

WSR 22-23-029

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 7, 2022, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-100.

Title of Rule and Other Identifying Information: The proposed rules to update definitions in WAC 194-24-30 and add new rules, as required by ESHB 1619 (2022 regular session).

Hearing Location(s): On December 27, 2022, at 10:00 a.m., virtual. Remote testimony will be accepted.

Date of Intended Adoption: January 31, 2023.

Submit Written Comments to: Liz Reichart, Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, email appliances@commerce.wa.gov, by January 2, 2023.

Assistance for Persons with Disabilities: Contact Liz Reichart, email appliances@commerce.wa.gov, by January 2, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal updates chapter 194-24 WAC and includes seven product standards, four new standards, and three existing standards. It also eliminates two standards which have been federally preempted. Most standards take effect on January 1, 2024. The effective dates of standards in this legislation are based on date of manufacture, not the date of sale. Products already in stores or warehouses may be installed after the new standards take effect. The standards apply to manufacturers, distributors, retailers, and installers, rather than to individual consumers.

Reasons Supporting Proposal: These proposed rules implement statutory changes to our existing state standards. These new and updated standards represent a cost-effective strategy to protect consumers and businesses and strengthen the state's economy.

Statutory Authority for Adoption: RCW 19.260.070.

Statute Being Implemented: Chapter 19.260 RCW.

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

Name of Proponent: Washington department of commerce, public.

Name of Agency Personnel Responsible for Drafting: Liz Reichart, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-515-8194; Implementation and Enforcement: Washington Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-407-6000.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of commerce is not a listed agency in RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rules implement statutory requirements and do not impose costs beyond what is required to comply with the statute. According to the appliance standards awareness project, these products represent a net cost savings of nearly \$52 million to consumers and businesses in Washington in the first 15 years of being enacted.

November 4, 2022
Amanda Hathaway
Rules Coordinator

OTS-4141.1

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

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

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

- (a) Showerheads;
- (b) Tub spout diverters;
- (c) Showerhead tub spout diverter combinations;
- (d) Lavatory faucets and replacement aerators;
- (e) Kitchen faucets and replacement aerators;
- (f) Public lavatory faucets and replacement aerators;
- (g) Urinals;
- (h) Water closets; ((and))
- (i) Computers and computer monitors; and
- (j) Portable electric spas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **Standard.** ~~((The idle energy rate of commercial hot food holding cabinets shall be no greater than 40 watts per cubic foot of measured interior volume.))~~ Commercial hot food holding cabinets must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for commercial hot food holding cabinets, version 2.0.

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

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

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

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

NEW SECTION

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

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

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

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

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

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

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

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

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

(4) **Listing.** There is no listing requirement for this product.

(5) **Marking.** There is no marking requirement for this product.

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

NEW SECTION

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

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

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

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

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

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NEW SECTION

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

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

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

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

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

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NEW SECTION

WAC 194-24-200 Electric vehicle supply equipment. (1) **Scope.** This rule applies to new electric vehicle supply equipment manufactured on or after January 1, 2024.

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

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

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

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

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REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 194-24-100 Residential pool pumps.

WAC 194-24-195 Uninterruptible power supplies.

WSR 22-23-042

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 8, 2022, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-046.

Title of Rule and Other Identifying Information: WAC 4-30-010

Definitions.

Hearing Location(s): On January 27, 2023, at 9:00 a.m., at Radisson Hotel Seattle Airport, Orcas Room, 18118 International Boulevard Seattle, WA 98188; or Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 27, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 25, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, Rules Coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771, email Kirsten.donovan@acb.wa.gov, by January 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-010 to: (1) Add a definition for professional services; and (2) eliminate definitions that are no longer needed.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328

(5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with these changes.

November 8, 2022
Michael J. Paquette, CPA
Executive Director

OTS-4189.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"Act" means the Public Accountancy Act codified as chapter 18.04 RCW.

"Active individual participant" means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

~~(**"Affiliated entity"** means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.)~~

"Applicant" means an individual who has applied:

- (a) To take the national uniform CPA examination;
- (b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;
- (c) To renew an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;
- (d) To reinstate an individual license, a CPA-Inactive certificate, registration as a resident nonlicensee firm owner, or practice privileges.

"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.

~~(**"Authorized person"** means a person who is designated or has held out as the client's representative, such as a general partner, tax matters partner, majority shareholder, spouse, agent, or apparent agent.)~~

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

"Certificate holder" means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

"Client" means the person or entity that retains a licensee, as defined in this section, a CPA-Inactive certificate holder, a nonlicensee firm owner of a licensed firm, or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

~~(**"Commissions and referral fees"** are compensation arrangements where the primary contractual relationship for the product or service is not between the client and licensee, as defined in this section, CPA-Inactive certificate holder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm; and~~

~~(a) Such persons are not primarily responsible to the client for the performance or reliability of the product or service; or~~

~~(b) Such persons add no significant value to the product or service; or~~

~~(c) A third party instead of the client pays the persons for the products or services.)~~

"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.

~~(**"Contingent fees"** are fees 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.)~~

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

"CPA-Inactive" means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195

(1)(a)(iii)(A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

"Inactive" means the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act or the act of another state.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

"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 (~~ten~~) 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) 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 oth-

er 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.

~~(**"Referral fees"** see definition of "commissions and referral fees" in this section.)~~

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

"Representing oneself" means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of CPA-Inactive certificate holders, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2) (a).

"Statements on auditing standards (SAS)" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"Statements on standards for accounting and review services (SSARS)" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

[Statutory Authority: RCW 18.04.055. WSR 19-16-074, § 4-30-010, filed 7/31/19, effective 1/1/20. Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-010, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-010, filed 8/9/16, effective 9/9/16. Statutory Authority: 18.04.055, 18.04.025, 18.04.350. WSR 10-24-009, amended and recodified as § 4-30-010, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055, 18.04.025. WSR 08-18-016, § 4-25-410, filed 8/25/08, effective 9/25/08. Statutory Authority: RCW 18.04.055. WSR 05-01-137, § 4-25-410, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-410, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(16). WSR 02-04-064, § 4-25-410, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(11). WSR 01-11-124, § 4-25-410, filed 5/22/01, effective 6/30/01; WSR 98-12-020, § 4-25-410, filed 5/27/98, effective 6/27/98; WSR 94-23-071, § 4-25-410, filed 11/15/94, effective 12/16/94.]

WSR 22-23-043

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 8, 2022, 12:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-094.

Title of Rule and Other Identifying Information: WAC 4-30-060

What are the education requirements to qualify to apply for the CPA examination?

Hearing Location(s): On January 27, 2023, at 9:00 a.m., at Radisson Hotel Seattle Airport, Orcas Room, 18118 International Boulevard, Seattle, WA 98188; or Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 27, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 25, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771, email Kirsten.donovan@acb.wa.gov, by January 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-060 to: (1) Change the number of college credits required to sit for the Uniform CPA Examination to 120 semester credits (180 quarter credits); and (2) rename the rule.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328 (5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with these changes.

November 8, 2022
Michael J. Paquette, CPA
Executive Director

OTS-4188.1

AMENDATORY SECTION (Amending WSR 16-10-018, filed 4/22/16, effective 5/23/16)

WAC 4-30-060 ~~((What are the education requirements to qualify to apply for the CPA examination?))~~ Education requirements. (1) Education requirements to sit for the exam: ~~((Effective July 1, 2000,))~~ To apply for the CPA examination you must have completed ~~((+))~~

~~((a-))~~ at least ~~((one hundred fifty))~~ 120 semester hours ~~((two hundred twenty-five))~~ 180 quarter hours) of college education ~~((+))~~; including ~~((+))~~

~~((b-))~~, a baccalaureate or higher degree; and ~~((e-))~~ an accounting major or concentration as defined as at least:

~~((i-))~~ (a) Twenty-four semester hours ~~((thirty-six))~~ 36 quarter hours) or the equivalent in accounting subjects of which at least ~~((fifteen))~~ 15 semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite); and

~~((ii-))~~ (b) Twenty-four semester hours ~~((thirty-six))~~ 36 quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.

(2) ~~((One hundred eighty-day provision: If you expect to meet the education requirements of this section within one hundred eighty days following the examination, you will be eligible to take the CPA examination provided you submit a signed Certificate of Enrollment from the educational institution in which you are enrolled stating that you will meet the board's education requirements within one hundred eighty days following the day you first sit for any one section of the examination. If you apply for the exam using the one hundred eighty-day provision, then within two hundred ten days of first sitting for any section of the exam, you must provide the examination administrator complete documentation demonstrating that you met the board's education requirements within one hundred eighty days of first sitting for any one section of the exam. If you do not provide such documentation within the required two hundred ten-day time period, your exam score(s) will not be released and you will not be given credit for any section(s) of the examination. Applicants failing to provide such documentation must reapply as a first-time applicant.))~~ Education re-

quirements to apply for a CPA license: To apply for the CPA license you must have completed at least 150 semester hours (225 quarter hours) of college education; including, a baccalaureate or higher degree; and an accounting major or concentration as defined as at least:

(a) Twenty-four semester hours (36 quarter hours) or the equivalent in accounting subjects of which at least 15 semester hours must be at the upper level or graduate level (an upper level course is defined as a course that frequently carries completion of a lower level course(s) as a prerequisite); and

(b) Twenty-four semester hours (36 quarter hours) or the equivalent in business administration subjects at the undergraduate or graduate level.

(3) **Education obtained outside the United States:** If you obtained all or a portion of your education outside the United States you must have your education evaluated by a board approved foreign education credential evaluation service. The board will establish the criteria for board approval of foreign education credential evaluation services. The board does not provide education credential evaluation services.

(4) **Semester versus quarter hours:** As used in these rules, a "semester hour" means the conventional college semester hour. Your quarter hours will be converted to semester hours by multiplying them by two-thirds.

(5) **Accreditation standards:** For purposes of this rule, the board will recognize colleges and universities which are accredited in accordance with (a) through (c) of this subsection.

(a) The college or university must be accredited at the time your education was earned by a regionally or nationally accrediting agency recognized by the board.

(b) If an institution was not accredited at the time your education was earned but is so accredited at the time your application is filed with the board, the institution will be deemed to be accredited for the purpose of (a) of this subsection provided that it:

(i) Certifies that your total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(ii) Furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the preaccrediting courses used to qualify you for a concentration in accounting are substantially equivalent to postaccrediting courses.

(c) If your degree was received at an accredited college or university as defined by (a) or (b) of this subsection, but the educational program which was used to qualify you for a concentration in accounting included courses taken at nonaccredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which your degree was received, provided the accredited institution either:

(i) Has accepted such courses by including them in its official transcript; or

(ii) Certifies to the board that it will or would accept such courses for credit toward graduation.

(6) **Alternative to accreditation:** If you graduated from a degree-granting institution that was not accredited at the time your degree was received or at the time your application was filed, you will be deemed to be a graduate of an accredited college or university if a credentials evaluation service approved by the board certifies that your degree is equivalent to a degree from an accredited college or university as defined in subsection (5) of this section. The board does not provide education credential evaluation services.

[Statutory Authority: RCW 18.04.055, 18.04.105. WSR 16-10-018, § 4-30-060, filed 4/22/16, effective 5/23/16. Statutory Authority: RCW 18.04.055(5), 18.04.105(1). WSR 10-24-009, amended and recodified as § 4-30-060, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-710, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-710, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(5). WSR 95-20-065, § 4-25-710, filed 10/3/95, effective 11/3/95; WSR 93-12-071, § 4-25-710, filed 5/27/93, effective 7/1/93.]

WSR 22-23-045

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 8, 2022, 1:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-060.

Title of Rule and Other Identifying Information: WAC 4-30-045 Commission and referral fees and 4-30-049 Accounting principles.

Hearing Location(s): On January 27, 2023, at 9:00 a.m., at Radisson Hotel Seattle Airport, Orcas Room, 18118 International Boulevard, Seattle, WA 98188; or Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 27, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 25, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771, email Kirsten.donovan@acb.wa.gov, by January 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes adoption of WAC 4-30-045 and 4-30-049 to reorganize the ethics and prohibited practice rule sections for clarity.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328 (5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with these changes.

November 8, 2022
Michael J. Paquette, CPA
Executive Director

OTS-4193.1

NEW SECTION

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), 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-4196.1NEW SECTION

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 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 de-

parture, 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), 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 22-23-050

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 8, 2022, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-093.

Title of Rule and Other Identifying Information: WAC 4-30-040

What are the requirements concerning integrity and objectivity?, 4-30-042 When is independence required?, 4-30-044 What restrictions govern commissions, referral, and contingent fees?, 4-30-046 What are the requirements concerning competence?, 4-30-048 Compliance is required with which rules, regulations and professional standards?, 4-30-050 Records and clients confidential information, 4-30-051 Client records, 4-30-052 What acts are considered discreditable?, 4-30-054 What are the limitations on advertising and other forms of solicitation?, 4-30-056 What are the limitations regarding individual and firm names?, and 4-30-058 Does the board authorize the use of any other titles or designations?

Hearing Location(s): On January 27, 2023, at 9:00 a.m., at Radisson Hotel Seattle Airport, Orcas Room, 18118 International Boulevard, Seattle, WA 98188; or Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 27, 2023.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 25, 2023.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by January 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-040, 4-30-042, 4-30-044, 4-30-046, 4-30-048, 4-30-050, 4-30-052, 4-30-054, 4-30-056, and 4-30-058 to: (1) Simplify the rules by paralleling the rules with the AICPA code of professional conduct (ACIPA code) and specifically listing any exceptions to the AICPA code; and (2) rename the rules (with the exception of WAC 4-30-050).

The board of accountancy proposes repealing: WAC 4-30-051 as the information contained in this rule was included throughout the ethics and prohibited practices rule sections amended above.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not a listed agency in RCW 34.05.328 (5) (a) (i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with these changes.

November 8, 2022
Michael J. Paquette, CPA
Executive Director

OTS-4190.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

~~WAC 4-30-040 ((What are the requirements concerning integrity and objectivity?)) Integrity and objectivity.~~ ((When offering or performing services, licensees, CPA Inactive certificate holders, nonlicensee firm owners, and employees of such persons must:

- ~~• Remain honest and objective;~~
- ~~• Not misrepresent facts;~~
- ~~• Not subordinate their judgment to others; and~~
- ~~• Remain free of conflicts of interest unless such conflicts are specifically permitted by board rule or professional standards listed in WAC 4-30-048.~~

~~If the language of the professional standards listed in WAC 4-30-048 differ from or conflict with specific board rules, board rules prevail.)~~ (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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-040, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-620, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-620, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-620, filed 1/31/02, effective 3/15/02; WSR 98-12-048, § 4-25-620, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-620, filed 10/28/93, effective 11/28/93.]

OTS-4191.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-042 (~~(When is independence required?)~~) Independence.

~~((When performing professional services for which a report expressing assurance is prescribed by professional standards, licensees, as defined in WAC 4-30-010, CPA inactive certificate holders, nonlicensee firm owners, and employees of such persons must evaluate and maintain their independence so that opinions, reports, conclusions, and judgments will be impartial and viewed as impartial by parties expected to rely on any report expressing assurance by such persons. Such persons are required:~~

~~(1) To comply with all applicable independence rules, regulations, and the AICPA code of conduct as referenced in and required by WAC 4-30-048; and~~

~~(2) To decline engagements for which a report expressing assurance is prescribed by professional standards when such persons have a relationship that could lead a reasonable and foreseeable user to conclude that such persons are not independent.~~

~~Independence is not required when performing a compilation engagement provided the report discloses a lack of 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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.~~

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-042, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-622, filed 8/25/08, effective 9/25/08; WSR 03-24-034, § 4-25-622, filed 11/25/03, effective 12/31/03; WSR 98-12-049, § 4-25-622, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-622, filed 10/28/93, effective 11/28/93.]

OTS-4192.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-044 (~~(What restrictions govern commissions, referral, and contingent fees?)~~) Contingent fees. ~~((For the purposes of this section, the term "licensed firm" includes any affiliated entity(ies) and the term "firm owner" includes the owner(s) of any affiliated entity(ies).~~

~~(1) Licensees and/or their employees must 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 such persons perform compila-~~

tion, or other professional services for which a report expressing assurance is prescribed by professional standards for that client. This prohibition applies:

(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and

(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.

(2) Licensees and/or their employees must also not:

(a) Perform for a contingent fee any professional services for, or receive such a fee from a client for whom such persons perform compilation, or other professional services for which a report expressing assurance is prescribed by professional standards; or

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(3) The prohibition against contingent fees applies:

(a) During the period in which such persons are engaged to perform professional services for which a report expressing assurance is prescribed by professional standards; and

(b) During the period covered by any information for which a report expressing assurance is prescribed by professional standards and a report was issued by such persons.

(4) Fees are not considered 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.) (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 ((person subject to board rules who is not prohibited by this section from performing services for, or receiving a commission, referral or contingent fee and who are paid or expect to be paid accordingly must disclose that fact to any person or entity to whom such

~~persons recommend or refer a product or service to which the commission, referral or contingent fee relates in the manner prescribed below)) 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 (~~(, CPA-Inactive certificate holder's, or nonlicensee firm owner's))~~ role as the client's advisor; and

(d) Obtain the client's consent to the fee arrangement in writing.

(6) (~~Nothing in this rule shall be interpreted to preclude licensees, as defined in WAC 4-30-010, CPA-Inactive certificate holders, or nonlicensee firm owners from purchasing, selling, or merging all or a portion of a licensed firm or affiliated entity or to require disclosure to clients of terms or payments made or received pursuant to the purchase, sale, or merger.~~) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, amended and recodified as § 4-30-044, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-626, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-626, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-626, filed 1/31/02, effective 3/15/02; WSR 01-03-012, § 4-25-626, filed 1/5/01, effective 2/5/01; WSR 98-12-055, § 4-25-626, filed 5/29/98, effective 6/29/98.]

OTS-4194.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-046 (~~(What are the requirements concerning competence?)~~) **General standards.** (~~(Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not undertake to perform any professional service unless such persons can reasonably expect to complete the service with professional competence.)~~) (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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-046, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-630, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-630, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-630, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-630, filed 10/28/93, effective 11/28/93.]

OTS-4195.1

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-048 ~~((Compliance is required with which rules, regulations and professional standards?))~~ Compliance with standards. ~~((Licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(b), CPA Inactive certificate holders, CPA firms, nonlicensee firm owners, and employees of such persons must comply with rules, regulations, and professional standards promulgated by the appropriate bodies for each service undertaken. However, if the requirements found in the professional standards listed in this section differ from the requirements found in specific board rules, board rules prevail.~~

~~Authoritative bodies include, but are not limited to, 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); the Federal Office of Management and Budget (OMB); the Internal Revenue Service (IRS); the American Institute of Certified Public Accountants (AICPA), and federal, state, and local audit, regulatory and tax agencies.~~

~~Such standards include:~~

~~(1) Statements on Auditing Standards and related Auditing Interpretations issued by the AICPA;~~

~~(2) Statements on Standards for Accounting and Review Services and related Accounting and Review Services Interpretations issued by the AICPA;~~

~~(3) Statements on Governmental Accounting and Financial Reporting Standards issued by GASB;~~

~~(4) Statements on Standards for Attestation Engagements and related Attestation Engagements Interpretations issued by AICPA;~~

- ~~(5) Statements of Financial Accounting Standards and Interpretations, and Staff Positions issued by FASB, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB;~~
- ~~(6) Statement on Standards for Consulting Services issued by the AICPA;~~
- ~~(7) Statements on Quality Control Standards issued by the AICPA;~~
- ~~(8) Statements on Standards for Tax Services and Interpretation of Statements on Standards for Tax Services issued by the AICPA;~~
- ~~(9) Statements on Responsibilities in Personal Financial Planning Practice issued by the AICPA;~~
- ~~(10) Statements on Standards for Litigation Services issued by the AICPA;~~
- ~~(11) Professional Code of Conduct issued by the AICPA including interpretations and ethics rulings;~~
- ~~(12) Governmental Auditing Standards issued by the U.S. Governmental Accountability Office;~~
- ~~(13) AICPA Industry Audit and Accounting Guides;~~
- ~~(14) SEC Rules, Concept Releases, Interpretative Releases, and Policy Statements;~~
- ~~(15) Standards issued by the PCAOB; and~~
- ~~(16) IRS Circular 230;~~
- ~~(17) Any additional national or international standards recognized by the AICPA, PCAOB, SEC and/or GAO.~~

If the professional services are governed by standards not included in subsections (1) through (17) of this section, individuals and firms including persons exercising practice privileges under RCW 18.04.350(2) who offer or render professional services in this state or for clients located in this state and the firms rendering professional services in this state or for clients located in this state through such qualifying individuals must:

- ~~(a) Maintain documentation of the justification for the departure from the standards listed in subsections (1) through (17) of this section;~~
- ~~(b) Determine and document what standards are applicable; and~~
- ~~(c) Demonstrate compliance with the applicable 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, 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), and out-of-state firms permit-

ted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 11-07-070, § 4-30-048, filed 3/22/11, effective 4/22/11; WSR 10-24-009, amended and recodified as § 4-30-048, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-631, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-631, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-631, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055 (2) and (6). WSR 00-11-071, § 4-25-631, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055(6). WSR 98-12-050, § 4-25-631, filed 5/29/98, effective 6/29/98. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-631, filed 10/28/93, effective 11/28/93.]

OTS-4197.1

AMENDATORY SECTION (Amending WSR 18-04-071, filed 2/2/18, effective 3/5/18)

WAC 4-30-050 ((Records and clients) Confidential client information. ~~((1) Client: The term "client" as used throughout WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client or another authorized person in an initial interview to obtain or provide professional services.~~

~~(2) Sale or transfer of client records: No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or another authorized person.~~

~~(3) Disclosure of client confidential records and client relationships:~~

~~(a) Confidential client communication or information: Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not without the specific consent of the client or another authorized person disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.~~

~~(b) Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons who have provided records to a client or another authorized person are not obligated to provide such records to other individuals associated with the client.~~

~~(c) When a licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee is engaged to prepare a married couple's joint tax return, both spouses are considered to be clients, even if the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee was engaged by one spouse and deals exclusively with that spouse.~~

~~Accordingly, if the married couple is undergoing a divorce and one spouse directs the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee to withhold joint tax information from the other spouse, the licensee, CPA-Inactive certificate holder,~~

~~nonlicensee firm owner, or employee shall provide the information to both spouses, in compliance with this rule. The licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee should consider reviewing the legal implications of such disclosure with an attorney and any responsibilities under any applicable tax performance standards promulgated by the United States Department of Treasury, Internal Revenue Service.~~

~~This rule also applies to confidential communications and information obtained in the course of professional tax compliance services unless state or federal tax laws or regulations require or permit use or disclosure of such information.~~

~~Consents may include those requirements of Treasury Circular 230 and IRC Sec. 7216 for purposes of this rule, provided the intended recipients are specifically and fully identified by full name, address, and other unique identifiers.~~

~~(4) **Disclosing information to third-party service providers:** Licensees, CPA-Inactive certificate holders, or nonlicensee firm owners must do one of the following before disclosing confidential client information to third-party service providers:~~

~~(a) Enter into a contractual agreement with the third-party service provider to assist in providing the professional services to maintain the confidentiality of the information and provide a reasonable assurance that the third-party service provider has appropriate procedures in place to prevent the unauthorized release of confidential information to others. The nature and extent of procedures necessary to obtain reasonable assurance depends on the facts and circumstances, including the extent of publicly available information on the third-party service provider's controls and procedures to safeguard confidential client information; or~~

~~(b) Obtain specific consent from the client before disclosing confidential client information to the third-party service provider.~~

~~(5) Disclosure of client records in the course of a firm sale, or transfer upon death of a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.~~

~~A licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, that sells or transfers all or part of a practice to another person, firm, or entity (successor firm) and will no longer retain ownership in the practice must do all of the following:~~

~~(a) Submit a written request to each client subject to the sale or transfer, requesting the client's consent to transfer its files to the successor firm or other entity and notify the client that its consent may be presumed if it does not respond to the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner's request within a period of not less than ninety days, unless prohibited by law. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or successor in interest of a deceased firm owner, should not transfer any client files to the successor firm until either the client's consent is obtained or the ninety days has lapsed, whichever is shorter. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner must retain evidence of consent, whether obtained from the client or presumed after ninety days.~~

~~(b) It is permissible for the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner to contract with a responsible custodian to securely store client records until such time as consent or transfer has been obtained.~~

~~(6) This rule does not:~~

~~(a) Affect in any way the obligation of those persons to comply with 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~~

~~(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.) (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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055 and 2017 c 304. WSR 18-04-071, § 4-30-050, filed 2/2/18, effective 3/5/18. Statutory Authority: RCW 18.04.055(2), 18.04.405(1). WSR 13-04-011, § 4-30-050, filed 1/25/13, effective 2/25/13. Statutory Authority: RCW 18.04.055(2), 18.04.390(4)(b), and 18.04.405(1). WSR 11-06-062, amended and recodified as § 4-30-050, filed 3/2/11, effective 4/2/11; WSR 08-18-016, § 4-25-640, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-640, filed 12/16/04, effective 1/31/05; WSR 03-24-033, § 4-25-640, filed 11/25/03, effective 12/31/03. Statutory Authority: RCW 18.04.055(2). WSR 02-22-082, § 4-25-640, filed 11/5/02, effective 12/31/02. Statutory Authority: RCW 18.04.055 [18.04.055]. WSR 93-22-046, § 4-25-640, filed 10/28/93, effective 11/28/93.]

OTS-4198.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 4-30-051 Client records.

OTS-4199.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-052 ((What acts are considered discreditable?)) Acts discreditable. ((Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not:

(1) Commit, or allow others to commit in their name, any act that reflects adversely on their fitness to represent themselves as a CPA, CPA-Inactive certificate holder, CPA firm, or a firm owner;

(2) Seek to obtain clients by the use of coercion, intimidation or harassing conduct; or

(3) Permit others to carry out on their behalf, either with or without compensation, acts which violate the rules of conduct.)) (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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-052, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-650, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-650, filed 12/16/04, effective 1/31/05; WSR 01-22-036, § 4-25-650, filed 10/30/01, effective 12/1/01. Statutory Authority: RCW 18.04.055. WSR 93-22-090, § 4-25-650, filed 11/2/93, effective 12/3/93.]

OTS-4200.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-054 ((What are the limitations on)) Advertising and other forms of solicitation((?)). ((Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not make false, fraudulent, misleading, deceptive or unfair statements or claims regarding their services. Examples of such statements or claims include, but are not limited to, statements or claims which:

~~(1) Contain a misrepresentation of fact;~~
~~(2) Fail to make full disclosure of relevant facts;~~
~~(3) Imply your professional services are of an exceptional quality, which is not supported by verifiable facts;~~
~~(4) Create false expectations of favorable results;~~
~~(5) Imply educational or professional attainments, specialty designations, or licensing recognition not supported in fact; or~~
~~(6) Represent that professional services will be performed for a stated fee when this is not the case, or do not disclose variables that may reasonably be expected to affect the fees that will be charged.)~~ (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, over-reaching, 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), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[Statutory Authority: RCW 18.04.055(2). WSR 10-24-009, recodified as § 4-30-054, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-660, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-660, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-660, filed 1/31/02, effective 3/15/02; WSR 00-11-072, § 4-25-660, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.04.055. WSR 93-22-090, § 4-25-660, filed 11/2/93, effective 12/3/93.]

OTS-4201.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-056 ((What are the limitations regarding individual and firm names?)) Form of organization and name. ((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.

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:

~~(1) 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.");~~

~~(2) Implies the existence of a partnership when one does not exist;~~

~~(3) Includes the name of a person who is neither a present nor a past owner of the firm; or~~

~~(4) Implies educational or professional attainments, specialty designations, or licensing recognition not supported in fact.~~

A licensee may not operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the

~~board. A CPA or a CPA-Inactive certificate holder may not use the title in association with a name that is not registered with the board.)~~ (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) For the purposes of this rule, "licensees" includes licensees, CPA firms, nonlicensee firm owners, employees of such persons, out-of-state individuals with practice privileges under RCW 18.04.350(2), and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195.

[WSR 10-24-009, recodified as § 4-30-056, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.055 (4), (8) and 18.04.345(5). WSR 05-01-137, § 4-25-661, filed 12/16/04, effective 1/31/05. Statutory Authority: RCW 18.04.055(8). WSR 01-22-036, § 4-25-661, filed 10/30/01, effective 12/1/01; WSR 00-11-073, § 4-25-661, filed 5/15/00, effective 6/30/00. Statutory Authority: RCW 18.40.055 [18.04.055]. WSR 93-22-046, § 4-25-661, filed 10/28/93, effective 11/28/93.]

OTS-4202.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

~~WAC 4-30-058 ((Does the board authorize the use of any other titles or designations?)) Other authorized titles. ((Yes. RCW 18.04.350(14), Practices not prohibited, authorizes the board to allow the use of other titles (designations) if the individual using the title or designation is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles or designations. Accordingly, the board authorizes the use of the following titles and designations:~~

~~(1) Designations or titles authorized by the American Institute of Certified Public Accountants (AICPA);~~

~~(2) Designations or titles authorized by the Accreditation Council for Accountancy and Taxation located in Alexandria, Virginia, or its successor:~~

- ~~• "Accredited Business Accountant" or "ABA";~~
- ~~• "Accredited Tax Preparer" or "ATP"; and~~
- ~~• "Accredited Tax Advisor" or "ATA."~~

~~(3) Designations or titles authorized by the Certified Financial Planner Board of Standards in Denver, Colorado, or its successor:~~

- ~~• "Certified Financial Planner" or "CFP."~~

~~These authorized designations relate to title use only, are not limited to individuals who have held or are holding a license or certificate under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive.") (1) The board allows the use of other titles by any person regardless of whether the person has been granted a certificate or holds a license if the person using the titles or designations is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles.~~

~~(2) Nothing in this chapter prohibits the use of the title "accountant" by any person regardless of whether the person holds a license under this chapter.~~

~~(3) Nothing in this chapter prohibits the use of the title "enrolled agent" or the designation "EA" by any person regardless of whether the person holds a license under this chapter if the person is properly authorized at the time of use to use the title or designation by the Internal Revenue Service (IRS).~~

~~(4) The board also authorizes titles and designations authorized by:~~

~~(a) The American Institute of Certified Public Accountants (AICPA);~~

~~(b) The Association of International Certified Professional Accountants (AICPA);~~

~~(c) The Institute of Management Accounts (IMA);~~

~~(d) The Accreditation Council for Accountancy and Taxation; and~~

~~(e) Certified Financial Planner Board of Standards (CFP Board).~~

~~(5) These authorized designations relate to title use only, are not limited to, individuals who have held or are holding a license under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive."~~

~~(6) The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:~~

((+)) (a) Has reached ((~~sixty~~)) 60 years of age and holds an active license in good standing; or

((+)) (b) At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than ((~~twenty~~)) 20 years.

[Statutory Authority: RCW 18.04.055. WSR 16-17-036, § 4-30-058, filed 8/9/16, effective 9/9/16. Statutory Authority: RCW 18.04.350(13). WSR 12-10-085, § 4-30-058, filed 5/2/12, effective 6/2/12; WSR 10-24-009, recodified as § 4-30-058, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 18.04.350(9). WSR 02-17-051, § 4-25-930, filed 8/15/02, effective 9/15/02.]

WSR 22-23-062
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 9, 2022, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-157.

Title of Rule and Other Identifying Information: WAC 392-191A-160 and 392-191A-190, concerning professional performance evaluations of certificated principals and assistant principals.

Hearing Location(s): On January 5, 2023, at 3:00 p.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of the superintendent of public instruction (OSPI) rules web page k12.wa.us/policy-funding/ospi-rulemaking-activity. The hearing will be held as a virtual public hearing, without a physical meeting space. For participation questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: January 10, 2023.

Submit Written Comments to: Katie Taylor, Director of Educator Effectiveness, OSPI, P.O. Box 47200, Olympia, WA 98504, email katie.taylor@k12.wa.us, by January 5, 2023.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by December 29, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to establish a timeline and defined process for professional performance evaluations of certificated principals and assistant principals. The proposal would require evaluations and summative conferences be conducted by the evaluator prior to June 1 of the school year of which the evaluation is made. The proposed timeline would apply to both focused and comprehensive evaluations for principals and assistant principals. The proposal is intended to ensure that principals and assistant principals receive timely feedback, as well as indications of their employment status.

Reasons Supporting Proposal: In collaboration with the teacher and principal evaluation program (TPEP) steering committee*, this proposal supports growth and development for all principals and assistant principals by requiring evaluations and summative conferences occur in a timely manner. Unlike teacher evaluations, whose evaluation timeline is established by collective bargaining agreements, principal and assistant principal evaluations might not be completed in a manner or on a timeline that allows a principal/assistant principal to improve their practice or to seek another position.

*The TPEP steering committee includes the following: Association of Washington School Principals, Washington Association of School Administrators, Washington Education Association, Washington State School Directors' Association, and Washington State Parent Teacher Association, as well as OSPI.

Statutory Authority for Adoption: RCW 28A.405.100.

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

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: OSPI anticipates that the proposed changes could be effective beginning with the 2023-24 school year.

Name of Agency Personnel Responsible for Drafting and Implementation: Katie Taylor, OSPI, 600 South Washington Street, Olympia, WA; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

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

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

November 9, 2022

Chris P. S. Reykdal

State Superintendent of Public Instruction

OTS-4131.1

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-160 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals and assistant principals must include, at a minimum, the following:

(1) All eight principal criteria must contribute to the overall summative evaluation.

(2) The evaluation must include an assessment of the criteria using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) Criterion scores, including leadership and student growth rubrics, must be determined by an analysis of evidence.

(4) An overall summative score shall be derived by a calculation of all summative scores and determining the final four level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(5) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated principal or assistant principal's student growth impact rating.

(6) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(7) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

(8) Principal and assistant principal evaluations, including a scheduled summative conference with their evaluators, must be held on or prior to June 1st of the school year for which the evaluation is being made.

[Statutory Authority: RCW 28A.405.100. WSR 16-17-028, § 392-191A-160, filed 8/8/16, effective 8/31/16; WSR 13-05-009, § 392-191A-160, filed 2/7/13, effective 3/10/13.]

AMENDATORY SECTION (Amending WSR 16-17-028, filed 8/8/16, effective 8/31/16)

WAC 392-191A-190 Minimum procedural standards—Conduct of the focused evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals or assistant principals must include, at a minimum, the following:

(1) One of the eight criterion for certificated principals or assistant principals must be assessed in every year that a comprehensive evaluation is not required.

(2) The selected criterion must be approved by the principal's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.

(3) The evaluation must include an assessment of the criterion using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(4) The focused evaluation will include the student growth rubrics selected by the principal or assistant principal and approved by the principal's evaluator. If criterion 3, 5, or 8 is selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 6, or 7 is selected, evaluators will use criterion 3, 5, or 8 student growth rubrics.

(5) A summative score is assigned using the summative score from the most recent comprehensive evaluation. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated principal or assistant principal is placed on a focused evaluation. Should a principal or assistant principal provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a principal or assistant principal on a focused evaluation should be moved to a comprehensive evaluation for that school year, the principal or assistant principal must be informed of this decision in writing at any time on or before December 15th.

(7) Districts shall implement the changes described in subsections (5) and (6) in this section no later than the 2017-18 school year. A district has the option to implement beginning in either the 2016-17 or the 2017-18 school year.

(8) Principal and assistant principal evaluations, including a scheduled summative conference with their evaluators must be held on or prior to June 1st of the school year for which the evaluation is being made.

[Statutory Authority: RCW 28A.405.100. WSR 16-17-028, § 392-191A-190, filed 8/8/16, effective 8/31/16; WSR 13-05-009, § 392-191A-190, filed 2/7/13, effective 3/10/13.]

WSR 22-23-065

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 9, 2022, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-002.

Title of Rule and Other Identifying Information: WAC 192-170-080
Leave of absence.

Hearing Location(s): On December 29, 2022, at 9:00 a.m., Zoom, Meeting ID 838 4143 3857, Passcode 530117, Call in 253-215-8782. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/83841433857?pwd=cVRGU0cwbllhdmZHQUZhdSs5ZlNhQT09>.

Date of Intended Adoption: January 6, 2023.

Submit Written Comments to: Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by December 29, 2022.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email Teresa.eckstein@esd.wa.gov [Teresa.eckstein@esd.wa.gov], by December 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal clarifies that an individual on a leave of absence is eligible for unemployment benefits as long as the individual: (1) Meets the definition of "unemployed" per RCW 50.04.310; and (2) meets all other eligibility requirements provided in RCW 50.20.010.

Reasons Supporting Proposal: In May of 2022, the employment security department (department) received a petition requesting that the department amend WAC 192-170-080 to eliminate subsection (1)(a), which states, "If you are on a leave of absence, you are not unemployed and thus not eligible for benefits."

WAC 192-170-080 (1)(a), which states that someone on a leave of absence is not "unemployed," was determined to be "invalid" by the commissioner of the employment security department in 2011 under *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011). In 2021, the United States Department of Labor issued guidance stating an individual should be considered "unemployed" when the individual incurs a reduction in work hours and their wages are less than their weekly benefit amount. Unemployment Insurance Program Letter No. 3-22 (November 22, 2021). Rule making is therefore necessary to revisit whether individuals on a leave of absence should or should not be considered "unemployed."

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.04.310 defines when an individual is "unemployed" and not "unemployed."

Statute Being Implemented: RCW 50.04.310.

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

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Not applicable.

Name of Proponent: Unemployment Law Project, public.

Name of Agency Personnel Responsible for Drafting: Josh Dye, Olympia, Washington, 360-890-3472; Implementation and Enforcement: JR Richards, Olympia, Washington, 360-463-1079.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, <https://esd.wa.gov/newsroom/rulemaking/leave-of-absence>.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed amendment to the rule does not create additional costs to employers.

November 9, 2022

Dan Zeitlin

Employment System Policy Director

OTS-4059.2

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) If you are on a leave of absence, you are (~~not unemployed and thus not eligible for benefits~~) eligible for unemployment insurance benefits as long as you meet:

(i) The definition of "unemployed" per RCW 50.04.310; and

(ii) All other eligibility requirements provided per RCW 50.20.010.

(b) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(c) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(d) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-170-080, filed 5/12/10, effective 6/12/10.]

WSR 22-23-072
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 10, 2022, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-013.

Title of Rule and Other Identifying Information: Chapter 110-302 WAC, Foundational quality standards for outdoor nature-based child care. WAC 110-302-0001 Authority, 110-302-0005 Definitions, 110-302-0010 License required, 110-302-0011 License transfers, 110-302-0015 ONB program managers' simultaneous absence, 110-302-0016 Inactive status—Voluntary and temporary closure, 110-302-0020 Unlicensed programs, 110-302-0025 Certified and exempt ONB programs, 110-302-0030 Nondiscrimination, 110-302-0035 Department access to agency premises, records, ONB programs, and staff, 110-302-0055 Developmental screening and communication to parents or guardians, 110-302-0065 School readiness and family engagement activities, 110-302-0080 Family support self-assessment, 110-302-0085 Family partnerships and communication, 110-302-0100 General staff qualifications for ONB programs, 110-302-0105 Preservice requirements, 110-302-0106 Training requirements, 110-302-0107 In-service training, 110-302-0110 ONB program-based staff policies and training, 110-302-0111 Staff oversight, 110-302-0115 Staff records, 110-302-0120 Providing for the personal, professional, and health needs of staff, 110-302-0125 Character, competence, and suitability to serve children in care—Professional evaluations, 110-302-0130 Indoor and permanently located outdoor classroom ONB program space, 110-302-0135 Routine care, play, learning, relaxation, and comfort, 110-302-0140 Space arrangement, child-related displays, private space, and belongings, 110-302-0145 ONB program space and active play, 110-302-0146 Equipment and surfaces in outdoor space, 110-302-0147 Weather conditions and outdoor hazards, 110-302-0148 Gardens in ONB program space, 110-302-0150 ONB program and activities, 110-302-0155 Use of television, video, and computers, 110-302-0160 Promoting diversity and belonging, 110-302-0165 Safety requirements, 110-302-0166 Emergency preparation and exiting, 110-302-0170 Fire safety, 110-302-0175 Water hazards and swimming pools, 110-302-0180 Meal and snack schedule, 110-302-0185 Menus, milk, and food, 110-302-0186 Food allergies and special dietary needs, 110-302-0190 Parent- or guardian-provided food and written food plans, 110-302-0195 Food service, equipment, and practices, 110-302-0196 Food sources, 110-302-0197 Safe food practices, 110-302-0198 Food preparation areas, 110-302-0200 Handwashing and hand sanitizer, 110-302-0205 Child and staff illness, 110-302-0210 Immunizations and exempt children, 110-302-0215 Medication, 110-302-0220 Bathroom space and toileting, 110-302-0221 Diaper changing areas and disposal, 110-302-0225 Pets and animals, 110-302-0230 First-aid and CPR certification and supplies, 110-302-0235 Safe water sources, 110-302-0236 Safe drinking water, 110-302-0240 Clean and healthy environment, 110-302-0241 Cleaning schedules, 110-302-0245 Laundry and equipment, 110-302-0250 Private septic systems, 110-302-0255 Pest control, 110-302-0260 Storage of hazardous and maintenance supplies, 110-302-0265 Sleep, rest, and equipment, 110-302-0300 Individual care plan, 110-302-0305 Curriculum philosophy and planning, 110-302-0310 Concept development and feedback quality, 110-302-0315 Language and communication modeling and reasoning, 110-302-0320 Facilitating child interests, learning, perspective,

and productivity, 110-302-0325 Creating a climate for healthy child development, 110-302-0330 Positive relationships and child guidance, 110-302-0331 Prohibited behavior, discipline, and physical removal of children, 110-302-0335 Physical restraint, 110-302-0340 Expulsion, 110-302-0345 Supervising children, 110-302-0346 Plant foraging activities, 110-302-0347 Supervising children who are climbing natural features, 110-302-0350 Supervising children during water activities, 110-302-0351 ONB program campfire activity supervision and safety, 110-302-0352 ONB program tool activity supervision and safety, 110-302-0353 ONB program encountering wildlife supervision and safety, 110-302-0354 Indoor ONB program space capacity, 110-302-0356 ONB program capacity, ratio, and group size, 110-302-0357 ONB mixed age group capacity, ratio, and group size, 110-302-0360 ONB program and daily schedule, 110-302-0400 Application materials, 110-302-0401 Licensing fees, 110-302-0402 Changing ONB program space or location, 110-302-0410 License and program location, 110-302-0415 Zoning, codes, and ordinances, 110-302-0420 Prohibited substances, 110-302-0425 Initial, nonexpiring, dual licenses, and license modifications, 110-302-0435 Waiver from department rules, 110-302-0436 Variance from department rules, 110-302-0440 Facility licensing compliance agreements, nonreferral status, probationary license, and ONB provider rights, 110-302-0443 Enforcement actions—Notice and appeal, 110-302-0450 Parent or guardian handbook and related policies, 110-302-0455 Attendance records, 110-302-0460 Child records, 110-302-0465 Retaining facility and ONB program records, 110-302-0470 Emergency preparedness plan, 110-302-0471 ONB benefit-risk assessments, risk management policies, and waivers, 110-302-0475 Duty to protect children and report incidents, 110-302-0480 Transportation and off-site activity policy, 110-302-0485 Termination of services policy, 110-302-0486 Expulsion policy, 110-302-0490 Child restraint policy, 110-302-0495 Consistent care policy, 110-302-0500 Health policy, and 110-302-0505 Postings.

Hearing Location(s): On December 27, 2022, telephonic. Make oral comments by calling 360-522-2826 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including December 27, 2022, will be considered.

Date of Intended Adoption: December 29, 2022.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 27, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by December 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new chapter 110-302 WAC establishes licensing requirements for outdoor nature-based child cares.

Reasons Supporting Proposal: DCYF licenses and certifies child cares in Washington state. The proposed rules are necessary to implement chapter 304, Laws of 2021, which directed the department to license outdoor nature-based (ONB) child cares. They establish the minimum standards that are needed to promote the health and safety of children who enroll in these programs.

Statutory Authority for Adoption: RCW 43.216.742.

Statute Being Implemented: RCW 43.216.250 through 43.216.395 and 43.216.742.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Olympia, 360-628-2151; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

Scope of exemption for rule proposal:

Is not exempt.

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

Small Business Economic Impact Statement

1. Describe the proposed rule, including:

- A brief history of the issue.
- An explanation of why the proposed rule is needed.
- A brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

DCYF licenses child cares and early learning programs in Washington state. The 2017 legislature directed then department of early learning to establish a pilot project that licensed ONB early learning and child care programs beginning August 31, 2017, through June 30, 2021. The 2021 legislature concluded the pilot successful, authorized DCYF to license ONB child cares, and directed the adoption of these rules to implement licensing. The rules are necessary [to] promote the continued safety of ONB child care settings.

ONB programs may need professional services that consist of certified water testing labs. Programs that license indoor space will test their water for the presence of excessive lead levels and remediate when necessary. Any programs served by wells will test them for the presence of *E. coli* bacteria and nitrates. Both of these tests must be performed by a Washington state-certified laboratory accredited by the state's department of ecology. ONB programs that are licensed to operate on public or private school grounds or in public parks are not subjected to these tests.

- Education: The proposed rules require ONB providers to have certain certificates, a particular number of credit hours in a specified concentration, or equivalencies. ONB programs are employers of these providers and DCYF does not believe that they bear their employees' education costs. Addition[al] education requirements are 10 hours of continuing education each calendar year. While DCYF provides many no-cost courses that satisfy this annual requirement, if providers enroll in fee-based courses, the cost may be paid by their employers.
- Certified water testing labs: ONB programs that license indoor space will test their water for the presence of excessive lead

levels and remediate when necessary. Any programs served by wells will test them for the presence of *E. coli* bacteria and nitrates. Both of these tests must be performed by a Washington state-certified laboratory accredited by the state's department of ecology. ONB programs that are licensed to operate on public or private school grounds or in public parks are not subjected to these tests.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Receipts
624410	Child day care services*	12**	\$2,991.80	\$1,014.95

* Based on the United States Bureau's 2020 data collection.

** Includes only ONB programs.

3. Analyze the probable cost of compliance: Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services, and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue. The probable cost of compliance is detailed below. Compliance with the rule is not likely to cause lost sales or revenue. Compliance with the proposed rules may result in an increase in enrollment since compliance means the programs will be participating in the early achievers quality child care program as well as child care subsidies.

Operating costs are dependent upon whether a program operates in a park, on public or private school grounds, or on private land; how many hours per day children are in care; how many children are enrolled; activities; and whether the program serves food.

Assumptions: ONB programs will not bear the cost of their employees' education costs or background checks.

Licensing fees for all child care programs are waived through June 30, 2023. If and when they are reinstated, the licensing fee will be \$125.00 for the first 12 children and \$12.00 for each additional child.

Staffing costs include wages and one-time training costs as follows:

Wages	\$15.74 per hour
Child care basics training	\$250 per individual
First aid, CPR, bloodborne pathogens	\$120 per individual
Food handler's card, if program serves food	\$10 per individual
Annual continuing education	\$200 per individual

There are no-cost options that satisfy the annual requirement, but they may not meet programs' or providers' specific needs. The number of staff a program must employ depends on the number of enrolled children and activities offered.

Storage and container costs are expected to be a one-time cost of \$300. This includes:

- Weatherproof bins or tubs to hold staff and children's belongings;
- Containers to hold program materials and records;

- Trash containers; and
- Containers to make hazardous materials inaccessible to children.

Emergency supplies are expected to average between \$300 - \$500 annually. Emergency supplies include:

- A working telephone, which DCYF anticipates would be a cell phone and plan;
- Working flashlight;
- Prescribed first aid supplies;
- Thermometer;
- Working fire extinguisher;
- Extra clothing to ensure that children are dressed appropriately for the weather and program activities; and
- Life-saving equipment such as a ring buoy and rope or rescue tube for programs that offer water activities.

Environment-related costs are expected to be \$200. This includes safety barriers that create boundaries for programs that operate in unenclosed spaces as well as protecting children from natural hazards adjacent to program space such as ravines, cliffs, and bodies of water and weather protection.

- DCYF anticipates providers will create boundary barriers from low-cost materials, such as cones and tape;
- Safety barriers protecting children and providers from natural hazards must be at least 29" high or 38" high for programs serving school-age children and can be made from natural elements such as logs and rocks;
- A program must have shaded areas available to children who need protection from the heat or sun. If trees are not available, a program must use shade structures; and
- A program must provide tents or tarps to protect resting or napping children from the rain.

Toileting and hygiene:

- **Toileting:** Programs that do not operate in public parks or nature centers or on school grounds and do not have licensed indoor space have several options to choose from when choosing toilet facilities, including a relatively low-cost option of a portable toilet that DCYF estimates would be \$150. The annual cost of toilet tissue is estimated to be \$150.
- **Handwashing:** Programs must provide handwashing facilities with running water, soap, and single-use or cloth towels that are sanitized after each use. The annual handwashing cost is estimated to be \$150.
- **Diaper-changing area:** When needed, programs must use a washable, moisture-resistant mat for diaper changing and have a moisture impervious bag for soiled diapers. The cost is estimated to be \$50.

Child-sized seating to accommodate the number of enrolled children is required, but no- or low-cost options, such as logs, boulders, or blankets, will suffice. The cost of child-sized seating is expected to not exceed \$50.

Culturally and racially diverse learning opportunities must be provided and may have an associated cost. Programs must engage with their local Native American tribes and incorporate their cultural materials and practice as appropriate. Programs that must purchase

dolls, books, music, or other tools to meet this requirement are likely to spend up to \$100.

Cleaning supplies such as cloths and bleach or other disinfectant are needed to clean and sanitize any nonnatural surface that enrolled children and staff may be touching such as storage tubs, toilets, books, etc. The annual cost of cleaning supplies is estimated to be \$150.

Outdoor play equipment: Outdoor play equipment is not required; however, if it is used and the program is not located on school grounds or in a park, the equipment must have shock-absorbing material under it. Options and their costs are:

Shock absorbing material under swings and outdoor play equipment.* Probable cost assumes a coverage area of 230 square feet necessary for a swing set at a depth of 6'. Acceptable options are:	
rubber mulch - 4.2 cubic yards	\$1,309
pea gravel - 6 cubic yards	\$400.20
playground wood chips - 6 cubic yards	\$180

Costs that are dependent on the number of hours children are in care: Food service and tooth brushing: Programs that operate less than five hours a day and do not offer after-school care are not required to serve food. Children receiving after-school care must be offered a meal or snack. Children in care for at least five hours must be served meals and snacks. Programs that have food service must offer tooth brushing, if it is developmentally appropriate. Food service and tooth brushing costs are estimated at \$15 per day, per child. This includes:

- Food*;
- Durable or single-use disposable utensils;
- Dishware, napkins, or paper towels to hold food;
- Water bottles or cups for beverages;
- Cleaning and sanitizing supplies;
- Gloves and serving utensils;
- Coolers and icepacks for food storage;
- Cutting boards and tarps for food prep area; and
- Toothbrushes and toothpaste.

* ONB programs are entitled to participate in the USDA food subsidies program.

Sleeping equipment: Programs must supply sleeping equipment for children who are in care more than six hours per day. Sleeping equipment consists of a mat or cot, a clean blanket or sheet to cover the sleeping surface, and a blanket or sleeping bag to cover the child. Coverings must be laundered weekly when used by the same child, or after each use when used by different children. Sleeping equipment costs are estimated at \$30 with ongoing monthly laundering costs of \$20.

Costs for programs that voluntarily license indoor space: ONB programs are not required to have indoor space. If a program uses indoor space, however, it must be licensed and comply with these health and safety requirements:

Requirement:	Probable cost:
Stickers for any glass door	\$20
Shatter resistant light bulbs	\$45/15 bulbs
Cardinal window gates	\$25/4 gates
Window/door alarm	\$30/4 alarms
Deck guardrail (required only when platform or deck with a drop zone of more than 18" is used for child care activities)	\$96/3 feet of railing

Requirement:	Probable cost:
Vacuum	\$100
Carpet shampooer, if needed	\$200
Pivot or side-hinged exit door for family home child care	\$500
Annual fire safety inspection	\$25 - \$100
Annual fireplace/wood stove inspection, if needed	\$99
One smoke detector per floor and in each sleeping area	\$50 per detector
One fire extinguisher per floor	\$35
Barrier with lock for any water hazard – examples include: locking cover straps for hot tub fencing with locking gate for 14'x28' swimming pool with alarm	\$17 \$1,987
Annual cleaning for swimming pool used in program, if needed	Indeterminate
Indoor food prep area:	
Vented range hood, exhaust fan or window in food prep area	\$290 (range hood)
Refrigerator/freezer	\$700
Two compartment sink and sanitizing dishwasher OR Three compartment sink	\$792 or \$775
Colander to prevent food from touching sink basin	\$30
Indoor bathrooms:	
Working toilet	\$150
Utility step platform	\$30
Toilet paper dispenser	\$30
Toilet paper	\$50/96 rolls
Working sink/faucet	\$250
Bathroom window or exhaust fan	\$40
Washable floor surface	\$3/sq. ft.
Nonslip floor surface around tub or shower or grab bar	\$50

Costs for optional, voluntary activities: Any garden space used for ONB program activities must have fencing or alternative safeguards to prevent animal cross contamination, follow the prescribed soil requirements, and raised beds may not be built from materials that will leech chemicals into the soil. A one time cost for establishing a garden under the parameters described in proposed WAC 110-302-0148 is anticipated to range from \$100 - \$300.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry: Estimates of the cost of compliance determined for each section were based on researching actual costs at the time the rules were proposed and discussions with child care providers.

5. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: Use one or more of the following as a basis for comparing costs:

- Cost per employee.
- Cost per hour of labor.
- Cost per \$100 of sales.

There are no ONB programs currently licensed or certified that have more than 50 employees, the small business threshold, meaning that only small businesses are impacted.

6. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. Include consideration of each of the following cost mitigation strategies: (a) Reducing, modifying, or eliminating substantive regulatory requirements:

Many requirements have reduced-cost options for compliance, such as creating boundaries with traffic cones and tape instead of erecting other types of fencing and instituting a clothing policy for children in care instead of providing clothes to ensure that the children are dressed appropriately for weather conditions and activities.

Equivalences are accepted in lieu of college course work. This is not a cost mitigation for most ONB programs, but accepting equivalencies increases the hiring pool for these small businesses.

(b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements: DCYF provides ONB programs with an electronic system that holds all professional development and background check records for their employees. The electronic system is a repository for their records as well as making them accessible by DCYF for monitoring.

(c) Reducing the frequency of inspections: DCYF limits in-person inspections to once every 12 months, which is believed to be the minimum necessary to ensure the health and safety of children in care. The inspections can be limited to once per year because of the proposed rules' recordkeeping requirements, which allows licensors to review program history.

(d) Delaying compliance timetables: The proposed rules allow five years from hire or promotion for ONB providers to meet education requirements.

(e) Reducing or modifying fine schedules for noncompliance: Area licensing administrators are authorized to forgive or minimize fine when appropriate.

(f) Any other mitigation techniques suggested by small businesses or their advocates: The proposed rules were informed by the aforementioned pilot, during which waivers and variances were used to successfully mitigate hurdles. Licensing fees are waived through June 30, 2023.

If the costs cannot be reduced, provide a clear explanation of why.

7. Describe how small businesses were involved in the development of the proposed rule: The proposed rules were developed on outcomes from the aforementioned outdoor preschool pilot. Where possible, the proposed rules align with DCYF's current standards for family home and center child cares, chapter 110-300 WAC, and school-age programs, chapter 110-301 WAC.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: DCYF does not anticipate compliance will result in job loss or gain.

9. Summarize the results of the analysis, including the determination if costs are disproportionate: All ONB programs are small businesses and will be impacted by the proposed rules. For those who are impacted, more-than-minor costs will likely be incurred. DCYF believes the proposed rules set the minimum requirements necessary to promote the health and safety of children.

A copy of the statement may be obtained by contacting DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov.

November 10, 2022

Brenda Villarreal
Rules Coordinator

OTS-4183.3

Chapter 110-302 WAC
FOUNDATIONAL QUALITY STANDARDS FOR OUTDOOR NATURE-BASED CHILD CARE

INTENT AND AUTHORITY

NEW SECTION

WAC 110-302-0001 Authority. (1) Under RCW 43.216.742 the department of children, youth, and families is required to establish an outdoor nature-based (ONB) child care program and must comply with the requirements described in this subsection.

(a) The department must adopt rules to implement the ONB child care program and may waive or adapt licensing rules or requirements when necessary to allow for the operation of outdoor classrooms in Washington state.

(b) The department must apply the early achievers program to the ONB child care program to assess quality in outdoor learning environments and may waive or adapt early achievers rules or requirements when necessary to allow for the operation of outdoor classrooms.

(2) A child care or early learning program operated by a federally recognized tribe may participate in the ONB child care program through an interlocal agreement between the tribe and the department. The interlocal agreement must reflect the government-to-government relationship between the state and the tribe, including recognition of tribal sovereignty.

(3) Pursuant to RCW 43.216.250 (2)(b), the provisions of this chapter governing the physical facility, including buildings and other physical structures attached to buildings and premises, do not apply to licensed school-age programs that operate in facilities used by public or private schools. The department only regulates health, safety, and quality standards that do not relate to the physical facility for school age only ONB programs operating in facilities used by public or private schools.

[]

NEW SECTION

WAC 110-302-0005 Definitions. The following definitions apply to this chapter unless the context clearly requires otherwise.

"Accessible to children" means items, areas, or materials of an outdoor nature-based program (ONB) that a child can reasonably reach, enter, use, or get to on their own.

"Accommodations" means ONB program curriculum and instruction, activities, spaces, and materials that have been adapted to help children and adults with special needs function within their surroundings.

"Active supervision" or **"actively supervise"** means a heightened standard of care beyond supervision. This standard requires an ONB provider to see and hear the children they are responsible for during higher risk activities. The ONB provider must be able to prevent or instantly respond to unsafe or harmful events.

"Agency" has the same meaning as described in RCW 43.216.010.

"Aide" is a person who offers support to the ONB program staff.

"Allergy" or **"allergies"** means an overreaction of the immune system to a substance that is harmless to most people. During an allergic reaction, the body's immune system treats the substance or "allergen" as an invader. The body overreacts by releasing chemicals that may cause symptoms ranging from mildly annoying to life threatening. Common allergens include certain foods such as milk, eggs, fish, shellfish, common tree nuts, peanuts, wheat, and soybeans, as well as pollen, mold, or medication.

"American Society for Testing and Materials (ASTM)" means the international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services.

"Americans with Disabilities Act (ADA)" means the federal "equal opportunity" law protecting people with disabilities.

"Annual" or **"annually"** means an event that occurs each calendar year, not to exceed 365 days between occurrences.

"Applicant" means an individual who has made a formal request for a child care license, certification, exemption, or portable background check.

"Appropriate" when used to refer to child care or educational materials, means that the materials will interest and challenge children in terms of their ages and abilities.

"Appropriately" means correct or properly suited for a particular situation.

"Assistant director" is the person responsible for the overall management, including the facility and operation, of an ONB program that enrolls preschool-age and school-age children, or only preschool-age children.

"Assistant teacher" is a person whose work is to assist a lead teacher in providing instructional supports to children and implementing a developmentally appropriate ONB program. The assistant teacher must carry out assigned tasks under the supervision of a lead teacher, program supervisor, director, program director, assistant director, site director, or licensee.

"Bathroom" means a room containing a built-in, flush-type toilet.

"Benefit-risk assessment" means, for purposes of outdoor nature-based programs, a process used to identify and document hazards and risky play elements associated with childhood outdoor play and making plans to mitigate the risk of injury to children while maintaining developmental benefits for children. This process includes identifying

the types of risk present in a location or activity, the likelihood and severity of potential injury, the potential benefits to children, methods of mitigating hazards, e.g., elimination, substitution, isolation, safeguards, and managing risk, e.g., heightened supervision, scaffolding, intervention, and identifying who is responsible for implementing the appropriate methods and when.

"Bias" means a tendency to believe that some people or ideas are better than others that usually results in treating some people unfairly.

"Biological needs" means, for purposes of outdoor nature-based programming, department approved toileting, handwashing, and transitional activities for children and providers.

"Body of water" or **"bodies of water"** is a natural area or human-made area or device that contains or holds a depth of more than four inches of water. Examples include swimming pools, ditches, canals, fish ponds, water retentions, excavations, quarries, streams, rivers, lakes, and ocean waters.

"Campfire" means an outdoor fire that is used for cooking, personal warmth, lighting, or ceremonial or esthetic purposes. For the purposes of this chapter, "campfire" does not include a fire within any building, mobile home, motor vehicle, or recreational vehicle.

"Campfire activities" means ONB program activities in which enrolled children have access to a campfire that may pose a risk of burns to children.

"Cannabis" also known as "marijuana" refers to all parts of the cannabis plant, whether growing or not, the seeds thereof, the resin or concentrate extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture, or preparation of the plant.

"Capacity" means the maximum number of children an ONB provider is authorized by the department to have in care at any given time. This includes any children on-site at the ONB program and any children in transit to or from the ONB program or other activities such as field trips while the children are signed in to the care of the ONB program.

"Certificate of exemption (COE)" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"Certificate of immunization status (child)" means a form that is approved by the DOH and consistent with the requirements of WAC 246-105-050, or an immunization form produced by the state immunization information system.

"Certification" means, as applied to the licensing process, department approval of a person, home, or facility that is exempt from licensing but requests evidence that the ONB program meets these foundational licensing standards.

"Child" means an individual who is younger than age 13, including any preschool-age child or school-age child as defined in this chapter.

"Child and adult care food program (CACFP)" means the food program established by Congress and funded by the United States Department of Agriculture (USDA).

"Child abuse" or **"neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment, negligent treatment or maltreatment of a child by any person as defined in RCW 26.44.020.

"Child care" refers to supervision of children outside the child's home for periods of less than 24 hours a day.

"Child care basics (CCB)" means curriculum designed to meet the initial basic training requirement for early learning program staff working in licensed or certified programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the early care and education field.

"Chromated copper arsenate (CCA)" is a wood preservative and insecticide that contains roughly 22 percent arsenic, a known carcinogen. The United States restricted the use of CCA on residential lumber in 2003, but it can still be found on older decks and playground equipment. Information about the health hazards of arsenic can be found on the DOH's website.

"Clean" or **"cleaning"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing or disinfecting a surface.

"Confidential" means the protection of personal information, such as the child's records, from individuals who are not authorized to see or hear the information.

"Consistent care" means providing steady opportunities for children to build emotionally secure relationships by primarily interacting with a limited number of ONB program staff.

"Consumer product safety commission (CPSC)" means the United States Consumer Product Safety Commission.

"Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases pertinent to this chapter are described in WAC 246-110-010.

"Continuous" means without interruptions, gaps, or stopping.

"Core competencies" are standards required by the department that detail what an early learning or school-age provider needs to know and is able to do to provide quality care and education for children and their families.

"Cultural" or **"culturally"** means in a way that relates to the ideas, customs, and social behavior of different societies.

"Curriculum philosophy" means a written statement of principles developed by an ONB provider to form the basis of the learning ONB program activities, including age appropriate developmental learning objectives for children.

"Department" means the Washington state department of children, youth, and families (DCYF).

"Department of defense (DOD)" means the United States Department of Defense.

"Department of health (DOH)" means the Washington state department of health.

"Developmental screening" is the use of standardized tools to identify a child at risk of a developmental delay or disorder.

(Source: American Academy of Pediatrics, *Healthy Child Care America*, 2009)

"Developmentally appropriate" means:

- (a) An ONB provider interacts with each child in a way that recognizes and respects the child's chronological and developmental age;
- (b) Knowledge about how children grow and learn;
- (c) Reflects the developmental level of the individual child; and

(d) Interactions and activities are planned with the developmental needs of the individual child in mind.

"Director" means the person responsible for the overall management, including the facility and operation, of an ONB program that enrolls preschool-age and school-age children, or only preschool-age children.

"Disability" or **"disabilities"** has the same meaning in this chapter as the meaning in RCW 49.60.040(7).

"Disaster" means a sudden event, accident, or natural catastrophe that causes great damage to property, serious bodily injury, or loss of life.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" means to eliminate virtually all germs from an inanimate surface by the process of cleaning and rinsing, followed by:

(a) The application of a fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or

(b) The application of other disinfectant products registered with the EPA, if used strictly according to the manufacturer's label instructions including, but not limited to, quantity, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled "safe for food contact surfaces."

"Disinfectant" means a chemical or physical process that kills bacteria and viruses.

"Drinking water" or **"potable water"** means water that is suitable for drinking by the general public as determined by the DOH or a local health jurisdiction.

"Dual language learners" means children who are learning two or more languages at the same time. This term includes children who learn two or more languages from birth, and children who are still mastering their home language when they are introduced to and start learning a second language. (Source: *The Washington State Early Learning and Development Guidelines*, a resource published by the department, OSPI, and Thrive Washington for children birth through third grade that outlines what children know and are able to do at different stages of their development.)

"Early achievers" is a statewide system of high-quality early learning that connects families to early learning programs with the help of an easy to understand rating system and offers coaching, professional development, and resources for early learning providers to support each child's learning and development.

"Early childhood education (ECE) initial certificate" (12 quarter credits) is Washington's initial certificate in early childhood education and serves as the point of entry for a career in early learning and covers foundational content for early learning professionals.

"Early childhood education and assistance program (ECEAP)" is a comprehensive preschool program that provides free services and support to eligible children and their families.

"Early childhood education (ECE) short certificate" is an ECE initial certificate plus eight quarter credits and is Washington's short certificate in early childhood education that offers areas of specialization, building on the state's initial certificate. Outdoor nature-based short certificate is an initial certificate plus eight quarter credits and is Washington's short certificate in outdoor nature-based

education that offers areas of specialization, building on the state's initial certificate.

"Early childhood education (ECE) state certificate" is a short certificate plus 27 quarter credits and is Washington's state certificate in early childhood education that is the benchmark for Level 2 core competencies for early care and education professionals and prepares for the next step, an associate's degree in early childhood education.

"Early learning" has the same meaning as described in RCW 43.216.010.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Electronic workforce registry" refers to the Washington state department of children, youth, and families' current database of professional records of individual ONB providers.

"Emergency preparedness" means a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action in an effort to ensure effective coordination in case of emergencies or during incident response.

"Emergent curriculum" means a teaching philosophy and a curriculum planning method designed to create meaningful learning experiences that focus on being responsive to child interests. This philosophy prioritizes active participation, relationship building, flexible and adaptable methods, inquiry, and play-based learning. The curriculum is child-initiated, collaborative and responsive to the child's needs, and teachers come prepared with information, offer resources to support child explorations, or both.

"Enforcement action" means the denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil penalties or fines pursuant to RCW 43.216.325(3). An ONB provider may contest an enforcement action and seek an adjudicative proceeding pursuant to chapter 110-03 WAC.

"EPA" means the United States Environmental Protection Agency.

"Equivalent" or **"equivalency"** means, when referring to staff qualifications, an individual is allowed to meet the chapter 110-302 WAC requirements that are based on a department recognized alternative credential, or demonstration of competency, that indicates similar knowledge as the identified credential.

"Exempt" or **"exemption"** means, as applied to immunizations, a type of immunization status where a child has not been fully immunized against one or more vaccine preventable diseases required by chapter 246-105 WAC for full immunization due to medical, religious, philosophical or personal reasons. Under chapter 362, Laws of 2019, if a child plans on attending or is attending an outdoor nature-based program, a philosophical or personal objection may not be used to exempt a child from the measles, mumps, and rubella vaccine.

"Expel" or **"expulsion"** means to end a child's enrollment in an ONB program. An ONB provider will end a child's enrollment if the ONB provider is unable to meet a child's needs due to the child's challenging behavior.

"Facility licensing compliance agreement (FLCA)" has the same meaning as in RCW 43.216.395 (2) (a).

"Food and Drug Administration (FDA)" means the United States Food and Drug Administration.

"Food worker card" means a food and beverage service worker's permit as required under chapter 69.06 RCW.

"Good repair" means about 80 percent of materials and components are unbroken, have all their pieces, and can be used by the children as intended by the manufacturer or builder.

"Hazard" means a source of harm that may or may not be obvious to the child. The source of harm is not obvious if the potential for injury is hidden or is greater than a child can manage to avoid given the individual circumstances and characteristics of the child.

"Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the laws of the state of Washington to provide health care in the ordinary course of business or practice of a profession.

"Immunization" means the process of administering a vaccine to make that person immune or resistant to an infectious disease.

"Inaccessible to children" means a method to prevent a child from reaching, entering, using, or getting to items, areas, or materials of an ONB program.

"Inactive" means, when used by the department to indicate a licensing status, an ONB provider who has informed the department of their intent to temporarily cease caring for children and close their ONB program in a manner that departs from the ONB program's regular schedule.

"Individual care plan" means a specific plan to meet the individual needs of a child with a food allergy, special dietary requirement due to a health condition, or other special needs or circumstances.

"In-service training" means professional development requirements for continuing education delivered or approved by the department to maintain staff standards and qualifications while employed as an ONB provider.

"Inspection report" has the same meaning as in RCW 43.216.010(17).

"Internal review process" has the same meaning as described in RCW 43.216.395.

"Lead teacher" means an ONB provider who works as the lead staff person in charge of a child or group of children and oversees or implements ONB activities or ONB programs.

"License" means a permit issued by the department legally authorizing an applicant to operate an outdoor nature-based program.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing an ONB licensed program.

"Licensee" means an individual or legal entity listed on a license issued by the department, authorized to provide child care or early learning services in an ONB program.

"Lockdown" means restricted to an interior room with few or no windows while the facility or building is secured from a threat, or other department approved lockdown plan.

"Locking mechanism" means a lock that requires a key, tumbler, dial, passcode, touchpad, or similar device or method to lock and unlock.

"Modification" means, when used in reference to an ONB provider's licensing status, an enforcement action by the department to change the conditions identified on a licensee's current license.

"Moisture-wicking" means a fabric that draws moisture away from the body, such as polyester or wool. Cotton is not a moisture-wicking fabric.

"Natural space" means land that is natural, semi-natural, or planted and includes plants, animals, and other features and products of the earth.

"Nonexpiring license" means a license that is issued pursuant to chapter 43.216 RCW to an ONB provider following the initial licensing period.

"Office of superintendent of public instruction (OSPI)" means the Washington state office of superintendent of public instruction.

"Operating hours" means the hours listed in an ONB program parent handbook when the ONB program is open and providing care and services to children.

"Outdoor nature-based (ONB) child care" or **"outdoor nature-based (ONB) program"** has the same meaning as described in RCW 43.216.010(1)(e).

"Outdoor nature-based child care basics" means a curriculum designed to meet the initial basic training requirement for outdoor nature-based program staff working in licensed or certified ONB programs in Washington state. It serves as a broad introduction for professionals who are pursuing a career in the outdoor nature-based child care and education field.

"Outdoor nature-based program (ONB)" means an ONB program that is authorized under RCW 43.216.742.

"Outdoor nature-based (ONB) program staff" or **"staff"** means all persons who work, substitute, or volunteer in an ONB program during hours when children are or may be present, excluding licensees. "Staff" include ONB child care directors, program directors, assistant directors, site directors, program supervisors, lead teachers, assistant teachers, aides, and volunteers.

"Outdoor nature-based child care (ONB) provider" or **"provider"** means an outdoor nature-based child care licensee or a designee who works in an ONB program during hours when children are or may be present. Designees include ONB child care directors, program directors, assistant directors, site directors, program supervisors, lead teachers, assistant teachers, aides, and volunteers.

"Outdoor nature-based tools" include, but are not limited to, peelers, whittling knives, small hammers, hand drills, pliers, child-sized saws, wrenches, and screwdrivers. Folding whittling knives must be equipped with a locking feature to keep knives open when in use. Motorized tools must be inaccessible to children.

"Parent" or **"guardian"** means birth parent, custodial parent, foster parent, legal guardian or those authorized by the parent or entity legally responsible for the welfare of the child.

"Permanently located outdoor classroom" means an outdoor area that is allocated to an ONB program for daily use, and the ONB provider or public park installs permanent or semi-permanent equipment for the ONB program's use, such as storage containers, portable chemical toilets, or child-sized furniture.

"Personal needs" means an ONB provider's toileting or medication needs that removes the ONB provider from the children. Personal needs do not include smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activi-

ties, sleeping or napping, screen time, or leaving children in unattended care.

"Pest" means an animal, plant, or insect that has a harmful effect on humans, food, or living conditions.

"Pesticide" refers to chemicals used to kill pests.

"Pet" means a domestic or tamed animal or bird kept for companionship or pleasure.

"Physical barrier" or **"barrier"** means a nonclimbable fence or wall that is at least five feet tall and has no openings greater than two inches, nor a gate or door that allows entry to and exit from a body of water. Any gate or opening, in addition to the requirements already listed, must have a locking mechanism, a self-closing or self-latching device, and a device used to open the locks which is inaccessible to children but readily available to staff.

"Physical boundary" or **"boundary"** means a way of marking the limits of an area consisting of, but not limited to, fences, barriers, ropes, large boulders or logs, or visual aids such as cones, tape, or ribbons.

"Physical restraint" means holding a child as gently as possible for the minimum amount of time necessary to control a situation where that child's safety or the safety of others is threatened.

"Poison" includes, but is not limited to, substances, chemicals, chemical compounds other than naturally occurring compounds such as water or salt, or similar items that, even in small quantities, are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed and unlicensed space at the licensed address including, but not limited to, buildings, land, residences, and other real property.

"Preschool-age child" means a child 30 months through six years of age not attending kindergarten or elementary school.

"Preservice training" means professional development standards or requirements for ONB program staff prior to hiring or within a department specified time frame and delivered or approved by the department.

"Private septic system" means a septic system as defined in chapter 246-272A WAC that is not connected to a public sewer system or a large on-site sewage system as defined in chapter 246-272B WAC. A private septic system includes, but is not limited to, the septic system's drain field and tanks.

"Probationary license" has the same meaning as described in RCW 43.216.010(25).

"Professional development support plan" is a formal means by which an individual who is supervising staff sets out the goals, strategies, and outcomes of learning and training.

"Program director" means the person responsible for the overall management, including the facility and operations, of an ONB program that enrolls only school-age children. The program director is not responsible for being on-site at the ONB program, unless the program director is filling in for an on-site role.

"Program supervisor" means the person responsible for planning and supervising the learning and activity programming of the ONB program that enrolls preschool-age and school-age children, or only preschool-age children.

"RCW" means the Revised Code of Washington.

"Readily available" means able to be used or obtained quickly and easily.

"Revocation" or **"revoke"** when used in reference to an ONB provider's licensing status, means an enforcement action by the department to close an ONB program and permanently remove the license.

"Risk" means, with regard to "risky play," a situation that a child can recognize and evaluate challenges to decide on a course of action, although there may be a potential for injury.

"Risk management policy" means a written policy or plan to mitigate children's risk of injury associated with risky play or learning activities.

"Risky play" means physical activity and play that is challenging and involves a risk of physical injury. Risky play for ONB programs includes, but is not limited to, play involving heights, speed, dangerous tools, close proximity to dangerous elements, such as falling into something potentially hazardous, and risk of getting lost. Risky play is also known as "adventure play."

"Routine care" means typical or usual care provided to a child during the time the child is enrolled in the ONB program, such as feeding, diapering, toileting, napping, resting, playing, and learning.

"Safe route" means a way or course taken to get from a starting point to a destination that is protected from danger or risk.

"Safety plan" means a written plan to implement ONB program changes to bring an ONB program into compliance with this chapter and chapter 43.216 RCW. Safety plans are developed at meetings involving at least an ONB provider and a department licensor and supervisor. Safety plans detail changes the ONB provider needs to make to mitigate the risk of direct and indirect harm to children enrolled in the ONB program. ONB program changes must be agreed to in writing, and signed by all participants at the meeting. Safety plans expire 30 calendar days after being signed by all parties. Safety plans may only be extended for an additional 30 days and extensions may only be authorized by a department supervisor.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing with water at a high temperature pursuant to the requirements described in this chapter; or

(b) Cleaning and rinsing, followed by using:

(i) A fragrance-free chlorine bleach and water solution following the DOH's current guidelines for mixing bleach solutions for child care and similar environments; or

(ii) Other sanitizer product if it is registered with the EPA and used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as "safe for food contact surfaces."

"School age child" has the same meaning as in RCW 43.216.010(27).

"Screen time" means watching, using, or playing television, computers, video games, video or DVD players, mobile communication devices, or other similar devices.

"Serious injury" means:

(a) An injury resulting in an overnight hospital stay;

(b) A severe neck or head injury;

(c) Choking or serious unexpected breathing problems;

(d) Severe bleeding;

(e) Shock or an acute confused state;

- (f) Sudden unconsciousness;
- (g) Dangerous chemicals in eyes, on skin, or ingested;
- (h) Near drowning;
- (i) One or more broken bones;
- (j) A severe burn requiring professional medical care;
- (k) Poisoning; or
- (l) An overdose from a chemical substance.

"Shelter in place" means staff and children staying at the licensed premises due to an external threat such as a storm, chemical or gas leak or explosion, or other event that prohibits the occupants from safely leaving the premises.

"Sign" means an individual formally placing their name or legal mark on a document by physical signature or electronic signature.

"Site director" means the person responsible for planning and implementing the services, under the oversight of the program director, of an ONB program that enrolls only school-age children. The site director is responsible for being on-site during the ONB program's operating hours and providing regular supervision of staff and volunteers.

"Sleeping equipment" means a bed, cot, mattress, or mat.

"Special needs" is a term used for children who require a higher level of care due to learning difficulties, physical or mental disability, or emotional and behavioral difficulties and who have one or more of the following documents that describes a child's condition: A health care provider's diagnosis, an individual educational plan (IEP), individual health plan (IHP), 504 plan, or an individualized family service plan (IFSP).

"Strengthening families program self-assessment" means a research informed approach to increase family strengths, enhance child development, and reduce the likelihood of child abuse and neglect. It is based on engaging families, ONB programs, and communities in building five protective factors:

- (a) Parental resilience;
- (b) Social connections;
- (c) Knowledge of parenting and child development;
- (d) Concrete support in times of need; and
- (e) Social and emotional competence of children.

"Supervise" or **"supervision"** means an ONB provider must:

- (a) Be able to see or hear the children they are responsible for at all times;
- (b) Use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible;
- (c) Reposition themselves or the children to be aware of where children are and what they are doing during care; and
- (d) Reassess and adjust their supervision each time ONB program activities change.

See "active supervision" for a heightened standard of care.

"Suspend" means, for purposes of an ONB provider's licensing status, an enforcement action by the department to temporarily stop a license in order to protect the health, safety, or welfare of enrolled children or the public.

"Swimming pool" means a body of water that has a depth greater than two feet (24 inches).

"Technical assistance" means a service provided to an ONB provider by department staff or a contracted third party. The goal of technical assistance is to offer guidance, information, and resources to

help an ONB provider fully comply with the licensing requirements described in this chapter and chapter 43.216 RCW.

"Transition" means the process or period of time to change from one activity, place, grade level, or sleeping arrangement to another.

"Unlicensed space" means the indoor and outdoor areas of the premises not approved by the department as licensed space that the ONB provider must make inaccessible to the children during ONB program hours.

"Unsupervised access" has the same meaning as WAC 110-06-0020.

"Usable space" means the areas that are available at all times for use by children in an ONB program and meets licensing requirements.

"USDA" means the United States Department of Agriculture.

"Vapor product" means any:

(a) Device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(b) Cartridge or container of a solution or substance intended to be used with or in such device or to refill such device; or

(c) Solution or substance intended for use in such a device including, but not limited to, concentrated nicotine, nonnicotine substances, or supplemental flavorings. This includes any electronic cigarettes, electronic nicotine delivery systems, electronic cigars, electronic cigarillos, electronic pipes, hookahs, steam stones, vape pens, or similar products or devices, as well as any parts that can be used to build such products or devices.

"Vapor product" does not include any drug, device, or combination product approved for sale by the FDA that is marketed and sold for such approved purpose.

"Variance" is an official approval by the department to allow an ONB program to achieve an outcome of a rule or rules in these standards in an alternative way than described due to the needs of a unique or specific ONB program approach or methodology. The department may grant a request for variance if the proposed alternative provides clear and convincing evidence that the health, welfare, and safety of all enrolled children will not be jeopardized. An ONB provider does not have the right to appeal the department's disapproval of request for variance under chapter 110-03 WAC. The ONB provider may challenge a variance disapproval on a department form.

"Volunteer" includes any person who provides labor or services to an ONB provider but is not compensated with employment pay or benefits. A volunteer must never have unsupervised access to a child unless the volunteer is the parent or guardian of that child or is an authorized person pursuant to WAC 110-302-0345.

"WAC" means the Washington Administrative Code.

"Wading pool" means a pool that has a water depth of less than two feet, or 24 inches.

"Waiver" is an official approval by the department allowing an ONB provider not to meet or satisfy a rule in this chapter due to specific needs of the ONB program or an enrolled child. The department may grant a request for waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all enrolled children is not jeopardized. An ONB provider does not have the right to appeal the department's disapproval of a waiver request under chapter 110-03 WAC. The ONB provider may challenge a waiver disapproval on a department form.

"Walk independently" means an individual is able to stand and move easily without the aid or assistance of holding onto an object, wall, equipment, or another individual.

"Water activities" means ONB program activities in which enrolled children swim or play in a body of water that poses a risk of drowning for children. Water activities do not include using sensory tables, or playing in temporary puddles at an ONB program, standing near, but not entering water, or belly exploration where hands are the only body part accessing water.

"Weapon" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

"Written food plan" is a document designed to give alternative food to a child in care because of a child's medical needs or special diet, or to accommodate a religious, cultural, or family preference. A parent or guardian and the ONB provider must sign a written food plan.

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NEW SECTION

WAC 110-302-0010 License required. (1) Pursuant to RCW 43.216.295 and 43.216.742, individuals or entities that provide ONB child care services for a group of children who are 30 months through 12 years of age must be licensed by the department, unless the individuals or entities are exempt from licensing under RCW 43.216.010(2) and WAC 110-302-0025.

(2) The department must not license department employees or members of employees' households if employees are involved directly, or in an administrative or supervisory capacity in the:

- (a) Licensing process;
- (b) Placement of children in licensed ONB programs; or
- (c) Authorization of payment for children in care.

(3) In addition to the requirements described in chapter 43.216 RCW and the requirements described in this chapter, applicants must comply with the following ONB child care license requirements:

(a) ONB programs must operate and conduct programming with a philosophy, curriculum, and organizational practices that provide developmentally appropriate early childhood education and nature-based education;

(b) ONB programs must occur outdoors for not less than four hours per day or 50 percent of the daily ONB program hours, whichever is less;

(c) ONB programs must comply with the requirements contained in chapters 43.216 RCW and 110-06 WAC background checks, the Child Care Development Fund at 45 C.F.R. Part 98, and this chapter; and

(d) ONB programs must be offered on a regular and ongoing basis for one or more preschool-age or school-age children not related to the licensee. For purposes of this chapter, "not related" means not any of the relatives listed in RCW 43.216.010 (2)(a).

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NEW SECTION

WAC 110-302-0011 License transfers. (1) Pursuant to RCW 43.216.305(1) and subject to this chapter, full licenses issued under chapter 43.216 RCW may be transferred to a new licensee in the event of a transfer of ownership of a child care operation. Current licensees or applicants must apply to transfer a license using forms and methods determined by the department.

(2) A full license will remain valid and may be transferred to a new licensee if:

(a) The new licensee meets the requirements of RCW 43.216.305(2); and

(b) The department determines before the license transfer the new licensee's child care operation is substantially similar to or an improvement of the originally licensed child care operation.

(3) To determine whether the new licensee's child care operation is substantially similar to or an improvement of the original child care operation, the department must assess the following factors of the new child care operation:

(a) The physical environment and all anticipated changes or updates, including the land use agreement and benefit risk assessments;

(b) The qualifications and number of all retained and newly hired staff;

(c) The ONB program operations and all anticipated changes or updates;

(d) The relation or connection, if any, between the original and new licensee; and

(e) Whether the new child care operation is able to comply with the licensing requirements described in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(4) The department will determine and disclose to the current licensee and new licensee whether the license is in good standing prior to transferring the license.

(5) At the request of the current licensee or the new licensee, the department will disclose the following license information from the last four years to one or both parties:

(a) A description of any valid complaints;

(b) A description of any instances that the department found non-compliance with the requirements contained in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC;

(c) Safety plans both historical and current;

(d) Facility licensing compliance agreements both historical and current; and

(e) Enforcement actions levied or pending against the license.

(6) Current licensees and new licensees have the right to appeal the department's denial of a license transfer application by requesting an adjudicative proceeding pursuant to the hearing rules described in chapter 110-03 WAC.

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NEW SECTION**WAC 110-302-0015 ONB program managers' simultaneous absence.**

(1) Licensees must have written plans for when the director, program

director, assistant director, site director, and program supervisor will be simultaneously absent but the ONB program remains open for the care of children. If the director, program director, assistant director, site director, and program supervisor are simultaneously absent for more than 10 consecutive operating days, ONB providers must submit written notifications to the department and each child's parent or guardian at least two business days prior to the planned absence.

(2) A written notification under this section must include the following information:

- (a) The time period of the absence;
- (b) Emergency contact information for the absent ONB provider;

and

(c) A written plan for ONB program staff to follow that includes:

- (i) A staffing plan that meets child-to-staff ratios;
- (ii) Identification of a lead teacher to be present and in

charge;

- (iii) ONB staff roles and responsibilities;
- (iv) How each child's needs will be met during the absence; and
- (v) The responsibility for meeting licensing requirements.

(3) If an ONB provider or staff fails to comply with one or more of the requirements described in this section, during an absence, an ONB provider must:

- (a) Retrain ONB program staff on the standards documented on the inspection report; and
- (b) Document when the retraining occurred.

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NEW SECTION

WAC 110-302-0016 Inactive status—Voluntary and temporary closure. (1) If a licensee plans to temporarily close their ONB program for more than 30 calendar days, and this closure is a departure from the ONB program's regular schedule, the ONB provider must submit a notification to go on inactive status to the department at least two business days prior to the planned closure. Notifications for inactive status must include:

- (a) The date the ONB program will cease operating;
- (b) The reasons why the licensee is going on inactive status; and
- (c) A projected date the ONB program will reopen.

(2) The requirements of this section do not apply to licensed ONB programs that have temporary closures beyond 30 calendar days as part of their regular schedule, such as ONB programs based on the school year or seasonal occupations.

(3) The department will not place an ONB provider on inactive status during their first initial six month licensing period unless for an emergency.

(4) An ONB provider must inform parents and guardians that the ONB program will temporarily close.

(5) An ONB provider is responsible for notifying the department of changes to ONB program status including voluntary closures, new staff, or other ONB program changes. ONB program status updates must also be completed in the department's electronic system.

(6) Background check rules in chapter 110-06 WAC, including allegations of child abuse or neglect, will remain in effect during inactive status.

(7) After receiving a notice of inactive status, the department will:

- (a) Place the license on inactive status;
- (b) Inform the licensee that the license is inactive; and
- (c) Notify the following ONB programs of the inactive status:
 - (i) The department's child care subsidy programs;
 - (ii) CACFP; and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington.

(8) A licensee is still responsible for maintaining annual compliance requirements during inactive status pursuant to RCW 43.216.305.

(9) If inactive status exceeds six months within a 12-month period, the department must close the license. The licensee must reapply for licensing pursuant to RCW 43.216.305(3).

(10) During the inactive status period, the department may pursue enforcement actions after three failed attempts to monitor an ONB program if:

- (a) An ONB provider has not been available to permit the monitoring visits;
- (b) Monitoring visits were attempted within a three-month time period; and
- (c) The department attempted to contact the ONB provider by phone during the third attempted visit while still on the ONB program premises.

(11) When a licensee is ready to reopen after a temporary closure, the licensee must notify the department in writing. After receiving notice of the intent to reopen, the department will in the following order:

- (a) Activate the license and inform the licensee that the license is active;
- (b) Notify the following programs of the active status:
 - (i) The department's child care subsidy programs;
 - (ii) CACFP; and
 - (iii) Early achievers, ECEAP, Head Start Grantee, and child care aware of Washington; and
- (c) Conduct a health and safety visit of the ONB program within 10 business days to determine that the ONB provider is in compliance with this chapter.

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NEW SECTION

WAC 110-302-0020 Unlicensed programs. (1) If the department suspects that individuals or agencies are operating an unlicensed ONB program, the department must follow the requirements described in RCW 43.216.360.

(2) If an individual or agency decides to obtain a license, within 30 calendar days from the date of the department's required notice described in RCW 43.216.360 and subsection (1) of this section, the

individual or agency must submit a written agreement on a department form stating they agree to:

(a) Attend and participate in the next available department ONB licensing orientation; and

(b) Submit a licensing application after completing the orientation.

(3) The department's written notice under subsection (1) of this section must inform the individual or agency operating an unlicensed ONB program:

(a) That an ONB program license is required and why it is required;

(b) That the individual or agency is suspected of providing care without a license;

(c) That pursuant to RCW 43.216.360, the individual or agency must immediately stop operating an ONB program;

(d) That the department may issue a penalty of \$250 for each day an ONB child care provider provided care without being licensed;

(e) How the individual must respond to the department;

(f) How the individual may apply for a license;

(g) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;

(h) That the individual has a right to request an adjudicative proceeding if a fine is assessed;

(i) How to ask for a hearing, under chapter 34.05 RCW Administrative Procedure Act, chapters 43.216 RCW and 110-03 WAC DCYF's administrative hearing rules; and

(j) That if the agency does not initiate the licensing process within 30 days of the date of the notice, the department will post on its website that the individual is operating an ONB program without a license.

(4) An individual or agency operating an unlicensed ONB program:

(a) Will be guilty of a misdemeanor pursuant to RCW 43.216.365; and

(b) May be subject to an injunction pursuant to RCW 43.216.355.

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NEW SECTION

WAC 110-302-0025 Certified and exempt ONB programs. (1) Pursuant to RCW 43.216.010(2), the department must not license ONB programs that are legally exempt from licensing pursuant. However, if ONB programs request to become certified by the department, the department must apply all licensing rules to the otherwise exempt programs. In such a case, the department must apply licensing rules equally to licensed and certified ONB programs.

(2) The department may certify for subsidy payment only, an otherwise exempt ONB programs without further inspection if the ONB programs are:

(a) A part of a tribal program that is subject to health and safety oversight as approved by the United States Department of Health and Human Services under the tribal program's Child Care Development Fund (CCDF) Plan and the tribal program is licensed or monitored by an Indian tribe, band, nation, or other organized community of Indians, including an Alaska native village as defined in 43 U.S.C. Sec.

1602(c), recognized as eligible for services by the United States Secretary of the Interior;

(b) Certified by the DOD; or

(c) Approved by the OSPI.

(3) ONB programs exempt from licensing pursuant to RCW

43.216.010(2) must use the department's form to submit their exempt status.

(4) ONB programs requesting certification must be located on the premises over which the tribe, DOD, or OSPI has jurisdiction.

(5) ONB programs regulated by a tribe, the DOD, or OSPI may request certification:

(a) For subsidy payment only; or

(b) As meeting the requirements otherwise detailed in this chapter.

(6) The department must not certify a department employee or a member of their household when the employee is involved directly, or in an administrative or supervisory capacity, in the:

(a) Certification process;

(b) Placement of a child in a certified ONB program; or

(c) Authorization of payment for the child in care.

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NEW SECTION

WAC 110-302-0030 Nondiscrimination. (1) ONB programs are defined by state law as places of public accommodation that must:

(a) Not discriminate in employment practices or client services based on race, creed, color, national origin, sex, honorably discharged veteran or military status, marital status, gender, sexual orientation, age, religion, or ability; and

(b) Comply with the requirements of the Washington law against discrimination (chapter 49.60 RCW) and the ADA.

(2) ONB programs must have written nondiscrimination policies addressing at least the factors listed in subsection (1) of this section.

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NEW SECTION

WAC 110-302-0035 Department access to agency premises, records, ONB programs, and staff. (1) Pursuant to RCW 43.216.250(8), applicants and ONB programs must grant reasonable access to the department during their hours of operation for the purpose of announced or unannounced inspections.

(a) Applicants, licensees, and ONB program staff must allow the department's authorized staff to inspect the indoor and outdoor licensed space and any adjacent enclosures, areas, spaces, substances, machinery, or devices that may directly impact the health, safety, or well-being of enrolled children to verify compliance with the requirements of this chapter and chapter 43.216 RCW.

(b) For purposes of this chapter, "hours of operation" means the hours of the day that a licensee offers ONB program services as reported to the department on the license application or modification paperwork, or as indicated in the parent or guardian handbook.

(2) The department may deny, suspend, revoke, or not continue a license when an applicant, licensee, or ONB program staff refuses to allow the department's authorized staff access to any of the following:

- (a) Information relevant to the ONB program;
- (b) The agency's premises pursuant to subsection (1) of this section;
- (c) Child, staff, or ONB program records or files;
- (d) Staff; or
- (e) Children in care.

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CHILD OUTCOMES

NEW SECTION

WAC 110-302-0055 Developmental screening and communication to parents or guardians. (1) ONB providers must inform parents or guardians of preschool-age children about the importance of developmental screenings.

(2) If not conducted on-site, ONB providers must share information with parents or guardians of preschool-age children about organizations that conduct developmental screenings such as a local business, school district, health care provider, specialist, or resources listed on the department website.

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NEW SECTION

WAC 110-302-0065 School readiness and family engagement activities. (1) At least once per calendar year, ONB providers must supply kindergarten or school readiness materials to the parents or guardians of preschool-age children.

(2) Kindergarten or school readiness materials must be the same or similar to resources posted online by OSPI, the department, or other equivalent organizations. These materials may address:

- (a) Kindergarten transition activities, if applicable; and
- (b) Developmentally appropriate local school and school district activities designed to engage families.

[]

FAMILY ENGAGEMENT AND PARTNERSHIPSNEW SECTION

WAC 110-302-0080 Family support self-assessment. ONB providers who serve and enroll preschool-age children must assess their ONB program within one year of being licensed to identify ways to support the families of enrolled children. ONB providers must complete the strengthening families ONB program self-assessment, or an equivalent assessment.

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NEW SECTION

WAC 110-302-0085 Family partnerships and communication. (1) ONB providers must communicate with families to identify individual children's developmental goals for each preschool-age child enrolled in the ONB program.

(2) ONB providers must attempt to obtain information from each child's family about that child's developmental, behavioral, health, linguistic, cultural, social, and other relevant information. ONB providers must make this attempt upon that child's enrollment and annually thereafter.

(3) ONB providers must determine how the ONB program can best accommodate each child's individual characteristics, strengths, and needs. ONB providers must utilize the information in subsection (2) of this section and seek input from family members and staff familiar with a child's behavior, developmental, and learning patterns.

(4) ONB providers must:

(a) Attempt to discuss with parents or guardians information including, but not limited to:

(i) A child's strength in areas of development, health issues, special needs, and other concerns;

(ii) Family routines or events, approaches to parenting, family beliefs, culture, language, and child rearing practices;

(iii) Internal transitions within the ONB program and transitions to external services or ONB programs, as necessary;

(iv) Collaboration between the ONB provider and the parent or guardian in behavior management; and

(v) A child's progress, at least two times per year, for preschool-age children;

(b) Communicate the importance of regular attendance for the preschool-age child;

(c) Give parents or guardians the ONB program's contact information for questions or concerns;

(d) Give families opportunities to share their language and culture in the ONB program;

- (e) Arrange a confidential time and space for individual conversations regarding children, as needed;
- (f) Allow parents or guardians access to their child during normal hours of operation, except as excluded by a court order; and
- (g) Communicate verbally or in writing:
- (i) Changes in drop-off and pickup arrangements as needed; and
- (ii) Daily activities.

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PROFESSIONAL DEVELOPMENT, TRAINING, AND REQUIREMENTS

NEW SECTION

WAC 110-302-0100 General staff qualifications for ONB programs.

All ONB providers must meet the applicable requirements detailed in this section prior to working at a licensed or certified ONB program.

- (1) Prior to being granted an initial license, **licensees** must:
 - (a) Meet the requirements of the director listed in subsection (2) of this section;
 - (b) Meet the requirements of the program director listed in subsection (5) of this section; or
 - (c) Hire a director or program director who meets the qualifications.
- (2) **Directors or assistant directors** for ONB programs that enroll preschool-age and school-age children, or only preschool-age children, manage the ONB program and set appropriate ONB program, and staff expectations.
 - (a) A **director** must meet the following qualifications:
 - (i) Be at least 18 years old;
 - (ii) Have an ECE state certificate or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:
 - (A) Have 30 hours or three credits of nature-based education training at the time of initial licensure or hire; and
 - (B) Complete an ECE state certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later;
 - (iii) Have two years of experience as a teacher of children in any age group enrolled in an ONB program and at least six months of experience in administration or management, or a department approved plan;
 - (iv) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110;
 - (v) If a director does not meet the minimum qualification requirements, the ONB program must employ an assistant director or pro-

gram supervisor who meets the minimum qualifications of these positions; and

(vi) Have their continued professional development progress documented annually.

(b) An **assistant director** must meet the following qualifications:

(i) Be at least 18 years old;

(ii) Have an ECE state certificate or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) Have 30 hours or three credits of nature-based education training at the time of initial licensure or hire; and

(B) Complete an ECE state certificate or equivalent by August 1, 2026, or within five years of licensure or being hired or promoted into the position, whichever occurs later.

(iii) Have two years of experience as a teacher of children in any age group enrolled in an ONB program or two years of experience in administration or management, or a department approved plan;

(iv) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(v) Have their continued professional development progress documented annually.

(c) A **director** or an **assistant director** or the equivalent staff position must provide the following services:

(i) Be on-site for the daily operation of the ONB program 50 percent or more of the weekly operating hours up to 40 hours per week, or designate a person with the qualifications of an assistant director, program supervisor or equivalent. On-site duties may include, but are not limited to, providing oversight, as-needed support for children and staff, and providing family engagement services. For the other 50 percent, the director must designate a staff person who meets at least the qualifications of a lead teacher to be on-site and in charge. The director may act as a substitute teacher if acting as a substitute does not interfere with management or supervisory responsibilities;

(ii) Be available to provide in-person support to the ONB program within 30 minutes of a request for support;

(iii) Comply with the requirements of this chapter;

(iv) Develop a curriculum philosophy, communicate the philosophy to all ONB program staff and parents, and train staff to ensure the philosophy serves all children in the ONB program or designate a program supervisor with this responsibility;

(v) Lead the development of benefit-risk assessments, and associated risk management policies and procedures, pursuant to WAC 110-302-0471;

(vi) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families; and

(vii) Oversee professional development plans for ONB program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Observing and mentoring staff.

(3) **Program supervisors** for programs that enroll preschool-age and school-age children, or only preschool-age children, plan the ONB

program services under the oversight of a director or assistant director.

(a) A **program supervisor** must meet the following qualifications:

(i) Be at least 18 years old;

(ii) Have an ECE state certificate or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) Have 30 hours or three credits of nature-based education training at the time of initial licensure or hire; and

(B) Complete an ECE state certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later. If the director or assistant director does not have an ECE state certificate or equivalent as required by this section, the program supervisor must have an ECE state certificate at the time of initial licensing of the ONB child care program or from the time of hire or promotion;

(iii) Have two years of experience as a teacher of preschool-age or school-age children in an ONB program;

(iv) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(v) Have their continued professional development progress documented annually.

(b) A program supervisor performs the following duties:

(i) Guide the planning of curriculum philosophy, implementation, and environmental design of the ONB program;

(ii) Comply with the requirements described in this chapter;

(iii) Act as a teacher or director as long as it does not interfere with the program supervisor's primary responsibilities; and

(iv) Manage the professional development plans and requirements for staff as needed.

(c) One person may be the director, assistant director, and the program supervisor when qualified for all positions, provided that all requirements of subsection (2) (a) and (b) of this section are met.

(4) Any individual hired or promoted into a position detailed in subsections (2) and (3) of this section who does not have an ECE state certificate or equivalent as required in this section must instead meet the requirements of this subsection. These requirements must be approved and verified in the electronic workforce registry by the department:

If an ONB program is licensed for this number of children:	Then the director, assistant director, or program supervisor must have completed at least this number of college quarter credits in early childhood education core competencies:
12 or fewer	10
13 to 24	25
25 or more	45

(5) **Program directors** for programs that enroll only school-age children manage the overall ONB program operations and facilities and set ONB program and staff expectations. The program director is not

responsible for being on-site at the ONB program, unless the program director is filling in for an on-site role.

(a) A **program director** must meet the following qualifications:

(i) Be at least 18 years old;

(ii) Have 45 college credits in any 100-level or above college coursework or equivalent or nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) Have 30 hours or three credits of nature-based education training at the time of initial licensure or hire; and

(B) Have at least 12 college credits in any 100-level or above college coursework or equivalent at the time of initial licensure or being hired or promoted into the position, and complete an additional 33 college credits in any 100-level or above college coursework or equivalent within five years of initial licensure or being hired or promoted into the position;

(iii) Have two years of experience as a teacher of preschool-age or school-age children enrolled in an ONB program;

(iv) Have at least six months of experience in administration or management, or a department approved plan;

(v) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(vi) Have their continued professional development progress documented annually.

(b) A program director must provide the following services:

(i) Comply with the requirements described in this chapter;

(ii) Be available to provide in-person support to the ONB program within 30 minutes of a request for support. On-site duties may include, but are not limited to, providing oversight, as-needed support for children and staff, and providing family engagement services;

(iii) Develop a curriculum philosophy, communicate the philosophy to all ONB program staff and parents, and train staff to ensure the philosophy serves all children in the ONB program (or designate a site director with this responsibility);

(iv) Lead the development of benefit-risk assessments and associated risk management policies and procedures pursuant to WAC 110-302-0471, or designate a site director to perform this duty;

(v) Have knowledge of community resources available to families, including resources for children with special needs and be able to share these resources with families, or designate a site director with this responsibility; and

(vi) Oversee professional development plans for ONB program staff including, but not limited to:

(A) Providing support to staff for creating and maintaining staff records;

(B) Setting educational goals with staff and locating or coordinating state-approved training opportunities for staff; and

(C) Mentoring the site director.

(6) **Site directors** (for programs that enroll only school-age children) plan and implement the ONB program services under the oversight of the program director. The site director is responsible for being on-site during the ONB program's operating hours.

(a) A site director must meet the following qualifications:

(i) Be at least 18 years old;

(ii) Have 30 college credits in any 100-level or above college coursework or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) Have 30 hours or three credits of nature-based education training at the time of initial licensure or hire; and

(B) Have at least 12 college credits in any 100-level or above college coursework or equivalent at the time of initial licensure or being hired or promoted into the position, and complete an additional 18 college credits in any 100-level or above college coursework or equivalent within five years of initial licensure or being hired or promoted into the position;

(iii) Have two years of experience as a teacher of preschool-age or school-age children in any ONB program;

(iv) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(v) Have their continued professional development progress documented annually.

(b) A site director performs the following duties:

(i) Plan and implement curriculum and environmental design of the ONB program;

(ii) Providing regular on-site supervision of staff and volunteers;

(iii) Complies with the requirements of this chapter;

(iv) Act as a teacher as long as it does not interfere with the site director's primary responsibilities; and

(v) Observe and mentor staff.

(7) One person may be the program director and the site director when qualified for both positions, provided that all requirements of subsection (5)(a) of this section are met.

(8) **Lead teachers** are responsible for implementing the ONB program. Lead teachers develop and provide a nurturing and responsive learning environment that meets the needs of enrolled children.

(a) A lead teacher must meet the following qualifications:

(i) Be at least 18 years old;

(ii) Have a high school diploma or equivalent as approved and verified in the electronic workforce registry by the department;

(iii) Unless otherwise stated in this chapter, complete the applicable preservice, training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(iv) Have their professional development progress documented annually.

(b) Lead teachers for programs that enroll preschool-age and school-age children, or only preschool-age children, must meet the following requirements:

(i) Have an ECE short certificate or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:

(A) Have 10 hours or one credit of nature-based education training at the time of hire;

(B) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into the position, whichever occurs later; and

- (C) Have an ECE short certificate or equivalent by August 1, 2028, or within two years of receiving an ECE initial certificate;
- (ii) During all operating hours when children are present and the director, assistant director, or program supervisor are not on-site, a lead teacher must meet the following additional requirements:
- (A) Have two years of experience as a teacher in an ONB program; and
- (B) Have completed a department orientation for ONB programs.
- (c) Lead teachers for programs that enroll only school-age children must meet the following requirements:
- (i) Have 12 college credits in any 100-level or above college coursework or equivalent and nature-based education training or equivalent as approved and verified in the electronic workforce registry by the department as follows:
- (A) Have 10 hours or one credit of nature-based education training at the time of hire; and
- (B) Have 12 college credits in any 100-level or above college coursework or equivalent within five years of being hired or promoted into this position.
- (ii) During all operating hours when children are present and the program director or site director are not on-site, a lead teacher must meet the following additional requirements:
- (A) Have two years of experience as a teacher in an ONB program; and
- (B) Have completed a department orientation for ONB programs.
- (9) **Assistant teachers** help a lead teacher provide instructional support to children and implement developmentally appropriate programming.
- (a) An assistant teacher must meet the following qualifications:
- (i) Be at least 18 years old;
- (ii) Have a high school diploma or equivalent as approved and verified in the electronic workforce registry by the department; and
- (iii) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110.
- (b) Assistant teachers for programs that enroll preschool-age and school-age children, or only preschool-age children must meet the following requirements:
- (i) Have an ECE initial certificate or equivalent by August 1, 2026, or within five years of being hired or promoted into this position, whichever occurs later;
- (ii) Beginning August 1, 2026, an assistant teacher must have an ECE initial certificate or equivalent within five years of being hired or promoted into the position;
- (iii) The ECE certificate or equivalent must be approved and verified in the electronic workforce registry by the department; and
- (iv) Have their professional development progress documented annually.
- (c) Assistant teachers may work alone with children with regular, scheduled, and documented oversight and on-the-job classroom training from the classroom's assigned lead teacher who is primarily responsible for the care of the same group of children for the majority of their day.
- (10) **Aides** provide support to an assistant teacher, lead teacher, program supervisor, site director, assistant director, program director, or director.

(a) Aides must:

(i) Be at least 14 years old;

(ii) Have a high school diploma or equivalent as approved and verified in the electronic workforce registry by the department, or be currently enrolled in high school or an equivalent education ONB program;

(iii) Unless otherwise stated in this chapter, complete the applicable preservice training, in-service, and ONB program policy requirements, pursuant to WAC 110-302-0105, 110-302-0106, 110-302-0107, and 110-302-0110; and

(iv) Have their professional development progress documented annually.

(b) Aides may be counted in the staff-to-child ratio if they are working under the continuous oversight of a lead teacher, program supervisor, site director, assistant director, program director, or director.

(11) **Other personnel** who do not directly care for children and are not listed in subsections (1) through (10) of this section must meet the following qualifications:

(a) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(b) Have a negative TB test, pursuant to WAC 110-302-0105; and

(c) Complete ONB program based staff policies and training, pursuant to WAC 110-302-0110.

(12) **Volunteers** help at ONB programs. Volunteers must meet the following qualifications:

(a) Be at least 14 years old and have written permission to volunteer from their parent or guardian if they are under 18 years old; and

(b) Work under the continuous oversight of a director, program director, assistant director, site director, program supervisor, lead teacher, or assistant teacher;

(c) Regular, ongoing volunteers may count in staff-to-child ratio if they meet the following qualifications:

(i) Be at least 18 years old;

(ii) Complete and pass a background check, pursuant to chapter 110-06 WAC;

(iii) Complete a TB test, pursuant to WAC 110-302-0105;

(iv) Unless otherwise stated in this chapter, complete the training requirements, pursuant to WAC 110-302-0106; and

(v) Complete ONB program based staff policies and training, pursuant to WAC 110-302-0111.

(d) Occasional volunteers must comply with (a) and (b) of this subsection and cannot count in staff-to-child ratio. Occasional volunteers may include, but are not limited to, a parent or guardian helping on a field trip, special guest presenters, or a parent or guardian, family member, or community member helping with a cultural celebration.

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NEW SECTION

WAC 110-302-0105 Preservice requirements. (1) A department provided ONB program orientation must be completed by:

- (a) Applicants, coapplicants, licensees, directors, program directors, assistant directors, site directors, program and supervisors;
 - (b) Lead teachers who work without any of the individuals listed in (a) of this subsection on-site; and
 - (c) Prior to being in charge of the ONB program 50 percent of the time or more, ONB providers who are newly promoted or assuming one of the roles listed in (a) of this subsection.
- (2) ONB providers must complete a department background check, pursuant to chapter 110-06 WAC.
- (3) ONB providers, including volunteers, must provide documentation signed within the last 12 months by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:
- (a) A negative TB symptom screen and negative TB risk assessment;
 - (b) A previous positive FDA-approved TB test and a current negative chest radiograph and documentation of clearance to safely work in an ONB program; or
 - (c) A positive symptom screening or a positive risk assessment with documentation of:
 - (i) A current negative FDA-approved TB test;
 - (ii) A previous or current positive FDA-approved TB test; and
 - (iii) A current negative chest radiograph and documentation of clearance to safely work in an ONB program.
- (4) Upon notification of TB exposure, ONB providers may be required to be retested for TB as directed by the local health jurisdiction.

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NEW SECTION

- WAC 110-302-0106 Training requirements.** (1) ONB providers must complete the child care basics or the otherwise applicable training requirements contained in subsections (4) through (7) of this section. These trainings must be completed within three months of the date of initial licensure or the date of hire and prior to working in an unsupervised capacity with children. State or federal rules may require health and safety training described in this chapter be renewed annually.
- (2) License applicants and ONB providers must register with the electronic workforce registry prior to being granted an initial license or working with children in an unsupervised capacity.
- (3) License applicants, directors, program directors, assistant directors, site directors, program supervisors, lead teachers, assistant teachers, and aides must complete the ONB child care basics training or equivalent as approved or offered by the department:
- (a) Prior to being granted a license;
 - (b) Prior to working unsupervised with children; or
 - (c) Within three months of the date the ONB child care basics training becomes available if already licensed or employed.
- (4) ONB providers must complete the recognizing and reporting suspected child abuse, neglect, and exploitation training as approved or offered by the department according to subsection (1) of this section. Training must include the prevention of child abuse or neglect as defined in RCW 26.44.020 and the mandatory reporting requirements under RCW 26.44.030.

(5) ONB providers must complete the emergency preparedness training as approved or offered by the department according to subsection (1) of this section.

(6) ONB providers must complete the serving children experiencing homelessness training as approved or offered by the department according to subsection (1) of this section.

(7) Directors, program directors, assistant directors, site directors, program supervisors, and lead teachers must complete the medication management and administration training as approved or offered by the department prior to giving medication to an enrolled child, or as indicated in subsection (1) of this section.

(8) ONB providers who directly care for children must complete the prevention of exposure to blood and body fluids training that meets Washington state department of labor and industries' requirements prior to being granted a license or working with children. This training must be repeated pursuant to Washington state department of labor and industries regulations.

(9) Directors, program directors, assistant directors, site directors, program supervisors, lead teachers, assistant teachers, and any other ONB provider counted in staff-to-child ratio, or who could potentially be counted in ratio, must be trained in first aid and cardiopulmonary resuscitation (CPR). This training must be renewed prior to expiring. Additionally, if an ONB program is operating more than 30 minutes from emergency medical care, including the time it would take an adult to walk from the trailhead to a potential location, there must be at least one staff person trained in wilderness first aid and CPR present with each group of children.

(a) Proof of training may be shown with a certification card, certificate, or instructor letter.

(b) The first-aid and CPR training and certification must:

(i) Be delivered in person and include a hands-on component for first aid and CPR demonstrated in front of an instructor certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification ONB program;

(ii) Include child and adult first aid and CPR; and

(iii) Be renewed prior to expiring.

(10) ONB providers who prepare or serve food to children at an ONB program must obtain a current food worker card prior to preparing or serving food. Food worker cards must:

(a) Be obtained through the local health jurisdiction, in-person or online; and

(b) Be renewed prior to expiring.

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NEW SECTION

WAC 110-302-0107 In-service training. (1) Directors, program directors, assistant directors, site directors, program supervisors, lead teachers, and assistant teachers must complete 10 hours of annual in-service training after 12 months of cumulative employment.

(a) Directors, assistant directors, program supervisors, lead teachers, and assistant teachers for ONB programs that enroll pre-school-age children must complete the department enhancing quality of

early learning (EQEL) in-service training within 36 months of being hired, unless the ONB provider has completed a department approved alternative training. EQEL hours may count towards the 10 hours of annual in-service training.

(b) Every 36 months following the completion of EQEL training, directors, assistant directors, and program supervisors must complete a minimum of 10 hours of in-service training on "child development" and a minimum of 10 hours of in-service training on "leadership practices."

(c) Every 36 months, program directors and site directors must complete a minimum of 10 hours of in-service training in leadership practices.

(d) Child development training includes the following Washington core competencies: Child growth and development, curriculum and learning environment, ongoing measurements of child progress, family and community partnerships, health, safety, nutrition, and interactions.

(e) Leadership practices training includes the following Washington core competencies: ONB program planning and development, professional development, and leadership.

(2) In-service training requirements under this section may be met by completing college courses that align with the Washington state core competencies. These courses must be delivered by a postsecondary institution and approved by the department.

(3) Only five in-service training hours that exceed the requirements of subsection (1) of this section may be carried over from one fiscal year to the next fiscal year.

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NEW SECTION

WAC 110-302-0110 ONB program-based staff policies and training.

(1) An ONB provider must have and follow written policies for ONB program staff. Staff policies must include those listed in subsections (2) and (3) of this section and must be reviewed and approved by the department prior to issuing an ONB provider's initial license. ONB providers must notify the department when substantial changes are made.

(2) Staff policies must include, but are not limited to:

(a) All of the information in the parent or guardian handbook except fees;

(b) Job descriptions, pay dates, and benefits;

(c) Professional development expectations and plans;

(d) Expectations for attendance and conduct;

(e) ONB program staff responsibilities for:

(i) Child supervision requirements, including preventing children's access to unlicensed space;

(ii) Child growth and development;

(iii) Developmentally appropriate curriculum and activities;

(iv) Teacher-child interaction;

(v) Child protection, guidance, and discipline techniques;

(vi) Food service practices;

(vii) Off-site field trips, if applicable;

(viii) Transporting children, if applicable;

(ix) Health, safety, and sanitization procedures;

- (x) Medication management procedures;
 - (xi) Medical emergencies, fire, disaster evacuation, and emergency preparedness plans;
 - (xii) Mandatory reporting of suspected child abuse, neglect, and exploitation, per RCW 26.44.020 and 26.44.030 and all other reporting requirements;
 - (xiii) Implementation of child's individual health care or special needs plan;
 - (xiv) Following nonsmoking, vaping, alcohol, and drug regulations;
 - (xv) Religious, equity, and cultural responsiveness;
 - (xvi) Partnering with the local Native American tribe(s);
 - (xvii) Nondiscrimination;
 - (xviii) Planned daily activities and routines;
 - (xix) ONB benefit-risk assessment, policies, and procedures, if applicable; and
 - (xx) ONB program toileting options, as applicable;
 - (f) Staff responsibilities if the director, assistant director, program director, site director, or program supervisor is absent from the ONB program;
 - (g) A plan that includes how both administrative and child care-taking duties are met when a job requires such dual responsibilities; and
 - (h) Observation, evaluation, and feedback policies.
- (3) An ONB provider must have and follow written policies requiring staff working, transitioning, or covering breaks with the same classroom or group of children to share applicable information with each other on a daily basis regarding:
- (a) A child's health needs, allergies, and medication;
 - (b) Any change in a child's daily schedule;
 - (c) Significant educational or developmental information;
 - (d) Any communications from the family; and
 - (e) Information to be shared with the family.
- (4) An ONB provider must develop, deliver, and document the delivery of staff training specific to the ONB program and premises.
- (a) Training topics must include:
 - (i) Staff policies listed in subsections (2) and (3) of this section;
 - (ii) Chapter 43.216 RCW;
 - (iii) Chapter 110-302 WAC; and
 - (iv) Chapter 110-06 WAC.
 - (b) Training must be updated with changes in ONB program policies and state or federal regulations.

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NEW SECTION

- WAC 110-302-0111 Staff oversight.** (1) ONB providers who oversee staff must:
- (a) Establish a work plan with clear expectations;
 - (b) Be aware of what staff are doing; and
 - (c) Be available and able to respond to an emergency to protect the health and safety of children in care.

(2) When the director, program director, assistant director, site director, program supervisor, lead teacher, or assistant teacher is the only staff supervising an aide or volunteer, the aide or volunteer may be out of the supervisor's visual and auditory range only when the aide, volunteer, or supervisor is attending to personal needs.

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NEW SECTION

WAC 110-302-0115 Staff records. (1) ONB providers must establish a records system for themselves, staff, and volunteers that complies with the requirements described in this chapter. Staff records must be:

- (a) Confirmed by the licensee, director, program director, assistant director, site director, or program supervisor;
- (b) Entered and maintained in the electronic workforce registry, if applicable. Paper records may be discarded once entered into the electronic workforce registry and verified by the department;
- (c) Updated to delete staff names from the electronic workforce registry when no longer employed at the ONB program; and
- (d) Kept on-site or in the ONB program's administrative office in a manner that allows the department to review the records.

Paper records may be discarded once entered into the electronic workforce registry and verified by the department.

(2) Records for ONB providers and staff must include:

- (a) First and last name;
- (b) Date of birth;
- (c) Job title;
- (d) First and last day of employment, if applicable;
- (e) Proof of professional credentials, requirements, and training for staff, pursuant to WAC 110-302-0100 through 110-302-0110.

(3) A licensee, director, program director, assistant director, site director, or program supervisor must maintain the following records for each ONB provider and ONB program staff in a confidential manner. These records must be reviewable by the department and must include at a minimum:

- (a) A copy of current government issued photo identification;
- (b) Emergency contact information;
- (c) Completed employment application or resume;
- (d) Annual observation, evaluation, and feedback information;
- (e) The licensee's Social Security number, federal EIN, or a written document stating the licensee does not possess either; and
- (f) Immunization records including exemption document, pursuant to WAC 110-302-0120 (3) (a).

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NEW SECTION

WAC 110-302-0120 Providing for the personal, professional, and health needs of staff. (1) Licensees must provide for the personal and professional needs of staff by:

(a) Having a secure place to store personal belongings that is inaccessible to children;

(b) Having a readily accessible, working telephone to use for emergency calls or to contact the parents of enrolled children;

(c) Providing file and storage space for professional materials; and

(d) Providing for the toileting needs of ONB program staff pursuant to the ONB programs' toileting options policy.

(2) ONB providers must be excluded from the ONB program premises when their illness or condition poses a risk of spreading a harmful disease or compromising the health and safety of others. The illnesses and conditions that require staff to be excluded are pursuant to WAC 110-302-0205.

(3) Staff and volunteers who have not been vaccinated, or have not shown documented immunity to a vaccine preventable disease, may be required by the local health jurisdiction or the department to remain off-site during an outbreak of a contagious disease described in WAC 246-110-010. ONB staff or volunteers who have not been vaccinated against measles, mumps, and rubella or shown proof of immunity from measles must not be allowed on the ONB program premises except as provided in (a) and (b) of this subsection.

(a) ONB programs may allow persons to be employed or volunteer on the ONB program premises for up to 30 calendar days if the person signs a written attestation that they received the measles, mumps, and rubella vaccine, or is immune from measles, but require additional time to obtain and provide their immunization records. The required records must include immunization records indicating the employee or volunteer has received the measles, mumps, and rubella vaccine; or records that show proof of immunity from measles through documentation of laboratory evidence of antibody titer or a health care provider's attestation of the person's history of measles sufficient to provide immunity against measles.

(b) ONB programs may allow persons to be employed or volunteer on the ONB program premises if they provide the ONB program with a written certification signed by a health care practitioner, as defined in RCW 28A.210.090(3), that the measles, mumps, and rubella vaccine is, in the practitioner's judgment, not advisable for the person. This subsection (3)(b) does not apply if a person's health care practitioner determines that the measles, mumps, and rubella vaccine is no longer contraindicated.

(4) ONB programs' health policies, pursuant to WAC 110-302-0500, must include provisions for excluding or separating ONB program staff with a contagious disease described in WAC 246-110-010.

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NEW SECTION

WAC 110-302-0125 Character, competence, and suitability to serve children in care—Professional evaluations. (1) ONB providers must have the personal characteristics, competencies, and suitability described in this section to operate, oversee, or work in a licensed ONB program.

(a) The understanding, ability, physical health, emotional stability, good judgment, and personality suited to meet the physical, intellectual, mental, emotional, and social needs of children in care;

(b) Be authorized by the department to care for or have unsupervised access to children in care pursuant to chapter 110-06 WAC; and

(c) Be able to furnish children in care with a healthy, safe, nurturing, respectful, supportive, and responsive environment.

(2) To further assess a person's character, competence, or suitability to serve children in care, the department at its discretion may require ONB providers who have or may have access to children in care, to undergo one or more of the following:

(a) Sexual deviancy evaluations;

(b) Substance abuse evaluations;

(c) Psychiatric evaluations;

(d) Psychological evaluations; or

(e) Medical evaluations.

(3) Any evaluation required under subsection (2) of this section will be conducted at the expense of the person being evaluated or the ONB provider with which that person is associated.

(4) The person being evaluated under subsection (2) of this section must give the department permission to speak with the evaluator(s) who conducts or conducted an evaluation both prior to and after the evaluation.

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ENVIRONMENT SPACE AND FURNISHINGS

NEW SECTION

WAC 110-302-0130 Indoor and permanently located outdoor classroom ONB program space. (1) ONB programs utilizing indoor space or structure only to meet the biological needs of children must comply with WAC 110-302-0356 and 110-302-0415, and all other applicable requirements of this chapter.

(2) ONB providers utilizing indoor space or structure for educational activity must apply for the relevant child care center or family home child care license, pursuant to chapter 110-300 WAC, or school-age program license pursuant to chapter 110-301 WAC.

(3) Any licensed indoor space, used as part of the ONB program, must be accessible to the ONB provider and children during ONB program operating hours.

(4) ONB program space, ramps, and handrails must comply with, be accessible to, and accommodate children and adults with disabilities as required by the Washington Law Against Discrimination (chapter 49.60 RCW) and the ADA.

(5) Indoor space and permanently located outdoor classroom space must allow children to move between areas without disrupting another child's work or play.

[]

NEW SECTION

WAC 110-302-0135 Routine care, play, learning, relaxation, and comfort. (1) ONB programs operating with a permanently located outdoor classroom must have accessible and child-size furniture and equipment in sufficient quantity for the number of children in care. ONB programs may use picnic benches in sufficient quantity for the number of children in care, with adaptations to support children as needed, or provide alternative seating and surface options, such as blankets or logs.

(2) If utilized by an ONB program, furniture and equipment must be:

(a) Maintained in a safe working condition;

(b) Developmentally and age appropriate;

(c) Visually inspected at least weekly for hazards, broken parts, or damage. All equipment with hazardous, broken parts or damage must be repaired as soon as possible and must be inaccessible to children until repairs are made according to the manufacturer's instructions, if available. Natural materials of an ONB program, such as logs and trees, must be inspected and any hazards that are not a result of the natural quality of the material must be mitigated, such as the removal of broken limbs from climbing trees;

(d) Arranged in a way that does not interfere with other play equipment;

(e) Installed and assembled according to manufacturer's specifications;

(f) Stored in a manner to prevent injury; and

(g) Accessible to the child's height so that children can find, use, and return materials independently.

(3) Subsection (2)(a) through (g) of this section may not apply to ONB programs operating in public areas where the equipment is not the property of the ONB provider and not intended for the use of the children.

(4) ONB programs must provide and maintain a space that is suitable for comfort and relaxation, pursuant to WAC 110-302-0140 (2) and (5).

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NEW SECTION

WAC 110-302-0140 Space arrangement, child-related displays, private space, and belongings. (1) ONB program materials and equipment must be visible and accessible to children in care, and arranged to promote and encourage independent access by children. The outdoor natural environment must provide age and developmentally appropriate materials for children, consistent with the ONB program's curriculum philosophy.

(2) ONB providers must offer or allow a child to create a place for privacy. Such a space must:

- (a) Still enable the ONB provider to supervise children; and
 - (b) Include an area accessible to children who seek or need time alone or in small groups.
- (3) ONB providers must have extra clothing available for children who get wet, soil, or have a need to change clothes. Pursuant to WAC 110-302-0147, the ONB program must ensure that children have the appropriate clothing for the weather and must have extra clothing available for children whose parent or guardian did not provide the appropriate clothing.
- (4) ONB providers must designate storage space for each child's belongings while the child is in attendance. At a minimum, the space must be:
- (a) Accessible to the child; and
 - (b) Large enough and spaced sufficiently apart from other storage space to:
 - (i) Store the child's personal articles and clothing; and
 - (ii) Promote or encourage children to organize their possessions.
- (5) Child usable and accessible areas must be arranged, or selected by an ONB program, to provide sufficient space for routine care, child play, and learning activities. These areas must be designed or selected by ONB programs to:
- (a) Allow ONB providers to supervise or actively supervise the children, depending on the nature of the activities;
 - (b) Allow children to move freely; and
 - (c) Allow for different types of activities at the same time, such as gross motor activity, natural sciences, dramatic play, music and movement, language and literacy learning, manipulatives and loose parts, and environmental literacy opportunities.

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NEW SECTION

WAC 110-302-0145 ONB program space and active play. (1) ONB program staff must visually inspect meeting spaces and permanently located outdoor classrooms or other commonly used spaces prior to children arriving. ONB providers must have a method of removing or mitigating any hazard on ONB licensed space such as, but not limited to, loose overhead branches, hazardous materials or devices left in public spaces, wildlife, or wildlife droppings.

(2) Pursuant to WAC 110-300-0356, ONB program space must promote a variety of age and developmentally appropriate active play areas for children in care. Activities must encourage and promote both moderate and vigorous physical activity such as running, jumping, skipping, throwing, pedaling, pushing, pulling, kicking, and climbing.

(3) ONB programs must have access to at least 4,000 square feet of natural space per child to support a nature-based curriculum, unless otherwise approved by a park's director and the department.

(a) Within the 4,000 square feet of natural space, the ONB provider must identify at least 75 square feet per child accessing the play space, at any given time that is suitable for vigorous and active play and gross motor activity.

(b) ONB providers must encourage children to engage in active play for at least 30 minutes of gross motor activity for every three hours the children are in attendance or 10 minutes for each hour of

programming at the ONB program operating less than three hours, pursuant to WAC 110-302-0360.

(4) ONB programs must have shaded areas in outdoor play space provided by trees, buildings, or shade structures. ONB providers engaging children in unshaded areas must notice and respond to the children's comfort and safety in all temperatures, pursuant to WAC 110-302-0147.

(5) When moving between areas in the ONB program space, or when moving to and from a licensed indoor program space to outdoor program space, ONB providers must identify and use safe routes and active supervision.

(6) ONB programs must meet the following requirements when using natural play spaces not enclosed by a fence, wall, or similar barrier:

(a) Establish boundaries with children in unenclosed spaces by using visual aids, such as webbing or tying ribbons on trees, in addition to the intentional teaching of boundaries to children required pursuant to WAC 110-302-0310. These visual aids must not create a tripping, confinement, or choking hazard.

(b) ONB programs with permanently located outdoor classroom space must create guardrails, barriers, or boundaries between that space and any immediately adjacent hazardous features, such as a ravine, cliff, or body of water more than two feet deep and six feet in diameter. These guardrails or barriers may be made by natural materials and must be at least 29 inches tall for ONB programs enrolling only preschool-age children and 38 inches tall for ONB programs that enroll school-age children. All other boundaries need approved supervision plans documented in benefit-risk assessments. If public parks property used by ONB programs do not meet these requirements, ONB providers must submit and follow supervision plans to be reviewed and approved by the department.

(c) ONB providers utilizing enclosed or designated outdoor play structures must follow the relevant CPSC playground safety guidelines and the applicable child care center or family home child care license, pursuant to chapter 110-300 WAC, or school-age program license pursuant to chapter 110-301 WAC.

(7) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must not install any wooden fence, barrier, playground structure, or furniture if it contains chromated copper arsenate (CCA), creosote or pentachlorophenol. If wooden fences, structures, and furniture are suspected of having CCA, they must be tested. If CCA is present, fences, structures, and furniture must be removed or sealed with an oil-based outdoor sealant annually or as needed.

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NEW SECTION

WAC 110-302-0146 Equipment and surfaces in outdoor space. (1)

Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB programs must not use or install manufactured playground equipment that does not comply with the following:

(a)(i) Playground equipment used by ONB providers must comply with applicable CPSC guidelines including, but not limited to, guide-

lines related to the installation, arrangement, design, construction, and maintenance of the outdoor play equipment and surface.

(ii) Climbing play equipment must not be placed on or above concrete, asphalt, packed soil, lumber, or similar hard surfaces;

(b) The ground under swings and play equipment must be covered by a shock absorbing material (grass alone is not acceptable) such as:

(i) Pea gravel at least nine inches deep;

(ii) Playground wood chips at least nine inches deep;

(iii) Shredded recycled rubber at least six inches deep; or

(iv) Any material that has a certificate of compliance, label, or documentation stating it meets ASTM standard F1292.

(2) Permanently anchored outdoor play equipment must not be placed over septic tank areas or drain fields, and must be installed according to the manufacturer's directions.

(3) Handmade playground equipment must be maintained for safety or removed when no longer safe. Prior to construction of new handmade playground equipment, the ONB provider must notify the department and have plans and a materials list available upon request.

(4) Bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable equipment must be inaccessible and locked. This requirement does not apply to bounce balls designed to be used by individual children.

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NEW SECTION

WAC 110-302-0147 Weather conditions and outdoor hazards. (1)

ONB providers must observe weather conditions and other possible hazards to take appropriate action to protect and promote child health, safety, and well-being. Conditions that pose a health or safety risk may include, but are not limited to:

(a) Heat in excess of 100 degrees Fahrenheit or pursuant to advice of the local authority;

(b) Cold less than 20 degrees Fahrenheit, or pursuant to advice of the local authority;

(c) Lightning storm, tornado, hurricane, or flooding if there is immediate or likely danger;

(d) Earthquake;

(e) Strong winds, including gusts over 25 mph;

(f) Air quality emergency ordered by a local or state authority on air quality or public health;

(g) Lockdown notification ordered by a public safety authority; and

(h) Other similar incidents.

(2) ONB providers must ensure children are dressed for weather conditions during outdoor program time. ONB programs must ensure all children have appropriate clothing for the time spent outdoors and have extra clothing to meet children's comfort and safety needs throughout the day, as needed. This must include rainy or cold weather clothing such as waterproof boots, rain pants, rain jacket, a moisture-wicking layer, two sets of gloves, and a hat to keep the child's head dry and warm.

(3) ONB programs must have a required clothing policy or ONB program to loan the appropriate clothing and other necessary equipment to

children, which must be included in the parent or guardian handbook pursuant to WAC 110-302-0450. ONB providers must work with families that require assistance in meeting their child's clothing needs.

(4) ONB providers must remain aware of the children's verbal and nonverbal cues regarding their warmth and comfort and respond appropriately to ensure the children's health and safety. These responses may include, but are not limited to:

- (a) Keeping children active and moving in cold weather;
- (b) Resting in shaded areas to cool off; and
- (c) Assisting children to remove or add layers of clothing, while supporting their development of self-regulation skills.

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NEW SECTION

WAC 110-302-0148 Gardens in ONB program space. (1) A garden in ONB program space must:

- (a) Have safeguards in place to minimize risk of cross-contamination by animals;
- (b) Use soil free from agricultural or industrial contaminants such as lead or arsenic if gardening directly in the ground;
- (c) If gardening in raised beds, use:
 - (i) New soil that is labeled "organic" or "safe for children" and was obtained from a gardening supply or other retail store; or
 - (ii) Composted soil made from material that is safe according to the Washington State University's extension master gardener composting guidelines; and
 - (iii) Use water that comes from a private well approved by the local health jurisdiction or from a public water system. ONB providers must make water for gardens inaccessible to children if irrigation water is used.

(2) Garden beds must be made of materials that will not leach chemicals into the soil including, but not limited to, wood treated with CCA, creosote or pentachlorophenol, reclaimed railroad ties, or tires.

(3) Any herbicide or pesticide must be applied pursuant to the product manufacturer's directions. The product must not be applied while children are present. Children must not apply the product or have access to the garden during the manufacturer's prescribed waiting period following application.

(4) Commonplace toxic plants or plants with poisonous leaves such as tomato, potato, or rhubarb may be grown in the garden. An ONB provider must actively supervise children who are able to access a garden where commonplace toxic plants or plants with poisonous leaves are growing.

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ACTIVITIES

NEW SECTION

WAC 110-302-0150 ONB program and activities. (1) ONB providers must supply children in care with materials that are age and developmentally appropriate. For each age group of children in care, ONB providers must supply a variety of materials that satisfy individual, developmental, and cultural needs. ONB programs that choose to supplement abundant natural resources with additional manufactured materials in the outdoors must ensure those materials comply with the rules of this section. Materials must be:

- (a) Clean;
- (b) Washable or disposable;
- (c) Accommodating to a range of abilities of children in care;
- (d) Available to children in care appropriate to a child's age and developmental level;
- (e) Nonpoisonous and free of toxins. If an ONB provider is using prepackaged art materials, the material packaging must be labeled "non-toxic" by the manufacturer and meet ASTM standard D-4236 as described in 16 C.F.R. Part 1500.14(b)(8)(i);
- (f) In good and safe working condition;
- (g) Accommodating to special needs of children in care;
- (h) Removed from the ONB program space once an item has been recalled by CPSC; and
- (i) ONB programs may provide natural materials to children to support the nature-based curriculum that, as organic matter, may not be able to meet the requirements described in (a) or (b) of this subsection, for example decomposing logs, leaves, or items in a mud kitchen. Such materials must be nonpoisonous and free of toxins; and when being used by the children, the children must be actively supervised.

(2) ONB providers must ensure a sufficient quantity and variety of materials to engage children in the ONB program such as arts and crafts supplies, various textured materials, construction materials, manipulative materials, music and sound devices, and books. ONB providers may choose to use natural materials for these purposes if sufficient in quantity and variety to engage children in the ONB program. Materials must:

- (a) Encourage both active physical play and quiet play activities;
- (b) Promote imagination and creativity;
- (c) Promote language development, communication, and literacy skills;
- (d) Encourage social skill development;
- (e) Promote numeracy, math, and spatial ability;
- (f) Encourage discovery, exploration, and reasoning; and
- (g) Promote learning skills.

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NEW SECTION**WAC 110-302-0155 Use of television, video, and computers.** (1)

If ONB providers offer screen time to children in care:

(a) The screen time available for each child:

(i) Must be educational, developmentally and age appropriate, nonviolent, and culturally sensitive; and

(ii) Should be interactive with staff for preschool-age children.

(2) Children must not be required to participate in screen time activities. Alternative activities must be provided to children in care when screen time is offered.

(3) Screen time must not occur during scheduled meals or snacks.

(4) For preschool-age children, the total screen time must not exceed two and one-half hours per week for children in full-day care or one and one-quarter hours for children in half-day care.

(5) For school-age children, screen time must be limited to two and one-half hours per week for each child unless computer use is required for homework or a part of curriculum.

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NEW SECTION**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 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 provider 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 Since Time Immemorial early learning curriculum (<https://www.dcyf.wa.gov/tribal-relations/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>).

(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.

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SAFETYNEW SECTION

WAC 110-302-0165 Safety requirements. (1) ONB providers must keep ONB program space, materials, and equipment free from hazards and in safe working condition.

(2) Hazards inherent to the natural features of the outdoors must be removed or mitigated according to the requirements described in this chapter including, but not limited to, WAC 110-302-0471.

(3) Equipment and toys used by the ONB program must be compliant with the CPSC guidelines or the ASTM standards.

(4) Except for ONB programs that enroll only school-age children and operate on public or private school premises, playground equipment and surfaces must comply with the requirements described in WAC 110-302-0146.

(5) ONB providers must take steps to prevent hazards to children including, but not limited to:

(a) Except for ONB programs that enroll only school-age children and operate on public or private school premises, eliminating and not using in the licensed space, pursuant to RCW 43.216.380, any window blinds or other window coverings with pull cords or inner cords capable of forming a loop and posing a risk of strangulation to children.

(i) Window blinds and other window coverings that have been manufactured or properly retrofitted in a manner that eliminates the formation of loops posing a risk of strangulation are allowed; and

(ii) A window covering must not be secured to the frame of a window or door used as an emergency exit in a way that would prevent the window or door from opening easily;

(b) Making inaccessible to preschool-age children straps, strings, cords, wires, or similar items capable of forming a loop around a child's neck when not being used during actively supervised ONB program activities;

(c) Making inaccessible to preschool-age children plastic bags and other suffocation hazards;

(d) Ensuring firearms, guns, weapons, and ammunition are not on the premises of an ONB program;

(e) Preventing preschool-age children from walking into or through a glass door, window, or other glass barrier, by placing stickers or art work at the children's eye level on the glass; and

(f) Climbing structures must not be placed next to windows, to prevent harm from shattered glass, unless the window is made of safety glass.

(6) ONB providers must take steps to prevent hazards to children in care, including hazards inherent to the natural physical features of the outdoors. Pursuant to WAC 110-302-0471, such inherent hazards must be mitigated or lessened by active supervision, and the implementation of benefit-risk assessments and risk management plans. In addition, the ONB provider must take the following measures to prevent hazards to children in care:

(a) **Cuts, abrasions, and punctures.** Equipment, materials, and other objects on the premises that have sharp edges, protruding nails, bolts, or other dangers, excluding approved tools during supervised use pursuant to WAC 110-302-0352, must be repaired, removed, or made inaccessible to children. ONB programs utilizing natural wooden materials in furniture or learning resources must utilize appropriate supervision or adequate maintenance of materials, such as sanding sharp edges;

(b) **Burns.** Equipment, materials, or products that may be hot enough to injure a child must be made inaccessible to children. Children in ONB programs may have access to campfires, pursuant to WAC 110-302-0351;

(c) **Sheering, crushing, or pinching.** Broken or cracked equipment, materials, and objects must be repaired, removed, or made inaccessible to children;

(d) **Confinement.** Washers, dryers, large compost bins, spare or secondary freezers or refrigerators, and other entrapment dangers must be inaccessible to children unless being actively supervised;

(e) **Tripping.** Tripping hazards must be eliminated. Except for ONB programs that enroll only school-age children and operate on public or private school premises, uneven walkways, damaged flooring or carpeting must be removed or repaired;

(f) **Falling objects.** Large objects that pose a risk of falling or tipping must be securely anchored. Large objects include, but are not limited to, televisions, dressers, bookshelves, wall cabinets, sideboards or hutches, and wall units; and

(g) **Equipment in poor condition.** Equipment in poor condition, meaning rusty parts, flaking paint, or other dangers, must be repaired, removed, or made inaccessible to children.

(7) To ensure a safe environment for children in care, ONB providers must comply with the following requirements:

(a) **Indoor temperatures for the premises.** The temperature of indoor spaces used for eating, sleep, or rest must be between 65 and 82 degrees Fahrenheit. If such indoor licensed space is colder than 65 degrees Fahrenheit or hotter than 82 degrees Fahrenheit, an ONB provider must use climate control devices that are inaccessible to children to bring the temperature within the required range;

(b) **Window openings.** Except for ONB programs that enroll only school-age children and operate on public or private school premises, windows within the reach of children in the licensed indoor spaces used for children's biological needs must only open up to three and one-half inches or have some barrier or preventive measure to discourage children from exiting through the window;

(c) **Licensed space lighting.** Indoor and outdoor licensed space must have natural or artificial light that provides appropriate illumination for ONB program activities and active supervision. Except for ONB programs that operate on public park land, or enroll only school-age children and operate on private school premises, an ONB program must comply with all light fixture manufacturers' installation and use requirements, and must ensure compliance with the following requirements:

(i) Light fixtures must have shatter-resistant light bulbs, covers, or both;

(ii) Lights or light fixtures used indoors must be designed for indoor use only;

(iii) Lights or light fixtures used outdoors must be designed for outdoor use only;

- (iv) Free standing lamps must be attached or secured to prevent tipping; and
- (v) Halogen lamps and bulbs are prohibited;
- (d) **Safe noise levels.** Noise levels must be maintained at a level in which a normal conversation may occur except when children are engaged in gross motor activities;
- (e) **Safe water temperature.** Except for ONB programs that enroll only school-age children and operate on public or private school premises, all water accessible to enrolled children must not be hotter than 120 degrees Fahrenheit;
- (f) **Stairway safety.**
 - (i) There must not be clutter or obstructions in the stairway;
 - (ii) Except for ONB programs that enroll only school-age children and operate on public or private school premises, all stairways (indoor and outdoor), not including play structures, must meet local building codes, pursuant to RCW 43.216.340.
 - (A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.
 - (B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.
 - (C) Stairways with a wall on both sides must have a handrail no higher than 38 inches on at least one side of the stairway;
 - (iii) For ONB programs operating in public parks where park features are preestablished, ONB providers must use benefit-risk assessments for using stair structures that do not meet the following requirements:
 - (A) Open stairways with no walls on either side must have handrails with slats (balusters) that prevent a child from falling off either side of the stairway.
 - (B) Stairways with a wall on only one side must have a handrail with slats (balusters) on the side without the wall that prevents a child from falling off the stairway.
 - (C) Stairways with a wall on both sides must have a handrail no higher than 38 inches on at least one side of the stairway;
 - (iv) Openings between slats on gates must not be large enough to allow a sphere that is three and one-half inches wide to pass through;
- (g) **Platforms and decks.** Except for ONB programs that enroll only school-age children and operate on public or private school premises, pursuant to chapter 19.27 RCW, all platforms and decks used for ONB program activities must comply with all building codes. All platforms and decks with a drop zone of more than 18 inches must have guardrails in sections without steps;
- (h) **Electrical requirements.** To ensure a safe environment for children in care, an ONB provider must comply with the following electrical requirements:
 - (i) Except for ONB programs that enroll only school-age children and operate on public or private school premises, outlets near sinks, tubs, toilets, or other water sources must be inaccessible to children or be tamper-resistant and equipped with a ground fault circuit interrupter (GFCI) outlet type;
 - (ii) For ONB programs that enroll only preschool-age children or both preschool-age and school-age children, electrical outlets in areas accessible to children must have automatic shutters that only allow electrical plugs to be inserted or that are covered by blank

plates or other tamper-resistant covers appropriate to the electrical outlet;

(iii) For ONB programs that enroll only preschool-age children or both preschool-age and school-age children, power strips must have surge protectors and be inaccessible to children in care;

(iv) Electrical cords must be plugged directly into a wall outlet or a power strip with surge protector;

(v) Electrical cords must be in good working condition, not torn or frayed, and not have any exposed wires;

(vi) Extension cords may only be used for a brief, temporary purpose and must not replace direct wiring;

(vii) Electrical devices accessible to children must not be plugged into an electrical outlet near a water source such as a sink, tub, water table, or swimming pool; and

(viii) For ONB programs operating in public parks where park features are preestablished, ONB providers must use benefit-risk assessments for using areas with access to electricity.

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NEW SECTION

WAC 110-302-0166 Emergency preparation and exiting. (1) To be properly prepared for an emergency, ONB programs must have an emergency preparedness plan pursuant to WAC 110-302-0470.

(2) One or more ONB providers must have the following in case of an emergency:

(a) A working flashlight or other emergency lighting device that is available for use as an emergency light source. Battery powered flashlights must have an extra set of batteries easily available; and

(b) A working telephone that is available for use and has sufficient backup power to function in an emergency.

(3) To ensure a safe exit from indoor premises during an emergency, ONB programs must comply with the following requirements:

(a) Except for ONB programs that enroll only school-age children and operate on public or private school premises, indoor locks for emergency exit doors must remain unlocked from the inside, but may be locked from the outside while the ONB program is open. The door handle must be of the type that can be opened from the inside without the use of a key, tools, or special knowledge, and must automatically unlock when the knob or handle is turned;

(b) Exit doors not designated as an emergency exit door may be locked during operating hours. Except for ONB programs that enroll only school-age children and operate on public or private school premises, locking interior doors in ONB program space must be designed to be unlocked from either side. An unlocking device must be readily available; and

(c) Exit doors must not be partially or entirely blocked.

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NEW SECTION

WAC 110-302-0170 Fire safety. (1) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers and programs must comply with the state building code, pursuant to RCW 19.27.031.

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must arrange for an annual fire safety inspection for any facility or structure approved for use.

(a) The annual fire safety inspection must be arranged with the local government agency that has the authority to conduct fire safety inspections. If the appropriate local government agency is not available to conduct a fire safety inspection, ONB providers must inspect for fire safety by using and implementing the state fire marshal form.

(b) ONB programs operating on public park land must communicate with the park director regarding fire safety or building inspections of any buildings in use by the ONB program, and ensure that fire inspections occur annually or submit a report to the department.

(3) To ensure a safe environment for children in care, an ONB provider must comply with all applicable fire safety requirements. ONB programs must also comply with the following:

(a) **Combustible materials.** Except for ONB programs that enroll only school-age children and operate on public or private school premises, combustible materials:

(i) Must be properly discarded pursuant to local jurisdictions removed from the premises, or properly stored in closed plastic or metal containers specifically designed to hold such combustible materials;

(ii) Stored in a closed plastic or metal container must not be accessible to children in care; and

(iii) Include, but are not limited to, lint, gasoline, natural gas, diesel, fuel, propane, rags soaked in combustible materials, oils, chemicals, or solvents.

(b) **Furnaces and other heating devices.**

(i) Except for ONB programs that enroll only school-age children and operate on public or private school premises, paper, rubbish, or other combustible materials must be at least three feet from furnaces, fireplaces, campfires, or other heating devices;

(ii) An appliance or heating device that has a surface capable of burning a child or reaching 110 degrees Fahrenheit must be inaccessible to children in care unless ONB program activities involve such appliances or devices and children are being actively supervised.

(iii) For ONB programs not operating on public or private school premises, furnaces and other heating devices must be inaccessible to children in care.

(c) **Open flame devices, candles, matches, and lighters.**

(i) Open flame devices must not be used in or on ONB program premises or any other space accessible to children in care during operating hours. This prohibition does not apply to the use of a gas kitchen range, a camp stove that is in compliance with the requirements described in WAC 110-302-0195, or a campfire that is in compliance with the requirements described in WAC 110-302-0351;

(ii) Candles must not be used during operating hours;

(iii) Matches and lighters must be inaccessible to children.

(d) **Portable heaters and generators.** Portable heaters or fuel-powered generators must not be used inside ONB program premises during operating hours.

(i) In case of an emergency, a generator may be used but must be placed at least 20 feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the premises or ONB program space; and

(ii) Appliances must be plugged directly into a generator or into a heavy duty outdoor-rated extension cord that is plugged into a generator.

(iii) When necessary, portable heaters may be used by ONB programs for the purposes of keeping children warm in cold weather. If the heating device reaches over 110 degrees Fahrenheit, children must be actively supervised, and children must remain out of reach of the heater to avoid accidental burns.

(e) **Fireplaces, woodstoves, or similar wood burning heating devices.** Chimneys, fireplaces, gas burning fireplaces, wood stoves or similar wood-burning devices and fire pits must be inspected annually by a state or locally certified inspector, unless the ONB provider submits to the department a written statement that the chimney, fireplace, wood stove or similar wood-burning device or fire pit will not be used at any time. ONB programs operating on public land do not have to provide inspection certificates for publicly provided fire pits or wood burning barbecues.

(f) **Fire alarms and smoke and carbon monoxide detectors.** ONB providers must comply with the requirements described in this subsection.

(i) Properly maintain at least one smoke detector for each indoor licensed sleeping area and one for each floor, unless exempt under WAC 51-50-0907.

(ii) Properly maintain carbon monoxide detectors for indoor space, unless exempt under WAC 51-50-0915.

(iii) At least once per month, ONB providers must inspect and test the smoke and carbon monoxide detectors. For each monthly inspection, ONB providers must document the following information in a written record:

(A) Who conducted the monthly inspection;

(B) The date the monthly inspection was conducted;

(C) A description of whether any smoke or carbon monoxide detectors were not working; and

(D) The corrective actions that were taken to replace or repair any smoke or carbon monoxide detector that was not working.

(g) **Extinguishers.** ONB providers operating with an applicable indoor ONB program or engaging in campfire or outdoor cooking activity must have and maintain working fire extinguishers that are marked with a minimum rating of 2A:10 BC.

(i) Fire extinguishers must be readily available for use in case of an emergency; and

(ii) For ONB programs operating in a public park location that do not allow the use of fire extinguishers, alternative fire suppression equipment, such as buckets of water must be available.

(h) **Monthly inspections.** ONB providers must involve staff responsible for different groups of children during monthly inspections. At least once per month, ONB providers must inspect fire extinguishers, and the premises to identify possible fire hazards and eliminate any hazards found including, but not limited to, emergency lighting. For each monthly inspection, the ONB provider must document the following information in a written record:

- (i) Who conducted the monthly inspection;
- (ii) The date the monthly inspection was conducted;
- (iii) A description of any fire hazards that were identified; and
- (iv) The corrective actions that were taken to eliminate identified fire hazards.

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NEW SECTION

WAC 110-302-0175 Water hazards and swimming pools. To prevent injury or drowning and ensure the health and safety of children, ONB providers must comply with the requirements described in this section.

(1) Except for ONB programs that enroll only school-age children and operate on public or private school premises, the following bodies of water must be inaccessible to children in care by using a physical barrier at least five feet tall with a locking mechanism:

(a) Swimming pools when not being used as part of the ONB program;

(b) Uncovered wells, septic tanks, wastewater, wastewater tanks, below grade storage tanks, farm manure ponds, or other similar hazards.

(2) Hot tubs and similar equipment must be made inaccessible to children by using a physical barrier with a locking mechanism.

(3) An ONB program operating near a natural body of water must provide a physical barrier or physical boundary to adjacent bodies of water pursuant to WAC 110-302-0145, and must provide active supervision pursuant to WAC 110-302-0350.

(4) An ONB provider must comply with the supervision requirements of WAC 110-302-0350 when using a swimming pool as part of the ONB program.

(5) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must comply with the following requirements when using a swimming pool as part of the ONB program:

(a) Audible alarms must be on all doors, screens, and gates in licensed areas that lead to a swimming pool. The alarm must be sufficient to warn staff when children enter the outdoor area and could access the swimming pool;

(b) Swimming pools must be maintained according to manufacturer specifications;

(c) Swimming pools must be cleaned and sanitized according to manufacturer instructions, chapter 246-260 WAC, and the DOH or local health jurisdiction guidelines;

(d) A swimming pool must not be used if the main drain cover is missing; and

(e) Children in diapers or toilet training must wear swim pants to lower the risk of contaminating the water.

(6) Filtered wading pools must be inaccessible to children when not in use. Wading pools that do not have a filtering system are not permitted in the ONB program space.

(7) If ONB providers use water tables or similar containers, the tables or containers must be emptied and sanitized daily, or more often if necessary.

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FOOD AND NUTRITIONNEW SECTION

WAC 110-302-0180 Meal and snack schedule. (1) ONB providers must serve meals and snacks to children in care as follows:

(a) Meals and snacks must be served not less than two hours apart, unless vigorous activity or weather conditions require more frequent serving, and not more than three hours apart unless the child is asleep;

(b) Children in care for five to nine hours:

(i) At least one meal and two snacks; or

(ii) Two meals and one snack;

(c) Children in care for more than nine hours:

(i) Two meals and two snacks; or

(ii) Three snacks and one meal;

(d) A snack or meal must be provided to a child who arrives to the ONB program after school.

(2) For ONB programs that enroll only preschool-age children or both preschool-age and school-age children, ONB providers must offer children the opportunity for developmentally appropriate tooth brushing activities at least once per day.

(a) Tooth brushing activities must be safe, sanitary, and educational.

(b) Toothbrushes used in an ONB program must be stored in a manner that prevents cross contamination.

(c) The parent or guardian of a child may opt out of the daily tooth brushing activities by signing a written form.

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NEW SECTION

WAC 110-302-0185 Menus, milk, and food. To ensure proper nutrition of children in care, ONB providers must comply with the child nutrition requirements described in this section.

(1) Meals, snack foods, and beverages provided to children in care must comply with the requirements contained in the most current edition of CACFP standards, or the *USDA National School Lunch and School Breakfast Program* standards.

(a) ONB providers must have dated menus.

(b) Food and beverage substitutions to a scheduled menu must be of equal nutritional value.

(c) ONB providers must only serve water, unflavored milk, 100 percent fruit, or vegetable juice.

(d) ONB providers must limit the consumption of 100 percent fruit juice to no more than four to six ounces per day for children between 30 months and six years old, and eight to 12 ounces per day for children seven through 12 years old.

(2) ONB providers must serve a fruit or vegetable during at least one snack per day. The fruit or vegetable serving may count as one of the two required snack components or be a third snack component.

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NEW SECTION

WAC 110-302-0186 Food allergies and special dietary needs. (1) ONB providers must obtain written instructions, known as an individual care plan, from the child's health care provider and parent or guardian when caring for a child with a known food allergy or special dietary requirement due to a health condition. The individual care plan, pursuant to WAC 110-302-0300, must:

(a) Identify foods that must not be consumed by the child and steps to take in the case of an unintended allergic reaction;

(b) Identify foods that can substitute for allergenic foods; and

(c) Provide a specific treatment plan for the ONB provider to follow in response to an allergic reaction. The specific treatment plan must include the:

(i) Names of all medication to be administered;

(ii) Directions for how to administer the medication;

(iii) Directions related to medication dosage amounts; and

(iv) Description of allergic reactions and symptoms associated with the child's particular allergies.

(2) ONB providers must arrange with the parents or guardians of a child in care to ensure the ONB program has the necessary medication, training, and equipment to properly manage a child's food allergies.

(3) If a child suffers from an allergic reaction, the ONB provider must immediately:

(a) Administer medication pursuant to the instructions in that child's individual care plan;

(b) Contact 911 whenever epinephrine or other lifesaving medication has been administered; and

(c) Notify the parents or guardians of a child if it is suspected or appears that any of the following occurred, or is occurring:

(i) The child is having an allergic reaction; or

(ii) The child consumed or came into contact with a food identified by the parents or guardians that must not be consumed by the child, even if the child is not having or did not have an allergic reaction.

(4) ONB providers must review each child's individual care plan information for food allergies prior to serving food to children.

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NEW SECTION

WAC 110-302-0190 Parent- or guardian-provided food and written food plans. (1) Written food plans must be developed by ONB providers and a child's parent or guardian, signed by all parties, and followed when accommodating a child's:

- (a) Special feeding needs;
- (b) Special diets;
- (c) Religious or cultural preferences;
- (d) Family preference; or
- (e) Other needs.

(2) ONB providers may allow or require parents or guardians to bring food for their child.

(3) If a parent or guardian provides meals for their child, ONB providers must:

(a) Notify the parent or guardian in writing of the USDA CACFP requirements for each meal; and

(b) Supplement a child's meal that does not comply with USDA CACFP requirements, if necessary.

(4) On special occasions, such as birthdays, ONB providers may allow parents or guardians to bring in snacks that may not satisfy the nutritional requirements for all children. The snacks provided must be limited to:

- (a) Store purchased, uncut fruits and vegetables;
- (b) Foods prepackaged in the original manufacturer containers; or
- (c) Snacks prepared, cooked, or baked at home by parents or guardians of a child in care. Prior to serving, ONB providers must receive written permission from each child's parent or guardian stating their child may consume food prepared, cooked, or baked by another child's parent or guardian.

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NEW SECTION

WAC 110-302-0195 Food service, equipment, and practices. (1) ONB providers preparing or serving food must comply with the current DOH *Washington State Food and Beverage Workers' Manual* and supervise services that prepare or deliver food to the ONB program.

(2) Snacks and meals must be prepared and served by ONB providers that possess a valid and current food worker card pursuant to WAC 110-302-0106.

(3) ONB providers must:

(a) Supply durable and developmentally appropriate individual eating and drinking equipment, or developmentally appropriate single use disposable items;

(b) Clean and sanitize eating and drinking equipment after each use. Water cups or bottles must be cleaned and sanitized daily if designated for a single child;

(c) Ensure plastic eating and drinking equipment does not contain BPA, a chemical used in hard plastic bottles and as a protective lining in food and beverage cans, or have cracks or chips;

(d) Use gloves, utensils, or tongs to serve food;

(e) Serve meals or snacks on plates, dishware, containers, trays, or napkins or paper towels, if appropriate. Food should not be served directly on the eating surface; and

(f) Be respectful of each child's cultural food practices.

(4) ONB providers must:

(a) Serve each child individually or serve family style dining, allowing each child the opportunity to practice skills such as passing shared serving bowls and serving themselves; and

(b) Sit with children during meals.

(5) ONB programs may use camp stoves that comply with applicable regulations to heat or cook food for children. Children that are in the cooking area within three feet of the camp stove must be actively supervised. Supervision for any child engaged in a cooking activity must be based on a one-to-one (1:1) staff-to-child ratio; and the staff member must remain within arms' reach of the child at all times.

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NEW SECTION

WAC 110-302-0196 Food sources. (1) Food prepared and served from ONB programs must not be tampered with or spoiled.

(2) Except as otherwise provided in subsection (6) of this section, food prepared and served from ONB programs must be obtained from an approved source licensed and inspected by the local health jurisdiction, the Washington state department of agriculture (WSDA), or the USDA. Food items not approved to be served to children in care include:

(a) Meat, fish, poultry, eggs, or milk that has not been inspected by the USDA or WSDA;

(b) Eggs collected from chickens that are kept as part of an ONB program, but do not comply with the requirements contained in subsection (5) of this section;

(c) Home canned food;

(d) Game meat or other meat that has not been inspected by the WSDA or USDA;

(e) Leftover food that was previously served from outside of the ONB program; or

(f) Food from roadside stands selling food without a permit.

(3) Food not prepared on-site by an ONB provider, pursuant to WAC 110-302-0195(2), must be provided by a:

(a) Licensed food service establishment, kitchen, or catering business that is in compliance with DOH food service requirements (chapter 246-215 WAC) and is regularly inspected by a local health jurisdiction;

(b) A licensed child care facility;

(c) Parent or guardian for their own children; or

(d) Manufacturer of prepackaged food.

(4) Fruits and vegetables grown on-site in a garden as part of ONB programs may be served to children in care as part of a meal or snack. Prior to preparing and serving:

(a) The produce must be thoroughly washed and scrubbed in cold running water to remove soil and other contaminants;

(b) Damaged or bruised areas on the produce must be removed; and

(c) Produce that shows signs of rotting must be discarded.

(5) Eggs that have been laid on-site in a coop as part of ONB programs, such as farm-based programs, may only be served to children in care if:

(a) The eggs have been laid in a coop that is inaccessible to the public.

(b) The eggs are gathered once a day or more frequently based on weather temperatures.

(c) The coop and the eggs must be kept under 80 degrees Fahrenheit. Coops must have their temperatures monitored daily, and when the coop temperature or egg temperature is above 80 degrees Fahrenheit, the eggs cannot be served to children.

(d) The eggs must be washed according to the facilities and handling guidelines of the WSDA Shell Egg Producer Guidelines for Off-Farm Sales.

(e) Once eggs are collected and cleaned, they must be stored at 41 degrees Fahrenheit or less.

(f) Written permission from the child's parent must be obtained before the child may consume the eggs or participate in the collection activities.

(6) (a) Certified ONB programs operated by tribes or tribal organizations that primarily enroll Indian children may serve donated or prepared traditional foods as part of their child care programs. For the purposes of this section, "traditional foods" means foods that have traditionally been prepared and consumed by an Indian tribe and includes, but is not limited to, wild game meat, fish, seafood, marine animals, plants, and berries.

(b) To comply with subsection (6) (a) of this section, certified tribes or tribal organizations must comply with all requirements detailed in USDA Memo SP 42-2015 CACFP 19-2015 SFSP 21-2015.

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NEW SECTION

WAC 110-302-0197 Safe food practices. (1) ONB providers must wash their hands, pursuant to WAC 110-302-0200.

(2) For all foods offered by ONB providers or given to an enrolled child by a parent or guardian, ONB providers must:

(a) Provide appropriate refrigeration to preserve foods from spoiling. Foods that may be subject to spoiling include, but are not limited to, meats, cooked potatoes, cooked legumes, cooked rice, sprouts, cut melons, cut cantaloupes, milk, and cheese; and

(b) Refrigerate foods requiring refrigeration at 41 degrees Fahrenheit or less, and freeze foods required to be frozen at 10 degrees Fahrenheit or less.

(3) Food must be stored as follows:

(a) In original containers or in clean, labeled, dated, and airtight food grade containers, if appropriate;

(b) Food not required to be refrigerated or frozen must not be stored directly on the floor;

(c) In a manner that prevents contamination;

(d) Food and food service items, such as utensils, napkins, and dishes, must not be stored in an area with toxic materials, such as cleaning supplies, paint, or pesticides;

(e) Raw meat must be stored in the refrigerator or freezer below cooked or ready to eat foods; and

(f) To keep food below a temperature of 41 degrees Fahrenheit, an ONB program may store food in a cooler using ice or icepacks.

(4) For food requiring temperature control, ONB programs must maintain a food temperature log by using a calibrated and working metal stem-type or digital food thermometer.

(5) Prior to storing leftover food in a refrigerator or freezer, ONB providers must label the food with the date the leftover food was opened or cooked.

(6) ONB providers may serve leftover food that originated from the ONB program if the leftover food was not previously served and complies with the following:

(a) Refrigerated leftover food must be stored and then served again within 48 hours of originally being prepared; or

(b) Frozen leftover food must be promptly served after thawing and being cooked.

(7) Frozen food must be thawed by one of the following methods:

(a) In a refrigerator;

(b) Under cool running water inside a pan placed in a sink with the drain plug removed; or

(c) In a microwave if the food is to be cooked as part of the continuous cooking process.

(8) Food that is past the manufacturer's expiration or "best served by" date must not be served to enrolled children.

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NEW SECTION

WAC 110-302-0198 Food preparation areas. (1) ONB providers or staff must clean and sanitize food preparation areas and eating surfaces before and after each use, pursuant to WAC 110-302-0241(1).

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, an ONB provider must comply with all licensing requirements described in chapter 110-300 WAC that pertain to indoor early learning program food preparation areas.

(3) If storing, preparing, and serving food outdoors without an outdoor kitchen area, ONB providers must:

(a) Use a cooler with ice or ice packs as needed to store food according to the current DOH *Washington State Food and Beverage Workers' Manual*; and

(b) Use temporary food preparation surfaces, such as a cutting board on a clean tarp, that are:

(i) Maintained in good repair including, but not limited to, being properly sealed without chips, cracks, or tears; and

(ii) Moisture resistant.

(4) An outdoor kitchen area may be used to prepare and serve food. The outdoor kitchen area must:

(a) Be maintained in good repair including, but not limited to, ensuring that the surfaces are moisture resistant, and are properly sealed without chips, cracks, or tears;

(b) Have at least eight feet between the food preparation area and any diaper changing tables or counters and sinks used for diaper changing;

(c) Have a clean and sanitized sink immediately before using it to prepare food to be served to children in care;

(d) Have a colander or other method that is used to prevent food and kitchen utensils from touching the sink basin; and

(e) Include clean dishes, pans, and kitchen utensils.

(5) ONB providers that prepares or serves food must have a method to clean and sanitize dishes, pans, kitchen utensils, and equipment. At a minimum, dishes, pans, utensils, and kitchen equipment must be:

(a) Washed and rinsed by hand to sanitize and dried with a clean, unused towel or allowed to air dry;

(b) Washed and rinsed in a two-compartment sink and dried with a clean, unused towel or allowed to air dry;

(c) Washed and rinsed using the three-compartment sink method (sink one is used to wash, sink two is used to rinse, sink three contains a sanitizer, and dried with a clean, unused towel or allowed to air dry; or

(d) Washed and rinsed using an automatic dishwasher that sanitizes with heat or chemicals and dried with a clean, unused towel or allowed to air dry.

(6) If ONB programs have a practice that allows staff to store and wash food at their private residence, there must be a policy to ensure staff are aware of and follow the requirements of this section. This practice must be included in the parent handbook.

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HEALTH PRACTICES

NEW SECTION

WAC 110-302-0200 Handwashing and hand sanitizer. (1) ONB providers must comply with the following handwashing procedures or those defined by the United States Centers for Disease Control and Prevention, and children should strongly be encouraged to:

(a) Wet hands with warm water;

(b) Apply soap to the hands;

(c) Rub hands together to wash for at least 20 seconds;

(d) Thoroughly rinse hands with water;

(e) Dry hands with a paper towel, single-use cloth towel, or air hand dryer. ONB programs may use cotton roll towels, or otherwise ensure that children do not use the same part of reusable cloth towels;

(f) Turn water faucet off using a paper towel or single-use cloth towel unless it turns off automatically;

(g) Properly discard paper single-use cloth towels after each use; and

(h) ONB programs with a permanently located outdoor classroom must provide children with an opportunity to wash hands and rinse using running water after toileting and before eating, and warm water is encouraged. Hand sanitizer may be used only after soil and dirt have been cleaned from the hands.

(2) ONB providers must wash and sanitize cloth towels after a single use. Soiled and used towels must be inaccessible to children.

(3) Except for ONB programs that enroll only school-age children and operate on public or private school premises, air hand dryers must have a heat guard (barrier that prevents user from touching heating element) and be equipped to turn off automatically to prevent children from being burned.

(4) ONB providers must wash their hands following the handwashing procedures listed above:

(a) When arriving at work;

(b) After toileting a child;

(c) Before and after diapering a child using a wet wipe in place of handwashing during the middle of diapering, if needed;

(d) After personal toileting;

(e) After attending to an ill child;

(f) Before and after preparing, serving, or eating food;

(g) After handling raw or undercooked meat, poultry, or fish;

(h) After egg gathering;

(i) Before and after giving medication or applying topical ointment;

(j) After handling or feeding animals, handling an animal's toys or equipment, or cleaning up after animals;

(k) After handling bodily fluids;

(l) After using tobacco or vapor products;

(m) After gardening activities;

(n) After handling garbage and garbage receptacles; and

(o) As needed or required by the circumstances.

(5) ONB providers must direct, assist, teach, and coach children to wash their hands using the steps listed above:

(a) When arriving at the ONB program;

(b) After using the toilet;

(c) After diapering;

(d) Upon entering a licensed indoor early learning or school-age space;

(e) After gardening activities;

(f) After playing with animals;

(g) After egg gathering;

(h) After touching body fluids such as blood or after nose blowing or sneezing;

(i) Before and after eating or participating in food activities including table setting; and

(j) As needed or required by the circumstances.

(6) Hand sanitizers or hand wipes with alcohol may be used for adults and children under the following conditions:

(a) When proper handwashing facilities are not available; and

(b) Hands are not visibly soiled or dirty.

(7) Children must be actively supervised when using hand sanitizers to avoid ingestion or contact with eyes, nose, or mouth.

(a) Hand sanitizer must not be used in place of proper handwashing.

(b) An alcohol-based hand sanitizer must contain 60 to 90 percent alcohol to be effective.

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NEW SECTION

WAC 110-302-0205 Child and staff illness. (1) ONB providers must observe all children for signs of illness when they arrive at the ONB program and throughout the day. Parents or guardians of a child should be notified, as soon as possible, if the child develops signs or symptoms of illness. When appropriate, ONB programs must also check for the presence of ticks.

(2) If ONB providers become ill, a director, program director, assistant director, site director, or program supervisor must determine whether they should be required to leave the licensed ONB program space.

(3) When children become ill, ONB providers, or school nurses when applicable, must determine whether children should be sent home or separated from others. An ONB provider must supervise the child to reasonably prevent contact between the ill child and healthy children.

(4) Ill children must be sent home or reasonably separated from other children if:

(a) The illness or condition prevents the child from participating in normal activities;

(b) The illness or condition requires more care and attention than ONB providers can give;

(c) The required amount of care for the ill child compromises or places at risk the health and safety of other children in care; or

(d) There is a risk that the child's illness or condition will spread to other children or individuals.

(5) Unless covered by an individual care plan or protected by the ADA, ill children, staff members, or other individuals must be sent home or isolated from children in care if the ill individuals have:

(a) A fever 101 degrees Fahrenheit by any method and behavior change or other signs and symptoms of illness, including sore throat, earache, headache, rash, vomiting, diarrhea;

(b) Vomited two or more times in the previous 24 hours;

(c) Diarrhea where stool frequency exceeds two stools above normal per 24 hours for that individual or whose stool contains more than a drop of blood or mucus;

(d) A rash not associated with heat, diapering, or an allergic reaction;

(e) Open sores or wounds discharging bodily fluids that cannot be adequately covered with a waterproof dressing or mouth sores with drooling;

(f) Lice, ringworm, or scabies. Individuals with head lice, ringworm, or scabies must be excluded from ONB program premises beginning from the end of the day the head lice, ringworm, or scabies was discovered. ONB providers may allow an individual with head lice, ringworm, or scabies to return to the premises after receiving the first treatment; or

(g) A child who appears severely ill, which may include lethargy, persistent crying, difficulty breathing, or a significant change in behavior or activity level indicative of illness.

(6) At the first opportunity, but in no case longer than 24 hours of learning that an enrolled child, staff member, or volunteer has

been diagnosed by a health care professional with a contagious disease pursuant to WAC 246-110-010(3), ONB providers must provide written notice to the parents or guardians of the enrolled children, and notify the department and the local health jurisdiction pursuant to WAC 110-302-0475.

(7) ONB providers must not take ear or rectal temperatures to determine a child's body temperature.

(a) Oral temperatures may be taken for children if single-use covers are used to prevent cross contamination; and

(b) Glass thermometers containing mercury must not be used.

(8) ONB providers may readmit a child, staff member, or volunteer into the ONB program area with written permission of a health care provider or health jurisdiction stating the individual may safely return after being diagnosed with a contagious disease pursuant to WAC 246-110-010(3).

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NEW SECTION

WAC 110-302-0210 Immunizations and exempt children. (1) On or before their children's first day of attending ONB programs, the parents or guardians of enrolled children must give the ONB provider proof of vaccination or acquired immunity for the vaccine-preventable disease, required under chapter 246-105 WAC. ONB providers may accept children without proof of vaccinations or immunity as otherwise indicated in this section.

(2) ONB providers must receive for each enrolled child, as required under WAC 246-105-050:

(a) A current and complete DOH certificate of immunization status (CIS) or an alternative in lieu of CIS required under WAC 246-105-050(3);

(b) A Washington state department of health approved certificate of exemption (COE) form, if applicable; or

(c) A current immunization record from the Washington state immunization information system (WA IIS).

(3) To children who are not current with their immunizations, ONB providers must give written notice to parents or guardians stating their child may be accepted if the immunizations are completed consistent with chapter 246-105 WAC and:

(a) Prior to enrollment the parent or guardian provides written proof the child is scheduled to be immunized; or

(b) The parent or guardian provides a signed and dated statement detailing when the child's immunizations will be brought up to date.

(4) ONB providers must maintain and update children's records relating to immunizations or exemptions, or plans to bring immunizations current. These records must be available in licensed space or easily accessible for review by department licensors, health specialists, and health consultants.

(5) ONB providers may accept into care a child who is living in foster care or experiencing homelessness without the records listed in this section if their parent or guardian, case worker, or health care provider offers written proof that they are in the process of obtaining the child's immunization records.

(6) ONB providers may exclude a child from care according to the criteria listed in WAC 246-105-080.

(7) If an outbreak of a vaccine-preventable disease occurs within an ONB program, an ONB provider must notify the parents or guardians of children exempt from immunization for that disease and children without vaccination documents. An ONB provider may exclude the child from the ONB program premises for the duration of the outbreak of that vaccine-preventable disease.

(8) ONB providers may have a written policy stating children exempted from immunization by their parent or guardian will not be accepted into care unless that exemption is due to an illness protected by the ADA or an illness or condition protected by Washington's Law Against Discrimination (chapter 49.60 RCW).

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NEW SECTION

WAC 110-302-0215 Medication. (1) **Managing medication.** A medication management policy must include, but is not limited to, safe medication storage, reasonable accommodations for giving medication, mandatory medication documentation and forms, pursuant to WAC 110-302-0500.

(2) **Medication training.** ONB providers must not give medication to children if the ONB providers have not successfully completed:

(a) An orientation about the ONB program's medication policies and procedures;

(b) The department standardized training course in medication administration that includes a competency assessment, pursuant to WAC 110-302-0106(7) or equivalent training; and

(c) If applicable, training from a child's parent, guardian, or an appointed designee for special medical procedures that are part of a child's individual care plan. This training must be documented and signed by the ONB provider and the child's parent, guardian, or designee.

(3) **Medication administration.** ONB providers must not give medication to any child without the written and signed consent from that child's parent or guardian, must administer medication pursuant to directions on the medication label, and must use appropriate cleaned and sanitized medication measuring devices.

(a) ONB providers must administer medication to children in care as follows:

(i) **Prescription medication.** Prescription medication must be given only to the child named on the prescription. Prescription medication must be prescribed by a health care professional with prescriptive authority for a specific child. Prescription medication must be accompanied with a medication authorization form that has the medical need and the possible side effects of the medication. Prescription medication must be labeled with:

(A) The child's first and last name;

(B) The date the prescription was filled;

(C) The name and contact information of the prescribing health professional;

(D) The expiration date, dosage amount, and length of time to give the medication; and

(E) Instructions for administration and storage.

(ii) **Nonprescription oral medication.** Nonprescription over-the-counter oral medication brought to ONB programs by a parent or guardian must be in the original packaging.

(A) Nonprescription over-the-counter medication must be labeled with the child's first and last name and accompanied with a medication authorization form that has the expiration date, medical need, dosage amount, age, and length of time to give the medication. An ONB provider must follow the instructions on the label or the parent or guardian must provide a medical professional's note; and

(B) Nonprescription medication must be given only to the child named on the label provided by the parent or guardian.

(iii) **Other nonprescription medication.** An ONB provider must receive written authorization from a child's parent or guardian and health care provider with prescriptive authority prior to administering if the item does not include age, expiration date, dosage amount, and length of time to give the medication:

(A) Vitamins;

(B) Herbal supplements;

(C) Fluoride supplements; and

(D) Homeopathic or naturopathic medication.

(iv) **Other items.** A parent or guardian must annually authorize an ONB provider to administer the following nonmedical items:

(A) Diaper ointments that are used as needed and according to manufacturer's instructions;

(B) Sunscreen that is not an aerosol;

(C) Hand sanitizers or hand wipes with alcohol;

(D) For ONB programs that enroll only preschool-age children or both preschool-age and school-age children:

(I) Lip balm or lotion; and

(II) Fluoride toothpaste.

(v) For ONB programs that enroll only school-age children, ONB providers may allow children to take their own medication, including nonmedical items, with parent or guardian authorization. The ONB provider must observe and document that the child took the medication, excluding other items listed in (a)(iv) of this subsection.

(A) A school-age child with a valid prescription from a health care provider may be allowed to carry and self-administer asthma medication and inhaler, anaphylaxis medication otherwise known as an epinephrine auto-injector, or insulin and pump with signed authorization from the child's parent or guardian and health care provider. The authorization form must attest that the child has the skill level and knowledge necessary to use the medication and device as prescribed.

(B) ONB programs must have individual care plans on-site for each child who self-carries asthma, anaphylaxis medication, or insulin in the event of an asthma, anaphylaxis, or diabetes emergency.

(C) ONB program staff must intervene if they observe a child misusing asthma or anaphylaxis medication or insulin, or if a child possesses another child's medication.

(vi) ONB providers must not give or permit another to give any medication to a child for the purpose of sedating the child unless the medication has been prescribed for a specific child for that particular purpose by a qualified health care professional.

(b) **Medication documentation.** Excluding "other items" detailed in (a)(iv) of this subsection, ONB providers must keep a current written medication log that includes:

- (i) A child's first and last name;
- (ii) The name of the medication that was given to the child;
- (iii) The dose amount that was given to the child;
- (iv) Notes about any side effects exhibited by the child;
- (v) The date and time of each medication given or reasons that a particular medication was not given; and
- (vi) The name and signature of the person that gave the medication.

(c) Medication must be stored and maintained as directed on the packaging or prescription label, including applicable refrigeration requirements. ONB programs may use approved coolers and reusable water-activated cooling packs for medication storage if the medication's manufacturer directions require the medication to be stored at a temperature below the indoor or outdoor temperature. An ONB provider must comply with the following additional medication storage requirements:

- (i) Medication must be inaccessible to children except as provided for in (a)(v)(A) of this subsection;
- (ii) Controlled substances must be locked in a container or cabinet which is inaccessible to children;
- (iii) Medication must be kept away from food in a separate, sealed container; and
- (iv) External medication designed to be applied to the outside of the body must be stored to provide separation from internal medication that is designed to be swallowed or injected to prevent cross contamination.

(d) ONB providers must return a child's unused medication to that child's parent or guardian. If this is not possible, ONB providers must follow the FDA recommendations for medication disposal.

(e) ONB providers must not accept or give to a child homemade medication, such as diaper cream or sunscreen.

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NEW SECTION

WAC 110-302-0220 Bathroom space and toileting. (1) ONB providers must provide at least one of the following bathroom options, and may use a combination of toileting options to ensure children and staff are able to meet their toileting needs:

- (a) An indoor bathroom in a licensed family home, center, or school-age facility.
- (b) A portable chemical toilet designated for use by the ONB program. The portable chemical toilet must be nontoxic and formaldehyde-free, and emptied regularly and as needed. The portable chemical toilet surfaces must be cleaned at least once each day and more often if needed, pursuant to WAC 110-302-0241. The waste container for the portable chemical toilet must be:
 - (i) Fabricated from impervious materials, such as plastic, steel, fiberglass, or other equivalent material;
 - (ii) Water tight and capable of containing the chemical waste in a sanitary manner; and

(iii) Sufficient in size for the number of persons that will be using the toilet and consistent with the manufacturer's recommended use requirements. At a minimum, the portable chemical toilet must be of sufficient size that the container will normally be at half of its volume capacity immediately before each regularly scheduled emptying of the waste.

(c) The use of toileting facilities in a public park or nature center if:

(i) ONB providers check the bathrooms for cleanliness and safety prior to the children's use; and

(ii) The toilet seats, sinks, or other surfaces that children touch are cleaned and disinfected daily.

(d) A portable toilet, with individual liners that allow for sanitary disposal after each use, and with surfaces cleaned at least once each day and more often if needed, pursuant to WAC 110-302-0241.

(e) A water conserving toilet, such as a composting or pit toilet, and greywater system that meets the requirements for health and sanitation as described in the Washington State Department of Health Water Conserving On-Site Wastewater Treatment Systems- Recommended Standards and Guidance (<https://www.doh.wa.gov/Portals/1/Documents/Pubs/337-016.pdf>).

(f) If no other toileting options are available, backcountry toileting options that comply with the rules of the landowner and the "Leave-No-Trace" standards described at <https://lnt.org/learn/principle-3>.

(i) Unless approved by the department, children must not be allowed to play or eat within 200 feet of areas that have been used or are designated as backcountry toileting spaces; and

(ii) ONB providers must use gloves to assist children and to ensure the sanitary disposal of toilet paper. Both children and adults must wash their hands pursuant to WAC 110-302-0200.

(g) For the toileting options described in (b) through (f) of this subsection:

(i) To ensure successful toileting and handwashing practices, ONB providers must ensure children have independent access to sufficient toilets, urinals, toilet paper, handwashing equipment, and staff support;

(ii) ONB programs must include:

(A) An ONB toileting policy in the parent handbook pursuant to WAC 110-302-0450; and

(B) A risk waiver must be included in the parent enrollment packet;

(iii) ONB staff must be trained in the proper use of alternative toileting options, and the ONB program's policies and procedures for supporting children, pursuant to WAC 110-302-0110;

(iv) Staff must be supported to meet their own toileting needs.

(2) Toilet plungers and toilet brushes must be inaccessible to children.

(3) ONB providers must discuss toilet training procedures with a child's parent or guardian when that child is ready for training. An ONB provider must facilitate the toilet training process by encouraging the child with:

(a) Positive reinforcement that does not include food items;

(b) Culturally sensitive methods;

(c) Developmentally appropriate methods; and

(d) A toilet training routine developed in agreement with the parent or guardian.

(4) An ONB provider may use a modified toilet seat if it is cleaned and disinfected using a disinfectant at least daily or more often if soiled.

(5) Toilet training equipment must be cleaned in a sink not used for food preparation or handwashing.

(6) If a child is developmentally ready, and an ONB provider uses a stand-up diapering procedure, it must be done in the bathroom or a diaper changing area.

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NEW SECTION

WAC 110-302-0221 Diaper changing areas and disposal. (1) An ONB provider must have a designated diaper changing area, including stand-up diapering, for every child or group of children who require diapering.

(a) A diaper changing area must:

(i) Be separate from areas where food is stored, prepared, or served;

(ii) Be separate from where children play or eat;

(iii) Have an approved handwashing method readily available, pursuant to WAC 110-302-0200;

(iv) Have a sturdy surface or mat that:

(A) Is not torn or repaired with tape;

(B) Is washable;

(C) Has a moisture resistant surface that is cleanable; and

(D) Is large enough to prevent the area underneath the diaper changing area from being contaminated with bodily fluids; and

(b) ONB providers must not leave children unattended on diaper changing surfaces or mats during the diaper changing process.

(c) ONB providers must not use safety belts on diaper changing tables because they are neither cleanable nor safe.

(d) ONB providers must have and follow each step described in a diaper changing procedure to ensure diaper changing and disposal practices prevent cross-contamination.

(e) ONB providers must prevent the viewing of a partially or fully undressed child during diaper changes by members of the public. For the purpose of this subsection, "members of the public" means anyone not affiliated with the providers' early learning program.

(2) If ONB providers use a diaper changing station, the station must:

(a) Be a stand alone or vertically mounted diaper changing station that meets manufacturer guidelines and specifications;

(b) Be large enough to accommodate the length of the child; and

(c) Have a protective barrier at least three and one-half inches high on all sides from the surface where the child lays.

(3) If ONB providers use reusable or cloth diapers, the diapers must:

(a) Not be rinsed;

(b) Be placed in a securely sealed moisture impervious bag;

(c) Be stored in a separate disposal container; and

(d) Be delivered to a commercial laundry service or given to the child's parent or guardian at least daily.

(4) ONB providers must provide a container designated for disposing of soiled diapers and diapering supplies only. The diaper disposal container must be:

- (a) Inaccessible to children;
- (b) Hands-free and covered with a lid to prevent cross contamination;
- (c) Lined with a disposable plastic trash bag; and
- (d) Within arm's length of the diaper changing area.

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NEW SECTION

WAC 110-302-0225 Pets and animals. (1) ONB providers may have pets or other animals on the ONB program premises. If an ONB provider keeps pets or animals on the ONB program premises:

- (a) ONB providers must have and follow a pet and animal policy that:
 - (i) Describes how children will access and interact with pets or animals;
 - (ii) Describes how children will be kept safe around the pets or animals;
 - (iii) Track pet immunizations; and
 - (iv) Gives instructions for handling pet waste or avoiding animal waste, if applicable.
- (b) ONB providers must provide written notice of the potential presence of pets or animals to all enrolled children's parents or guardians.

(2) Pets or other animals controlled by ONB programs that have or may have contact with children must:

- (a) Have all required vaccinations, pursuant to local and county regulations;
 - (b) Show no signs of illness, disease, worms, or parasites. If these symptoms appear, the pet or animal must be removed from the licensed space until appropriately treated for the condition; and
 - (c) Be nonaggressive.
- (3) ONB providers must:
- (a) Require that chickens, ducks, turkeys, doves, pigeons, or other birds that are provided by ONB programs:
 - (i) Are caged, cooped, or penned when they are not a part of a supervised ONB program activity so that they are inaccessible to children; and
 - (ii) Are kept at a distance that prevents children from having direct access to the animal's enclosures or waste when they are not a part of a supervised ONB program activity.
 - (b) Prevent debris from spilling out of a container or cage used for pets and animals;
 - (c) Not allow pets and animals in the kitchen during food preparation and ensure pets and animals do not come into contact with food, food preparation, or serving areas while food is served;
 - (d) Not use a sink that is used for cleaning food or utensils to clean pet supplies; and
 - (e) Store pet and animal medication separate from human medication.

(4) ONB providers must require:

(a) Animals and pets to go to the bathroom outdoors if the animals do not have designated indoor litter areas. The designated outdoor areas must be inaccessible to children in care, unless part of a sustainable farming practice approved by the department for an ONB program;

(b) Pet containers and cages to be cleaned and disinfected at least weekly, or more often if needed;

(c) Litter boxes to be kept inaccessible to children and cleaned daily;

(d) Animal waste and litter be disposed of as soon as possible and the area disinfected. ONB providers must prevent children from handling animal waste, and must ensure children wash their hands and change clothing if they come into contact with animal waste;

(e) Animal waste be inaccessible to children, unless part of a sustainable farming practice approved by the department;

(f) Animal waste to be disposed of in a manner that prevents children from coming into contact with the waste material;

(g) Animal waste, including fish tank water, to be disposed of in unlicensed space or toilets or custodial sinks. Toilets and custodial sink areas must be washed, rinsed, and disinfected after disposal; and

(h) Indoor and outdoor play space to be cleaned and disinfected where animal or bird waste or vomit is present, not including natural outdoor spaces utilized by ONB programs. This must be done as soon as possible or prior to access by children.

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NEW SECTION

WAC 110-302-0230 First-aid and CPR certification and supplies.

(1) Directors, program directors, assistant directors, site directors, program supervisors, lead teachers, assistant teachers, and any other ONB providers counted in staff-to-child ratio, or who could potentially be counted in ratio, must have a current pediatric and adult first-aid and CPR certificate, pursuant to WAC 110-302-0106.

(2) ONB providers must keep a complete first-aid kit where children are present, such as in the licensed space, on any off-site trip, and in vehicles used to transport children in care. A first-aid kit must:

(a) Be stored in a location that is easily accessible to staff;

(b) Be inaccessible to children;

(c) Be separate from food or chemicals;

(d) Be kept clean and sanitary;

(e) Be stored in a manner that prevents contamination; and

(f) Have sufficient supplies for the number of enrolled children and staff consistent with the ONB program's licensed capacity, or sufficient supplies for each room in the licensed space.

(3) First-aid kits must include:

(a) Disposable nonporous protective nonlatex gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

- (h) A disposable or mercury free thermometer that uses disposable sleeves, or is cleaned and sanitized after each use;
- (i) A sling, or a large triangular bandage;
- (j) Adhesive tape;
- (k) A CPR barrier with a one-way valve or both, and an adult and pediatric CPR mask with a one-way valve;
- (l) Sterile, nonadhesive bandages of various sizes;
- (m) A fire suppression blanket for ONB programs that engage in campfire activities;
- (n) Hand-warmers and a method to prevent direct skin contact for hand-warmers that reach temperatures above 120 degrees Fahrenheit;
- (o) Emergency thermal blanket;
- (p) A current first-aid manual; and
- (q) Hand sanitizer (for adult use only unless otherwise approved for a child's use by that child's parent or guardian pursuant to WAC 110-302-0215).

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NEW SECTION

WAC 110-302-0235 Safe water sources. (1) ONB programs without access to hot or cold running water must provide sufficient potable water for drinking, food preparation, handwashing, dishwashing, and sanitizing.

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must use a Washington state certified water laboratory accredited by the department of ecology to test for lead and copper in water from fixtures that supply the ONB program either on-site or remotely. This requirement does not apply to portable, bottled, or packaged water transported to and used by the ONB program.

(a) All fixtures used to obtain water for preparing food, drinking, or cooking must be tested prior to licensing approval and at least once every six years.

(b) Testing must be done pursuant to current environmental protection agency standards.

(c) A copy of the water testing results must be kept on the licensed premises or in the ONB programs' administrative offices.

(d) ONB programs operating entirely on public land may use public records of water testing for their location instead of using a department of ecology accredited laboratory to conduct the testing described in this subsection.

(3) If test results are at or above the current EPA lead and copper action level, ONB providers must do the following within 24 hours:

(a) Consult with DOH for technical assistance;

(b) Close the ONB program to prevent children from using or consuming water, or supply bottled or packaged water to meet the requirements of these standards;

(c) Notify all parents and guardians of enrolled children of the test results;

(d) Notify the department of the water test results and steps taken to protect enrolled children; and

(e) Notify the department once lead and copper levels are below the current EPA action level.

(4) If ONB programs' space receives water from a private well, the well must comply with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(a) Well water must be tested within six months of the date this section becomes effective and at least once every 12 months thereafter for *E. coli* bacteria and nitrates by a Washington state certified laboratory accredited by the department of ecology to analyze drinking water. To achieve desirable results, the test must indicate:

(i) No presence of *E. coli* bacteria; and

(ii) The presence of less than 10 parts per million (ppm) for nitrates. If test results for nitrates are greater than five but less than 10 ppm, the water must be retested within six months.

(b) If well water tests positive for *E. coli* bacteria, or greater than 10 ppm for nitrates, the ONB provider must:

(i) Stop using the well water in the ONB premises within 24 hours;

(ii) Inform the local health jurisdiction, DOH, and the department of the positive test results; and

(iii) If directed to do so by the department, discontinue ONB program operations until repairs are made to the water system and water tests indicate desirable results pursuant to (a) of this subsection.

(c) If the department determines that ONB program operations may continue while an unsafe water system is being repaired or while the ONB provider installs treatment, the ONB provider must:

(i) Provide an alternate source of water, approved by the department; and

(ii) Retest until water tests indicate desirable results pursuant to (a) of this subsection.

(5) ONB providers must notify the department within four hours of when the water connection to ONB program space is interrupted for more than one hour, or the water source becomes contaminated.

(a) The department may require ONB programs to temporarily close until the water connection is restored or the water source is no longer contaminated; or

(b) ONB providers must obtain an alternative source of potable water such as bottled or packaged water. The amount of the alternative source of potable water must be sufficient to ensure compliance with the requirements of this chapter for safe drinking water, handwashing, sanitizing, dishwashing, and cooking.

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NEW SECTION

WAC 110-302-0236 Safe drinking water. (1) ONB programs' drinking water must:

(a) Be offered multiple times throughout the day and be readily available to children at all times;

(b) Be served in a manner that prevents contamination;

(c) Not be obtained from a handwashing sink used with toileting or diapering; and

(d) Be served fresh daily or more often as needed.

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, drinking fountains used by ONB programs must:

- (a) Not be attached to handwashing sinks or must be disabled;
- (b) Not be located in bathrooms;
- (c) Not be a "bubble type" fountain (the water flow must form an arch); and
- (d) Cleaned and sanitized daily, or more often as needed.

(3) ONB programs may require that parents or guardians provide drinking water in water bottles for their children, and these must be labeled with the children's first and last names. An ONB program must provide water to children in accordance with this section whenever necessary, such as when a water bottle is forgotten or empty.

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CLEANING AND SANITATION

NEW SECTION

WAC 110-302-0240 Clean and healthy environment. (1) The indoor licensed space and equipment must be clean and sanitary.

(2) Hard surfaces in the indoor or approved space including, but not limited to, floors excluding carpet, walls, counters, shelves, and tables must be smooth and easily cleanable.

(a) A cleanable surface must be:

- (i) Designed to be cleaned frequently and made of sealed wood, linoleum, tile, plastic, or other solid surface materials;
- (ii) Moisture resistant; and
- (iii) Free of chips, cracks, and tears.

(b) ONB providers must have at least 24 inches of moisture resistant and cleanable material or barrier around sinks, drinking fountains, and toilets located in indoor facilities.

(c) ONB providers or their designee must clean all surfaces before sanitizing or disinfecting. Surfaces must be cleaned with a soap and water solution or spray cleaner and rinsed. If using a spray cleaner, directions on the label must be followed.

(d) Aerosol sprays and air fresheners must not be used during ONB program hours.

(3) ONB programs must protect children from toxic or infectious agents by cleaning or sanitizing any contaminated area prior to children's use. For the purposes of this section, "toxic or infectious agents" include, but are not limited to, animal or human waste and trash or other debris that may pose a health risk to ONB providers, enrolled children, or anyone affiliated with ONB programs.

(a) If a bleach solution is used for sanitizing or disinfecting, ONB providers or their designees must use one that is fragrance-free and follow the DOH's current *Guidelines for Mixing Bleach Solutions for Child Care and Similar Environments*.

(b) If ONB providers or their designees use a product other than bleach, including wipes, to sanitize or disinfect, the product must be:

- (i) Approved by the department prior to use;
- (ii) Used by trained staff only;
- (iii) Registered with the EPA and have safety data sheets (SDS) available;
- (iv) Used in accordance with the manufacturer's label, which must include:
 - (A) Directions for use;
 - (B) A description of the safety precautions and procedures, and if applicable, a description of the equipment that must be used for mixing the substitute product concentration;
 - (C) A description of the safety precautions and procedures if the substitute product contacts skin or is inhaled; and
 - (D) A description of the procedures and safety precautions for rinsing cleaned areas and cleaning equipment.
- (v) Labeled as safe to use on food surfaces if the product will be used to sanitize:
 - (A) Food contact surfaces; or
 - (B) Items such as eating utensils or toys used by the child or put into the child's mouth; and
- (vi) Fragrance-free.
- (c) Any spot, portion, or section of an ONB premises that contains a toxic or infectious agent but cannot be cleaned or sanitized must be made inaccessible to children.
- (d) ONB programs operating on public park land may not be able to use bleach or other chemicals due to environmental impact. ONB programs must work with park directors or their designees to determine the appropriate way to sanitize the area or remove contaminated materials from ONB program space.

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NEW SECTION

WAC 110-302-0241 Cleaning schedules. (1) ONB providers must develop and follow a cleaning schedule that includes cleaning:

- (a) Food preparation areas, tables and chairs, high chairs, and food service counters, which must be cleaned and sanitized before and after each meal and snack with single use paper towels or one-time use wiping cloths;
- (b) Eating utensils, drinking equipment, and dishes, which must be cleaned and sanitized after each use;
- (c) Except for ONB programs that enroll only school-age children and operate on public or private school premises, appliances used to prepare food, which must be cleaned after each use and sanitized daily or more often as needed;
- (d) Except for ONB programs that enroll only school-age children and operate on public or private school premises, refrigerators and freezers, which must be cleaned and sanitized monthly or more often as needed;
- (e) Toys, which must be cleaned and sanitized as follows:

- (i) When a toy comes into contact with a child's mouth or bodily fluids it must be removed from use until it can be cleaned and sanitized prior to reuse;
 - (ii) All other toys must be cleaned and sanitized weekly or more often as needed; and
 - (iii) Collected natural materials, such as sticks, leaves, or pinecones used as toys may not be able to be sanitized but must be checked to confirm they do not contain toxins or animal droppings prior to use in ONB programs.
- (f) Furniture and equipment, which must be cleaned monthly or more often as needed.
- (2) Machine washable clothes provided by ONB programs must be laundered as needed.
- (3) Sleeping equipment must be:
- (a) Cleaned and sanitized after each use if used by more than one child; or
 - (b) Cleaned and sanitized weekly or more often as needed if assigned to only one child.
- (4) Bedding must be:
- (a) Laundered and sanitized after each use if used by more than one child; or
 - (b) Laundered and sanitized weekly or more often as needed if assigned to only one child.
- (5) Sleeping bags must be:
- (a) Laundered and sanitized after each use if used by more than one child; or
 - (b) Laundered and sanitized after 10 uses or more often as needed if assigned to only one child.
- (6) Outdoor sinks used for gardening should be cleaned and sanitized as needed.
- (7) Toileting and diaper changing areas including, but not limited to, toilets, counters, sinks, and floors must be cleaned and disinfected daily or more often as needed.
- (8) Diaper changing tables and changing pads must be cleaned and disinfected between children, even if using a nonabsorbent covering that is discarded after each use.
- (9) Garbage cans and receptacles must be emptied on a daily basis and cleaned and disinfected as needed.
- (10) Diaper receptacles must be emptied, cleaned, and disinfected daily or as needed. Contents of a diaper receptacle must be removed from the licensed space, and replaced with a new liner.
- (11) ONB programs providing or utilizing a portable chemical toilet must ensure that:
- (a) Toilets are serviced on a regular schedule. Servicing must include the use of a disinfectant for cleaning urinals and seats, removing waste from containers, recharging containers with an odor controlling chemical and installing an adequate supply of toilet tissue;
 - (b) Toilet maintenance and service must be performed in accordance with city, county, and state laws by approved servicing organizations;
 - (c) The storage of toilet waste while on the ONB premises and removal of toilet waste from the ONB premises, must be handled and performed in accordance with city, county, and state laws by approved servicing organizations. The removal must be done in a clean and sanitary manner by means of a vacuum hose and received by a leak-proof tank truck; and

(d) Service trucks have a clear approach and convenient access to the toilets to be serviced.

(12) Floors in licensed or approved indoor spaces must be cleaned by either sweeping or vacuuming at least once per day or more often as needed.

(13) Carpets or area rugs soiled with bodily fluids must be cleaned and disinfected with high heat or an EPA registered product. ONB providers must limit exposure to blood and body fluids during cleanup.

(14) Children must not:

(a) Be present when carpets are cleaned or vacuumed unless ONB providers are spot vacuuming, the vacuum has a HEPA filter, and children are not within the immediate area; or

(b) Use or play on or near carpet areas until dry.

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NEW SECTION

WAC 110-302-0245 Laundry and equipment. (1) ONB programs that do not have an indoor facility but are required to launder hand-towels, clothing, bedding, or other items must comply with the following:

(a) Laundry and laundry equipment used by an ONB program must be inaccessible to children and separated from areas where food is prepared to prevent cross contamination.

(b) Dirty or soiled laundry must be:

(i) Kept separate from clean laundry;

(ii) Cleaned with laundry soap, detergent or other department approved product or process including, but not limited to, the cleaning of water-resistant rain suits or down-filled sleeping bags.

(iii) Rinsed; and

(iv) Sanitized:

(A) With bleach or a similar sanitizer registered by the EPA; or

(B) By using a "sanitize" setting on a washing machine or dryer that reaches at least 140 degrees Fahrenheit or other department approved product or process including, but not limited to, the sanitizing of, water-resistant rain suits or down-filled sleeping bags.

(2) If ONB programs allow parents or staff to share laundering responsibilities by laundering at their private residence, the ONB programs must:

(a) Have a policy to ensure parents or staff are aware of and follow the requirements of this section; and

(b) Include the requirements of the shared laundering practice in the parent handbook.

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NEW SECTION

WAC 110-302-0250 Private septic systems. (1) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB programs that are served by private septic systems must ensure that the septic systems are designed, con-

structured, and maintained in accordance with state and local health jurisdiction requirements.

(a) Private septic systems must be inspected by a septic system maintenance service providers approved by the local health jurisdiction and monitored on a routine basis. Any deficiencies noted in an inspection report must be corrected with the necessary permits and inspections.

(b) The most recent private septic system pumping and inspection records must be kept on the licensed premises or in the ONB programs' administrative offices.

(c) If ONB providers do not have the documentation described in (b) of this subsection, ONB providers must obtain such documentation from the state, local health jurisdiction, or a department approved private company within six months of the date the ONB provider is approved by DCYF to operate an ONB program.

(d) ONB providers must notify the department and local health jurisdiction if there is a problem, concern, or malfunction with their private septic system.

(e) If a private septic system problem, concern, or malfunction interferes with the proper care of children and an approved alternative is not available, the state, local health jurisdiction, or department may require ONB programs to close until the system is inspected, repaired, and approved by the local health jurisdiction.

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, pursuant to WAC 110-302-0146, playground design must not:

(a) Interfere with access to or the operation of a private septic system, including a private septic system's drain field and tanks; or

(b) Be located or placed in a way that impacts the private septic system's drain field or tanks as determined by local officials.

(3) ONB programs that utilizes a water-conserving toilet and greywater system pursuant to WAC 110-302-0220 must ensure that children do not play in areas contaminated by greywater.

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NEW SECTION

WAC 110-302-0255 Pest control. (1) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB programs operating in natural environments must prevent and manage the children's exposure to toxic or infectious agents, such as potentially toxic animal waste, bee stings, and potentially toxic plants or fungi. ONB programs must notify staff, parents and guardians if pesticides are applied on or near the ONB program space, pursuant to WAC 110-302-0225, 110-302-0240, and 110-302-0505.

(2) ONB school-age only providers must have a pest control policy that emphasizes prevention and natural, nonchemical, low-toxicity methods where pesticides or herbicides are used as a last resort, also known as "integrated pest management." In areas where local pest control policies are already in place, such as a school district, school-age ONB programs may adopt or amend such policies to develop its own policy.

(3) ONB programs operating on private or public park land must work with the owners or park directors or their designees to comply with the following:

(a) **Prevention.** ONB providers must take steps to prevent attracting pests including, but not limited to, identifying and removing food and water sources that attract pests.

(b) **Inspection.** Indoor and outdoor areas in and around the licensed space must be inspected for evidence of pests. ONB providers must document the date and location if evidence is found.

(c) **Notification.** If pesticides are used, except in the case of an emergency such as the discovery of a wasp nest, ONB providers must notify the parents or guardians of enrolled children at least 48 hours before application what pesticide will be applied and where it will be applied.

(d) **Application.** Pesticides must not be applied to ONB program space when children are present.

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NEW SECTION

WAC 110-302-0260 Storage of hazardous and maintenance supplies.

(1) ONB providers must ensure all poisonous or dangerous substances including, but not limited to, fuels, solvents, oils, laundry, dishwasher, other detergents, sanitizing products, and disinfectants are stored as follows:

(a) In a location that is inaccessible to children;

(b) Separate and apart from food preparation areas, food items, and food supplies;

(c) In their original containers or clearly labeled with the name of the product if not in the original container;

(d) In compliance with the manufacturer's directions, including, not storing products near heat sources; and

(e) ONB providers who operate ONB programs on public land must implement appropriate planning, supervision, and intervention to ensure that children do not have access to poisonous or dangerous substances.

(2) Storage areas and storage rooms must be inaccessible to children.

(3) For ONB programs that do not operate on public or private school premises, storage areas and rooms that contain chemicals, utility sinks, or wet mops must be ventilated to the outdoors with an exterior window or mechanical ventilation to prevent the buildup of odors, fumes, or other hazards.

(4) Except for ONB programs that enroll only school-age children and operate on public or private school premises, storage areas and rooms must:

(a) Have locking doors or other methods to prevent child access;

(b) Have moisture resistant and easily cleanable floors;

(c) Have a designated maintenance or janitorial utility sink, or another method excluding kitchen sinks to dispose of wastewater; and

(d) Be kept clean and sanitary.

(5) Saws, power tools, lawn mowers, and other maintenance and janitorial equipment must be inaccessible to children.

(6) ONB programs using developmentally appropriate tools or equipment, including ropes or sharp objects, as part of their curriculum must make such tools inaccessible to children when not in use or under active supervision.

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SLEEP AND REST

NEW SECTION

WAC 110-302-0265 Sleep, rest, and equipment. ONB programs that enroll only preschool-age children or both preschool-age and school-age children must comply with the requirements in this section.

(1) ONB providers must offer a supervised daily rest period to preschool-age children who remain in care for more than six hours per day, or who show a need for rest.

(2) ONB providers must provide quiet activities for children who do not require rest. Quiet activities must be minimally disruptive to sleeping children.

(3) ONB providers must communicate children's sleep needs and patterns with their parents or guardians.

(4) ONB providers must not place children directly on the floor or ground to rest or sleep.

(5) ONB providers must provide developmentally appropriate mats, cots, or other sleep equipment made of water resistant material that can be cleaned and sanitized.

(6) Mats, cots, and other sleep equipment used in ONB programs must be:

(a) In good condition, have no tears or holes, and have no repairs with tape;

(b) Cleaned, sanitized, and air dried at least once per week or more often as needed if used by only one child, or after each use if used by more than one child; and

(c) Stored so sleeping surfaces are not touching each other unless cleaned and sanitized after each use.

(7) Floor mats designed for sleeping and mattresses must be at least one inch thick. Inflatable sleeping pads must be suitable for the outdoor temperature according to the manufacturer's label. Inflatable sleeping pads less than one inch thick must be approved by the department.

(8) When in use, sleep equipment must be spaced apart from other sleep equipment to reduce germ exposure and allow ONB providers' access to each child during sleep time as follows:

(a) There must be at least 18 inches on each side between mats, cots, or other sleep equipment; and

(b) Mats, cots, and other sleep equipment must be arranged so children are head to toe, or toe to toe.

(9) Each child's bedding must:

(a) Have a clean sheet or blanket to cover the sleeping surface and a clean blanket for the child that is suitable given the child's size and room or outdoor temperature. Children may use sleeping bags suitable for the outdoor temperature;

(b) Be laundered at least weekly or more often, such as between uses by different children or if soiled; and

(c) Be stored separately from bedding used by another child, unless it is cleaned and sanitized after each use.

(10) ONB providers must not allow children less than six years of age to use loft style beds or the upper bunk of bunk beds.

(11) Napping or resting children must be protected from the sun, rain, and extreme weather, such as by the use of tarps or tents.

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INTERACTIONS AND CURRICULUM LEARNING SUPPORTS

NEW SECTION

WAC 110-302-0300 Individual care plan. (1) ONB providers must develop an individual care plan for each child with identified special needs. Plans and documentation required under this section must:

(a) Meet the requirements of this section;

(b) Be available for department review;

(c) Have written permission from a child's parent or guardian stating that a visiting health professional may provide services to the child at the ONB program, if applicable;

(d) Have verification that ONB program staff involved with a particular child has been trained on implementing the individual care plan for that child, if applicable;

(e) Be updated annually or when there is a change in the child's special needs; and

(f) Be kept in the child's file.

(2) Individual care plans must be signed by the parent or guardian and may be developed using a department provided template.

(a) Individual care plans must contain:

(i) The child's diagnosis, if known;

(ii) Contact information for the primary health care provider or other relevant specialist;

(iii) A list of medications to be administered at scheduled times, or during an emergency along with descriptions of symptoms that would trigger emergency medication;

(iv) Directions on how to administer medication;

(v) Allergies;

(vi) Food allergy and dietary needs, pursuant to WAC 110-302-0186;

(vii) Activity, behavioral, or environmental modifications for the child;

(viii) Known symptoms and triggers;

(ix) Emergency response plans and what procedures to perform; and
 (x) Suggested special skills training, and education for ONB program staff, including specific pediatric first aid and CPR for special health care needs.

(b) ONB providers must have supporting documentation of the child's special needs provided by the child's licensed or certified:

- (i) Physician or physician's assistant;
- (ii) Mental health professional;
- (iii) Education professional;

(iv) Social worker with a bachelor's degree or higher with a specialization in the individual child's needs; or

(v) Registered nurse or advanced registered nurse practitioner.

(3) ONB providers' written plans and documentation for accommodations must be informed by any existing:

- (a) Individual education plan (IEP);
- (b) Individual health plan (IHP);
- (c) 504 Plan; or
- (d) Individualized family service plan (IFSP).

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NEW SECTION

WAC 110-302-0305 Curriculum philosophy and planning. (1) ONB providers must have a written curriculum philosophy that describes the ONB programs' planned daily activities related to child development.

(2) ONB providers must include in their curriculum philosophy how nature is central to their curriculum, and how learning and being outdoors in a nature-based setting impacts the ONB program of daily activities and will benefit children.

(3) The curriculum philosophy must address all age groups being served. The curriculum philosophy may include, but is not limited to:

(a) How children develop emotionally, socially, cognitively, and physically in nature and through nature-based experiences and reasonable risky play;

(b) What ONB programming looks like or areas of focus for each age group being served;

(c) How the ONB provider will meet cultural, dual language learner, and special needs of children in care;

(d) How to guide learning and social interactions; and

(e) The importance of play to a child's learning process.

(4) Staff must be trained on ONB programs' curriculum philosophy.

(5) ONB program staff responsible for ONB program and activity planning must be given regularly scheduled time to plan and develop curriculum and activities. Planning may be done during rest time but all supervision requirements pursuant to WAC 110-302-0345 must be met. Planning time for ONB staff implementing emergent curriculum may be spent on activities such as documenting children's learning, making plans for individualized learning goals, and gaining knowledge of subject matter relevant to the children's learning goals, interests, seasons, and the environment.

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NEW SECTION**WAC 110-302-0310 Concept development and feedback quality.** (1)

ONB providers must facilitate activities to support child learning and understanding.

(2) ONB providers may facilitate child learning and understanding through a variety of techniques such as:

(a) Using a variety of teaching strategies such as different techniques, curricula, or styles and natural materials to address different learning styles, abilities, developmental levels, and temperament;

(b) Helping children enter into and sustain play;

(c) Encouraging children to participate by asking questions and providing guidance;

(d) Providing opportunities for children's creativity;

(e) Linking concepts and activities to one another and to the children's lives and interests;

(f) Noticing and responding to teachable moments;

(g) Clarifying and expanding children's understanding;

(h) Describing and discussing children's learning processes;

(i) Encouraging children's efforts and persistence;

(j) Showing tolerance for mistakes;

(k) Using diverse vocabulary;

(l) Leading discussions and activities;

(m) Providing materials during the day, including daily routines such as meals and transitions, to encourage communication in English and children's home languages when possible; and

(n) Using scaffolding methods to gradually move children toward stronger understanding and greater independence in the learning process.

(3) ONB programs must emphasize children's exploration of the natural world. This must be accomplished by implementing the techniques described in subsection (2)(a) through (n) of this section, and providing modeling and teaching that encourages:

(a) Opportunities for child-directed inquiry;

(b) The children's curiosity through open-ended experiences and questioning;

(c) Respectful, reciprocal, and sustainable interactions with nature, including the local fauna, flora, and delicate ecosystems; and

(d) Engaging children in diverse environments.

(4) ONB programs, as operating primarily outside and potentially in unenclosed spaces, must prioritize behavior management and children's development of habits that keep them safe in such environments. This must be accomplished by:

(a) Establishing boundaries through visual cues, such as cones or rope;

(b) Teaching children to stop and return, such as through words or the use of other calls;

(c) The appropriate use of consequence for unsafe behaviors;

(d) Engaging children in developmentally appropriate assessment of risky play, pursuant to WAC 110-302-0315.

(e) Ensuring children are engaged in areas that suit the developmental level of their behaviors; and

(f) Positioning ONB staff at locations within the ONB program space to ensure the ONB provider has the ability to respond to dangerous situations.

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NEW SECTION

WAC 110-302-0315 Language and communication modeling and reasoning. (1) ONB providers must be aware of and responsive to children's developmental, linguistic, cultural, and learning needs.

(2) ONB providers must be aware of and responsive to children's needs by engaging in activities such as:

(a) Asking developmentally appropriate questions for the age group and allow children to answer without interruption from the ONB provider;

(b) Circulating among the children during free choice activities and talking with children about what they are doing;

(c) ONB providers must use language to develop and encourage reasoning skills by using techniques such as:

(i) Talking about logical relationships or concepts during the day including, but not limited to, the daily schedule, the differences and similarities between objects, or people in the ONB program;

(ii) Introducing concepts using guiding questions that encourage children to figure out cause and effect relationships;

(iii) Providing opportunities for reading and writing activities; and

(iv) Asking open ended questions to help children improve skills and acquire knowledge.

(d) ONB providers working with non-English speaking children must encourage language development and acquisition by using techniques such as:

(i) Using words in various languages to talk about the ONB program routines;

(ii) Reading books out loud or using audio books; and

(iii) Playing games in different languages.

(3) ONB providers, in addition to carrying out benefit-risk assessments, pursuant to WAC 110-302-0471, must engage children in a developmentally appropriate assessment of risky play. This must be accomplished by:

(a) Providing greater supervision when children engage in new levels of risky play;

(b) Using questioning and scaffolding techniques to help children determine risks and identify ways to mitigate risk;

(c) Prohibiting staff from physically placing children into risky situations, such as in trees or on top of boulders; and

(d) Encouraging children to accept their current levels of ability as they work towards goals.

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NEW SECTION

WAC 110-302-0320 Facilitating child interests, learning, perspective, and productivity. (1) ONB providers must work to maximize

children's interests, engagement with developmentally and culturally responsive activities, and ability to learn from play.

(2) ONB providers must maximize children's interests, engagement, and abilities by using techniques such as:

(a) Maximizing learning time with natural learning materials and products, limiting disruptions during activities, and offering additional choices when activities are completed;

(b) Giving clear instructions and directions; and

(c) Making opportunities for children to learn during transitions by clearly communicating expectations and keeping transitions to a duration that is developmentally appropriate.

(3) ONB providers must offer developmentally and culturally responsive activities that offer a range of auditory, visual, and movement opportunities by using techniques such as:

(a) Encouraging child engagement;

(b) Promoting each child's self-help and social skills;

(c) Organizing around child interests and ideas;

(d) Allowing choice, exploration, and experimentation;

(e) Promoting active and play-based learning experiences;

(f) Allowing children freedom to move during activities;

(g) Ensuring child expression;

(h) Utilizing interesting and creative materials;

(i) Offering hands-on opportunities for children;

(j) Providing opportunities for children to direct their own learning and problem solving rather than teacher-directed activities; and

(k) Orienting and guiding children toward learning objectives.

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EMOTIONAL SUPPORT AND CLASSROOM ORGANIZATION

NEW SECTION

WAC 110-302-0325 Creating a climate for healthy child development. (1) When communicating or interacting with children, ONB providers must maintain a climate for healthy, culturally responsive, child development such as:

(a) Using a calm and respectful tone of voice;

(b) Using positive language to explain what children can do and give descriptive feedback;

(c) Having relaxed conversations with children by listening and responding to what they say. Adult conversations must not dominate the overall sound of the group;

(d) Greeting children upon arrival and departure at the ONB program;

(e) Using facial expressions such as smiling, laughing, and enthusiasm to match a child's mood;

- (f) Using physical proximity in a culturally responsive way to speak to children at their eye level and with warm physical contact including, but not limited to, gently touching a hand or shoulder, sitting next to a child, appropriately holding younger children close while communicating;
 - (g) Validating children's feelings and showing tolerance for mistakes;
 - (h) Being responsive and listening to children's requests and questions, encouraging children to share experiences, ideas, and feelings;
 - (i) Observing children in order to learn about their families, cultures, individual interests, ideas, questions, and theories;
 - (j) Modeling and teaching emotional skills such as recognizing feelings, expressing them appropriately, accepting others' feelings, and controlling impulses to act out feelings;
 - (k) Representing the diversity found in the ONB program and society, including gender, age, language, and abilities, while being respectful of cultural traditions, values, religion and beliefs of enrolled families;
 - (l) Interacting with staff and other adults in a positive, respectful manner; and
 - (m) Encouraging the development of a caring relationship with the environment.
- (2) ONB providers must encourage positive interactions between and among children with techniques such as:
- (a) Giving children several chances a day to interact with each other while playing or completing routine tasks;
 - (b) Modeling social skills;
 - (c) Encouraging socially isolated children to find friends;
 - (d) Helping children understand feelings of others; and
 - (e) Including children with special needs to play with others.
- (3) Weather permitting, ONB providers must offer daily access to unobstructed natural light, including access to direct sunshine, to promote:
- (a) The body's natural absorption of Vitamin D; and
 - (b) Healthy mental well-being and emotional development.

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NEW SECTION

- WAC 110-302-0330 Positive relationships and child guidance.** (1) ONB providers must work to maintain positive relationships with children by using consistent guidance techniques to help children learn. Guidance techniques must adapt ONB programs' environment, routines, and activities to a child's strengths, age and developmental level, abilities, culture, community, and relate to the child's behavior.
- (2) Guidance techniques may include:
- (a) Coaching behavior;
 - (b) Modeling and teaching social skills such as taking turns, cooperation, waiting, self-control, respect for the rights of others, treating others kindly, and conflict resolution;
 - (c) Offering choices;
 - (d) Distracting;

- (e) Redirecting or helping a child change their focus to something appropriate to achieve their goal;
- (f) Planning ahead to prevent problems and letting children know what events will happen next;
- (g) Explaining consistent, clear rules and involving children in defining simple, clear classroom limits;
- (h) Involving children in solving problems; and
- (i) Explaining to children, the natural and logical consequence related to the child's behavior in a reasonable and developmentally appropriate manner.

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NEW SECTION

- WAC 110-302-0331 Prohibited behavior, discipline, and physical removal of children.** (1) ONB providers must take steps to prevent and, once aware of, must not tolerate:
- (a) Profanity, obscene language, "put downs," or cultural or racial slurs;
 - (b) Angry or hostile interactions;
 - (c) Threats of physical harm or inappropriate discipline such as, but not limited to, spanking, biting, jerking, kicking, hitting, slapping, grabbing, shaking, pulling hair, pushing, shoving, throwing a child, or inflicting pain or humiliation as a punishment;
 - (d) Intimidation, gestures, or verbal abuse including sarcasm, name calling, shaming, humiliation, teasing, derogatory remarks about a child or the child's family;
 - (e) Emotional abuse including victimizing, bullying, rejecting, terrorizing, extensive ignoring, or corrupting a child;
 - (f) Prevent a child from or punish a child for exercising religious rights; or
 - (g) Anyone to:
 - (i) Restrict a child's breathing;
 - (ii) Bind or restrict a child's movement unless permitted under WAC 110-302-0335;
 - (iii) Tape a child's nose, mouth, or other body part;
 - (iv) Deprive a child of sleep, food, clothing, shelter, physical activity, first aid, or regular or emergency medical or dental care;
 - (v) Force a child to ingest something as punishment such as hot sauce or soap;
 - (vi) Interfere with a child's ability to take care of their own hygiene and toileting needs;
 - (vii) Use toilet learning or training methods that punish, demean, or humiliate a child;
 - (viii) Withhold hygiene care, toileting care, or diaper changing from any child unable to provide such care for themselves;
 - (ix) Expose a child to extreme temperatures as punishment;
 - (x) Demand excessive physical exercise or strenuous postures. Excessive physical exercise includes, but is not limited to, running laps around the yard until overly tired, an extensive number of push-ups, having a child rest more than the child's development requires, standing on one foot for an uncomfortable amount of time, or holding out one's arms until tired or painful;

(xi) Place the separated child in a closet, bathroom, locked room, out of visual range in an approved tent, cabin, yurt or other structure; or in an unlicensed space; and

(xii) Use confining space or equipment to punish a child or restrict movement.

(2) ONB providers must supervise to protect children from the harmful acts of other children. ONB providers must immediately intervene when they become aware that a child or children are teasing, fighting, bullying, intimidating, or becoming physically aggressive.

(3) ONB providers may separate a child from other children when that child needs to regain control of themselves.

(a) During separation time, the child must remain under the appropriate level of supervision of a licensee, director, program director, assistant director, site director, program supervisor, lead teacher or an assistant teacher.

(b) Separation time should be minimized and appropriate to the needs of the individual child.

(4) If a child is separated from other children, ONB providers must:

(a) Consider the child's developmental level, language skills, individual and special needs, and ability to understand the consequences of their actions; and

(b) Communicate to the child the reason for being separated from the other children.

(5) If ONB providers follow all strategies in this section, and a child continues to behave in an unsafe manner, only a licensee, director, program director, assistant director, site director, program supervisor, lead teacher, or an assistant teacher may physically remove the child to a less stimulating environment. Staff must remain calm and use a calm voice when directing or removing the child. Physical removal of a child is determined by that child's ability to walk:

(a) If the child is willing and able to walk, staff may hold the child's hand and walk them away from the situation.

(b) If the child is not willing or able to walk, staff may pick the child up and remove them to a quiet place where the child cannot hurt themselves or others.

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NEW SECTION

WAC 110-302-0335 Physical restraint. (1) ONB programs must have written physical restraint policies pursuant to WAC 110-302-0490, and staff must implement such protocols only when appropriate and after complying with all requirements of WAC 110-302-0330 and 110-302-0331.

(2) Physical restraint must only be used if a child's safety or the safety of others is threatened and must be:

(a) Limited to holding a child as gently as possible to accomplish restraint;

(b) Limited to the minimum amount of time necessary to control the situation;

(c) Developmentally appropriate; and

(d) Only performed by ONB providers trained in the ONB program's child restraint policy, pursuant to WAC 110-302-0490.

(3) ONB providers must not use bonds, ties, blankets, straps, car seats, or heavy weights to include an adult sitting on a child to physically restrain children.

(4) Licensees, directors, program directors, assistant directors, site directors, program supervisors, lead teachers or trained staff must remove themselves from a situation if they sense a loss of their own self-control and concern for the child when using a restraint technique if another ONB provider is present. ONB providers must intervene when they observe another staff member or volunteer using inappropriate restraint techniques.

(5) If physical restraint is used, staff must:

(a) Report the use of physical restraint, pursuant to WAC 110-302-0475.

(b) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application was appropriate;

(c) Document the incident in the child's file, including the date, time, staff involved, duration and what happened before, during, and after the child was restrained;

(d) Develop a written plan with input from the child's primary care or mental health provider, and the parents or guardians to address underlying issues and to reduce the need for further physical restraint if:

(i) Physical restraint has been used more than once; and

(ii) A plan is not already a part of the child's individual care plan.

(e) Notify the department when a written plan has been developed.

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NEW SECTION

WAC 110-302-0340 Expulsion. (1) To promote consistent care and maximize opportunities for child development and learning, ONB providers must develop and follow expulsion policies and practices, pursuant to WAC 110-302-0486.

(2) ONB providers may expel a child only if the:

(a) Child exhibits behavior that presents a serious safety concern for that child or others; and

(b) ONB program is unable to reduce or eliminate the safety concern through reasonable modifications.

(3) When children are expelled, ONB providers must:

(a) Review the ONB program's expulsion policy with the parent or guardian of the child;

(b) Provide a record to the parent or guardian about the expulsion and the steps that were taken to avoid expulsion. The record must include the date, time, staff involved, and details of each incident that led to expulsion; and

(c) Provide information to the parent or guardian that includes, but is not limited to, community-based resources that may benefit the child.

(4) ONB providers must report to the department when children are expelled. The information must include:

(a) Child demographic data including, but not limited to, the age, race, ethnicity, and gender of the child;

- (b) The reason the child was expelled; and
- (c) The resources that were provided to the parent or guardian of the child.

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ONB PROGRAM STRUCTURE AND ORGANIZATION

NEW SECTION

WAC 110-302-0345 Supervising children. (1) ONB providers must allow only the following persons to have unsupervised access to a child in care:

- (a) The child's own parent or guardian;
- (b) Licensees or ONB program staff authorized by the department under chapter 110-06 WAC;
- (c) A government representative including an emergency responder who has specific and verifiable authority for access, supported by documentation; and
- (d) A person authorized in writing or by telephone by the child's parent or guardian such as a family friend or the child's therapist or health care provider.

(2) ONB providers must comply with department approved capacity, group size, and staff-to-child ratios while children are in care. This includes, but is not limited to:

- (a) Indoor and outdoor play activities;
- (b) Off-site activities;
- (c) During transportation;
- (d) Meal times;
- (e) Rest periods; and
- (f) When children are on different floor levels of an indoor space.

(3) ONB providers must supervise children in care by:

- (a) Scanning the environment, looking and listening for both verbal and nonverbal cues to anticipate problems and plan accordingly;
- (b) Positioning themselves to supervise all areas accessible to children;
- (c) Attending to children and being aware of what children are doing at all times;
- (d) Being available and able to promptly assist or redirect a child as necessary; and
- (e) Considering the following when deciding whether increased supervision is needed:
 - (i) The ages of children;
 - (ii) The individual differences and abilities of children;
 - (iii) The layout of the indoor and outdoor licensed space and play area;
 - (iv) The risk associated with the activities children are or may be engaged in; and

(v) Whether there are any nearby hazards including those in the licensed or unlicensed space.

(4) ONB providers must ensure that the staff-to-child ratios required by this chapter are followed by program staff and that children are actively supervised.

(5) ONB providers must ensure that program staff are equipped with cell phones or walkie-talkies at all times for the purpose of communicating with other staff.

(6) ONB program staff may undertake other activities for a temporary time period when not required to be providing the active supervision required under subsection (7)(b) of this section, or when following a missing child protocol, pursuant to WAC 110-302-0470(2)(d). Such activities include, but are not limited to, cleaning up after an activity or preparing items for a new activity. The staff member must remain in visual or auditory range, and be available and able to respond to the children's needs.

(7) ONB providers must:

(a) Not use devices such as baby monitors, video monitors, or mirrors in place of supervision;

(b) Actively supervise children when the children:

(i) Interact with pets or animals;

(ii) Engage in water or sand play;

(iii) Play in an area adjacent to a body of water;

(iv) Using a safe route to access an area or activity not immediately adjacent to the ONB program premises;

(v) Search for or handle plant life (foraging);

(vi) Engage in cooking activities;

(vii) Engage in water activities;

(viii) Engage in campfire activities;

(ix) Engage in climbing activities;

(x) Engage in tool use activities;

(xi) Ride on public transportation;

(xii) Are attending field trips; and

(xiii) Are participating in hikes or walks.

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NEW SECTION

WAC 110-302-0346 Plant foraging activities. (1) All plants gathered by children or staff that are intended to be consumed by children must be clean and safe to eat. The requirements described in WAC 110-302-0196 through 110-302-0198 apply to plants gathered by children or staff that are intended to be consumed by children.

(2) ONB program staff must be able to demonstrate they have the level of knowledge necessary to:

(a) Properly identify the different plant species that are native to the area and region where the ONB program is located;

(b) Identify and avoid poisonous plants and plants that look similar to poisonous plants; and

(c) Ensure that plants are harvested during the correct time of year and season.

(3) ONB program staff must ensure the area where plants are being harvested, for example an adjacent road or field, has not been sprayed with pesticides or other pollutants. The ONB program staff must also

ensure that plants are not harvested if the ground contains any type of toxins including, but not limited to, toxins associated with the smelter plume areas in the Tacoma and Everett smelter plume areas located in King, Pierce, Snohomish, and Thurston counties.

(4) Mushrooms and other fungi of any variety must not be touched, picked, harvested, or consumed by children.

(5) ONB program staff must ensure that children do not touch, pick, harvest, or consume plants without the permission of program staff. Before a child eats any type of wild vegetation, ONB program staff must ensure the vegetation has been approved for consumption by a staff person who is able to correctly identify the source plant. Prior approval by the appropriate ONB program staff person is required even if a child thinks they can correctly identify the plant.

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NEW SECTION

WAC 110-302-0347 Supervising children who are climbing natural features. (1) ONB providers may allow children to climb natural features, including trees and boulders.

(2) Before allowing children to climb natural features, ONB providers must use and apply the benefit-risk assessments described in WAC 110-302-0315(3) and 110-302-0471 to determine the appropriate methods to remove or mitigate the possibility of injury.

(3) To prevent injury to children, ONB providers must comply with the requirements described in this subsection.

(a) Staff members must remove hazardous objects and mitigate hazards whenever possible from the surrounding area where children might fall. This includes, but is not limited to, removing rocks and covering sharp edges or potentially harmful protrusions including harmful protrusions or branches that may extend from trees or stumps.

(b) Before a child or children climb on trees, ONB providers must inspect the trees for weak or loose branches or other potential hazards.

(c) ONB staff members must provide active supervision and be able to provide immediate assistance to any climbing child. To ensure adequate supervision and after conducting the risk assessments described in WAC 110-302-0471, it may be necessary for ONB programs to limit the number of children climbing at one time.

(d) At all times, a staff member must be within reach of the midriff of a child who is climbing a natural feature 30 inches above the ground. A climbing child must not be allowed to climb out of reach of staff.

(3) For school-age children and activities that involve climbing natural features or challenge courses 48 inches or higher from the ground, ONB programs must comply with the requirements described in the American National Standard Institute/Association for Challenge Course Technology (ANSI/ACCT) Challenge Course Standards (<https://www.acctinfo.org/page/ANSIACCTStandards>). ONB program staff that provide climbing and challenge course activities must possess a valid and current Association for Challenge Course Technology (ACCT) Practitioner Certification.

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NEW SECTION**WAC 110-302-0350 Supervising children during water activities.**

(1) During water activities, ONB providers must comply with the requirements described in this section, WAC 110-302-0175 and 110-302-0345.

(2) In addition to the "risk waiver" described in WAC 110-302-0471:

(a) ONB providers must obtain written permission on a "water activity waiver" from the child's parent or guardian before that parents or guardian's child participates in water activities.

(b) ONB programs located within a quarter mile of an accessible body of water must obtain from the parent or guardian a signed "water hazard waiver."

(3) For water activities that involve a water depth that is more than 24 inches deep, ONB providers must comply with this chapter and the requirements described in this subsection.

(a) A certified lifeguard must be present and on-duty. A staff member or volunteer may be included in the staff-to-child ratio who is also the on-duty certified lifeguard.

(b) All children must wear approved water life jackets or approved water life vests.

(4) ONB providers must have life-saving equipment readily accessible during water activities if the surface area of a pool or body of water is equal to or greater than six feet and the depth of any portion of the surface area is equal to or greater than two feet. Life-saving equipment may include a ring buoy and rope, a rescue tube, or a throwing line and a shepherd's hook that will not conduct electricity.

(5) During water activities, ONB providers must hold or have continuous touch of children with special needs unless that is not developmentally appropriate.

(6) At least one attending staff person must be able to swim when children are within one quarter mile of an accessible body of water such as a park located near a lake or stream regardless of whether or not the children are actively engaging in a water activity.

(7) If children are at or near a moving body of water, an ONB staff member who can swim or a lifeguard must be positioned downstream of where the children are playing or otherwise take into account how water moves and their access to the body of water.

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NEW SECTION

WAC 110-302-0351 ONB program campfire activity supervision and safety. (1) To engage in a campfire activity, ONB providers must comply with this section and have permission from the landowner or park personnel to engage in campfire activities.

(2) ONB providers must have a signed and dated written permission for campfire activities from each child's parent or guardian in the form of a "fire hazard waiver."

(3) ONB staff must receive training on ONB program campfire policies and procedures before the staff may lead any campfire activity. To ensure the staff are able to properly build and extinguish a fire as described in this section, the ONB program must:

(a) Provide training campfire policies and procedures; and

(b) Complete written staff evaluations of each staff member's ability to properly build and extinguish a fire. The storage, preservation, and retention of the written staff evaluations required under this subsection must comply with WAC 110-302-0115 and other applicable requirements of this chapter.

(4) For each campfire activity, ONB providers must prepare and retain a record that the safe campfire practices required under this section were followed. Compliance with this subsection may include the creation of a checklist by the ONB provider that describes the safe campfire practices that were followed before and after each campfire activity.

(5) ONB providers must have and properly maintain a first-aid kit near the campfire that contains first-aid supplies made specifically to treat fire related injuries including, but not limited to, a fire blanket and sterile, nonadhesive bandages. Staff must be prepared to smother a fire on a child's clothing or hair using equipment including, but not limited to, water, a fire suppression blanket, or fire extinguisher.

(6) ONB providers must create a clearly visible boundary at least three feet away from the outer edge of the fire pit or structure containing the fire. This boundary may be marked by a rope, large rocks, or seating area made of logs or camp chairs. At all times, the area within the three-foot boundary must:

(a) Be clear of tripping hazards such as bags or other materials; and

(b) Have space in between the logs, camp chairs, or other seating so that children and adults may easily move into and out of the seating area.

(7) Prior to any campfire activity, ONB providers must use developmentally appropriate teaching practices to ensure children understand safe behavior around a campfire.

(8) Campfires must be built and extinguished according to safe fire practices provided by the U.S. Forest Service at <https://smokeybear.com/en/prevention-how-tos/campfire-safety>. Campfires:

(a) Must not be built during periods of high fire danger in the area;

(b) Must not be more than two feet in diameter;

(c) Must be in a fire pit or structure that is designed for the express purpose of safely containing a campfire including, when applicable, the fire pit or structure must contain an approved bottom; and

(d) Must not burn materials that release toxic substances, such as chemically treated wood, rubber, or plastics.

(9) Each ONB program class cannot have more than one campfire activity at any time.

(10) Before starting a campfire activity, ONB providers must have the necessary equipment and supplies to safely extinguish a campfire. For purposes of this subsection, equipment and supplies include, but are not limited to, sufficient water and a shovel. Fire extinguishers must be kept on-site and comply with the requirements described in WAC 110-302-0170.

(11) While campfires are burning, ONB providers must remain within the three-foot boundary around the fire to respond to any fire-tending needs and to prevent children from coming into close contact with the fire.

(12) There must be a one-to-one (1:1) staff-to-child ratio for any child within the three-foot boundary around the fire. A staff mem-

ber must remain within arms' reach of that child and the child may only assist in setting up or tending to the fire in a developmentally appropriate way, such as by placing kindling or small sticks before the fire is started.

(13) Adults and children who tend to the fire must tie back long hair and secure loose clothing to reduce the risk of catching fire.

(14) ONB providers and program staff must prevent children from:

(a) Entering the three-foot boundary around the campfire without one-to-one supervision;

(b) Running and pushing within six feet of the edge of the fire-pit; and

(c) Inhaling campfire smoke.

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NEW SECTION

WAC 110-302-0352 ONB program tool activity supervision and safety. (1) During tool activities, ONB providers must comply with all supervision requirements described in this section and WAC 110-302-0345.

(2) Tools must be inaccessible to children when not in use.

(3) There must be a one-to-one (1:1) staff-to-child ratio for:

(a) Any preschool-age child who is engaged in a tool activity; and

(b) Any school-age child who is not proficient in using the tool for the activity.

(4) There must be a one-to-three (1:3) staff-to-child ratio for any school-age children who have previously demonstrated proficiency of specific tool use.

(5) Before a child can participate in tool activities, ONB providers must obtain written permission from the children's parents or guardians that allows them to participate in such activities.

(6) Before engaging in and leading a tool activity, staff must be trained about the ONB program's tool use policies and procedures and benefit-risk assessments. Pursuant to the requirements described in WAC 110-302-0110, ONB providers must train, evaluate, and maintain a written record of the staff's ability to carry out any tool activity.

(7) ONB providers must have a first-aid kit near the tool activity that is in compliance with the requirements described in WAC 110-302-0230 and is equipped with first-aid supplies made specifically to treat sharp cuts, punctures, or other injuries related to the use of tools.

(8) Prior to any tool use activity, ONB providers must use developmentally appropriate teaching practices to ensure children understand and can demonstrate safe tool use. Teaching techniques must include, but not be limited to:

(a) Safe whittling practices using a push stroke away from the body and hand holding the piece of wood;

(b) Wearing work or gardening gloves, especially on the hand that is not holding the tool;

(c) Wearing safety goggles, when appropriate;

(d) Children sitting on their knees with their legs tucked under, sitting cross-legged, or at a table;

- (e) Holding the piece of wood past one's knees, to the side of one's body, or on the top of a table;
- (f) Allowing appropriate space between children using tools; and
- (g) Demonstrated understanding and proficiency of less risky tools prior to the use of tools that may pose a greater risk.
- (9) Children must not use or have access to motorized tools.
- (10) When using tools, the children must remain in an area designated for tool activities.
- (11) Tools must be inaccessible when not being used.

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NEW SECTION

- WAC 110-302-0353 ONB program encountering wildlife supervision and safety.** (1) ONB providers must have and follow policies that describe how to safely encounter wildlife. These policies must identify potentially dangerous wildlife in the ONB program area or location and how children and ONB program staff should appropriately respond to both wildlife and potentially dangerous wildlife.
- (2) ONB providers must actively supervise children and immediately respond when potentially dangerous wildlife is seen or heard, or other signs are discovered or noticed.
- (3) ONB programs must be in contact with local rangers, park officials, or other emergency response agencies if dangerous wildlife is in the area, and follow all state and national agency protocols and requirements.
- (4) ONB programs must relocate to an approved location or close while dangerous wildlife is in the area.
- (5) ONB programs must manage property and dispose of waste to prevent attracting wildlife.
- (6) ONB programs must conduct encountering wildlife drills with children.
- (7) ONB programs must always hike with staff in the front and the back of each group.

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NEW SECTION

WAC 110-302-0354 Indoor ONB program space capacity. For each child in attendance at ONB programs, the licensed indoor space must consist of a minimum of 35 square feet per child and comply with all other requirements described in this chapter.

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NEW SECTION

WAC 110-302-0356 ONB program capacity, ratio, and group size.
 (1) The department has the authority to issue initial or nonexpiring

ONB program licenses. The department will not issue an ONB license to care for more children than permitted by this chapter. The department may issue a license to care for fewer than the maximum allowable enrolled children. For each ONB program, the ONB license will describe:

(a) The maximum number of children that may be in care at any one time;

(b) The licensed capacity for each space within the natural area licensed for use by children; and

(c) The authorized age range of children who may attend the ONB program.

(2) For each child attending an ONB program, there must be a minimum of 4,000 square feet of natural space per child in attendance to support a nature-based curriculum, unless otherwise approved by a park's director and the department.

(3) For purposes of a permanently located outdoor classroom area, each child in attendance who is receiving instruction within that area must have a minimum of 75 square feet of space in that area per child in attendance, not including bathroom or diaper changing spaces or ground space occupied by shelves, features, or other equipment not intended to be accessible to children.

(4) For purposes of determining capacity, the department will consider the factors and requirements described in this subsection.

(a) The area and maximum occupancy described in the ONB program's use agreement with the landowner or public park;

(b) Unless otherwise approved by the park's director and the department, the licensed space of another ONB program or educational program that regularly operates at the same time will not be considered in the licensed space calculations for the area that is being licensed;

(c) The land's features and diversity must be sufficient to support high quality, developmentally appropriate, early childhood and child development environmental education;

(d) The land's facilities, such as emergency shelters and toilets, must be sufficient to support the health, safety, and biological needs of all enrolled children;

(e) The age range of children requested or approved by the department to attend the ONB program;

(f) If an indoor space will be used to meet the children's biological needs, those spaces:

(i) Must comply with WAC 110-302-0415 and all other applicable laws, regulations, and policies; and

(ii) May be used to provide children with transitional activities while the biological needs of other children are met in order to meet supervision requirements and keep children together;

(g) If an indoor space will be used for scheduled educational activity when the focus of the ONB program is not on meeting the biological needs of children, the program must be licensed pursuant to chapter 110-300 or 110-301 WAC;

(h) An ONB provider's education and on-going training;

(i) An ONB provider's licensing history with the department; and

(j) The number of qualified staff necessary to comply with the required staff-to-child ratios.

(5) The following spaces or areas must not be included in the capacity determination:

(a) Unlicensed space;

(b) Emergency shelter space that will only be used in case of emergency;

- (c) Toileting facilities;
- (d) Restricted land; and
- (e) Roadways through parks.

(6) Except as described in this section, a licensee must not at any time exceed the total capacity or age range stated on the ONB program license.

(a) All children, including children of staff, must be counted in the capacity calculation if those children are:

- (i) On the premises and signed in to the ONB program;
- (ii) Participating in an off-site trip from the ONB program; or
- (iii) Being transported to or from an ONB program activity by ONB staff.

(b) Licensees must comply with WAC 110-302-0300 Individual care plan and receive department approval to care for a child with special needs or a child who is older than the maximum age described on the license. A child with documented special needs may be in care up to age 19 and must be counted in the capacity and staff-to-child ratio.

(c) A child with special needs who requires individualized supervision pursuant to WAC 110-302-0300 will be included in the count for purposes of capacity.

(d) A child with special needs will not be included in the staff-to-child ratio calculation.

(e) A child who, after entering the ONB program has a 13th birthday and is authorized to continue to attend the ONB program under chapter 110-15 WAC, must be counted in both the capacity calculation and the staff-to-child ratio calculation.

(7) ONB providers must provide qualified staff to comply with staffing requirements, staff-to-child ratios, and group size during operating hours, including off-site activities or when transporting children in care.

(8) The staff-to-child ratios and group size requirements described in this section apply to each ONB program class that is individually described in this subsection.

(a) For preschool-age children 30 months to six years of age that are not attending kindergarten or elementary school, the maximum group size must not exceed 16 children with a staff-to-child ratio of one staff member to six children.

(b) For school-aged children from five to 13 years of age, the maximum group size must not exceed 20 children with a staff-to-child ratio of one staff member to eight children. Group size may only exceed 20 children for special events such as assemblies or performances.

(c) For school-aged children from nine to 13 years of age, the maximum group size must not exceed 20 children with a staff-to-child ratio of one staff member to 10 children. Group size may only exceed 20 children for special events such as assemblies or performances.

(d) Each group must be staffed by at least two qualified staff members who are not aides or volunteers. Every third staff member counted in the ratio may be an aide or volunteer. Children related to the staff person or licensee must be included in the staff-to-child ratio calculation.

(9) The ONB program class must comply with specific ratio requirements for specific risky activities as described in this subsection.

(a) If children will be participating in water activities, the ONB program must:

(i) Conduct the ONB benefit-risk assessments described in WAC 110-302-0471 (1)(c) and (d) to determine whether increased staffing is necessary for the planned water activities; and

(ii) As described in WAC 110-302-0350, provide staff who are able to swim and provide a certified lifeguard.

(b) The ONB program must provide additional staff after conducting the risk assessment described in WAC 110-302-0471.

(10) As described in WAC 110-302-0436, the ONB program class must comply with any variance from this chapter that is authorized or required by the department.

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NEW SECTION

WAC 110-302-0357 ONB mixed age group capacity, ration, and group size. (1) ONB programs must do the following to mix age groups of children in care in addition to any other applicable requirements of this section:

(a) Notify the department of the ONB program's plan to mix age groups of children and receive approval from the department prior to implementing this plan;

(b) Meet the square footage and staff-to-child ratio requirements for the youngest child in the approved mixed age group, even when the youngest child is not present; and

(c) Meet the health, safety, and developmental needs for all ages of children in the approved mixed age group.

(2) ONB programs must do the following to mix groups of children between 30 months old to 13 years old with a maximum group size of 16 children:

(a) Have at least two staff present with the group, consisting of one lead teacher and one other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:6.

(3) ONB programs must do the following to mix groups of children four and one-half to nine years old with a maximum group size of 18 children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:7.

(4) ONB programs must do the following to mix groups of children four and one-half to 13 years old with a maximum group size of 20 children:

(a) Have at least three staff present with the group, consisting of one lead teacher and two other staff members qualified under this chapter; and

(b) Keep a staff-to-child ratio of 1:8.

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NEW SECTION

WAC 110-302-0360 ONB program and daily schedule. (1) ONB providers must have established ONB programs and daily schedules that are familiar to children.

(2) Daily schedules must be designed to meet enrolled children's developmental, cultural, and special needs. Schedules must:

- (a) Be specific for each age group of children, when applicable;
- (b) Offer a variety of activities to meet the children's needs, pursuant to WAC 110-302-0150;
- (c) Provide children access to the outdoors for more than half of their daily ONB program schedule, and for every three hours of programming, pursuant to WAC 110-302-0145, at least 30 minutes of the ONB program must promote a variety of age and developmentally appropriate active play activities for children in care;
- (d) Include scheduled and consistent times for meal service;
- (e) Include routine transportation times, if applicable; and
- (f) Include rest periods, if applicable.

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**ONB PROGRAM ADMINISTRATION AND OVERSIGHT
LICENSING PROCESS**

NEW SECTION

WAC 110-302-0400 Application materials. (1) After completing a department approved ONB program orientation pursuant to chapter 43.216 RCW, applicants must submit complete license application packets as described in this section. The application requirements described in this section also apply to a request for a change of ownership.

(2) Complete license application packets must include the following professional background information about the applicant:

- (a) A completed department application form;
- (b) A copy of the applicant's ONB orientation certificate that indicates the orientation was completed within 12 months of the license application;
- (c) A copy of the applicant's current government issued photo identification;
- (d) A copy of the applicant's Social Security card or a sworn declaration stating that the applicant does not have one;
- (e) The applicant's employer identification number (EIN) if the applicant plans to hire staff; and
- (f) Employment and education verification information that includes, but is not limited to, diplomas, degrees, transcripts, or a sworn declaration stating that the applicant cannot verify education requirements.

(3) Complete license applications must include:

- (a) A site plan that:

- (i) Describes the proposed use of the licensed and unlicensed space; and
- (ii) Provides a diagram with all pertinent measurements of the natural space, licensed space, and unlicensed space;
- (b) A description and diagram of any permanently located outdoor classrooms and gross motor active play areas;
- (c) A description of any areas or locations that will be used regularly for risky educational or play activities and areas or locations that may involve risky educational or play activities;
- (d) For all applicable areas and activities, completed benefit-risk assessments that are in compliance with the requirements described in WAC 110-302-0471;
- (e) A description of the proposed shelter that will be used by children and staff during an emergency;
- (f) A description of the proposed toileting facilities that will be used by children and staff, including a description of any alternative toileting policies and practices that may be implemented;
- (g) A floor plan of any buildings or structures that may or will be used that includes a description and diagram of all emergency exits and emergency exit pathways;
- (h) For ONB program spaces that will rely on a private septic system, the applicant must provide documentation that is no more than three years old and is from a licensed inspector, septic designer, or engineer that states the septic system and drain field are maintained and in good working order;
- (i) For ONB program spaces that will receive water from a well, the applicant must provide *E. coli* bacteria and nitrate well water testing results that is no more than 12 months old;
- (j) For ONB program spaces located in the Tacoma smelter plume areas of King, Pierce, and Thurston counties or the Everett smelter plume area of Snohomish County, the applicant must provide a lead or arsenic evaluation agreement;
- (k) Lead and copper test results for drinking water;
- (l) ONB program days and hours of operation, including closure dates and holiday observances;
- (m) The following information about ONB program staff:
 - (i) A list of all staff;
 - (ii) A list of all staff and volunteers who are required to complete the background check process as described in chapter 110-06 WAC; and
 - (iii) A resume for the applicant, director, program director, assistant director, program supervisor, and site director; and
- (n) The following policy documents, which will be reviewed by the department and returned to applicants:
 - (i) Parent and ONB program policies;
 - (ii) Staff policies;
 - (iii) An emergency preparedness plan; and
 - (iv) Health policies.
- (4) In addition to the requirements in subsection (3) of this section, complete license applications must include:
 - (a) A signed and dated interlocal agreement between a federally recognized tribe and the department, if applicable;
 - (b) All licenses that are required by the state of Washington, a county, city, or tribe, including a business and occupation license;
 - (c) Liability insurance;
 - (d) A certificate of incorporation, partnership agreement, or similar business organization document;

(e) A land-use agreement that is signed by the land owner. If the land-use agreement is between the ONB program and a public park, the official with the designated authority must sign on behalf of the public park. The land-use agreement must describe:

(i) The shared and individual roles and responsibilities of the ONB program, and the land owner or the public park; and

(ii) The agreed-upon space the ONB program will occupy and other agreed-upon space that will be accessible to the ONB program. Land-use agreements are not required for ONB programs operating on private property owned by the licensee;

(f) Proof that the local emergency management system, fire district, or other applicable emergency response agencies have been provided notice of the location of the ONB program. The notice must be provided by the ONB program using a department approved form; and

(g) If required by any local government agency, a certificate of occupancy that approves the ONB program's occupancy of the ONB program licensed and unlicensed space.

(5) Applicants must submit completed application packets at least 90 calendar days before the planned opening of their ONB programs. The department will inspect the ONB program space and all submitted application materials before deciding whether to issue a license to the applicant.

(a) The 90 calendar days will be calculated from the date the department receives a complete application packet.

(b) Incomplete application packets will be returned to applicants for completion.

(c) Applicants that are unable to successfully complete the application and licensing process within 90 days may withdraw their applications and reapply when they are able to meet the licensing requirements. If the applicant has completed the required application process within 90 days but an external barrier out of the applicant's control exists, the reapplication fee will be waived one time.

(d) Pursuant to RCW 43.216.325, applicants who are unable to meet the application requirements and have not withdrawn their applications will be denied a license.

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NEW SECTION

WAC 110-302-0401 Licensing fees. (1) The rules establishing licensing fees within this chapter are adopted pursuant to RCW 43.216.300.

(2) The license fee is nonrefundable and is due:

(a) With the applicant's initial license application packet; and

(b) Annually thereafter, 30 calendar days prior to the anniversary date of the license.

(3) Payment must be in the form of a check, credit or debit card, or money order.

(4) The annual licensing fee for a school-age program is \$125 for the first 12 children plus \$12 for each additional child, or as otherwise set by the legislature.

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NEW SECTION**WAC 110-302-0402 Changing ONB program space or location.** (1)

ONB providers must notify the department prior to making a change to ONB program space or unlicensed space that may impact the health, safety, or welfare of enrolled children. Such changes include, but are not limited to:

(a) Moving an ONB program to a different location or facility, even if the new location is on the same premises;

(b) An ONB program altering a planned use of space including, but not limited to, the use of previously unlicensed areas or new location for a permanently located outdoor classroom;

(c) Modifying facilities in a way that requires a permit under the Washington state building code or by a local jurisdiction, such as remodeling or renovating emergency shelter locations;

(d) Except for ONB programs that enroll only school-age children and operate on public or private school premises, changing outdoor play areas, such as adding or altering the type of surface or altering stationary climbing or play equipment; and

(e) Any substantial modifications to the licensed area planned or implemented by the landowner.

(2) ONB providers must submit to the department the new proposed site map prior to making any of the changes described in subsection (1)(a) through (c) of this section.

(3) ONB providers planning a change under subsection (1)(a) of this section must also:

(a) Submit a complete application, pursuant to WAC 110-302-0400, as soon as the ONB provider plans to move and has an identified address, but not more than 90 calendar days or less than 30 calendar days before moving. Prior to moving, the ONB provider must receive from the department confirmation that the application was correctly submitted and received;

(b) Notwithstanding the requirements described in (a) of this subsection, in the event of a natural disaster, the department may waive the 30 calendar day requirement; and

(c) Not significantly change or move an ONB program until the department has first inspected the new location and determines that it complies with the requirements described in this chapter.

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NEW SECTION

WAC 110-302-0410 License and program location. (1) Applicants for a license under this chapter must be at least 18 years old.

(2) "Licensee" means the individual or legal entity:

(a) Whose name appears on a license issued by the department;

(b) Who is responsible for complying with chapters 43.216 RCW, 110-06 and 110-302 WAC, this chapter, and other applicable laws, rules, and policies; and

(c) Who is responsible for training ONB program staff with regard to the ONB requirements described in this chapter.

(3) ONB program space must be located:

(a) On a site that does not have any known environmental hazards, except for natural hazards that have not been created or caused by humans and are a part of the natural physical features of the outdoors;

(b) In an area that nonemergency services and utilities can serve the ONB program space; and

(c) In an area served by emergency fire, medical, and police during the hours the ONB program provides care to children.

(4) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must prevent enrolled children from being exposed to the following known hazards within and around the licensed premises:

(a) Lead based paint;

(b) Plumbing and fixtures containing lead or lead solders;

(c) Asbestos;

(d) Arsenic, lead, or copper in the soil or drinking water;

(e) Toxic mold; and

(f) Other identified toxins or hazards.

(g) Sites undergoing remedial work by the Washington state department of ecology (DOE) must take additional steps to ensure children do not ingest contaminated soil.

(5) ONB programs located on private property are required to place address numbers and signage at the entrance of the private property that contains the ONB program space.

(6) License applicants planning to open an ONB program in the designated Tacoma smelter plume areas of King, Pierce, and Thurston counties or the Everett smelter plume area of Snohomish County must contact the state (DOE) and complete and sign an access agreement with DOE to evaluate the applicant's property for possible arsenic and lead soil contamination.

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NEW SECTION

WAC 110-302-0415 Zoning, codes, and ordinances. (1) The department adopts and incorporates by reference the Washington state building code, chapter 19.27 RCW.

(2) Except for ONB programs that enroll only school-age children and operate on public or private school premises, the indoor licensed space must comply with the Washington state building code and local building code as enacted at the time of licensure.

(3) Facility modifications must comply with WAC 110-302-0402.

(4) Prior to licensing, applicants must contact state, city, and local agencies that regulate ONB programs. An ONB provider must obtain regulations and comply with the direction given by such agencies. These agencies may include, but are not limited to, the Washington state department of labor and industries, the Washington state fire marshal, DOH, local health jurisdictions, public parks directors, and emergency management and response agencies.

(5) Before issuing a license, except for ONB programs that enroll only school-age children and operate on public or private school premises, to ONB providers who plan on using an indoor facility or structure for occupancy, such as a cabin or yurt, to meet the biological needs of children, for part of its ONB program that is not currently licensed, the ONB provider must:

(a) Have a certificate of occupancy issued by the local building, planning, or zoning department, or a local equivalent such as a building permit, if a locality does not have the certificate of occupancy; and

(b) Be inspected and approved by the state fire marshal or local authority as approved by the department; or

(c) If state or local government agencies are not available to conduct a fire safety inspection, ONB providers must inspect for fire safety using the state fire marshal form found at <https://www.dcyf.wa.gov/sites/default/files/pdf/el-license/CTR-Fire-Inspection.pdf>. The certificate of occupancy classification does not have to be E or I-4 occupancy; however, all other considerations of fire safety must comply.

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NEW SECTION

WAC 110-302-0420 Prohibited substances. (1) ONB programs must comply with chapter 70.160 RCW, which prohibits smoking in public places and places of employment.

(2) Pursuant to RCW 70.160.030, ONB providers must comply with the requirements described in this subsection.

(a) Prohibit smoking, vaping, or similar smoking activities in licensed indoor space during business and nonbusiness hours;

(b) Prohibit smoking, vaping, or similar activities in licensed outdoor space unless:

(i) The smoking, vaping, or similar activities occurs during non-business hours; and

(ii) The smoking, vaping, or similar activity occurs in an area reserved for smoking or vaping tobacco products that is not a "public place" or "place of employment" as defined in RCW 70.160.020.

(iii) The ONB program is operated on public land and the law allows members of the public to smoke in the area. If smoking is allowed on the public land, the ONB provider must reasonably protect children from second-hand smoke;

(c) Prohibit smoking, vaping, or similar activities in any motor vehicle that is used to transport ONB program enrolled children;

(d) Prohibit smoking, vaping, or similar activities by any ONB provider who is supervising children, including during field trips;

(e) Prohibit smoking, vaping, or similar activities within 25 feet from entrances, exits, operable windows, and vents, pursuant to RCW 70.160.075; and

(f) Except for ONB programs that enroll only school-age children and operate on public or private school premises, post "no smoking or vaping" signs. Signs must be clearly visible and located at each building entrance wherever possible pursuant to WAC 110-302-0505. For ONB programs operating on private land, it is the landowner's duty to post "no smoking" signs.

(3) ONB providers must:

(a) Prohibit any person from consuming or being under the influence of alcohol on licensed space during business hours;

(b) Prohibit any person from consuming or being under the influence of an illegal drug on licensed space during business hours;

(c) Prohibit any person from consuming prescription drugs to the extent that it interferes with the care of children as required by this chapter;

(d) Prohibit any staff person from consuming smokeless cannabis products in licensed space during business hours;

(e) Store any tobacco or vapor products, packaging of tobacco or vapor products, cannabis or associated paraphernalia, or alcohol (both open and closed containers) in a space that is inaccessible to children;

(f) Prohibit children from accessing cigarette or cigar butts and ashes; and

(g) Protect children from members of the public consuming or under the influence of alcohol, legal drugs, illegal drugs, or misused prescription drugs.

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NEW SECTION

WAC 110-302-0425 Initial, nonexpiring, dual licenses, and license modifications. (1) The department may issue an initial license when ONB program applicants demonstrate compliance with health and safety requirements described in this chapter, but may not be in full compliance with all other requirements, pursuant to RCW 43.216.315.

(a) An initial license is valid for six months from the date issued.

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years.

(c) The department must evaluate the ONB provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements described in this chapter during the period of initial license, pursuant to RCW 43.216.305.

(3) Licensees must submit annual compliance documents at least 30 calendar days prior to their anniversary dates. The anniversary date is the date the first initial license was issued. The required annual compliance documents are:

(a) The annual nonrefundable license fee; and

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed ONB program;

(ii) The intent to cease operation as a licensed ONB program;

(iii) A change in the ONB program's operational hours or dates;

and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background check applications as determined by the department's established schedule, pursuant to RCW 43.216.270; and

(d) For each individual required to have a background check clearance, ONB providers must verify current background checks or require the individual to submit a background check application at least 30 calendar days prior to the anniversary date.

(4) If a licensee fails to comply with the requirements for continuing a nonexpiring license by their anniversary date, the licensee's current license expires. ONB providers whose licenses have expired must submit new applications for licensure, pursuant to RCW 43.216.305(3).

(5) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practices, pursuant to RCW 43.216.305(4)(a).

(6) A licensee does not have a right to an adjudicative proceeding to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license if the expiration, nonrenewal, or noncontinuation was caused by the licensee's failure to comply with the requirements of this section.

(7) Licensees must have department approval to hold dual licenses, such as an ONB license and another care giving license, certification, or similar authorization.

(8) If the department determines that a licensee is not in compliance with all the requirements described in this chapter and chapter 43.216 RCW, the licensee may relinquish any license, certification, or authorization they hold. Despite the licensee's agreement to relinquish one of the licensee's certifications, authorizations, or licenses:

(a) The department and licensee may agree to modify the ONB program license; or

(b) The department may suspend, deny, or revoke the ONB program license.

(9) ONB providers must report the information described in this subsection within 24 hours of when they are aware or should be aware of such information.

(a) To the department and local authorities: A fire or other structural damage to the ONB program space or other parts of the premises, including a natural disaster affecting an ONB program space;

(b) To the department:

(i) A retirement, termination, death, incapacity, or change of the director, program director, assistant director, site director, or program supervisor, or change of ownership or incorporation of an ONB provider;

(ii) When ONB providers become aware of a charge or conviction against themselves or a staff person, pursuant to WAC 110-06-0043;

(iii) When ONB providers become aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves or a staff person; and

(iv) Any changes in the ONB program hours of operation to include closure dates.

(10) Prior to increasing the capacity of an ONB program, the licensee, director, program director, assistant director, site director, or program supervisor must request and be approved to increase capacity by the department.

(11) The licensee, director, program director, assistant director, site director, or program supervisor must have state fire marshal or department approval, and comply with local building ordinances following a significant change under WAC 110-302-0402 (1)(a) through (c), if applicable.

(12) The licensee, director, program director, assistant director, site director, or program supervisor must notify the department within 30 calendar days when liability insurance coverage under RCW 43.216.700 has lapsed or been terminated.

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NEW SECTION

WAC 110-302-0435 Waiver from department rules. (1) The department cannot waive a requirement that is described or included in a state or federal law.

(2) Pursuant to RCW 43.216.065, the department may approve a waiver from a rule described in this chapter if it does not jeopardize the health, safety, or welfare of the children in care.

(3) ONB providers' requests for a waiver from a rule in this chapter must be:

(a) Submitted in writing to the department;

(b) Approved in writing by the department secretary or the secretary designee prior to the ONB provider implementing the waiver from the rule; and

(c) For a specific ONB program need or child.

(4) A department approved waiver may be time specific or may remain in effect for as long as the ONB provider continues to comply with the conditions of the waiver. If the waiver is time limited, the ONB provider must not exceed the time frame established by the department.

(5) The department may rescind an approved waiver if a licensing rule that was considered in granting the waiver is materially altered or amended.

(6) The department may rescind an approved waiver at any time if it determines that such waiver is or may negatively impact the health, safety, or well-being of any enrolled child.

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NEW SECTION

WAC 110-302-0436 Variance from department rules. (1) The department cannot provide a variance from a requirement in state or federal law.

(2) Upon written request of an applicant, licensee, director, program director, assistant director, site director, or program supervisor, the department may grant a variance from a rule in this chapter if the proposed variance does not jeopardize the health, safety, or welfare of the children in care.

(3) Requests for a variance from these standards must be:

(a) Submitted in writing to the department;

(b) Approved in writing by the department secretary or the secretary's designee prior to the ONB provider implementing the variance from the rule; and

(c) For a specific ONB program approach or methodology.

(4) A granted variance may be time specific or may remain in effect for as long as the ONB provider continues to comply with the conditions of the variance. If the variance from the rule is time limited, the ONB provider must not exceed the time frame established by the department.

(5) The department may rescind a granted variance if a licensing rule which was considered in granting the variance is materially altered or amended.

(6) The department may rescind a granted variance at any time if it determines that such variance is or may negatively impact the health, safety, or well-being of any enrolled child.

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NEW SECTION

WAC 110-302-0440 Facility licensing compliance agreements, non-referral status, probationary license, and ONB provider rights. (1) At the department's discretion, when an ONB provider is in violation of chapter 43.216 RCW or this chapter, a facility licensing compliance agreement (FLCA) may be issued in lieu of the department taking enforcement action. The FLCA must contain:

(a) A description of the violation and the law or rule that was violated;

(b) A proposed plan from the ONB provider or a designee to comply with the law or rule;

(c) The date the violation must be corrected, determined by:

(i) The seriousness of the violation;

(ii) The potential threat to the health, safety, and well-being to the children in care; and

(iii) The number of times the ONB program has violated this chapter or chapter 43.216 RCW;

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) The signature of the department licensor and the licensee.

(2) ONB providers must return a copy of the completed FLCA to the department after corrective action has been completed and by the date indicated.

(3) ONB providers may request an internal review process regarding the violation of the department rules pursuant to RCW 43.216.395.

(4) In an enforcement action against an ONB program or an ONB provider, ONB providers have the right to refuse to:

(a) Accept or sign a FLCA.

(b) Agree to a probationary license.

(5) If a provider refuses a FLCA or probationary license, this may result in any of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring license;

(c) Suspension of the license;

(d) Revocation of the license; or

(e) Civil penalties.

(6) The department may place a provider on nonreferral status, pursuant to RCW 43.216.325(4), in addition to or in lieu of an enforcement action.

(7) A probationary license may be issued to ONB programs or ONB providers operating under a nonexpiring license as part of a corrective action plan. Prior to issuing a probationary license, the department must refer the ONB program or ONB provider for technical assistance, pursuant to RCW 43.216.320(2).

(8) A department decision to issue a probationary license is based on an ONB program or ONB provider's:

- (a) Negligent or intentional noncompliance with this chapter or chapter 43.216 RCW;
- (b) History of noncompliance with this chapter or chapter 43.216 RCW;
- (c) Current noncompliance with this chapter or chapter 43.216 RCW;
- (d) Fire safety inspection or health and sanitation inspection report that failed to gain approval;
- (e) Use of unauthorized space for the ONB program;
- (f) Inadequate supervision of children;
- (g) Understaffing for the number of children in care;
- (h) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation or personal hygiene practices; and
- (i) Any other factors relevant to the specific situation and consistent with the intent or purpose of this chapter or chapter 43.216 RCW.

(9) The department must not issue a probationary license if the noncompliance by the ONB provider or program presents an immediate threat to the health and well-being of the children.

(10) When the department issues a probationary license, the provider must:

- (a) Provide notice of the probationary license and a copy of the department's probationary licensing agreement to the parents or guardians of enrolled children within five business days of receiving the probationary license;
- (b) Provide documentation to the department that parents or guardians of enrolled children have been notified within 10 business days of receiving the probationary license;
- (c) Inform new parents or guardians of the probationary status before enrolling new children into care;
- (d) Return the ONB program's nonexpiring license to the department; and
- (e) Post documentation of the approved written probationary license as required by RCW 43.216.687.

(11) Pursuant to RCW 43.216.689, ONB providers must have inspection reports and notices of enforcement actions for the past three years readily available for review by the department, parents, guardians, and the public.

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NEW SECTION

WAC 110-302-0443 Enforcement actions—Notice and appeal. (1)

Pursuant to RCW 43.216.325, the department is authorized to take enforcement actions when ONB providers fail to comply with this chapter or chapter 43.216 RCW. Enforcement actions are taken pursuant to RCW 43.216.020, 43.216.065, and 43.216.250. Enforcement actions include civil monetary penalties and the denial, suspension, revocation, modification, or nonrenewal of a license.

(2) ONB providers subject to an enforcement action have the right to appeal by requesting an adjudicative proceeding pursuant to chapter 110-03 WAC, DCYF administrative hearing rules.

(3) The department must issue a notice of violation to ONB providers when commencing enforcement actions. A notice of violation must be sent by certified mail or personally served and must include:

- (a) The reason why the department is taking the action;
- (b) The rules the ONB provider failed to comply with;
- (c) The ONB provider's right to appeal enforcement actions; and
- (d) How the ONB provider may appeal and request a hearing.

(4) Fines must not exceed \$250 per day per violation for an ONB program, or as otherwise set by the legislature. Fines may be:

- (a) Assessed and collected with interest for each day a violation occurs;
- (b) Imposed in addition to other enforcement actions; and
- (c) Withdrawn or reduced if an ONB provider comes into compliance during the notification period.

(5) ONB providers must pay fines within 28 calendar days after receiving a notice of violation unless:

- (a) The office of financial recovery establishes a payment plan for the ONB provider;
- (b) A later due date is specified on the notice of violation, pursuant to RCW 43.216.335(2); or
- (c) The ONB provider requests a hearing, pursuant to chapter 110-03 WAC, DCYF hearing rules and RCW 43.216.335(3).

(6) The department may suspend or revoke a license if ONB providers fail to pay assessed fines within 28 calendar days or become delinquent in making payments, pursuant to RCW 43.216.327 and 43.216.335. If an ONB provider's license is due for renewal, the department may elect not to continue the license for failure to pay a fine.

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RECORDS, POLICIES, REPORTING, AND POSTING

NEW SECTION

WAC 110-302-0450 Parent or guardian handbook and related policies. (1) ONB providers must supply to each parent or guardian written policies regarding the ONB program. Each enrolled child's record must have signed documentation stating the parent or guardian reviewed the handbook and ONB program policies.

(2) ONB providers must have and follow formal written policies in either paper or electronic format, including:

- (a) A nondiscrimination statement;
- (b) A family engagement and partnership communication plan;
- (c) A parent or guardian's permission for photography, videotaping, or surveillance of their child;

- (d) Alcohol, tobacco, cannabis use and prohibition of illegal drugs;
- (e) Curriculum philosophy pursuant to WAC 110-302-0305, and how this philosophy is implemented;
- (f) Child guidance plan, which includes restraint policies and forbidding corporal punishment;
- (g) Expulsion policy;
- (h) ONB program staff-to-child ratios and classroom or age grouping types offered, if applicable;
- (i) For ONB programs that offer any of the following, they must include a policy for each that applies to their ONB program:
 - (i) Care for children with specific or special needs;
 - (ii) Dual language learning;
 - (iii) Religious and cultural activities, including how holidays will be celebrated;
 - (iv) Transportation and off-site field trips;
 - (v) Water activities;
 - (vi) Campfire activities; and
 - (vii) How weapons on the premises are secured, if applicable;
- (j) ONB program risk management policies and waiver(s) for activities that are covered under WAC 110-302-0471 ONB program days and hours of operation, including closure dates and observed holidays;
- (k) Enrollment and disenrollment requirements;
- (l) Fees and payment plans;
- (m) Sign-in and sign-out requirements;
- (n) Information required for the child's record, including:
 - (i) The importance and plan for keeping the information current;
 - (ii) A plan to keep the child's information confidential; and
 - (iii) Who may legally access the child's information;
- (o) A kindergarten transition plan, if applicable;
- (p) What parents or guardians must supply for their child, if applicable (for example, extra clothing or diapers);
- (q) Permission for a parent or guardian's access to areas of the ONB program during business hours;
- (r) Termination of services policy;
- (s) Emergency preparedness plan;
- (t) ONB provider's and staff's duty to report incidents including reporting suspected child abuse, neglect, sexual abuse, or maltreatment;
- (u) Policies regarding mixed age groups, if applicable, including when children may be in a mixed age group;
- (v) Description of where the parent or guardian may find and review the ONB program's:
 - (i) Health policy;
 - (ii) Staff policies;
 - (iii) Consistent care policy;
 - (iv) Menus;
 - (v) Liability insurance;
 - (vi) Inspection reports and notices of enforcement actions, if applicable; and
 - (vii) Other relevant ONB program policies;
- (w) Any food preparation practices done by staff at their private residence, pursuant to WAC 110-302-0198;
- (x) Any laundering practices done by staff or families at their private residence, pursuant to WAC 110-302-0245;
- (y) Policies for postings for an ONB program without an appropriate facility for posting.

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NEW SECTION

WAC 110-302-0455 Attendance records. (1) ONB providers may keep a child in care up to a maximum of 10 hours each day. If needed, the maximum time may be extended based upon the parent or guardian's work, an agreed upon alternate schedule, or travel to and from the ONB program.

(2) ONB providers must keep daily child attendance records, either in paper or electronic format for each child including the children of staff in the ONB program. These records must be easily accessible and kept on-site or in the ONB program's administrative office for department review. These records must clearly document:

- (a) The name of the child;
- (b) The date of care;
- (c) Child arrival and departure times from the ONB program;
- (d) Signature or electronic signature of parent, guardian or other authorized person at the time of arrival and departure; and
- (e) A staff signature when a child leaves the ONB program to attend school or participate in off-site activities not offered by the ONB program.

(3) ONB providers must keep daily staff attendance records for each classroom or group of children. These attendance records must be on paper or in an electronic format and clearly document:

- (a) The name of each staff member including staff assigned to care for children with special needs and one-on-one care and volunteers;
- (b) The number of children in each ONB program classroom or group of children;
- (c) The staff-to-child ratio;
- (d) The date; and
- (e) Start and end times of the assigned staff or volunteers.

(4) If the attendance records are kept electronically, the electronic system must:

- (a) Record either an electronic signature, swipecard, personal identification number (PIN), biometric reader, or similar action by the parent or authorized person when signing the child in or out of care or staff notation of who picked up or dropped off along with time in and out if authorized person does not have electronic signature, swipe card, PIN, biometric reader or similar action;
- (b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against disproof of the electronic records;
- (c) Be able to produce an authentic, verifiable and uniquely identified written record for each transaction;
- (d) Be able to authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;
- (e) Be able to capture an electronic record for each transaction conducted;
- (f) Be able to retain the electronic record in an accessible form for their legal minimum retention period;
- (g) Be able to search and retrieve electronic records in the normal course of business; and

(h) Be able to perform in an accurate, reliable, and consistent manner in the normal course of business.

(5) Electronic attendance records must contain information necessary to reproduce the entire electronic record and associated signatures in a form that permits a person viewing or printing the entire electronic record to verify:

- (a) The contents of the electronic record;
- (b) The person signing the electronic record; and
- (c) The date signatures were executed.

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NEW SECTION

WAC 110-302-0460 Child records. (1) ONB providers must keep current individualized enrollment and health records for all enrolled children, including children of staff, updated annually or as often as enrolled children's health records are updated.

(a) A child's record must be kept in a confidential manner but in an area easily accessible to staff.

(b) A child's parent or guardian must be allowed access to all of their own child's records.

(2) Each child's enrollment record must include the following:

(a) The child's birth date;

(b) An enrolled child's parent or guardian's phone number, address, and contact information for reaching the family while the child is in care;

(c) Emergency contact information. If no emergency contact is available, a written and signed emergency contact plan may be accepted;

(d) Names and phone numbers of persons authorized to pick up enrolled children;

(e) A plan for special or individual needs of the child, if applicable, including parent or guardian signatures, pursuant to WAC 110-300-0300;

(f) Signed parent or guardian permissions and waivers, pursuant to WAC 110-302-0450 as applicable for:

(i) Field trips;

(ii) Transportation;

(iii) Bathing;

(iv) Plant foraging activities, pursuant to WAC 110-302-0346;

(v) Climbing natural features, pursuant to WAC 110-302-0347;

(vi) Water activities including swimming pools or other bodies of water, pursuant to WAC 110-302-0350;

(vii) Campfire activities, pursuant to WAC 110-302-0351;

(viii) Tool use activities, pursuant to WAC 110-302-0352;

(ix) Applicable ONB program risk management policies and waivers, pursuant to WAC 110-302-0471; and

(x) Photo, video, or surveillance activity;

(g) The beginning and end enrollment date for children no longer in the ONB program's care;

(h) Physical restraint documentation pursuant to WAC 110-302-0335, if applicable;

(i) Expulsion information, documentation, and steps taken to avoid expulsion, if applicable;

- (j) Termination of services documentation and communication; and
- (k) Notification of child developmental screening information given to the preschool-age child's parent or guardian, if applicable.
- (3) Each child's health record and the information described in subsection (2)(a) through (e) of this section must be available to staff for medical administration or emergencies.
- (4) A health record is required for every child who is enrolled and counted in an ONB program's capacity. A health record must include:
 - (a) An immunization record, pursuant to WAC 110-302-0210;
 - (b) The child's health history, including any known health conditions and the child's individual care plan, if applicable;
 - (c) A medication authorization and administration log, pursuant to WAC 110-302-0215, if applicable;
 - (d) Documentation of special medical procedure training by parent or guardian, if applicable;
 - (e) Medical and dental care provider names and contact information or what facility the parent or guardian would prefer for treatment;
 - (f) Dates of the child's last physical and dental exam, if available;
 - (g) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian;
 - (h) Signed parent or guardian permission for visiting health professionals who provide direct services to children at the ONB program;
 - (i) An incident or injury report, pursuant to WAC 110-302-0475, that includes:
 - (i) The date and description of the child's incident or injury;
 - (ii) Treatment provided to the child while in care;
 - (iii) The names of the ONB program staff providing the treatment;
 - and
 - (iv) Evidence that a copy of the incident or injury report was given to the child's parent or guardian;
 - (j) Documentation that an ONB provider reported food poisoning or contagious diseases to the local health jurisdiction or the DOH, if applicable.

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NEW SECTION

WAC 110-302-0465 Retaining facility and ONB program records.

- (1) ONB providers must keep the records required under this chapter for a minimum of three years unless otherwise indicated.
- (2) Attendance records must be kept for a minimum of five years.
- (3) Facility and ONB program records from the previous 12 months must be easily accessible and kept on-site or in the ONB program's administrative office for department or other state agency review.
- (4) Records older than 12 months must be provided within two weeks of a written request by the department.
- (5) ONB providers must keep the following records available for department review:
 - (a) The parent or guardian handbook;
 - (b) Sleep equipment forms and specifications, if applicable;

- (c) Food temperature logs pursuant to CACFP, if applicable;
 - (d) Child incident and illness logs;
 - (e) Vaccination records for pets or animals housed at the ONB, if applicable;
 - (f) Car insurance policy, if applicable;
 - (g) Curriculum planning schedule;
 - (h) Strengthening families program self-assessment or an equivalent assessment, if applicable;
 - (i) Documents from department visits (inspections, monitoring, compliance agreements, and safety plans);
 - (j) Land use agreements for ONB programs;
 - (k) Insurance policies, for ONB programs; and
 - (l) Waivers or variances from department rules, if applicable.
- (6) Except for ONB programs that enroll only school-age children and operate on public or private school premises, ONB providers must keep the following records:
- (a) Furniture and play equipment forms and specifications, if applicable;
 - (b) CCA test results, if applicable;
 - (c) Annual fire inspection by qualified fire professional, if applicable;
 - (d) Monthly inspection to identify fire hazards and elimination of such hazards;
 - (e) Monthly testing of smoke and carbon monoxide detectors;
 - (f) Monthly fire extinguisher inspection and annual maintenance;
 - (g) Lead and copper testing results;
 - (h) Private well and septic systems inspection and testing results, if applicable;
 - (i) Cleaning log for large area rugs or carpets, if applicable;
 - (j) Pesticide use (seven years);
 - (k) King, Pierce, and Snohomish counties smelter plume inspection results or evaluation agreement, if applicable; and
 - (l) Land maintenance records, such as arborist records, for ONB programs operating on private land.

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NEW SECTION

WAC 110-302-0470 Emergency preparedness plan. (1) ONB programs must have and ONB providers must follow a written emergency preparedness plan. The plan must be reviewed and approved by the department prior to being licensed as an ONB program and prior to when the ONB provider makes substantial changes to the ONB program or premises. Emergency preparedness plans must:

- (a) Be designed to respond to fire, natural disasters, and other emergencies that might affect the ONB program;
- (b) Be specific to the ONB program and able to be implemented during hours of operation;
- (c) Address what the ONB provider would do if a staff member has an emergency to ensure children are not left unsupervised;
- (d) Address what the ONB program must do if parents are not able to get to their children for up to three days;

(e) Follow the requirements contained in chapter 212-12 WAC, Fire marshal standards and the state fire marshal's office requirements of an ONB program;

(f) Be reviewed at program orientation, annually with all ONB program staff with documented signatures, and when the plan is updated;

(g) Be reviewed with parents or guardians when a child is enrolled and when the plan is updated; and

(h) Apply to all locations where an ONB program is licensed to operate.

(2) The written emergency preparedness plan must cover at a minimum:

(a) Disaster evacuation plans, including fires that require evacuation from a building and outdoor fires or encounters with dangerous wildlife that require evacuation from the outdoor natural space into the nearby emergency shelter or alternative evacuation location.

(i) An evacuation floor plan of any building being used by the ONB program that identifies room numbers or names of rooms, emergency exit pathways, emergency exit doors, and emergency exit windows if applicable;

(ii) Methods to be used for sounding an alarm or informing children of the danger and calling 911;

(iii) Actions to be taken by a person discovering an emergency;

(iv) How the ONB provider will evacuate children, especially those who cannot walk independently. This may include children with disabilities, functional needs requirements, or other special needs;

(v) Where the emergency shelter and evacuation route are located;

(vi) What to take when evacuating children including, but not limited to:

(A) First-aid kit(s);

(B) Copies of emergency contact information;

(C) Child medication records; and

(D) Individual children's medication, if applicable.

(vii) How the ONB provider will maintain the required staff-to-child ratio and account for all children;

(viii) How parents or guardians will be able to contact the ONB program; and

(ix) How children will be reunited with their parents or guardians after the event.

(b) Earthquake procedures including:

(i) What an ONB provider will do during an earthquake;

(ii) How an ONB provider will account for all children; and

(iii) Except for ONB programs that enroll only school-age children and operate on public or private school premises, how an ONB provider will coordinate with local or state officials to determine if the licensed space is safe for children after an earthquake.

(c) Public safety related lockdown scenarios when an individual at or near an ONB program is harming or attempting to harm others with or without a weapon. This plan must include lockdown of the ONB program or shelter-in-place including:

(i) How doors and windows will be secured to prevent access, if needed; and

(ii) Where children will safely stay inside the ONB license space, or inside an alternate evacuation location for an ONB program without a suitable structure in the licensed area.

(d) Missing child protocols pursuant to WAC 110-302-0475. Missing child protocols for ONB programs must also include how staff will:

(i) Immediately check for the child's presence at hazardous features, such as a ravine, cliff, road, or body of water, within a quarter mile of the ONB program; and

(ii) Manage the behavior of the remaining children, and using techniques described in WAC 110-302-0310(4).

(e) Extreme weather procedures including, but not limited to, a description of the following:

(i) How staff will determine whether to cancel or alter the scheduled daily ONB program based on weather including, but not limited to:

- (A) Strong winds, including gusts over 25 mph;
- (B) Extreme cold or heat, pursuant to WAC 110-302-0147;
- (C) Unhealthy air quality;
- (D) Lightning storm;
- (E) Tornado;
- (F) Hurricane;
- (G) Falling trees or large branches; or
- (H) Flooding, tsunami, or seiche;

(ii) How staff will inform parents and guardians of canceled or altered daily ONB programs;

(iii) How staff will determine a need to use the emergency shelter;

(iv) How staff will contact families if extreme weather requires a cancellation of the ONB program after the day has already begun;

(v) How and where staff will care for children whose parents cannot be contacted when the ONB program is canceled after the day has already begun;

(vi) The factors that will be used for determining how long staff will remain at the emergency shelter with children before relocating to an alternate evacuation location;

(vii) How staff and children will relocate to an alternate evacuation location (i.e., transportation);

(viii) How the ONB provider will maintain the required staff-to-child ratio and account for all children; and

(ix) How parents will be notified of emergencies, evacuations, and how children will be reunited with their parents or guardians after the event.

(f) A description for how parents or guardians will be contacted after the emergency ends.

(3) ONB providers must keep on the premises a three-day supply of food, water, blankets for possible overnight stay, and life-sustaining medication for the licensed capacity of children and current staff for use in case of an emergency. An ONB program must ensure these resources are available at the alternate evacuation location.

(a) For an ONB program that enrolls only school-age children and operates on public or private school premises, if the school on the premises has an existing three-day supply of food and water that would sustain the ONB program's license capacity of children and staff, the ONB program may submit to the department documentation from the school verifying the school agrees to allow the ONB program to access and use the three-day supply of food and water in an emergency.

(4) ONB providers must practice and record emergency drills with staff and children as follows:

(a) Disaster evacuation drills, such as for fire or encounters with dangerous wildlife, once each calendar month;

(b) Earthquake, lockdown, high winds, flooding, shelter-in-place, or missing child drill once every two calendar months;

(c) Emergency drills must be conducted with a variety of staff and at different times of the day; and

(d) Drills must be recorded on a department form and include:

(i) The date and time of the drill;

(ii) The number of children and staff who participated;

(iii) The length of the drill; and

(iv) Notes about how the drill went and how it may be improved.

(5) In areas where local emergency plans are already in place, such as school districts, ONB programs may adopt or amend such procedures when developing their own plan.

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NEW SECTION

WAC 110-302-0471 ONB benefit-risk assessments, risk management policies, and waivers. (1) ONB programs must have and follow benefit-risk assessments and risk management plans. These assessments and plans must be submitted to DCYF on a form provided by the department and be available for department review at the time of initial licensing. An amended assessment or plan cannot be implemented until the department has approved it. Benefit-risk assessments must include, but are not limited to, the following criteria:

(a) Information about the site or sites that will be used by the ONB program on a regular basis.

(b) Different seasons of the year such as summer versus winter plans, based on how conditions change within ONB sites and locations used by the ONB program on a regular basis.

(c) Risky play activities including, but not limited to, the following:

(i) Climbing natural features pursuant to WAC 110-302-0146;

(ii) Water activities pursuant to WAC 110-302-0350;

(iii) Using sharp tools pursuant to WAC 110-302-0352;

(iv) Plant foraging pursuant to WAC 110-302-0346;

(v) ONB program pets pursuant to WAC 110-302-0225;

(vi) Egg collection and consumption pursuant to WAC 110-302-0196;

(vii) Campfire activities pursuant to WAC 110-302-0351; and

(viii) Activities near water, cliffs, steep slopes, or other potentially hazardous natural features.

(d) Guidance for when increased staffing is necessary, and provide guidance for the development of the applicable risk management policies and procedures described in subsection (2) of this section.

(2) ONB programs must have and follow risk management policies and procedures to address potential hazards and risks of the ONB programs. These must include, but are not limited to, policies or procedures related to the following:

(a) Encountering non-ONB program pets and wildlife pursuant to WAC 110-302-0225 and 110-302-0353;

(b) Interacting with strangers, limiting unsupervised access to any child in care, pursuant to WAC 110-302-0345;

(c) The shared use of public space;

(d) Weather requiring the use of an emergency shelter;

(e) Required clothing and keeping children dressed for the weather pursuant to WAC 110-302-0147;

(f) Using public facilities or buildings;

- (g) Encountering poisonous species; and
 - (h) All other potentially hazardous situations and natural features.
- (3) Parents or guardians must sign an ONB program risk waiver that acknowledges and accepts the potential hazards and risks associated with ONB programs. The ONB programs' applicable risk management policies or procedures, as described in subsection (2) of this section, along with the parent waiver, must be included in the parent handbooks, pursuant to WAC 110-302-0450.
- (4) A copy of waivers signed by the child's parent or guardian must be kept in each child's records.
- (5) ONB staff must be trained on the applicable ONB program benefit-risk assessments, and risk management policies and risk procedures pursuant to WAC 110-302-0110.
- (6) Staff must consider the health and safety needs of children and staff daily, as well as any instances of heightened or dangerous behavior among children, when determining that more restrictive risk management practices are necessary to address an unforeseen increased risk.

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NEW SECTION

WAC 110-302-0475 Duty to protect children and report incidents.

- (1) Pursuant to RCW 26.44.030, when ONB providers have reasonable cause to believe a child has suffered abuse or neglect, that ONB provider must report such incident, or cause a report to be made, to the proper law enforcement agency or the department. "Abuse and neglect" has the same meaning here as in RCW 26.44.020.
- (2) ONB providers must report by telephone to the listed individuals, department, and other government agencies when the ONB provider knows or has reason to know of an act, event, or occurrence described in (a) through (f) of this subsection.
- (a) Law enforcement or the department at the first opportunity, but in no case longer than 48 hours:
- (i) The death of a child while in the ONB program's care or the death from injury or illness that may have occurred while the child was in care;
 - (ii) A child's attempted suicide or talk about attempting suicide;
 - (iii) Any suspected physical, sexual, or emotional child abuse;
 - (iv) Any suspected child neglect, child endangerment, or child exploitation;
 - (v) A child's disclosure of sexual or physical abuse; or
 - (vi) Inappropriate sexual contact between two or more children.
- (b) Emergency services (911) immediately, and to the department within 24 hours:
- (i) A child missing from care, triggered as soon as staff realizes the child is missing;
 - (ii) A medical emergency that requires immediate professional medical care;
 - (iii) A child who is given too much of any oral, inhaled, or injected medication;
 - (iv) A child who took or received another child's medication;

- (v) A fire or other emergency;
- (vi) Poisoning or suspected poisoning; or
- (vii) Other dangers or incidents requiring emergency response.

(c) Washington poison center immediately after calling 911, and to the department within 24 hours:

(i) A poisoning or suspected poisoning;

(ii) A child who is given too much of any oral, inhaled, or injected medication; or

(iii) A child who took or received another child's medication.

The ONB provider must follow any directions provided by Washington poison center;

(d) The local health jurisdiction or the DOH immediately, and to the department within 24 hours about an occurrence of food poisoning or reportable contagious disease as defined in WAC 246-110-010(3);

(e) To the department at the first opportunity, but in no case no longer than 24 hours, upon knowledge of any person required by chapter 110-06 WAC to have a change in their background check history due to:

(i) A pending charge or conviction for a crime listed in chapter 110-06 WAC;

(ii) An allegation or finding of child abuse, neglect, maltreatment or exploitation under chapter 26.44 RCW or chapter 110-30 WAC;

(iii) An allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(iv) A pending charge or conviction of a crime listed in the secretary's list in chapter 110-06 WAC from outside Washington state, or a "negative action" as defined in RCW 43.216.010;

(f) A child's parent or guardian as soon as possible, but no later than the release of the child at the end of the day, and to the department within 24 hours, about using physical restraint on a child as described in WAC 110-302-0335.

(3) In addition to reporting to the department by phone or email, ONB providers must submit a written incident report of the following on a department form within 24 hours of:

(a) Situations that required an emergency response from emergency services (911), Washington poison center, or DOH;

(b) Situations that occur while children are in care that may put children at risk including, but not limited to, inappropriate sexual touching, neglect, physical abuse, maltreatment, or exploitation; and

(c) A serious injury to a child in care.

(4) ONB providers must immediately report to the parent or guardian:

(a) Their child's death, serious injury, need for emergency or poison services; or

(b) An incident involving their child that was reported to the local health jurisdiction or the DOH.

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NEW SECTION

WAC 110-302-0480 Transportation and off-site activity policy.

(1) ONB programs must have and ONB providers must follow a transportation and off-site activity policy for personal or public transportation service, or nonmotorized travel offered to children in care.

- (a) The transportation and off-site activity policy must include routine trips, which must not exceed two hours in a vehicle per day for any individual child.
- (b) Written parent or guardian authorization to transport the parent or guardian's child. The written authorization must be:
- (i) For a specific event, date, and anticipated travel time;
 - (ii) For a specific type of trip (for example, transporting to and from school, or transporting to and from a field trip); or
 - (iii) For a full range of trips a child may take while in the ONB provider's care; and
 - (iv) For purposes of ONB program emergency preparedness, emergency trips to an alternative evacuation location.
- (c) Written notices to parents or guardians, to be given at least 24 hours before field trips are taken.
- (2) During travel to an off-site activity, ONB providers must:
- (a) Have the health history, appropriate medication (if applicable), emergency information, and emergency medical authorization forms accessible for each child being transported;
 - (b) Have a phone to call for emergency help;
 - (c) Have a complete first-aid kit;
 - (d) Maintain the staff-to-child ratio, mixed groupings, and active supervision requirements;
 - (e) Have a current first-aid and CPR certification pursuant to WAC 110-302-0106;
 - (f) Take attendance using a roll call or other method that assures all children are accounted for each time children begin and end travel to an off-site activity, and every time children enter and exit a vehicle; and
 - (g) Never leave children unattended in the vehicle.
- (3) When ONB providers supply the vehicle to transport children in care, the ONB program and ONB provider must:
- (a) Follow chapter 46.61 RCW, Rules of the road, and other applicable laws regarding child restraints and car seats;
 - (b) Assure that the number of passengers does not exceed the seating capacity of the vehicle;
 - (c) Maintain the vehicle in good repair and safe operating condition;
 - (d) Maintain the vehicle temperature at a comfortable level to children;
 - (e) Assure the vehicle has a current license and registration by Washington state transportation laws;
 - (f) Assure the vehicle has emergency reflective triangles or other devices to alert other drivers of an emergency;
 - (g) Assure the driver has a valid driver's license for the type of vehicle being driven and a safe driving record for at least the last five years;
- (4) Prevent any driver with a known condition that would compromise driving, supervision, or evacuation capabilities from operating ONB program vehicles; and
- (5) Have a current insurance policy that covers the driver, the vehicle, and all occupants.

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NEW SECTION

WAC 110-302-0485 Termination of services policy. (1) ONB programs must have and ONB providers must follow a termination of services policy.

(2) ONB providers may terminate a child's services due to that child's parent or guardian's inability to meet the expectations and requirements of the ONB program. Expectations and requirements of the ONB program may include unpaid bills, continual late arrivals, or a parent, guardian or family member's inappropriate or unsafe behavior in or near ONB program space.

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NEW SECTION

WAC 110-302-0486 Expulsion policy. (1) ONB programs must have and ONB providers must follow an expulsion policy, pursuant to WAC 110-302-0340.

(2) The expulsion policy must:

(a) Provide examples of behavior that could lead to expulsion from the ONB program;

(b) Detail steps the ONB provider takes to avoid expelling a child including, but not limited to, environmental and staffing changes;

(c) Detail how the ONB provider communicates to the parent or guardian of a child the steps taken under (b) of this subsection; and

(d) Include information that may benefit an expelled child including, but not limited to, community based resources.

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NEW SECTION

WAC 110-302-0490 Child restraint policy. (1) ONB programs must have and ONB providers must follow a child restraint policy that contains behavior management and practices, pursuant to WAC 110-302-0335.

(2) A restraint policy must be:

(a) Appropriate for children's developmental level, abilities, and language skills;

(b) Directly related to the child's behavior; and

(c) Designed to be consistent, fair, and positive.

(3) The director, program director, assistant director, site director, program supervisors, lead teachers and other appropriate staff members must be trained annually in the ONB program's child restraint policy.

(4) Only trained staff may restrain a child in care, pursuant to WAC 110-302-0335.

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NEW SECTION

WAC 110-302-0495 Consistent care policy. (1) ONB programs must have and ONB providers must follow a policy that promotes the consistent care of children.

(2) When possible, ONB providers must be assigned to work with a consistent group of children for much of the day with a goal of building long-term, trusting relationships.

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NEW SECTION

WAC 110-302-0500 Health policy. (1) ONB programs must have and ONB providers must follow a written health policy reviewed and approved by the department that includes the topics listed in subsection (2) of this section. The health policy must be reviewed and approved by the department when changes are made, and as otherwise necessary.

(2) ONB programs' health policies must comply with the requirements described in these standards including, but not limited to:

- (a) A prevention of exposure to blood and body fluids plan;
- (b) Meals, snacks, and food services including guidelines for food allergies and food brought from home;
- (c) Handwashing and hand sanitizer use;
- (d) Toileting;
- (e) Observing children for signs of illness daily;
- (f) Exclusion and return of ill children, staff, or any other person in the ONB program space;
- (g) Contagious disease notification;
- (h) Medical emergencies, injury treatment and reporting;
- (i) Immunization tracking;
- (j) Medication management, storage, administration and documentation;
- (k) Care for pets and animals that have access to licensed space, how children may engage with pets and animals, and the health risks of interacting with pets and animals;
- (l) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, toileting equipment, and laundry will be cleaned, sanitized and disinfected;
- (m) Pest control policies;
- (n) Caring for children with special needs or health needs, including allergies, as listed in the child's record; and
- (o) Dental hygiene practices and education.

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NEW SECTION

WAC 110-302-0505 Postings. (1) Postings listed in subsection (2) of this section that are part of an ONB program must be clearly visible to parents, guardians, and ONB program staff whenever possible. ONB programs without the ability to post the information detailed in subsection (2) of this section must instead:

- (a) Have available on-site and easily accessible for parent or guardian review the same information as described in subsection (2)(a), (b), (d), (f), (k), and (l) of this section.
- (b) Deliver notice to the parents and guardians of the events described in subsection (2)(i), (l), and (m) of this section within 24 hours of the occurrence of such event or events.
- (c) Have available on-site and easily accessible to staff the information contained in subsection (2)(a), (b), (c), (e), (f), (g), (h), (i), (j), and (m) of this section.
- (2) Postings on ONB program premises must include, whenever possible:
- (a) The child care license, pursuant to WAC 110-302-0010;
- (b) The ONB program site map, with emergency routes and exits identified in each child care area, pursuant to WAC 110-302-0400 (3)(g) and 110-302-0470 (2)(a)(i);
- (c) Dietary restrictions, known allergies, and nutrition requirements, if applicable, in a location easily accessible for staff but not available to those who are not parents or guardians of the enrolled child, pursuant to WAC 110-302-0186(1);
- (d) Handwashing practices at each handwashing sink or station, pursuant to WAC 110-302-0200;
- (e) Diaper changing or stand-up diapering procedure at each diapering station, if applicable, pursuant to WAC 110-302-0220 and 110-302-0221 (1)(d);
- (f) Pesticide treatment notices, if applicable, pursuant to RCW 43.216.280 and 17.21.410 (1)(d);
- (g) Emergency numbers and information including, but not limited to:
- (i) 911 or emergency services number;
- (ii) Name, address and directions from the nearest arterial street or nearest cross street to the facility;
- (iii) The department's toll-free number;
- (iv) Washington poison center toll-free number; and
- (v) The contact information for child protective services;
- (h) The location of emergency medical information for children and staff;
- (i) A notice of any current or pending enforcement action, including probationary licenses, pursuant to RCW 43.216.687. Notice must be posted:
- (i) Immediately upon receipt; and
- (ii) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;
- (j) "No smoking" and "no vaping" signs, pursuant to WAC 110-302-0420;
- (k) A copy of a department approved waiver or variance from a rule in this chapter, if applicable. Waivers or variances must be posted for parent or guardian view when related to the overall ONB program and not related to any specific child, and as long as the waiver or variance is approved;
- (l) Insurance coverage, or a lapse or termination of such coverage if applicable, pursuant to RCW 43.216.700; and
- (m) Any other information listed or described in RCW 43.216.687.

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WSR 22-23-076

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed November 10, 2022, 3:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-089.

Title of Rule and Other Identifying Information: WAC 246-817-701 through 246-817-790 for administration of anesthetic agents for dental procedures. The dental quality assurance commission (commission) is proposing rule amendments to establish new and updated requirements for the administration of anesthetic agents for dental procedures.

Hearing Location(s): On January 20, 2023, at 8:30 a.m., in person at Olympia Parks, Arts and Recreation, Multipurpose Room B, 222 Columbia Street N.W., Olympia, WA 98501; or virtual [https://us02web.zoom.us/webinar/register/WN_E8QNdtFsTIqF_Kb4ZdAN4A](https://us02web.zoom.us/join/https://us02web.zoom.us/webinar/register/WN_E8QNdtFsTIqF_Kb4ZdAN4A). The public hearing will be hybrid. Participants can attend at either the physical location or virtually by registering via Zoom.

Date of Intended Adoption: January 20, 2023.

Submit Written Comments to: Amber Freeberg, P.O. Box 47852, Olympia, WA 98504, email dental@doh.wa.gov, fax 360-236-2901, by January 6, 2023.

Assistance for Persons with Disabilities: Contact Amber Freeberg, phone 360-236-4893, fax 360-236-2901, TTY 711, email dental@doh.wa.gov, by January 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule includes 24-hour on-call availability, updates basic life support education, adds requirements for emergency protocols and training, clarifies recordkeeping and emergency medications, establishes self-inspections for all dentists when anesthetic is administered, updates on-site inspections for dentists with moderate sedation with parenteral agents or general anesthesia permits, and creates a pediatric sedation endorsement.

Reasons Supporting Proposal: The current rules have had several updates and a complete review was necessary. Creating a pediatric sedation endorsement is necessary to provide safeguards for the unique sedation needs of pediatric patients. Interested parties have expressed concern with lack of 24-hour on-call availability after dental procedures. Although current rule requires 24-hour on-call availability when anesthesia is used, there are complex dental procedures that do not involve anesthesia and on-call availability is necessary. Self-inspections are needed to ensure all dentists are prepared for dental emergencies when any type of anesthetic is administered during a dental procedure. Current rule requires on-site inspections for dentists holding general anesthesia permits; the proposed rule amendment adds moderate sedation with parenteral agents permits and creates standards for the on-site inspections to ensure patient safety.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 18.32.640.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2985; Imple-

mentation and Enforcement: Amber Freeberg, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 711, email dental@doh.wa.gov.

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

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

Explanation of exemptions: See explanation above.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 246-817-730 and 246-817-771 are both exempt under RCW 34.05.310 (4) (d) as the proposed rules in both clarify current requirements without material change.

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

Small Business Economic Impact Statement

Description of the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The commission is proposing rule amendments to establish new and updated requirements for the administration of anesthetic agents for dental procedures. The proposed rule includes 24-hour on-call availability, updates basic life support education, adds requirements for emergency protocols and training, clarifies recordkeeping and emergency medications, establishes self-inspections for all dentists when anesthetic is administered, updates on-site inspections for dentists with moderate sedation with parenteral agents or general anesthesia permits, and creates a pediatric sedation endorsement.

The current rules have had several updates and a complete review was necessary. Creating a pediatric sedation endorsement is necessary to provide safeguards for the unique sedation needs of pediatric patients. Interested parties have expressed concern with lack of 24-hour on-call availability after dental procedures. Although current rule requires 24-hour on-call availability when anesthesia is used, there are complex dental procedures that do not involve anesthesia and on-call availability is necessary. Self-inspections are needed to ensure all dentists are prepared for dental emergencies when any type of anesthetic is administered during a dental procedure. Current rule requires on-site inspections for dentists holding general anesthesia permits; the proposed rule amendment adds moderate sedation with parenteral agents permits and creates standards for the on-site inspections to ensure patient safety.

Businesses that are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	Number of businesses in Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
621210	Offices of dentists	3551	$[(1,212,689 * 1000) / 3551] * (0.01) = \$3,415$	

Analysis of the probable cost of compliance. The probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

There are costs for licensed dentists to comply with the proposed rules. Costs are associated with 14 sections of the proposed rules. Cost estimates are for the average dental office. There is no anticipation of loss of sales or revenue to comply with the proposed rules. Costs and time associated with complying with the proposed rules were gathered through various sources, including:

- Bureau of Labor Statistics;
- Dental health care providers' direct comments;
- Dental supply vendors; and
- Dental education providers.

WAC 246-817-701 Administration of anesthetic agents for dental procedures: The existing rule excludes procedures using only local anesthesia. The proposed rule amendment modifies 24-hour availability to include local anesthetic and adds options to meet requirements for availability.

The commission anticipates that for a dentist to establish a pre-arranged agreement with another provider for immediate care to a patient will take 15-30 minutes. The average hourly salary of a dentist is \$79.00¹. Therefore, the anticipated cost of compliance to the proposed rule is \$40.00.

¹ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

WAC 246-817-720 Basic life support requirements: The existing rule requires health care provider basic life support certification requirements for dental staff. The proposed rule amendment adds a hands-on component for initial [initiation] and renewal of health care provider basic life support (BLS) certification and education standards.

The commission anticipates no new cost to obtain health care provider BLS certification with a hands-on component, as dentists are currently required to have health care provider BLS certification. There are a variety of courses and locations available to obtain health care provider BLS certification. The cost of a seven-hour in-person course through American Red Cross is \$120² and there is no difference in cost in a health care provider BLS certification course with and without a hands-on component.

² Search | Classes, Products, Articles | Red Cross

WAC 246-817-722 Defibrillator: The existing rule requires a licensed dentist providing anesthetic agents to ensure a defibrillator or automated external defibrillator is accessible to all staff within 60 seconds and excludes local anesthesia from this requirement. The proposed rule amendment adds this requirement when local anesthetic is administered. There is a new cost for dentists that do not already have a defibrillator or AED in office. It is not always possible to predict how a patient is going to respond to anesthetic agents and

practitioners need to be able to rescue that patient. A defibrillator or AED average price range is \$1200 to \$1900³. There are a variety of types, models, and distributors available to obtain a defibrillator or AED. There are a variety of courses and locations to obtain defibrillator or AED training.

³ AED Machine for Sale | AED Superstore AEDs

WAC 246-817-724 Recordkeeping, equipment, and emergency medications or drugs: The existing rule requires specific patient record documentation, equipment, emergency drugs, and excludes minimal sedation by inhalation. The proposed rule amendments include the following:

- Adds requirement for written emergency protocols, training, and annual review;
- Details recordkeeping requirements;
- Clarifies these requirements when anesthetics of any kind are administered, to include local anesthetic;
- Adds exception for pediatric patients when local anesthetic and nitrous is [are] administered;
- Updates examples of emergency drugs; and
- Adds requirement to have equipment calibrated to manufacturer instructions.

There is a cost to develop and maintain written emergency protocols. There is an additional cost for staff training and documenting the annual review. Costs greatly differ depending on whether the dentist and staff establish their own written infection prevention policies and training or if the dentist determines to use an outside organization to develop policies and training.

The commission assumes that an average staff makeup in a dental office includes one dentist, two hygienists, two dental assistants, and one administrator. Salaries based on the Bureau of Labor Statistics are:

- Dentist - \$79 hourly wage⁴.
- Dental Hygienist - \$38 hourly wage⁵.
- Dental Assistant - \$19 hourly wage⁶.
- Office Administrator - \$48 hourly wage⁷.

⁴ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

⁵ Dental Hygienists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

⁶ Dental Assistants: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

⁷ Administrative Services and Facilities Managers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

The commission assumes [that the] that either a staff person in the dental office or the dentist will develop, maintain, and provide training for emergency protocols. The time spent is estimated at 20 hours for initial development. It is estimated that two hours of initial training will be needed for all staff, and one-hour annual training for all staff.

- The cost for developing policies and procedures for 20 hours ranges from \$372 (for a dental assistant) to \$1570 (for a dentist) depending on who prepares and revises policies.
- The initial cost for two hours of training is \$477 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.

- The cost for one-hour annual training is \$239 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.
- It is assumed time to document annual review is 15 minutes. The cost for the dentist to document is \$20 annually.

By using straight-line depreciation (spreading the cost of an asset evenly over the asset's useful life) and assuming a five-year useful life (defined as the estimated time that an asset provides value) costs to comply with this section are provided below⁸:

⁸ Resch S, Menzies N, Portnoy A, Clarke-Deelder E, O'Keeffe L, Suharlim C, Brenzel L. How to cost immunization programs: a practical guide on primary data collection and analysis. 2020. Cambridge, MA: immunizationeconomics.org/ Harvard T.H. Chan School of Public Health. Page 39. 7.3.5 Training "Initial training ... should be treated as a capital cost and allocated over a multi-year time horizon. ...training would be a capital cost with a useful life of five years." Page 40. 7.4 Annualization of capital costs. Also includes definitions of useful life (page 40) and straight-line depreciation (page 41). https://msh.org/wp-content/uploads/2021/06/howtocost_digital_12.24.20.pdf

	Initial/First year cost	Two - five year total cost/annually
Initial policy development	\$372 - \$1570	\$0/\$0
Initial two-hour training	\$477	\$0/\$0
Documenting training	\$20	\$80/\$20
Annual training	\$0	\$956/\$239

WAC 246-817-740 Minimal sedation with nitrous oxide: The existing rule provides minimum requirements for a licensed dentist to administer (inhalation) minimal sedation. The proposed rule amendments include the following:

- Changes the title of the section and the term inhalation to nitrous oxide;
- Clarifies specific acceptable training requirements;
- Updates recordkeeping requirement when nitrous oxide is administered;
- Adds requirement for BLS certification;
- Moves continuing education requirements to new WAC 246-817-773; and
- Increases continuing education requirement of seven hours from every five years to every three years.

The commission anticipates there are no new additional costs for a dentist to comply with training requirements, recordkeeping, or BLS certification, as none of the proposed amendments add additional time for a dentist to comply. Clarification for training requirements is consistent with *American Dental Association's Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students*⁹.

⁹ American Dental Association. (2021). Guidance for teaching pain control and sedation to dentists and dental students. Chicago: ADA https://www.ada.org/-/media/project/ada-organization/ada/ada-org/files/resources/research/oral-health-topics/ada_guidelines_teaching_pediatric_sedation.pdf?rev=86a7c539ce9d4025bc2b291223f35328&hash=395FF38AD1E42109BC021760194CAC89

The commission anticipates there are new additional costs for the continuing education change from every five years to every three years. Seven hours every five years equals 1.4 hours annually. Seven hours every three years equals approximately 2.34 hours annually. The proposed rule amendment increases the continuing education by 0.94 hours annually. Continuing education costs vary dramatically depending on number of hours obtaining, where, and method of obtaining continuing education. The average two-hour continuing education course offered by University of Washington, School of Dentistry is \$69¹⁰. The cost for one additional hour annually is \$34.50. Because there are several acceptable ways proposed in new WAC 246-817-773 to complete

continuing education at no cost, the commission assumes minimal or no cost to comply with this change.

¹⁰ CDE Requirements - UW School of Dentistry (washington.edu)

WAC 246-817-745 Minimal sedation: The existing rule identifies the minimum requirements for a licensed dentist to administer a single dose or agent for minimal sedation with or without nitrous oxide. The proposed rule amendments include the following:

- Reduces initial education and training from 21 to 16 hours;
- Removes delineation of single agent versus combined or multiple agents;
- Clarifies specific acceptable training requirements;
- Adds patient evaluation requirement;
- Adds reference to the requirements for recordkeeping, necessary equipment, and required emergency medications or drugs as identified in WAC 246-817-724;
- Clarifies detailed recordkeeping requirement when nitrous oxide is administered;
- Adds requirement for BLS certification;
- Moves continuing education requirements to new WAC 246-817-773; and
- Increases continuing education requirement of seven hours from every five years to every three years.

The commission anticipated that there is a potential cost savings by reducing the initial education and training hours from 21 to 16 hours. The average two-hour continuing education course offered by University of Washington, School of Dentistry is \$69¹¹. There are no new costs for a dentist to comply with training requirements, recordkeeping, or BLS certification as none of the proposed amendments add additional time for a dentist to comply. Reduction and clarification for training requirements are consistent with American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students.

¹¹ CDE Requirements - UW School of Dentistry (washington.edu)

The commission anticipated that there is minimal or no additional cost for a dentist to complete a patient evaluation as patient evaluation is a standard of care currently expected. The proposed rule identifies the American Society of Anesthesiologists patient classification requirements¹².

¹² American Society of Anesthesiologists. (2020). ASA physical status classification system. <https://www.asahq.org/standards-and-guidelines/asa-physical-status-classification-system>

The costs for continuing education change from every five years to every three years is [are] provided in WAC 246-817-740 analysis.

WAC 246-817-755 Moderate sedation with enteral agents: The existing rule identifies the training and administration requirements a licensed dentist must comply with to administer moderate sedation. The proposed rule amendments include the following:

- Clarifies title as "Moderate sedation with enteral agents";
- Increases education and training from 28 to 37 total hours;
- Adds specific acceptable training requirements;
- Adds hands-on skill training requirements;
- Adds patient evaluation requirement;
- Clarifies requirement for BLS certification;
- Moves continuing education requirements to new WAC 246-817-773; and

- Increases continuing education requirement of seven hours from every five years to every three years.

The commission does not anticipate additional costs for the proposed rule increasing training hours and hands-on skill training. The proposed increase in hours and clarification for training requirements are consistent with American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. The proposed increase of 37 hours of education and training from 28 hours includes the education of 16 hours required for minimal sedation proposed in WAC 246-817-745. The remaining proposed 21 hours of education and training must be in moderate sedation. There is a net increase by four hours between these two rules. These additional hours are routinely provided in sedation-related available courses. Increased initial training costs range from \$0 to \$138¹³. The commission has reasonable belief that a dentist can comply with the proposed rule change at no cost for the increased training hours; therefore, the commission does not anticipate an additional cost to comply with the rule.

¹³ CDE Requirements - UW School of Dentistry (washington.edu)

The commission anticipated that there is minimal or no additional cost for a dentist to complete a patient evaluation, as patient evaluation is a standard of care currently expected. The proposed rule identifies the American Society of Anesthesiologists patient classification requirements.

The costs for continuing education change from every five years to every three years is [are] provided in WAC 246-817-740 analysis.

WAC 246-817-760 Moderate sedation with parenteral agents: The existing rule identifies the training requirements a licensed dentist must complete to administer moderate sedation with parenteral agents. The proposed rule amendments include the following:

- Increases initial education requirement from 15 patients to 20 patients of supervised experience;
- Adds hands-on skill training requirements;
- Changes term "minor" to "pediatric";
- Adds list of prohibited drugs;
- Adds patient evaluation requirement;
- Clarifies anesthesia monitor requirement;
- Increases pulse oximetry and respiratory recording to every five minutes from every 15 minutes;
- Adds requirement to have equipment calibrated to manufacturer instructions;
- Adds operating theater, table or chair, and lighting system requirements;
- Adds laryngeal mask airway equipment requirement;
- Adds electrocardiographic monitor equipment requirement;
- Clarifies monitoring requirements;
- Updates examples of emergency drugs;
- Adds bronchodilator agent, advanced cardiovascular life support (ACLS) emergency drugs, and anti-hypoglycemic agent to emergency drugs;
- Adds requirement for written contract requirement if providing sedation in another practitioner's dental office;
- Clarifies requirement for ACLS certification;
- Moves continuing education requirements to new WAC 246-817-773;
- Reduces continuing education requirement from 18 hours to 14 hours every three years; and

- Adds authorization to provide lower level of sedation.

The commission anticipates additional costs of the proposed rule to increase supervised patient experience from 15 to 20 patients. Supervised patient experience is obtained during training. Most programs already provide at least 20 patient experiences, as this is a requirement under American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students. DOCS Education provides IV Sedation Training for Dentists at a cost of \$23,495¹⁴. This is not a new cost and not an increase in cost. Additionally, education and training costs may be higher than the documented range due to the proposed added requirement that the training must include hands-on skills training. Although most training courses already include hands-on skills, there are several courses that have not incorporated this component, as the rule has not previously required it.

¹⁴ IV Sedation Certification | DOCS Education

The commission does not anticipate additional costs for clarifying language and terms, listing prohibited drugs, adding a patient evaluation requirement, clarifying monitoring requirements, updating examples of emergency drugs, clarifying ACLS certification, or adding authorization for lower-level sedation administration, because the standard of care for dentists include all these standards.

The commission anticipates a negligible cost to increase pulse oximetry and respiratory recording from every 15 minutes to every five minutes. Costs are associated with dentist and staff time. The commission anticipates the average staff assisting in a sedation procedure is one dentist and two dental assistants. Salaries based on the Bureau of Labor Statistics are dentist - \$79¹⁵ hourly wage and dental assistant - \$19¹⁶ hourly wage. The proposed rule adds that an additional two recordings are required every 15 minutes. Approximately 30 seconds are needed to view the monitor and to record, that is 60 seconds of increased time spent every 15 minutes for a dentist or dental assistant during a sedation procedure; approximately four minutes per hour. An average sedation procedure is one hour. The commission believes this proposed time increase for monitoring and recording during a sedation procedure is negligible for this reason.

¹⁵ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics ([bls.gov](https://www.bls.gov))

¹⁶ Dental Assistants ([bls.gov](https://www.bls.gov))

The commission anticipates no new costs to have equipment calibrated, adding requirements for operating theater, table or chair, lighting system requirements, and additional emergency drugs. The existing standard of care currently includes ensuring offices where sedation is administered be appropriate for sedating patients, and equipment is maintained and in good working order. Office and equipment standards are recommended by the American Association of Oral and Maxillofacial Surgeons¹⁷.

¹⁷ Practice Resources | AAOMS

The commission anticipates an added cost to purchase additional emergency equipment for laryngeal mask airway and electrocardiographic equipment if the office does not already own them. There are many distributors of emergency equipment. Grayline Medical offers a laryngeal mask at \$35¹⁸. Discount Cardiology offers an electrocardiographic monitor for \$1095¹⁹.

¹⁸ laryngeal mask - Grayline Medical

¹⁹ Certified Pre-Owned | EKG Machines | Patient Monitors ([discountcardiology.com](https://www.discountcardiology.com))

The commission anticipates an additional cost for requiring a written contract when providing sedation in another practitioner's dental office. Costs include time spent developing and managing a written contract. There is a one-time cost developing standard contract language. The commission also anticipates additional costs when executing a contract with individual practitioners. The commission estimates up to one hour of both office administrator and dentist time to develop a standard contract and an additional one hour of time for the dentist to execute an individual contract. Salaries based on the Bureau of Labor Statistics are dentist - \$79²⁰ hourly wage and office administrator - \$48²¹ hourly wage. The probable one-time costs to develop standard contract language include dentist and administrator time of \$127. The probable cost to execute a contract is estimated at \$79.

²⁰ Dentists : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics (bls.gov)

²¹ Administrative Services and Facilities Managers : Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics (bls.gov)

The commission anticipates a potential cost savings for proposed continuing education reducing hours from 18 to 14 hours every three years (reduction of 4 hours every three years). Continuing education costs vary dramatically depending on number of hours obtaining, where, and method of obtaining continuing education. The average two-hour continuing education course offered by University of Washington, School of dentistry is \$69²². The commission anticipates that a potential savings could be between \$0 - \$138 every three years.

²² CDE Requirements - UW School of Dentistry (washington.edu)

New WAC 246-817-765 Pediatric sedation endorsement: The proposed new section establishes a new pediatric endorsement requirement for a dentist to administer sedation to a pediatric patient when using moderate sedation with enteral and moderate sedation with parenteral permit holders. The proposed rule allows delayed implementation, administration of intranasal midazolam using moderate sedation with enteral agent permit authorization, clarifies administration of intranasal drugs, requires moderate sedation with parenteral agents permit for patients over age 12, includes education and training requirements and BLS and Pediatric Advanced Life Support (PALS) requirement to obtain and maintain BLS and PALS certification, and establishes a continuing education requirement.

The commission anticipates additional costs to comply with this proposed rule for dentists who sedate pediatric patients. Not all dentists administer sedation nor do all dentists sedate pediatric patients. Pediatric dentists who are specialists obtain additional education and training as part of their national specialty certification provided in the proposed rule. The proposed rule is consistent with the American Academy of Pediatric Dentistry guidelines. The commission assumes most, if not all, dentists providing pediatric sedation already meet these standards. It is proposed that dentists without pediatric specialty training must complete an additional 14 hours in pediatric sedation education. Costs for this education range from \$1500 to \$2505²³.

²³ Pediatric Sedation CE Courses for Dentists - Academy of Dental and Medical Anesthesia (admatraining.org)

The commission anticipates potential costs for adding 14 hours of continuing education every three years for a dentist who obtains the pediatric endorsement. The commission anticipates that the cost for complying to the proposed additional continuing education is \$483²⁴

every three years. Several acceptable ways to complete continuing education are proposed in new WAC 246-817-773 and can be achieved at no cost; therefore, the commission believes that there are no additional costs for a dentist to comply with this rule.

24 CDE Requirements - UW School of Dentistry (washington.edu)

WAC 246-817-770 General anesthesia and deep sedation: The existing rule establishes deep sedation and general anesthesia standards that must be met before administering. The proposed rule amendments include the following:

- Clarifies training requirements and removes outdated language;
- Adds patient evaluation requirements;
- Adds electrocardiograph continuous display requirement;
- Adds requirement of three personnel: Anesthesia provider, anesthesia monitor, and dental assistant;
- Clarifies appropriate credentialed personnel;
- Changes respiratory recording to every five minutes from every 15 minutes;
- Adds requirement to have equipment calibrated to manufacturer instructions;
- Changes AED or defibrillator requirement to reference WAC 246-817-722;
- Updates examples of emergency drugs;
- Adds ACLS or PALS emergency drugs;
- Adds requirement for written contract requirement if providing sedation in another practitioner's dental office;
- Moves continuing education requirements to new WAC 246-817-773;
- Clarifies requirement for maintaining ACLS certification; and
- Adds authorization to provide lower level of sedation.

There are no costs for clarifying language and terms, listing prohibited drugs, adding the patient evaluation requirement, clarifying monitoring requirements, updating examples of emergency drugs, clarifying ACLS certification, adding authorization for lower-level sedation administration, updating AED requirements, and moving continuing education requirements to new section.

The costs to have equipment calibrated, adding requirements for operating theater, table or chair, lighting system requirements, and additional emergency drugs is provided in the WAC 246-817-760 analysis.

The commission anticipates no new additional cost to the proposed addition of ACLS or PALS emergency drugs, as the existing standard of care includes ensuring the office is prepared for an emergency.

The cost for requiring a written contract when providing sedation in another practitioner's dental office is provided in the WAC 246-817-760 analysis.

The commission anticipates an additional cost of one additional assistant when administering anesthesia. Based on the Bureau of Labor Statistics, the hourly wage for a dentist is \$79 and \$19 an hour for a dental assistant. An average sedation procedure is one hour; the anticipated additional cost is \$19 per sedation procedure.

The cost to increase respiratory recording from every 15 minutes to every five minutes is provided in the WAC 246-817-760 analysis.

WAC 246-817-772 Requirements for anesthesia monitor: The existing rule provides anesthesia monitor training requirements and identifies when a licensed dentist administering anesthesia must also have an ad-

ditional appropriately trained individual monitoring the patient. The proposed rule amendments include:

- Adding a requirement that an anesthesia monitor is required when a dentist administers moderate sedation with parenteral agents;
- Clarifying that an anesthesia monitor may not also perform dental assisting tasks during general anesthesia procedures and that another individual is necessary to perform dental assistant tasks;
- Clarifying on-site or in-office as acceptable training for an anesthesia monitor; and
- Requiring dentists to maintain anesthesia monitor training documentation.

The commission anticipates a cost to obtain additional anesthesia monitoring. Anesthesia monitoring education and training can be obtained through an education course or in-office training by the dentist. An education course provided through American Association of Oral and Maxillofacial Surgeon Dental Anesthesia Assistant National Certification Examination costs \$545²⁵. In-office training is estimated to cost \$1372 based on the average hourly wage for a dentist at \$79²⁶ and dental assistant at \$19²⁷ for 14 hours each.

²⁵ daance_handbook.pdf (aaoms.org)

²⁶ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

²⁷ Dental Assistants: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

New WAC 246-817-773 Continuing education for dentists administering sedation: The proposed new section consolidates all sedation permit continuing education requirements into one section, provides for content of continuing education, methods to complete continuing education, and allows delayed implementation to comply with new requirements.

The commission anticipates additional costs for the proposed continuing education change from every five years to every three years. Costs to comply with this section are provided in the WAC 246-817-740, 246-817-760, and 246-817-765 analyses. The commission concludes that there is no additional cost to consolidate continuing education requirements into one section.

WAC 246-817-774 Permitting and renewal requirements: The existing rule identifies the requirements to receive and renew a permit to administer moderate oral or parenteral or general anesthesia, including deep sedation. The proposed rule amendments include the following:

- Adds a pediatric endorsement;
- Adds requirement of on-site inspection from commission discretion to every five years to renew sedation permit and maintenance of on-site inspection reports;
- Adds requirement of 12 emergency drill scenarios, performed at least two times per year;
- Adds requirement of emergency drill declaration to renew sedation permit and maintenance of drill documentation;
- Clarifies random audits for each requirement; and
- Moves site visit requirements to new WAC 246-817-775.

The cost to obtain the pediatric endorsement is provided in the WAC 246-817-765 analysis. There is no additional cost to clarification of the rule requirements. The commission does anticipate potential additional cost for a dentist to obtain on-site inspections, conduct emergency drills, and to maintain site visit and drill documentation. The commission anticipates that average staff participating in on-site

inspections and drills include one dentist and two dental assistants. Salaries based on the Bureau of Labor Statistics are:

- Dentist - \$79 hourly wage²⁸
- Dental Assistant - \$19 hourly wage²⁹

²⁸ Dentists: Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics (bls.gov)

²⁹ Dental Assistants: Occupational Outlook Handbook: : U.S. Bureau of Labor Statistics (bls.gov)

The commission anticipates that the average on-site inspection takes four hours. Nationally certified oral and maxillofacial surgeons are currently required to have an on-site inspection every five years to maintain their professional certification by the American Association of Oral and Maxillofacial Surgeons³⁰. The commission anticipates no additional increased cost for certified oral and maxillofacial surgeons, as under current rule, they already comply with the proposed rule. Other dentists providing anesthesia may conduct peer on-site inspections at no cost or choose to obtain on-site inspections through the authorized organizations at a cost of \$0 - \$500³¹. In addition to on-site inspection costs, it is anticipated that potential staff time for on-site inspections is for one dentist and two dental assistants. Onsite inspections are required once every five years; annual recurring costs for inspection and staff time range from \$93.60 to \$193.60.

³⁰ AAOMS

³¹ OME|WSSOMS

A standard emergency drill may take up to 15 minutes per drill. The proposed rule now requires 24 drills annually. At 15 minutes per drill, a total of six hours of dental staff time could be expected annually. Staff time is for one dentist and two dental assistants. The anticipated costs to comply with the proposed rule is \$702 annually.

The commission anticipates an additional cost to document and maintain on-site and emergency drill information. The commission estimates two hours per year for an office administrator to document and maintain information. The salary based on the Bureau of Labor Statistics for Office Administrator is \$48³² hourly wage. The anticipated cost to comply with the proposed rule is \$96 annually.

³² Administrative Services and Facilities Managers: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

New WAC 246-817-775 On-site inspections: The proposed new section consolidates self- and on-site inspections into one section with the following:

- Adds annual self-inspections of emergency preparedness for all dentists;
- Defines annual self-inspection for moderate sedation with parenteral agents and general anesthesia permits annually;
- Defines the new on-site inspection requirement every five years for general anesthesia and moderate sedation with parenteral agent permit holders;
 - o Provides an on-site inspection requirement every five years by organization or self-arranged, using approved form;
 - o Provides standards for those self-arranged inspections using approved form;
 - o Provides list of approved organizations;
 - o Provides delayed implementation of on-site inspections; and
- Includes requirement to maintain on-site inspection documentation for five years.

The commission anticipates additional costs for dentists to self-assess their office for emergency preparedness. The commission anticipates that an annual assessment will take 30-60 minutes annually and the cost range is \$29.50 to \$79 for a dentist³³. The commission does not anticipate any additional costs for a dentist who holds a moderate sedation with parenteral agents or general anesthesia permit, as it is assumed that they also hold a dentist license and must complete the annual self-assessment under the proposed rule. The commission does not anticipate any additional cost to use the commission-approved form.

³³ Dentists: Occupational Outlook Handbook: U.S. Bureau of Labor Statistics (bls.gov)

Onsite inspection costs are provided in the WAC 246-817-774 analysis.

WAC 246-817-776 Discharge criteria: The existing rule requires licensed dentists to follow specific discharge criteria after administering sedation. The proposed rule amendment adds two exceptions when taking vital signs is not required. There is no cost to comply with this rule amendment.

WAC 246-817-780 Mandatory reporting: The existing rule requires a licensed dentist without a general anesthesia permit, to establish a contract outlining responsibilities of other providers administering anesthesia in a dental office. The proposed rule amendments update the section title from nondental to nondentist and creates specific requirements and responsibilities for written contract requirements that include:

- Facility, equipment, monitoring, and training requirements;
- Anesthesia provider responsibilities;
- Delineation of responsibilities;
- Whom nondentist anesthesia provider includes;
- Criteria of anesthesia provider; and
- Responsibilities of licensed dentists.

The commission does not anticipate any new costs to comply with the proposed rule amendments. A written contract is a current requirement under rule. The proposed rule amendments create and clarify specific written contract content requirements.

WAC 246-817-780 Mandatory reporting: The existing rule identifies mandatory reporting requirements for licensed dental providers. The proposed rule amendment adds hospital discharge records, if available, to be submitted.

The commission anticipates a negligible cost for a dentist to comply with this proposed rule amendment. The commission anticipates that it takes an average of five minutes for a dentist to request and obtain hospital records prior to submitting a report to the commission and, for this reason, the commission anticipates the cost to comply with the proposed rule to be negligible.

WAC 246-817-790 Application of chapter 18.130 RCW: The existing rule applies chapter 18.130 RCW for sedation permits. The proposed rule amendment adds issuance and renewal of the proposed pediatric endorsement to authority under chapter 18.130 RCW.

The commission anticipates there is no additional cost for a dentist to comply with this proposed rule amendment because chapter 18.130 RCW applies to all credentialed health care practitioners.

Summary: The commission anticipates the probable cost estimate for a dentist to comply with the proposed rule changes in WAC

246-817-701 through 246-817-790 is between \$0 to \$9,277 one-time cost and \$0 to \$1,408.60 annually.

WAC	Initial one-time costs (Range)	Recurrent annual costs* (Range)
246-817-701	\$0	\$40
246-817-722	\$1200 - \$1900	\$0
246-817-724	\$372 - \$2047	\$259
246-817-745	\$69	\$0
246-817-760	\$1257	(\$59) net savings
246-817-765	\$500 - \$2505	\$0
246-817-770	\$127	\$98
246-817-772	\$1372	\$0
246-817-774	\$0	\$93.60 - \$991.60
246-817-775	\$0	\$29.50 - \$79
Probable Costs	\$0 - \$9277	\$0 - \$1408.60

Analysis of whether the proposed rule may impose more-than-minor costs on businesses in the industry: The commission has determined that \$0 to \$9,277 one-time cost and \$0 to \$1,408.60 annual cost for the proposed rules will exceed minor economic impact of \$3,415 for dentist offices. Costs associated with sedating patients and responding to emergencies range significantly because not all sedation cases or emergencies are the same. Specific levels of education depend on level of sedation being performed; a variety of monitoring and emergency equipment and drugs are necessary to ensure the dentist is prepared for any emergency.

Rule making supports the overarching goal of chapter 18.32 RCW by assuring dentists, anesthesia providers, and patients that dentists are adequately trained, complying with nationally accepted standards of practice, and prepared to respond to emergencies during administration of anesthetics, confirming that the public policy goals of the dental commission are achieved.

Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule: The proposed rule may have a disproportionate impact on small businesses versus large businesses. Whether a licensed dentist is practicing in an independent practice setting or is part of a larger group or clinic, the administration of anesthetic agent requirements applies to wherever anesthetic agents for dentistry are administered in the state of Washington.

Licensed dentists work in many settings: independent practice, partnerships, group practices, community clinics, general dental clinics, and universities. There are approximately 7,200 licensed dentists as of April 2022. We are unable to determine how many licensed dentists work in each of the different practice settings. Dentists in independent practice or partnerships will incur all the costs to comply with the proposed rules. Dentists that are part of larger group practices will be able to share in the costs to comply with the proposed rules. Dentists that work for community clinics, general dental clinics, or universities will most likely incur minimal, if any, costs to comply with the proposed rules. As business models differ, so does the expectation of who will cover the costs to comply with the proposed rules. Ultimately, the licensed dentist needs to ensure all require-

ments have been met where anesthetic agents for dentistry are administered in the state of Washington.

If the proposed rule has a disproportionate impact on small businesses, the steps taken to reduce the costs of the rule on small businesses. If the costs can not be reduced, provide a clear explanation of why: Although the proposed rule may have a disproportionate impact on small businesses versus large businesses, the commission determined to delay implementation of pediatric endorsement, continuing education changes, and on-site inspections in proposed rules WAC 246-817-765, 246-817-773, and 246-817-775 to help reduce the first-year cost impact of the proposed rules.

Description of how small businesses were involved in the development of the proposed rule: The commission worked closely with interested parties and other constituents to minimize the burden of this proposed rule. The commission held open public meetings from December 2017 through February 2022, allowing interested parties, including the Washington State Dental Association, Washington State Society of Oral and Maxillofacial Surgeons, and Washington State Society of Mobile Dental Anesthesia, to provide suggested rule changes and comments. During open public rules meetings, alternative versions of the rules were discussed. After careful consideration, some of the suggested changes were accepted while others were rejected. Mutual interests were identified and considered through deliberations.

The commission's public participation process encouraged interested individuals to:

- Identify burdensome areas of the existing rule and proposed rule;
- Propose initial or draft rule changes; and
- Refine those changes.

The proposed rule amendments went through several stages of edits, review, and discussion and then further refinement before arriving at the final proposal. The results of this process are proposed changes that will provide increased rule clarity, guidance, and will ultimately be less burdensome than the original rule.

The estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: The commission does not anticipate any jobs created or lost because of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email Dental@doh.wa.gov.

November 10, 2022

Lyle McClellan, DDS, Chairperson
Dental Quality Assurance Commission

OTS-3080.4

AMENDATORY SECTION (Amending WSR 10-23-001, filed 11/3/10, effective 12/4/10)

WAC 246-817-701 Administration of anesthetic agents for dental procedures. The purpose of WAC 246-817-701 through 246-817-790 is to

govern the administration of anesthetic, sedation, and general anesthesia by dentists licensed in the state of Washington in settings other than hospitals as defined in WAC 246-320-010 and ambulatory surgical facilities as defined in WAC 246-310-010, pursuant to the DQAC authority in RCW 18.32.640.

(1) The DQAC has determined that sedation and anesthesia permitting should be based on the ~~(("))~~level~~(("))~~ of ~~((anesthesia))~~ sedation or anesthesia because ~~((anesthesia/sedation))~~ sedation or anesthesia is a continuum, and the route of administration and drug combinations are both capable of producing a deeper level of ~~((sedation/anesthesia))~~ sedation or anesthesia than is initially intended. Practitioners intending to produce a given level of sedation should be able to rescue patients who enter a state deeper than initially intended.

(2) All anesthesia providers must provide ~~((twenty-four))~~ 24 hour, on-call availability following an anesthesia procedure~~((, excluding those procedures using only local anesthetic))~~.

(a) A licensed dentist that only administers local anesthesia shall provide timely telephonic or electronic communication with the patient or their representative by the provider or a designated provider.

(b) In the event a licensed dentist will be unavailable for timely assistance, the licensed dentist shall have a prearranged agreement with another provider that is available to provide timely care to a patient.

(3) The dental assistant and expanded function dental auxiliary may not administer any general or local anesthetic, including intravenous sedation.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 10-23-001, § 246-817-701, filed 11/3/10, effective 12/4/10; WSR 09-04-042, § 246-817-701, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-701, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-710 Definitions. The definitions in this section apply throughout WAC 246-817-701 through 246-817-790 unless the context clearly requires otherwise.

(1) "Advanced cardiac life support" or "ACLS" means a set of clinical interventions for the urgent treatment of cardiac arrest, stroke, and other life-threatening medical emergencies, as well as the knowledge and skills to deploy those interventions.

(2) "American Society of Anesthesiologists patient classification I" means a normal healthy patient.

(3) "American Society of Anesthesiologists patient classification II" means a patient with mild systemic disease.

(4) "American Society of Anesthesiologists patient classification III" means a patient with severe systemic disease.

(5) "American Society of Anesthesiologists patient classification IV" means a patient with severe systemic disease that is a constant threat to life.

(6) "Analgesia" (~~((is))~~) means the diminution of pain in the conscious patient.

~~((2))~~ (7) "Anesthesia" (~~is~~) means the loss of feeling or sensation, especially loss of sensation of pain.

~~((3))~~ (8) "Anesthesia monitor" means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

~~((4))~~ (9) "Anesthesia provider" means a dentist, physician anesthesiologist, dental hygienist, or certified registered nurse anesthetist (CRNA) licensed (~~and~~), authorized, competent, and qualified to (~~practice~~) perform anesthesia within the state of Washington.

~~((5))~~ (10) "Automated external defibrillator" or "AED" means a portable electronic device that automatically diagnoses the life-threatening cardiac arrhythmias of ventricular fibrillation and pulseless ventricular tachycardia, and is able to treat through defibrillation.

(11) "Basic life support" or "BLS" means a type of care health care providers and public safety professionals provide to anyone who is experiencing cardiac arrest, respiratory distress, or an obstructed airway.

(12) "Carbon dioxide" or "CO₂" means a gas consisting of one part carbon and two parts oxygen.

(13) "Close supervision" means that a supervising dentist whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervising dentist is continuously on-site and physically present in the treatment facility while the procedures are performed by the assistive personnel and capable of responding immediately in the event of an emergency. (~~The term~~) Close supervision does not require a supervising dentist to be physically present in the operator.

~~((6))~~ (14) "Commission on Dental Accreditation" or "CODA" means a national organization that develops and implements accreditation standards that promote and monitor the continuous quality and improvement of dental education programs.

(15) "Deep (~~sedation/analgesia~~ is)" sedation" means a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~((7))~~ (16) "Dental anesthesia assistant" means a health care provider certified under chapter 18.350 RCW and specifically trained to perform the functions authorized in RCW 18.350.040 under supervision of an oral and maxillofacial surgeon or dental anesthesiologist.

~~((8))~~ "~~Direct visual supervision~~" means ~~supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight.~~

~~((9))~~ (17) "Enteral" means any technique of administration in which an agent is absorbed through the gastrointestinal tract.

(18) "General anesthesia" (~~is~~) means a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a

patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

~~((10)) "Local anesthesia" is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.~~

~~((11))~~ (19) "Minimal sedation" ~~((is a drug induced state during which patients))~~ means a minimally depressed level of consciousness, produced by a pharmacological method, that retains the patient's ability to independently and continuously maintain an airway and respond normally to tactile stimulation and verbal commands. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected.

~~((12))~~ (20) "Moderate sedation" ~~((is))~~ means a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both ~~((moderate sedation/analgesia (conscious sedation) and moderate sedation with))~~ enteral and parenteral ((agent)) routes of administration.

~~((13))~~ (21) "Nothing by mouth" or "NPO" means the time before an examination or procedure during which a patient cannot eat or drink.

(22) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract ~~((i.e.))~~ including, but not limited to, intramuscular, intravenous, intranasal, submuscular, subcutaneous, and intraosseous((+)).

(23) "Pediatric" means a child 12 years of age or younger.

(24) "Pediatric advanced life support" or "PALS" means a type of care that focuses on providing advanced airway and life support skills in immediate emergency care to children.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-710, filed 7/23/13, effective 8/23/13. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-710, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-710, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-720 Basic life support requirements. (1) Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider ~~((basic life support (-)))~~ BLS ~~((+))~~ certification. Initial and renewal certification must include both didactic and hands-on components.

(2) Health care provider BLS certification must be obtained from an individual, organization, or training center who holds a current and valid BLS instructor certification and teaches the current International Liaison Committee on Resuscitation or ILCOR standard including, but not limited to, American Heart Association or American Red Cross.

(3) Health care provider BLS instruction must include online or in-person didactic instruction with a written assessment, in-person skills assessment on high quality chest compressions, rescue breathing using the bag valve mask, correct use of AED or defibrillator for adults, children, and infants, feedback to students, and a valid health care provider BLS certification card upon completion.

(4) Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, certified dental anesthesia assistants, and registered dental assistants.

(5) Newly hired office staff providing direct patient care are required to obtain the required certification within ((forty-five)) 45 days from the date hired.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-720, filed 7/23/13, effective 8/23/13. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-720, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-720, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 10-23-001, filed 11/3/10, effective 12/4/10)

WAC 246-817-722 Defibrillator. ~~((1) Every dental office in the state of Washington that administers minimal, moderate, or deep sedation, or general anesthesia, as defined in WAC 246-817-710, must have an automated external defibrillator (AED) or defibrillator.~~

~~(2))~~ When anesthetic agents of any kind are administered, the dentist and staff must have access to ((the)) an AED or defibrillator ((in an emergency, and it)). The AED or defibrillator must be available and in reach within ((sixty)) 60 seconds.

~~((3) A dental office may share a single AED or defibrillator with adjacent businesses if it meets the requirements in this section.))~~

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 10-23-001, § 246-817-722, filed 11/3/10, effective 12/4/10; WSR 09-04-042, § 246-817-722, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-724 Recordkeeping, equipment, and emergency medications or drugs ((required in all sites where anesthetic agents of any kind are administered)). When anesthetic agents of any kind are administered, the dentist must comply with the requirements in this section.

~~(1) ((Dental records must contain an appropriate medical history and patient evaluation. Any adverse reactions, and))~~ The anesthesia provider or anesthesia monitor shall record the patient's condition. The record must include documentation of all medications ((and)) administered with dosages ((, must be recorded)), regular and consistent

time intervals, and route of administration. The provider administering the sedation may determine time intervals.

(2) ~~((When sedation of any level is to be administered, excluding minimal sedation by inhalation, pre-sedation))~~ Excluding pediatric patients receiving local anesthetic or minimal sedation with nitrous oxide, vitals including, but not limited to, blood pressure and heart rate must be obtained and recorded, unless the cooperation of the patient or circumstances of the case will not allow it. If ~~((pre-sedation))~~ vitals cannot be obtained, the reason ~~((s))~~ or reasons why must be recorded.

(3) ~~((Office facilities and))~~ The following equipment must be available and include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(c) Blood pressure cuff ~~((+))~~ or sphygmomanometer ~~((+))~~ of appropriate size;

(d) Stethoscope or equivalent monitoring device.

(4) The following emergency drugs must be available and maintained:

(a) Bronchodilator including, but not limited to, albuterol;

(b) Sugar ~~((+))~~ or glucose ~~((+))~~;

(c) Aspirin;

(d) Antihistaminic including, but not limited to, diphenhydramine;

(e) Coronary artery vasodilator including, but not limited to, nitroglycerin;

(f) Anti-anaphylactic agent including, but not limited to, epinephrine.

(5) A licensed dentist shall develop and maintain written emergency protocols and ensure:

(a) All staff are trained in the protocols wherever anesthetic agents of any kind are administered.

(b) The emergency preparedness written protocols include training requirements and procedures specific to the licensed dentist's equipment and drugs for responding to emergency situations involving sedation or anesthesia, including information specific to respiratory emergencies.

(c) The protocols are reviewed annually, updated as necessary, and the review is documented.

(d) The protocols include basic life support protocols, advanced cardiac life support protocols, or pediatric advanced life support protocols based on the level of anesthetics being administered.

(6) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-724, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-724, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-730 Local anesthesia. Local anesthesia ~~((shall))~~ must only be administered ~~((only))~~ by a ~~((person))~~ provider qualified under this chapter and dental hygienists as provided in chapter 18.29 RCW.

(1) ~~((All offices must))~~ "Local anesthesia" means the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

(2) A licensed dentist administering local anesthetic agents shall comply with ((the)) recordkeeping, equipment, and emergency medication requirements ((listed)) in WAC 246-817-724.

~~((2))~~ (3) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-730, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-730, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-740 ~~((u))Minimal sedation ((by inhalation" (to include, but not limited to,)) with nitrous oxide((?))).~~ (1) ~~((Training requirements:))~~ To administer ((inhalation)) minimal sedation with nitrous oxide, a licensed dentist ((must have completed a course containing)) shall successfully complete a minimum of ((fourteen)) 14 hours of ((either predoctoral dental school or postgraduate instruction in inhalation minimal sedation)) education and training in one of the following:

(a) Minimal sedation with nitrous oxide; or

(b) Moderate sedation with nitrous oxide; or

(c) Advanced education program accredited by the CODA that meets comprehensive and appropriate training necessary to administer and manage minimal sedation with nitrous oxide; or

(d) Education and training must be consistent with ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed.

(2) ~~((Procedures for administration: Inhalation))~~ A licensed dentist shall ensure:

(a) Delegation of administration for minimal sedation ((must be administered)) with nitrous oxide is under the close supervision of ((a person)) an anesthesia provider qualified under this chapter ((and dental hygienists as provided in chapter 18.29 RCW:

~~(a) When administering inhalation minimal sedation,))~~

(b) A second individual ((must be on)) is in the office ((premises)) and able to immediately respond to any request from the ((person administering the inhalation minimal sedation,

~~(b)) licensed dentist or anesthesia provider.~~

(c) The patient must be continuously observed while ((inhalation)) minimal sedation with nitrous oxide is administered.

(3) A licensed dentist shall comply with recordkeeping, equipment, and emergency medication~~((s: All offices in which inhalation~~

~~minimal sedation is administered must comply with the recordkeeping and equipment standards listed) requirements in WAC 246-817-724.~~

(4) Dental records must contain documentation in the chart of ~~((either))~~ nitrous oxide, oxygen or any other inhalation sedation agent administered or dispensed.

(a) In the case of nitrous oxide sedation only (~~"N₂O used" is required~~), the record must include the maximum nitrous oxide concentration used and the times started and stopped or total time of administration.

(b) Other inhalation agents require a dose record noting the time each concentration or agent was ~~((used))~~ administered or dispensed.

(5) ~~((Continuing education:))~~ A licensed dentist who administers ((inhalation)) minimal sedation ((to patients must participate in)) with nitrous oxide shall complete seven hours of continuing education ((or equivalent)) every ((five)) three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

- ~~(i) Sedation;~~
- ~~(ii) Physiology;~~
- ~~(iii) Pharmacology;~~
- ~~(iv) Inhalation analgesia;~~
- ~~(v) Patient evaluation;~~
- ~~(vi) Patient monitoring; and~~
- ~~(vii) Medical emergencies.~~

~~(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS), or advanced cardiac life support (ACLS) certification. Hourly credits earned from certification in BLS or ACLS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credits earned in BLS or ACLS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.)~~

(6) A licensed dentist who administers minimal sedation with nitrous oxide must hold a current and valid BLS certification.

(7) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-740, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-740, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-740, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-745 (()) Minimal sedation. (()) (1) ~~((Training requirements: To administer "minimal sedation," including:~~

~~(a) A single oral agent, a dentist must have completed a course containing a minimum of fourteen hours of a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440) in the use of oral agents;~~

~~(b) Any oral agent in combination with a different agent or multiple agents other than nitrous oxide or injectable agents, a dentist~~

~~must have completed a course containing))~~ To administer minimal sedation which is limited to a single dose of a single oral agent with or without nitrous oxide, a licensed dentist shall successfully complete a minimum of ((twenty-one)) 16 hours of ((either predoctoral dental school or postgraduate instruction.

~~(2) Procedures for administration:~~

~~(a-))~~ education and training in one of the following:

(a) Minimal sedation; or

(b) Moderate sedation; or

(c) Advanced education program accredited by the CODA that meets comprehensive and appropriate training necessary to administer and manage minimal sedation; or

(d) Education and training must be consistent with ADA *Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students*, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed.

(2) A licensed dentist shall:

(a) Evaluate patient considered for minimal sedation prior to the administration of any sedative procedure.

(i) Review of the patient's current medical history and medication use is required for healthy or medically stable individuals with American Society of Anesthesiologists patient classification of I or II.

(ii) Consultation with the patient's primary care physician or consulting medical specialist is required for patients with significant medical considerations whom have American Society of Anesthesiologists patient classification III or IV. If the licensed dentist is unsuccessful in contacting or consulting with the patient's physician or physicians, the licensed dentist shall document the attempt or document the patient has no physician to contact.

(b) Administer oral sedative agents ((can be administered)) in the treatment setting or ((prescribed)) prescribe for patient dosage prior to the appointment((~~+~~)).

~~((b-))~~ (c) Ensure a second individual ((must be on)) is in the office ((premises)) and able to immediately respond to any request from the ((person)) anesthesia provider administering ((the drug~~+~~)) minimal sedation.

~~((e-))~~ (d) Ensure the patient ((must be)) is continuously observed while in the office under the influence of ((the drug~~+~~)) minimal sedation.

~~((d-))~~ (e) Comply with the recordkeeping, equipment, and emergency medication requirements in WAC 246-817-724.

(f) Ensure any adverse reactions ((must be)) are documented in the ((records~~+~~)) patient record.

~~((e-))~~ (g) If a patient unintentionally enters into a moderate level of sedation, ensure the patient ((must be)) is returned to a level of minimal sedation as quickly as possible. While returning the patient to the minimal sedation level, periodic monitoring of pulse, respiration, and blood pressure must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

~~(3) ((Dental records must contain documentation))~~ A licensed dentist shall document in the ((chart of)) patient record all agents administered, time administered, and dosage for minimal sedation.

~~((a) In the case of nitrous oxide sedation only "N₂O used" is required.~~

~~(b) Other inhalation agents require a dose record noting the time each concentration and agent was used.)~~

(4) ~~((Continuing education:))~~ A licensed dentist who administers minimal sedation ~~((to patients must participate in))~~ shall complete seven hours of continuing education ((or equivalent)) every ((five)) three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

- ~~(i) Sedation;~~
- ~~(ii) Physiology;~~
- ~~(iii) Pharmacology;~~
- ~~(iv) Nitrous oxide analgesia;~~
- ~~(v) Patient evaluation;~~
- ~~(vi) Patient monitoring; and~~
- ~~(vii) Medical emergencies.~~

~~(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS) or advanced cardiac life support (ACLS) certification. Hourly credits earned from certification in BLS or ACLS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credit hours earned in BLS or ACLS certification may be used to meet the renewal requirements of WAC 246-817-440 to renew the dentist license.)~~

(5) A licensed dentist who administers minimal sedation must hold a current and valid BLS certification.

(6) A permit of authorization is not required.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-745, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-745, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-755 Moderate sedation with enteral agents. (1)

~~((Training requirements: To administer moderate sedation the dentist must have completed a course containing))~~ A licensed dentist is required to hold a permit of authorization to administer moderate sedation with enteral agents.

(2) To obtain a moderate sedation with enteral agents permit, a licensed dentist shall:

(a) Comply with the permitting and renewal requirements in WAC 246-817-774; and

(b) Successfully complete:

(i) A minimum of 16 hours of education and training in minimal sedation as required in WAC 246-817-745(1); and

(ii) A minimum of ((seven)) 21 hours of ((a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440))) education and training in moderate sedation ((in addition to twenty-one hours for minimal sedation)).

~~((2) Procedures for administration:~~

~~(a))~~ (iii) Moderate sedation education and training must:

(A) Meet ADA Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, adopted by ADA House of Delegates October 2016 or prior adopted version in effect at the time training was completed; and

(B) Include medical emergency management, not limited to airway management, conducted in-person with hands-on skills.

(3) A licensed dentist shall:

(a) Ensure the patient is evaluated for moderate sedation with enteral agents prior to the administration of any sedative.

(i) Review at an appropriate time the patient's medical history and medication use and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for a patient with significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV. If the anesthesia provider is unsuccessful in contacting or consulting with the patient's physician or physicians, document the attempt or document the patient has no physician to contact.

(iii) Patients body mass index must be assessed as part of a pre-procedural workup.

(b) Administer oral sedative agents ((can be administered)) in the treatment setting or ((prescribed)) prescribe for patient dosage prior to the appointment.

((b)) (c) Ensure a second individual ((must be on)) is in the office ((premises)) who can immediately respond to any request from the ((person administering the drug)) anesthesia provider.

((e)) (d) Ensure the patient ((must be)) is continuously observed while in the office ((under the influence of the drug)).

((d)) (e) Record any adverse reactions ((must be documented)) in the patient record(s).

((e) If a patient unintentionally enters a deeper level of sedation,) (f) Ensure the patient ((must be)) is returned to a level of moderate sedation as quickly as possible, if a patient unintentionally enters a deeper level of sedation. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, and blood pressure and pulse oximetry must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

((f) Patients) (g) Ensure a patient receiving ((these forms of)) moderate sedation ((must be)) with enteral agents is accompanied by a responsible adult upon departure from the treatment facility.

((3)) (4) A licensed dentist shall comply with the recordkeeping, equipment, and emergency ((medications: All offices must comply with the requirements listed in WAC 246-817-724.)) medication requirements in WAC 246-817-724.

(a) When a sedative drug is used that has a reversal agent, the reversal agent must be in the office emergency kit and the equipment to administer the reversal agent must be stored with the delivery device.

(b) Pulse oximetry equipment or equivalent respiratory monitoring equipment must be available in the office.

((4) Continuing education:) (5) A licensed dentist who ((administers)) holds a valid moderate sedation ((to patients must participate in)) with enteral agents permit shall complete seven hours of

continuing education (~~(or equivalent)~~) every ~~((five))~~ three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

- ~~(i) Sedation;~~
- ~~(ii) Physiology;~~
- ~~(iii) Pharmacology;~~
- ~~(iv) Nitrous oxide analgesia;~~
- ~~(v) Patient evaluation;~~
- ~~(vi) Patient monitoring; and~~
- ~~(vii) Medical emergencies.~~

~~(b) In addition to education requirements in (a) of this subsection, the dentist must obtain health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS) certification to renew the moderate sedation permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection. However, the hourly credits earned in BLS, ACLS, or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.~~

~~(5) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.)~~ (6) A licensed dentist who holds a valid moderate sedation with enteral agents permit must hold a current and valid BLS certification.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-755, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-755, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 17-07-037, filed 3/8/17, effective 4/8/17)

WAC 246-817-760 Moderate sedation with parenteral agents. (1)

~~((Training requirements: To administer moderate sedation with parenteral agents, the dentist must have successfully completed))~~ A licensed dentist is required to hold a permit of authorization to administer moderate sedation with parenteral agents. A moderate sedation with parenteral agents permit allows the holder to deliver moderate sedation with enteral agents without obtaining a separate permit.

(2) To obtain a moderate sedation with parenteral agents permit, a licensed dentist shall:

(a) Comply with the permitting and renewal requirements in WAC 246-817-774;

(b) Successfully complete a postdoctoral course ~~((+s))~~ or courses of ~~((sixty))~~ 60 clock hours or more which includes ~~((training in))~~:

(i) Basic moderate sedation ~~((τ))~~;

(ii) Physical evaluation ~~((τ))~~;

(iii) Venipuncture ~~((τ))~~ and intravenous drug administration, training is a hands-on skill and must be completed in-person;

(iv) Technical administration ~~((τ))~~;

(v) Recognition and management of complications and emergencies, training is a hands-on skill and must be completed in-person;

(vi) Monitoring ~~((τ))~~; and

(vii) Supervised experience in providing moderate sedation with parenteral agents to ~~((fifteen))~~ 20 or more patients. ~~((If treating an adult, the dentist must have))~~

(c) Training in adult sedation ~~((. If treating a minor, the dentist must have)),~~ if treating an adult; and

(d) Training in pediatric sedation, if treating a pediatric patient.

~~((2))~~ (3) In addition to meeting the criteria in subsection ~~((1))~~ (2) of this section, the licensed dentist ~~((must also have))~~ shall hold and maintain a current certification in ~~((advanced cardiac life support ~~(-))~~ ACLS ~~((+))~~ or ~~((pediatric advanced life support ~~(-))~~ PALS ~~((+))~~).~~~~

(a) If treating an adult, the dentist must have ACLS certification.

(b) If treating a ~~((minor))~~ pediatric patient, the dentist must have PALS certification.

~~((3))~~ (4) The use of any drugs classified under the Food and Drug Administration as general anesthetic agents including, but not limited to, Propofol, Ketamine, Sevoflurane, Halothane, and Isoflurane are considered outside the scope of a moderate sedation with parenteral agents permit.

(5) The drugs, drug amounts, and techniques used must carry a margin of safety wide enough to render unintended loss of consciousness highly unlikely.

~~((4) Procedures for administration of moderate sedation with parenteral agents by a dentist and an individual trained in monitoring sedated patients:))~~ (6) A licensed dentist shall:

(a) ~~((In the treatment setting,))~~ Ensure a patient receiving moderate sedation with parenteral agents ~~((must have that))~~ receives the sedation ~~((administered by a person))~~ from an anesthesia provider qualified under this chapter.

(b) Ensure the patient is evaluated for moderate sedation with parenteral agents prior to the administration of any sedative.

(i) Review, at an appropriate time, the patient's medical history and medication use and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for a patient with significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV.

(iii) Patient's body mass index must be assessed as part of a preprocedural workup.

(iv) A focused physical examination to include vital signs, evaluation of the airway, and auscultation of the heart and lungs is required before administration of any sedative or anesthesia agent.

(c) Ensure a patient ~~((may not be))~~ is not left alone in a room and ~~((must be))~~ is continually monitored by a ~~((dentist with a valid moderate sedation with parenteral agent permit))~~ anesthesia provider or trained anesthesia monitor as defined in WAC 246-817-772.

~~((e))~~ (d) Ensure an intravenous infusion ~~((must be))~~ is maintained during the administration of a parenteral agent. Two exceptions for intravenous infusion may occur, but reasons why intravenous infusion was not used must be documented for:

(i) Pediatric sedation cases using agents for brief procedures; and

(ii) When the pediatric patient is uncooperative or the emotional condition is such that intravenous access is not possible.

~~((d))~~ (e) Ensure when the operative dentist is also the ~~((per-son))~~ provider administering the moderate sedation with parenteral agents, the operative dentist ~~((must-be))~~ is continuously assisted by ~~((at least one individual experienced in monitoring sedated patients))~~ a trained anesthesia monitor as defined in WAC 246-817-772. The trained anesthesia monitor may function as the dental or surgical as-
sistant.

(i) If treating an adult, the additional individual must have experience or training in adult sedation.

(ii) If treating a ~~((minor))~~ pediatric patient, the additional individual must have experience or training in pediatric sedation.

~~((e) In the treatment setting,)~~ (f) Ensure a patient ~~((experiencing moderate sedation with parenteral agents must be))~~ is visually and tactilely monitored ~~((by the dentist))~~ either by themselves or an individual trained in monitoring sedated patients. Patient monitoring must include:

(i) Heart rate;

(ii) Blood pressure;

(iii) ~~((Respiration,))~~ Respiratory rate;

(iv) ~~((Pulse oximetry; and))~~ Oxygen saturation;

(v) ~~((Expired carbon dioxide (CO₂)). Two exceptions for expired CO₂ monitoring may occur, but reasons why expired CO₂ monitoring was not used must be documented for))~~ Continuous electrocardiographic monitoring when the patient has clinically significant cardiovascular disease.

(A) Clinically significant cardiovascular disease can be classified, but not limited to, coronary artery disease, arrhythmias, congenital heart defects, heart valve disease, disease of the heart muscle, and heart infection.

(B) Electrocardiographic monitoring of a pediatric patient who does not tolerate the monitor pads or wiring is not required. Reasons why electrocardiographic monitoring was not used must be documented.

(vi) End-tidal CO₂. Monitoring is not required when:

(A) A pediatric sedation ~~((eases using))~~ case uses agents for a brief ~~((procedures; and))~~ procedure; or

(B) ~~((When the))~~ A pediatric patient is uncooperative or the emotional condition is such that end-tidal CO₂ monitoring is not possible.

~~((f))~~ (C) Reasons why end-tidal CO₂ monitoring was not performed must be documented.

(g) Comply with requirements of immobilization devices for pediatric patients ~~((+))~~ .

(i) Immobilization devices, such as, papoose boards, must be applied in such a way as to avoid airway obstruction or chest restriction.

(ii) The pediatric patient head position and respiratory excursions must be checked frequently to ensure airway patency.

(iii) If an immobilization device is used, a hand or foot must be kept exposed.

~~((g))~~ (h) Ensure the patient's blood pressure ~~((and))~~ , heart rate ~~((must-be))~~ , pulse oximetry, and respiration rate is recorded every five minutes ~~((, pulse oximetry recorded every five minutes, and respiration rate must be recorded at least every fifteen minutes))~~ .

~~((h))~~ (i) Ensure the patient's level of consciousness ~~((must be))~~ is recorded prior to the dismissal of the patient.

~~((i) Patients receiving moderate sedation with parenteral agents must be))~~ (j) Ensure patient is accompanied by a responsible adult upon departure from the treatment facility.

~~((j) If a patient unintentionally enters a deeper level of sedation,))~~ (k) Ensure the patient ((must be)) is returned to a level of moderate sedation as quickly as possible, if the patient unintentionally enters a deeper level of sedation. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, blood pressure and continuous monitoring of oxygen saturation must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

~~((5) Dental records must contain))~~ (7) A licensed dentist shall document in the patient record appropriate medical history and patient evaluation. Sedation records must be recorded during the procedure in a timely manner and must include:

- (a) Blood pressure;
- (b) Heart rate;
- (c) Respiration;
- (d) Pulse oximetry;

~~(e) End-tidal CO₂. ((Two exceptions for end-tidal CO₂ monitoring may occur, but reasons why end-tidal CO₂ monitoring was not used must be documented for:))~~ Monitoring is not required when:

(i) Pediatric sedation ((eases using)) case uses agents for brief procedure ((s; and)); or

(ii) ((When the)) A pediatric patient is uncooperative or the emotional condition is such that end-tidal CO₂ monitoring is not possible.

(iii) Reasons why end-tidal CO₂ monitoring was not performed must be documented.

- (f) Drugs administered including amounts and time administered;
- (g) Length of procedure; and
- (h) Any complications of sedation.

~~((6))~~ (8) A licensed dentist shall comply with the following recordkeeping, equipment, and emergency ((medications: All offices in which moderate sedation with parenteral agents is administered or prescribed must comply with the following equipment standards:

~~Office facilities and equipment shall include:~~

~~(a))~~ medication requirements:

(a) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions.

(b) An operating theater must be large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least two individuals to freely move about the patient;

(c) An operating table or chair must permit the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

(d) A lighting system must be adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any procedure underway at the time of general power failure;

(e) Suction equipment capable of aspirating gastric contents from the mouth and ~~((pharynx))~~ pharyngeal cavities. A backup suction device must be available;

~~((b) Portable))~~ (f) An oxygen delivery system ~~((including))~~ with adequate full face masks and ~~((a bag valve mask combination with))~~ appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, ~~((oxygen-enriched patient ventilation and oral and nasal pharyngeal airways.))~~ together with an adequate portable backup system;

(i) If treating an adult, the equipment must be appropriate for adult sedation~~((.))~~;

(ii) If treating a ~~((minor))~~ pediatric patient, the equipment must be appropriate for pediatric sedation;

~~((e))~~ (iii) Appropriate sized laryngeal mask airway must be ready for emergency use;

(g) A blood pressure cuff ~~((+))~~ or sphygmomanometer ~~((+))~~ of appropriate size and stethoscope; or equivalent monitoring devices;

~~((d))~~ (h) End-tidal CO₂ monitor;

~~((e))~~ (i) Pulse oximetry; and

~~((f))~~ (j) An emergency drug kit with minimum contents of:

(i) Sterile needles, syringes, and tourniquet;

(ii) Narcotic antagonist;

(iii) Alpha and beta adrenergic stimulant;

(iv) Vasopressor;

(v) Coronary vasodilator including, but not limited to, nitroglycerin;

(vi) Antihistamine including, but not limited to, diphenhydramine;

(vii) Parasympatholytic;

(viii) Intravenous fluids, tubing, and infusion set; ~~((and))~~

(ix) Sedative antagonists for drugs used, if available;

(x) Bronchodilator agent including, but not limited to, albuterol;

(xi) ACLS or PALS emergency drugs; and

(xii) Anti-hypoglycemic agent.

~~((7) Continuing education: A dentist who administers moderate sedation with parenteral agents must participate in eighteen))~~ (9) A licensed dentist who holds a valid moderate sedation with parenteral agents permit and administers moderate sedation with parenteral agents in another licensed dentist office, must have a contract in place that contains the provisions described in WAC 246-817-778 (1)(a) through (c).

(10) A licensed dentist who holds a valid moderate sedation with parental agents permit shall complete 14 hours of continuing education ~~((or equivalent))~~ every three years as required in WAC 246-817-773.

~~((a) The education must include instruction in one or more of the following areas:~~

~~(i) Venipuncture;~~

~~(ii) Intravenous sedation;~~

~~(iii) Physiology;~~

~~(iv) Pharmacology;~~

~~(v) Nitrous oxide analgesia;~~

~~(vi) Patient evaluation;~~

~~(vii) Patient monitoring; and~~

~~(viii) Medical emergencies.~~

~~(b) In addition to the education requirements in (a) of this subsection, the dentist must have a current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) to renew the moderate sedation with parenteral agents permit. Hourly credits earned from certification in BLS, ACLS, or PALS courses may not be used to meet the education requirements in (a) of this subsection to renew a moderate sedation with parenteral agents permit. However, the hourly credits earned in ACLS or PALS certification may be used to meet the requirements of WAC 246-817-440 to renew the dentist license.~~

~~(8) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.) (11) A licensed dentist who holds a valid moderate sedation with parenteral agents permit must hold a current and valid ACLS certification.~~

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 17-07-037, § 246-817-760, filed 3/8/17, effective 4/8/17; WSR 16-06-106, § 246-817-760, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-760, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-760, filed 10/10/95, effective 11/10/95.]

NEW SECTION

WAC 246-817-765 Pediatric sedation endorsement. A pediatric patient is physiologically and anatomically unlike an adult, and different sedation drugs and practices may be used for this population, it is necessary to ensure that adequately trained and skilled individuals are treating pediatric patients.

(1) Effective January 1, 2024, a pediatric sedation endorsement is required to administer moderate sedation with enteral agents or moderate sedation with parenteral agents, to pediatric patients.

(2) A licensed dentist who holds a valid moderate sedation with enteral agents permit and a pediatric sedation endorsement may administer intranasal midazolam to a pediatric patient. This modality may be administered without a moderate sedation with parenteral agents permit. Administration of intranasal drugs on patients over the age of 12 requires the licensed dentist to hold a moderate sedation with parenteral agents or general anesthesia permit.

(3) To obtain a pediatric sedation endorsement a licensed dentist shall:

(a) Hold a valid moderate sedation with enteral agents or moderate sedation with parenteral agents permit;

(b) Comply with the permitting and renewal requirements in WAC 246-817-774;

(c) Provide evidence of education and training in:

(i) A CODA postgraduate instruction in pediatric dentistry, oral and maxillofacial surgery, or dental anesthesiology; or

(ii) Predoctoral dental school, postgraduate instruction, or continuing education of at least 37 hours in minimal and moderate sedation and an additional 14 hours in pediatric sedation.

(A) The 14 hours in pediatric sedation must include:

(I) Pediatric specific anatomical and physiological considerations;

- (II) Pediatric behavioral management during administration of sedating medication and intraoperatively;
 - (III) Pediatric drugs, dosages, and routes of administration;
 - (IV) Appropriate use of immobilization devices;
 - (V) Recordkeeping;
 - (VI) Nitrous oxide in combination with other sedating medications;
 - (VII) Prevention, recognition and management of complications;
- and
- (VIII) Four or more hours must include hands-on instruction, simulations, live supervised pediatric sedation case management, or a combination of those modalities. Observation alone is not acceptable.
- (B) The 37 hours in minimal and moderate sedation must include:
- (I) Physical evaluation;
 - (II) Technical administration;
 - (III) Drugs and routes of administration;
 - (IV) Recognition and management of complications and emergencies;
- and
- (V) Monitoring and monitoring equipment including training in expired CO₂.
- (d) Provide current health care provider BLS and PALS certifications.
- (4) A licensed dentist who holds a valid pediatric sedation endorsement shall complete 14 hours of continuing education every three years as required in WAC 246-817-773.
- (5) A licensed dentist who holds a valid pediatric endorsement must maintain a current and valid BLS and PALS certification.

[]

AMENDATORY SECTION (Amending WSR 14-21-068, filed 10/10/14, effective 11/10/14)

WAC 246-817-770 General anesthesia and deep sedation. (~~Deep sedation and general anesthesia must be administered by an individual qualified to do so under this chapter.~~

~~(1) Training requirements: To administer deep sedation or general anesthesia, the dentist must meet one or more of the following criteria:~~

~~(a) Any provider currently permitted as of the effective date of this revision to provide deep sedation or general anesthesia by the state of Washington will be grandfathered regarding formal training requirements, provided they meet current continuing education and other ongoing applicable requirements.~~

~~(b) New applicants with anesthesia residency training will be required to have had two years of continuous full-time anesthesia training meeting the following requirements based on when they began their anesthesia training:~~

~~(i) For dentists who began their anesthesia training prior to 2008, training must include two full years of continuous full-time training in anesthesiology beyond the undergraduate dental school level, in a training program as outlined in part 2 of "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry,"~~

published by the American Dental Association, Council on Dental Education (last revised October 2005).

~~(ii) For dentists who begin their anesthesia training in January 2008 or after, must have either received a certificate of completion.~~

~~(A) From))~~ (1) A licensed dentist is required to hold a permit of authorization to administer deep sedation or general anesthesia. A general anesthesia permit allows the holder to deliver moderate sedation with enteral or moderate sedation with parenteral agents without obtaining a separate permit.

(2) To obtain a general anesthesia permit, a licensed dentist shall:

(a) Comply with permitting and renewal requirements in WAC 246-817-774;

(b) Successfully complete two years of continuous full-time anesthesia training in at least one of the following:

(i) A dental anesthesiology program accredited by CODA ((ADA Commission on Dental Accreditation, "Accreditation Standards for Advanced General Dentistry Education Programs in Dental Anesthesiology," January 2007)) at the time the training was completed; or

~~((B) From))~~ (ii) A dental anesthesiology program approved by the ((Dental Quality Assurance Commission)) DQAC; or

~~((C) With a minimum of two years of full-time))~~ (iii) An anesthesia residency training, with a minimum of two years full-time, at a medical program accredited by the Accreditation Council for Graduate Medical Education ((ACGME)).

~~(c) New applicants who completed residency training in); or~~

(iv) An oral and maxillofacial surgery ((must meet)) residency and obtain at least one of the following ((requirements)):

~~((i) Be a))~~ (A) Diplomate status of the American Board of Oral and Maxillofacial Surgery;

~~((ii) Be a))~~ (B) Fellow status of the American Association of Oral and Maxillofacial Surgeons; or

~~((iii) Be a graduate of))~~ (C) Diploma in an Oral and Maxillofacial Residency Program accredited by CODA at the time the training was completed.

~~((2))~~ (3) In addition to meeting one or more of the ((above criteria)) requirements in subsection (1) of this section, the licensed dentist ((must also)) shall have a current ((and documented proficiency in advanced cardiac life support ((ACLS)) certification.

~~((3) Procedures for administration:))~~ (4) A licensed dentist shall:

(a) Ensure a patient is evaluated for general anesthesia prior to the administration of any sedative.

(i) Review the patient's medical history, medication use, and NPO or nothing by mouth status.

(ii) Consult with the patient's primary care physician or consulting medical specialist for significant medical considerations whom have American Society of Anesthesiologists patient classification of III or IV.

(iii) A patient's body mass index must be assessed as part of a preprocedural workup.

(iv) A focused physical examination to include vital signs, evaluation of the airway, and auscultation of the heart and lungs is required before administration of any sedative or anesthesia agent.

(b) Ensure a patient((s)) receiving deep sedation or general anesthesia ((must have)) has continual monitoring of their heart rate,

blood pressure, respiration, and expired ~~((carbon dioxide-))~~ CO₂ ~~((+))~~.
~~((In so doing, the licensee must))~~

(i) The licensed dentist shall utilize electrocardiographic monitoring, pulse oximetry, and end-tidal CO₂ monitoring~~((+))~~.
~~((b))~~.

(ii) Electrocardiograph monitoring must be continuously displayed from the beginning of general anesthesia and until the patient reaches the level of stage 1 anesthesia after treatment is completed.

(c) The patient's blood pressure ~~((and))~~, heart rate, and respiration rate shall be recorded every five minutes ~~((and respiration rate shall be recorded at least every fifteen minutes;))~~.

~~((e))~~ (d) To complete dental procedures under general anesthesia, the anesthesia permit holder, the anesthesia monitor, and the dental assistant shall all be present in the operating or treatment room. During deep sedation or general anesthesia, the ~~((person administering the))~~ anesthesia provider and the ~~((person))~~ provider monitoring the patient may not leave the immediate area~~((+))~~.

~~((d))~~ (e) During the recovery phase, the patient must be continually observed by the anesthesia provider or credentialed personnel~~((+))~~

~~((e))~~ acting within their scope of practice and trained in recovery phase of anesthesia.

(f) A discharge entry ~~((shall))~~ must be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.

~~((4) Dental records must contain))~~ (5) A licensed dentist who holds a valid general anesthesia permit shall document in the patient record appropriate medical history and patient evaluation. Anesthesia records ~~((shall))~~ must be recorded during the procedure in a timely manner and must include:

- (a) Blood pressure;
- (b) Heart rate;
- (c) Respiration;
- (d) Pulse oximetry;
- (e) End-tidal CO₂;
- (f) Drugs administered including amounts and time administered;
- (g) Length of procedure; and
- (h) Any complications of anesthesia.

~~((5))~~ (6) A licensed dentist shall comply with the following recordkeeping, equipment, and emergency ~~((medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following equipment standards))~~ medication requirements:

(a) Equipment used for monitoring patients must be calibrated or performance verified according to manufacturer's instructions;

(b) An operating theater must be large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient;

~~((b))~~ (c) An operating table or chair ~~((which))~~ must permit ~~((s))~~ the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

~~((e))~~ (d) A lighting system ~~((which is))~~ must be adequate to permit evaluation of the patient's skin and mucosal color and a backup

lighting system of sufficient intensity to permit conclusion of any ~~((operation))~~ procedure underway at the time of general power failure;

~~((d))~~ (e) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available;

~~((e))~~ (f) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system;

~~((f))~~ (g) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater;

~~((g))~~ (h) Ancillary equipment ~~((which))~~ must include the following:

(i) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb;

(ii) Endotracheal tubes and appropriate connectors, and laryngeal mask airway ~~((LMA))~~ and other appropriate equipment necessary to do an intubation;

(iii) Oral airways;

(iv) Tonsillar or pharyngeal suction tip adaptable to all office outlets;

(v) Endotracheal tube forceps;

(vi) Sphygmomanometer and stethoscope;

(vii) Adequate equipment to establish an intravenous infusion;

(viii) Pulse oximeter or equivalent;

(ix) Electrocardiographic monitor;

(x) End-tidal CO₂ monitor; and

~~((xi) AED or defibrillator ((or automatic external defibrillator (AED) available and in reach within sixty seconds from any area where general or deep anesthesia care is being delivered. Multiple AEDs or defibrillators may be necessary in large facilities. The AED or defibrillator must be on the same floor. (In dental office settings where sedation or general anesthesia are not administered, AEDs or defibrillators are required)) as defined in WAC 246-817-722.))~~

~~((h))~~ (i) Emergency drugs of the following types ~~((shall))~~ must be maintained:

(i) Vasopressor or equivalent;

(ii) Corticosteroid or equivalent;

(iii) Bronchodilator including, but not limited to, albuterol;

(iv) Muscle relaxant;

(v) Intravenous medications for treatment of cardiac arrest;

(vi) Narcotic antagonist;

(vii) Benzodiazepine antagonist;

(viii) Antihistaminic including, but not limited to, diphenhydramine;

(ix) Anticholinergic;

(x) Antiarrhythmic;

(xi) Coronary artery vasodilator including, but not limited to, nitroglycerin;

(xii) Antihypertensive;

(xiii) Anticonvulsant; and

(xiv) ACLS or PALS emergency drugs.

~~((6) Continuing education:~~

~~((a) A dentist granted a permit to administer))~~ (7) A licensed dentist who holds a valid general anesthesia permit and administers

general anesthesia in another licensed dentist office, must have a contract in place that contains the provisions required in WAC 246-817-778 (1) (a) through (c).

(8) A licensed dentist who holds a valid general anesthesia ((including deep sedation) under this chapter, must)) permit shall complete ((eighteen)) 18 hours of continuing education every three years as required in WAC 246-817-773.

(9) A licensed dentist who holds a valid general anesthesia permit must hold a current and valid ACLS certification.

~~((A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years.~~

~~((b) The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia; conscious sedation; physical evaluation; medical emergencies; pediatric advanced life support (PALS); monitoring and use of monitoring equipment; pharmacology of drugs; and agents used in sedation and anesthesia.~~

~~((c) Hourly credits earned from certification in health care provider basic life support (BLS) and advanced cardiac life support (ACLS) courses may not be used to meet the continuing education hourly requirements for obtaining or renewing a general anesthesia and deep sedation permit, however these continuing education hours may be used to meet the renewal requirement for the dental license.~~

~~((7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.))~~

[Statutory Authority: RCW 18.32.0365, 18.32.640 and 18.32.002. WSR 14-21-068, § 246-817-770, filed 10/10/14, effective 11/10/14. Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-770, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-770, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-771 Dental anesthesia assistant. (1) A dental anesthesia assistant ((must)) shall be certified under chapter 18.350 RCW and WAC 246-817-205.

(2) A dental anesthesia assistant may only accept delegation from an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.

(3) Under close supervision, the dental anesthesia assistant may:

(a) Initiate and discontinue an intravenous line for a patient being prepared to receive intravenous medications, sedation, or general anesthesia; and

(b) Adjust the rate of intravenous fluids infusion only to maintain or keep the line patent or open.

(4) Under direct visual supervision, the dental anesthesia assistant may:

(a) Draw up and prepare medications;

(b) Follow instructions to deliver medications into an intravenous line upon verbal command;

- (c) Adjust the rate of intravenous fluids infusion beyond a keep open rate;
- (d) Adjust an electronic device to provide medications, such as an infusion pump;
- (e) Administer emergency medications to a patient in order to assist the oral and maxillofacial surgeon or dental anesthesiologist in an emergency.
- (5) The responsibility for monitoring a patient and determining the selection of the drug, dosage, and timing of all anesthetic medications rests solely with the supervising oral and maxillofacial surgeon or dental anesthesiologist.
- (6) A certified dental anesthesia assistant shall notify the ~~((commission))~~ DQAC in writing, on a form provided by the department, of any changes in his or her supervisor.
- (a) The ~~((commission))~~ DQAC must be notified of the change prior to the certified dental anesthesia assistant accepting delegation from another supervisor. The certified dental anesthesia assistant may not practice under the authority of this chapter unless he or she has on file with the ~~((commission))~~ DQAC such form listing the current supervisor.
- (b) A supervisor must be an oral and maxillofacial surgeon or dental anesthesiologist who holds a valid Washington state general anesthesia permit.
- (c) For the purposes of this subsection:
- (i) "Any change" means the addition, substitution, or deletion of supervisor from whom the certified dental anesthesia assistant is authorized to accept delegation.
- (ii) "Direct visual supervision" means supervision by an oral and maxillofacial surgeon or dental anesthesiologist by verbal command and under direct line of sight.

[Statutory Authority: Chapter 18.350 RCW, RCW 18.32.0365, 18.32.640, 18.130.050(14), and 18.260.120. WSR 13-15-144, § 246-817-771, filed 7/23/13, effective 8/23/13.]

AMENDATORY SECTION (Amending WSR 16-06-106, filed 3/1/16, effective 4/1/16)

WAC 246-817-772 (~~((Requirements for))~~ Anesthesia monitor requirements. (1) When ~~((the))~~ a licensed dentist is also administering ~~((the))~~ moderate sedation with parenteral agents, deep sedation or general anesthesia, one additional appropriately trained team member must be designated for patient monitoring. The team member designated for patient monitoring when general anesthesia is being administered may not also perform dental assistant tasks.

(2) When moderate sedation with parenteral agents, deep sedation or general anesthesia is administered by a dedicated anesthesia provider who is not the operative dentist, the anesthesia provider may serve as the monitoring personnel.

(3) ~~((The))~~ A licensed dentist cannot employ an individual to monitor patients receiving moderate sedation with parenteral agents, deep sedation or general anesthesia unless that individual has received a minimum of ~~((fourteen))~~ 14 hours of documented training, ~~((+))~~ such as national certification American Association of Oral and Maxillofacial Surgeons ("AAOMS") in a course), on-site or in-office

training by a licensed dentist with a moderate sedation with parenteral agents or general anesthesia permit, or other education course specifically designed to include instruction and practical experience in use of equipment to include, but not be limited to, the following equipment:

- (a) Sphygmomanometer((+)) or a device able to measure blood pressure;
 - (b) Pulse oximeter((+)) or other respiratory monitoring equipment;
 - (c) Electrocardiogram;
 - (d) Bag-valve-mask resuscitation equipment;
 - (e) Oral and nasopharyngeal airways;
 - (f) Defibrillator((+)) or automatic external defibrillator.
- (4) The ((course)) training referred to in subsection (3) of this section must also include instruction in:
- (a) Basic sciences;
 - (b) Evaluation and preparation of patients with systemic diseases;
 - (c) Anesthetic drugs and techniques;
 - (d) Anesthesia equipment and monitoring; and
 - (e) Office anesthesia emergencies.
- (5) A licensed dentist shall maintain training or certification documentation of the anesthesia monitor.

[Statutory Authority: RCW 18.32.0365 and 18.32.640. WSR 16-06-106, § 246-817-772, filed 3/1/16, effective 4/1/16; WSR 09-04-042, § 246-817-772, filed 1/30/09, effective 3/2/09.]

NEW SECTION

WAC 246-817-773 Continuing education for dentists administering sedation. Continuing education must contribute to the professional knowledge and development of the licensed dentist to enhance sedation services provided to patients.

(1) The continuing education reporting period for a licensed dentist that administers sedation in Washington before December 31, 2023, begins January 1, 2024.

(2) The three-year continuing education reporting period for a licensed dentist that administers minimal sedation with nitrous oxide or minimal sedation in Washington on January 1, 2024, or later begins the date of first administration of sedation.

(3) The three-year continuing education reporting period for a licensed dentist initially issued a sedation permit in Washington on January 1, 2024, or later begins the date of permit issuance.

(4) A licensed dentist who holds a valid permit or endorsement shall complete required hours of continuing education every three years in one or more of the subject categories as required in below table.

	WAC 246-817-740 Minimal sedation with nitrous oxide – 7 hours	WAC 246-817-745 Minimal sedation – 7 hours	WAC 246-817-755 Moderate sedation with enteral agents – 7 hours	WAC 246-817-760 Moderate sedation with parenteral agents – 14 hours	WAC 246-817-765 Pediatric sedation endorsement – 14 hours	WAC 246-817-770 General anesthesia and deep sedation – 18 hours
Appropriate use of immobilization devices					X	
ACLS	X	X	X			

	WAC 246-817-740 Minimal sedation with nitrous oxide – 7 hours	WAC 246-817-745 Minimal sedation – 7 hours	WAC 246-817-755 Moderate sedation with enteral agents – 7 hours	WAC 246-817-760 Moderate sedation with parenteral agents – 14 hours	WAC 246-817-765 Pediatric sedation endorsement – 14 hours	WAC 246-817-770 General anesthesia and deep sedation – 18 hours
Behavioral management						X
General anesthesia						X
Inhalation analgesia						X
Medical emergencies	X	X	X	X	X	X
Nitrous oxide analgesia	X	X	X	X	X	
Oral or intravenous sedation				X		
Oral sedation	X	X	X			
PALS	X	X	X	X		X
Patient evaluation	X	X	X	X	X	X
Patient monitoring	X	X	X	X	X	X
Pediatric behavioral management					X	
Pediatric pharmacology					X	
Pediatric physiological					X	
Pediatric sedation					X	
Pharmacology				X		X
Physiology	X	X	X	X		X

(5) Verification of completion of continuing education hours will be due on the dentist's sedation permit renewal date beginning in 2027.

(6) Continuing education in subject categories identified in subsection (4) of this section may be completed using any of the activities or methods authorized in WAC 246-817-440(4).

(7) Proof of continuing education requirements are listed in WAC 246-817-440(5).

[]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-774 Permitting(~~/~~) and renewal requirements. (1) To administer moderate sedation (~~((oral and/or parenteral))~~) with enteral agents, moderate sedation with parenteral agents, or general anesthesia, (~~((+))~~) including deep sedation(~~(, dentist must first)~~), a licensed dentist shall:

(a) Meet the requirements of this chapter(~~((7))~~);

(b) Possess and maintain a (~~(current dental)~~) valid dentist license pursuant to chapter 18.32 RCW; and

(c) Obtain a permit of authorization from the DQAC (~~((through the department of health))~~). (~~((Application forms for permits may be obtained online or from the department and must be fully completed and include the current))~~)

(2) A pediatric sedation endorsement is required to administer moderate sedation with enteral agents or moderate sedation with parenteral agents to pediatric patients. A moderate sedation with enteral agents or moderate sedation with parenteral agents permit is required

to obtain the pediatric sedation endorsement as described in WAC 246-817-765.

~~(3)~~ An applicant for a permit or an endorsement as identified in this section shall complete and submit to the department an application as provided by the department and the applicable application fee.

~~((2))~~ (4) A permit of authorization is valid for three years from the date of issuance ~~((and must be renewed prior to the expiration date))~~.

~~((3) In addition to the renewal application form, the permit holder must))~~ (5) The permit holder shall renew the permit prior to the expiration date by providing to the department:

(a) ~~((Demonstrate))~~ Written declaration of continuing compliance with this chapter.

(b) ~~((Submit satisfactory evidence))~~ For a licensed dentist with a moderate sedation with parenteral agents or general anesthesia permit a written declaration of an acceptable on-site inspection by a DQAC approved organization, as described in WAC 246-817-775, within the previous five years.

(i) The permit holder shall maintain on-site inspection documentation for five years.

(ii) The DQAC may randomly audit up to 25 percent of permit holders after the permit is renewed.

(c) Written declaration of continuing education hours as required ((by this chapter)) in WAC 246-817-773.

~~((The dentist must maintain records that can be audited and must submit course titles, instructors, dates of attendance, sponsors and number of hours for each course every three years as required by this chapter.~~

~~(e) Pay))~~ (i) The permit holder shall maintain continuing education documentation for four years in compliance with WAC 246-12-170 through 246-12-240.

(ii) The DQAC may randomly audit up to 25 percent of permit holders as required in WAC 246-12-190.

(d) Written declaration that a minimum of 12 emergency drill scenarios were performed at least two times per year.

(i) The permit holder shall maintain emergency drill documentation for three years.

(ii) The DQAC may randomly audit up to 25 percent of permit holders after the permit is renewed.

(e) The applicable renewal fee.

~~((4) Site visits may be conducted at the DQAC discretion. Site visits will be conducted by an anesthesia provider permitted at the same level, in conjunction with a department of health investigator. Site visits may include the evaluation of equipment, medications, patient records, documentation of training of personnel, and other items as determined necessary.))~~

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-774, filed 1/30/09, effective 3/2/09.]

NEW SECTION

WAC 246-817-775 On-site inspections. (1) A licensed dentist shall conduct a self-assessment of their office preparedness for emer-

gencies, proper emergency equipment, and emergency drugs annually. The annual self-assessment attestation must be maintained for five years.

(2) A licensed dentist who holds a valid moderate sedation with parenteral agents or general anesthesia permit shall conduct a self-inspection using the appropriate DQAC's on-site inspection form annually. The annual self-inspection form shall be maintained for five years.

(3) A licensed dentist who holds a moderate sedation with parenteral agents or general anesthesia permit must:

(a) Obtain an on-site inspection every five years at the location where moderate sedation with parenteral agents or general anesthesia is provided by an approved organization or by a self-arranged inspection using the DQAC approved on-site inspection form.

(i) The self-arranged on-site inspection must be completed by at least two providers with the same or higher level permit as the licensed dentist being evaluated.

(ii) Volunteer evaluators may be a certified registered nurse anesthetist, licensed physician anesthesiologist, or a licensed dentist who holds an appropriate moderate sedation with parenteral agents or general anesthesia permit for at least five years.

(b) Choose one office to have inspected, if the permit holder provides sedation or anesthesia in more than one office. The permit holder must provide an attestation that all the same standards from the inspection are met in all offices where sedation or anesthesia is provided.

(4) On-site inspections by approved organizations include:

(a) The Washington state society of oral and maxillofacial surgeons;

(b) Accreditation Association for Ambulatory Health Care;

(c) Department of health ambulatory surgical facility license survey as required in chapter 246-330 WAC;

(d) Joint commission;

(e) American Association for Accreditation of Ambulatory Surgery Facilities;

(f) The Centers for Medicare and Medicaid Services; or

(g) Substantially equivalent organizations approved by the DQAC.

(5) On-site inspections for general anesthesia permit holders must begin by the end of the first full permit renewal period after June 30, 2023, or five years after initial permit issuance, whichever is later.

(6) On-site inspection for moderate sedation with parenteral agents permit holders must begin by the end of the first full permit renewal period after June 30, 2024, or five years after initial permit issuance, whichever is later.

(7) A licensed dentist who holds a moderate sedation with parenteral agents or general anesthesia permit shall maintain completed and signed on-site inspection forms for at least five years.

[]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-776 Discharge criteria for all levels of sedation (/) or general anesthesia. The licensed dentist shall ensure an

anesthesia provider (~~(must assess)~~) assesses patient responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met, except when their prior baseline is below the noted criteria:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable(~~(+)~~). Vital signs are not required when:

(a) A pediatric ASA I or ASA II patient is undergoing a routine dental procedure using either local anesthetic, nitrous oxide, or both with no other sedating medications; or

(b) A pediatric patient is uncooperative or the emotional condition is such that obtaining vital signs is not possible.

(c) Reasons why vital signs were not obtained must be documented.

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(3) The patient can talk and respond coherently to verbal questioning as appropriate to age and preoperative psychological status;

(4) The patient can sit up unassisted;

(5) The patient can walk with minimal assistance;

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness;

(7) The anesthesia provider has made a discharge entry (~~(must be made)~~) in the patient's record (~~(by the anesthesia provider indicating)~~). Discharge entries must include:

(a) The patient's condition upon discharge(~~(+)~~); and

(b) The name of the responsible party to whom the patient is released, (~~(+)~~) if a patient is required to be released to a responsible party(~~(+)~~);

(8) If the patient does not meet established discharge criteria, the anesthesia provider must evaluate the patient and determine if the patient has safely recovered to be discharged. The evaluation determining that the patient can be safely discharged must be noted in the patient's record.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-776, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-778 ((Nondental)) Nondentist anesthesia providers.

(1) A licensed dentist(~~(, certified registered nurse anesthetist (CRNA) or physician anesthesiologist~~) may provide anesthesia services in dental offices where dentists do not have an anesthesia permit when the anesthesia provider ensures that all equipment, facility, monitoring and assistant training requirements as established within this chapter related to anesthesia have been met. The anesthesia provider is exclusively responsible for the pre, intra, and post operative anesthetic management of the patient.

(2) The dentist without a general anesthesia permit must establish a written contract with the anesthesia provider to guarantee that when anesthesia is provided, all facility, equipment, monitoring and training requirements, for all personnel, as established by DQAC related to anesthesia, have been met.

~~(a) The dentist and the anesthesia provider may agree upon and arrange for the provision of items such as facility, equipment, moni-~~

toring and training requirements to be met by either party, provided the delineation of such responsibilities is written into the contract.

~~(b) Any contract under this section must state that the anesthesia provider must ensure anesthesia related requirements as set forth in this chapter have been met.)~~ shall have a contract in place when working with a nondentist anesthesia provider. The contract must include:

(a) That all facility, equipment, monitoring, and training requirements, for all personnel required in WAC 246-817-701 through 246-817-790 have been met.

(b) That the anesthesia provider is responsible for the pre, intra, postoperative, and discharge anesthetic management of the patient.

(c) Delineation of responsibilities. The dentist and the anesthesia provider shall agree upon and arrange for the provision of items such as facility, equipment, monitoring, and training requirements to be met by either party. The dentist and the anesthesia provider shall establish written emergency protocols, as required in WAC 246-817-724, and all clinical staff must be trained.

(2) A nondentist anesthesia provider may be a certified registered nurse anesthetist or licensed physician anesthesiologist.

(3) Sedation or general anesthesia must be provided by a competent and qualified certified registered nurse anesthetist, licensed physician anesthesiologist, or a licensed dentist with an appropriate sedation or general anesthesia permit.

(4) A licensed dentist must ensure compliance with WAC 246-817-701 through 246-817-790 whenever sedation or general anesthesia is administered in their dental facility.

(5) A licensed dentist with a moderate sedation, moderate sedation with parenteral agents, or general anesthesia permit must ensure compliance with WAC 246-817-701 through 246-817-790 everywhere they administer sedation or general anesthesia.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-778, filed 1/30/09, effective 3/2/09.]

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-780 Mandatory reporting (~~of death or significant complication as a result of any dental procedure~~). ~~((All licensees engaged in the practice of dentistry must))~~ A licensed dentist shall submit a report of any patient death or other life-threatening incident or complication, permanent injury or admission to a hospital that results in a stay at the hospital for more than (~~twenty-four~~) 24 hours, which is or may be a result of a dental procedure caused by a dentist or dental treatment.

(1) (~~The dentist involved must~~) A licensed dentist shall notify the (~~department of health/DQAC~~) DQAC, by telephone, email, or (~~fax~~) facsimile within (~~seventy-two~~) 72 hours of discovery and must submit a complete written report to the DQAC within (~~thirty~~) 30 days of the incident.

(2) When a patient comes into an office with an existing condition, and hospital admission is the result of that condition and not the dental procedure, it is not reportable.

- (3) The written report must include the following:
- (a) Name, age, and address of the patient.
 - (b) Name of the dentist and other personnel present during the incident.
 - (c) Address of the facility or office where the incident took place.
 - (d) Description of the type of sedation or anesthetic being utilized at the time of the incident.
 - (e) Dosages, if any, of drugs administered to the patient.
 - (f) A narrative description of the incident including approximate times and evolution of symptoms.
 - (g) Hospital discharge records if available.
 - (h) Additional information which the DQAC may require or request.

[Statutory Authority: RCW 18.32.640 and 18.32.0365. WSR 09-04-042, § 246-817-780, filed 1/30/09, effective 3/2/09. Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-780, filed 10/10/95, effective 11/10/95.]

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-790 Application of chapter 18.130 RCW. The provisions of the Uniform Disciplinary Act, chapter 18.130 RCW, apply to the permits and endorsements of authorization that may be issued and renewed under this chapter.

[Statutory Authority: RCW 18.32.035. WSR 95-21-041, § 246-817-790, filed 10/10/95, effective 11/10/95.]

WSR 22-23-093
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 15, 2022, 3:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-04-056 and 22-18-062; and Expedited [Emergency] Rule Making—Proposed notice was filed as WSR 22-18-061.

Title of Rule and Other Identifying Information: The department of children, youth, and families (DCYF) is amending:

- WAC 110-80-0260 What are the consequences of an adopted child being placed in foster care?
- WAC 110-50-0300 What cases must be referred to the division of child support (DCS)?
- WAC 110-50-0320 What constitutes good cause for not pursuing the collection or establishment of child support or paternity?

DCYF is repealing WAC 110-50-0310 Does children's administration refer foster care cases to the division of child support where good cause exists?

Hearing Location(s): On December 27, 2022, telephonic. Oral comments may be made by calling 360-972-5385 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including December 27, 2022, will be considered.

Date of Intended Adoption: December 29, 2022.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 27, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCYF is making changes regarding referrals to the division of child support when children are placed into the care of DCYF. DCYF had an automatic referral process to start collecting child support 72 hours after a child or youth is removed from the parents' or guardians' care and custody, unless good cause existed to not pursue collection. DCYF is revising good cause criteria to minimize the number of referrals to the division of child support.

Reasons Supporting Proposal: These changes are being made to help to alleviate financial hardship and other barriers families often experience, which in turn helps reunify and stabilize children and their families sooner. In addition, the governor's office has included minimized referrals as a cost-savings in the 2022 budget proposal.

Statutory Authority for Adoption: RCW 74.20.040.

Statute Being Implemented: RCW 74.20.040.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tara Camp, Olympia, 509-823-7503; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This proposed rule does not impact small businesses as defined in RCW 19.85.020.

Scope of exemption for rule proposal:

Is fully exempt.

November 15, 2022
Brenda Villarreal
Rules Coordinator

OTS-4046.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0300 ((What)) When will cases ((must)) be referred to the division of child support (DCS)? ~~((Each case where the department participates in the payment of foster care must be referred to the division of child support, except when:~~

~~(1) Collection would not be cost effective, including placements of seventy-two hours or less;~~

~~(2) Collection is exempt by law; or~~

~~(3) A child with developmental disabilities is eligible for admission to or discharged from a residential habilitation center as defined by RCW 71A.10.020(8), unless the child is placed as a result of an action taken under chapter 13.34 RCW.))~~ (1) The department will refer cases to DCS when a court has made a finding of abandonment as defined in RCW 13.34.030, unless good cause exists.

(2) Nothing in this section prohibits a parent, guardian, or relative from pursuing child support by contacting DCS directly.

[WSR 18-14-078, recodified as § 110-50-0300, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. WSR 05-06-091, § 388-25-0225, filed 3/1/05, effective 4/1/05. Statutory Authority: RCW 74.13.031. WSR 01-08-047, § 388-25-0225, filed 3/30/01, effective 4/30/01.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-50-0320 What constitutes good cause for not pursuing the collection or establishment of child support or paternity? ~~((Child-
ren's administration uses the following criteria to determine whether
sufficient good cause exists for requesting that DCS not pursue col-
lection or establish child support or paternity on foster care ca-
ses:))~~ Good cause for not pursuing the collection of child support or
establishing paternity exists when:

- (1) It is not in the child's or youth's best interest; and
- (2) The parent or ~~((other legally obligated person))~~ guardian, or the ~~((parent or other person's))~~ parent's or guardian's child or youth, spouse, or spouse's child or youth was the victim of the offense for which the child or youth was committed to the custody of the juvenile rehabilitation ~~((administration (JRA)))~~ division (JRD) and the child or youth is being placed directly into foster care from a ~~((JRA))~~ JRD facility until this placement episode closes;
- (3) Adoption proceedings for the child or youth are pending in court or the custodial parent or guardian is being helped by a private or public agency to decide if the child or youth will be placed for adoption;
- (4) The child or youth was conceived as a result of incest or rape ~~((and establishing paternity would not be in the child's best interest))~~;
- (5) The juvenile or tribal court in ~~((the))~~ dependency proceedings or the department finds that the parents or guardians will be unable to comply with an agreed reunification plan with the child or youth due to ~~((the))~~ financial hardship caused by paying child support ~~((The social worker also may determine that financial hardship caused by paying child support will delay or prevent family reunification; or))~~;
- (6) The custodial parent ~~((and/or))~~ or guardian or the child or youth may be placed in danger as a result of the presence of or potential for domestic abuse perpetrated by the ~~((person that the division of child support))~~ individual that DCS would be pursuing for collection action;
- (7) The child support obligation would result in a financial hardship for parents or guardians because the child's or youth's household was low income at the time of removal; or
- (8) The parent of a newborn child abandons the child by transferring the child to a qualified individual at an appropriate location, per RCW 26.20.030.

[WSR 18-14-078, recodified as § 110-50-0320, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.08.090, 2004 c 183, 74.20.040, and 74.13.020. WSR 05-06-091, § 388-25-0227, filed 3/1/05, effective 4/1/05.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 110-50-0310 Does children's administration refer foster care cases to the division of child support where good cause exists?

OTS-4047.2

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-80-0260 What are the consequences of an adopted child being placed in foster care? (~~(1) If a child is on active status with Washington state's adoption support program and the department places the child in foster care, the department is required to refer the case to the division of child support and the program may report that good cause exists for not pursuing collection of support payments.~~

~~(2))~~) The department may review the adoption support agreement and may renegotiate the amount of any cash payments to the adoptive parent during the child's out-of-home placement.

[WSR 18-14-078, recodified as § 110-80-0260, filed 6/29/18, effective 7/1/18. Statutory Authority: 42 U.S.C. § 671-675, RCW 26.33.340, 74.13A.020, 74.13A.030, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.085, 74.13A.100, 74.15.020, 45 C.F.R. § 1356.40. WSR 18-14-008, § 388-27-0265, filed 6/21/18, effective 7/22/18. Statutory Authority: RCW 74.13.031. WSR 01-08-045, § 388-27-0265, filed 3/30/01, effective 4/30/01.]

WSR 22-23-129
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS
[Filed November 21, 2022, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-043.

Title of Rule and Other Identifying Information: WAC 363-116-0751
Qualifications for pilot applicants.

Hearing Location(s): On January 19, 2023, at 10:00 a.m., Microsoft Teams and/or via phone conference 206-531-0324, Meeting Code 928096063#. To request a video link, please call 206-515-3887 or visit www.pilotage.wa.gov for call-in instructions.

Date of Intended Adoption: January 19, 2023.

Submit Written Comments to: Jaimie Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, by January 10, 2023.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, email HamelJ@wsdot.wa.gov, by January 16, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to update the exam process to better reflect agency practices, goals, and values, as well as to conduct other housekeeping of language to increase clarity to pilot aspirants and applicants, in preparation for the 2024 marine pilot exam.

Reasons Supporting Proposal: The proposed revisions will provide pilot applicants with a better understanding of requirements and qualifications for the exam process. In addition, the proposed rule language better aligns with Washington state diversity, equity, and inclusion initiatives.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The board received a recommendation from the trainee evaluation committee favoring implementation of the proposed language based on the benefits listed above.

Name of Proponent: Washington state board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3904.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5) (a) (i).

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

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

Scope of exemption for rule proposal:
Is fully exempt.

November 21, 2022
Jaimie C. Bever
Executive Director

OTS-4215.1

AMENDATORY SECTION (Amending WSR 20-19-110, filed 9/21/20, effective 10/22/20)

WAC 363-116-0751 Qualifications for pilot applicants. (1) Sea service.

(a) In addition to meeting the preexamination requirements of RCW 88.16.090, pilot applicants must, before taking the examination provided in WAC 363-116-076, meet one of the following indicated service requirements while holding a minimum license as mate/master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) (\div); any such license to be held by the applicant for at least two years before application.

Vessel Type	Minimum Size	Waters	Minimum Time
Cargo or tank	5000 GRT or 10,000 GT (ITC)	Ocean or near coastal	1 year as master
Cargo or tank	700 GRT or 1400 GT (ITC)	Ocean or near coastal	2 years as master
Cargo or tank	1600 GRT or 3000 GT (ITC)	Inland	2 years as master
Passenger or ferry	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Towing	100 GRT or 300 GT (ITC) towing/barge combination greater than 1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Ship assist	100 GRT or 300 GT (ITC)	Inland	2 years as master or 4 years sailing as a mate/master with a minimum of 1 year as master
Articulated tug barge (ATB)	Combined 10,000 GT (ITC)	Ocean or near coastal	4 years sailing as a mate/master with a minimum of 1 year as master
U.S. Flag government	3000 displacement tons	Ocean, near coastal or inland	2 years as commanding officer or master
Special purpose	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as master
Other			

Vessel Type	Minimum Size	Waters	Minimum Time
State-licensed pilot or Navy civil service pilot	1600 GRT or 3000 GT (ITC)	Ocean, near coastal or inland	2 years as pilot and 120 vessel moves

(b) Sea service is calculated based on days spent onboard a vessel while it is actively engaged in normal operations. "Sea service" does not include time onboard a vessel that is "laid up" or on "stand-by." One day of duty time equates to one day of sea service with no multiples or reductions based upon the type of industry or the watch and schedule a certain officer has to stand. In calculating sea service under this subsection, a year of service shall equal (~~three hundred sixty~~) 360 days of service on the vessel in the required capacity. Pilot applicants combining the above types of sea service shall have a total of at least two years of the various service times, except that one day of service as master on cargo, tank, or passenger/ferry vessels of at least 5000 GRT or 10,000 GT (ITC) shall be credited as two days of service time for the purpose of calculating such combined service times.

(c) Ship assist vessel sea service as mate must be on vessels where the mate is the sole vessel operator and acts independently of the master for (~~twelve~~) 12 hours per day.

(2) In lieu of the requirements of subsection (1) of this section, a pilot applicant may substitute either:

(a) Two years of service as a state licensed pilot and active member of a professional pilot association or as a naval federal pilot during which periods the pilot applicant was actively engaged in maneuvering, docking and undocking vessels while holding a minimum license as a master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; a naval federal pilot or state licensed pilot must also have 120 vessel moves; or

(b) Two years of service as a commanding officer or master of U.S. flag government vessels of not less than 3000 displacement tons. The pilot applicant must hold at the time of application a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC) upon oceans, near coastal waters or inland waters; or

(c) Two years of service as master of special purpose vessels of not less than 1600 GRT or 3000 GT (ITC) while holding a minimum license as master of steam or motor vessels of not more than 1600 GRT or 3000 GT (ITC), provided that the sea time making up the sea service was spent in charge of a vessel that can be documented to have been underway and to have required the type of ship-handling, navigation and leadership skills that the board finds necessary to provide the experience needed to become a pilot. Special purpose vessels may include fishing vessels, fishing processors, research vessels, offshore supply vessels, dredge vessels, and cable vessels. Special purpose vessels do not include drill ships. Evaluation of service time on special purpose vessels shall be made by the board on a case-by-case basis and shall not be approved unless the board finds the service to be the substantial equivalent of the sea service required in subsection (1)(a) and (b) of this section or (a) and (b) of this subsection. The determination of the board as to the suitability of service as master of a special purpose vessel will be final.

(3) As used in this section these terms shall have the following meanings:

(a) Cargo or tank vessels shall refer to vessels primarily engaged in the transportation of cargo between points.

(b) Passenger vessels shall refer to vessels primarily engaged in the transportation of passengers between points. This shall include yachts only to the extent and for such times that such vessels are actively engaged in moving passengers between points.

(c) Ferry vessels shall refer to vessels primarily engaged in the transportation of vehicles and passengers between points.

(d) Towing vessels shall refer to vessels primarily engaged in commercial towing.

(e) Ship assist vessels shall refer to vessels primarily engaged in assisting ships dock, undock, and maneuver.

(f) GRT shall refer to gross register tonnage (domestic).

(g) GT (ITC) shall refer to gross tonnage measured in accordance with the requirements of the 1969 *International Convention on Tonnage Measurement of Ships*.

(h) Master shall refer to the person of master's rank on the vessel's station bill or muster list or other such document who, in the event of an emergency or the sounding of a general alarm, is required to be on the bridge and in charge. If there is no such designation, the term master shall refer to the person of master's rank and pay who is ultimately in charge of the navigation of the vessel as reflected in the vessel's official log book, or there being no official log book, the bridge log of the vessel.

(i) Mate shall refer to the person of mate's rank (third mate, second mate, chief mate or simply mate) whose duties include regular bridge watchkeeping. Except where mate is defined above under ship assist sea time.

(4) It will be the responsibility of the pilot applicant to provide adequate documentation to enable the board to set forth and verify sea service in the manner specified in the board's application form.

The board will not provide applicants with a final determination verifying service until it receives an application form. An applicant will not get official notification of whether ~~((he/she qualifies))~~ they qualify to sit for the examination until the board reviews a formal application. In the event an applicant is working on a vessel other than one of the five specified in subsection (1)(a) of this section, e.g., a special purpose vessel, ~~((he/she))~~ the applicant will be required to provide the board with sufficient documentation to demonstrate to the board the amount of time involved in the navigation of a vessel underway.

[Statutory Authority: Chapter 88.16 RCW. WSR 20-19-110, § 363-116-0751, filed 9/21/20, effective 10/22/20; WSR 18-14-024, § 363-116-0751, filed 6/26/18, effective 7/27/18; WSR 12-05-064, § 363-116-0751, filed 2/15/12, effective 3/17/12. Statutory Authority: Chapter 88.16 RCW and 2008 c 128. WSR 08-15-119, § 363-116-0751, filed 7/21/08, effective 8/21/08. Statutory Authority: Chapter 88.16 RCW and 2005 c 26. WSR 05-18-021, § 363-116-0751, filed 8/29/05, effective 10/1/05.]

WSR 22-23-132

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed November 21, 2022, 10:51 a.m.]

Supplemental Notice to WSR 22-22-076.

Preproposal statement of inquiry was filed as WSR 22-16-043.

Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2022 and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): On December 27, 2022, at 10:00 a.m., internet/phone via Microsoft Teams. Please contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: January 1, 2023.

Submit Written Comments to: Nikki Bizzarri, P.O. Box 47453, Olympia, WA 98504-7453, email NikkiB@dor.wa.gov, fax 360-534-1606, by December 29, 2022.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384, by December 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes the stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply January 1 through June 30, 2023.

The forest land values are updated to reflect land values per acre for 2023 and are updated from the figures published in WSR 22-22-076.

Reasons Supporting Proposal: This proposal provides the revised stumpage value tables for January 1 through June 30, 2023, and the forest land values for 2023.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Nikki Bizzarri, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1582, fax 360-534-1606.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

November 21, 2022
 Atif Aziz
 Rules Coordinator

OTS-4170.3

AMENDATORY SECTION (Amending WSR 22-01-185, filed 12/20/21, effective 1/1/22)

WAC 458-40-540 Forest land values—((2022)) 2023. The forest land values, per acre, for each grade of forest land for the ((2022)) 2023 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2022)) 2023 VALUES PER ACRE
1	1	((218)) <u>224</u>
	2	((216)) <u>222</u>
	3	((202)) <u>208</u>
	4	((148)) <u>152</u>
2	1	((186)) <u>191</u>
	2	((179)) <u>184</u>
	3	((172)) <u>177</u>
	4	((122)) <u>125</u>
3	1	((144)) <u>148</u>
	2	((140)) <u>144</u>
	3	((138)) <u>142</u>
	4	((106)) <u>109</u>
4	1	((112)) <u>115</u>
	2	((107)) <u>110</u>
	3	((106)) <u>109</u>
	4	((81)) <u>83</u>
5	1	((81)) <u>83</u>
	2	((71)) <u>73</u>
	3	((70)) <u>72</u>
	4	((50)) <u>51</u>
6	1	((41)) <u>42</u>
	2	((39)) <u>40</u>
	3	((39)) <u>40</u>
	4	((37)) <u>38</u>
7	1	((18)) <u>19</u>
	2	((18)) <u>19</u>
	3	17
	4	17
8	1	1

[Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-540, filed 12/20/21, effective 1/1/22; WSR 21-02-020, § 458-40-540, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-02-053, § 458-40-540, filed 12/23/19, effective 1/1/20; WSR 19-02-069, § 458-40-540, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-02-058, § 458-40-540, filed 12/29/17, effective 1/1/18; WSR 17-02-003, § 458-40-540, filed 12/22/16, effective 1/1/17; WSR 16-01-069, § 458-40-540, filed

12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-01-095, § 458-40-540, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 14-01-097, § 458-40-540, filed 12/17/13, effective 1/1/14; WSR 13-02-034, § 458-40-540, filed 12/21/12, effective 1/1/13. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-540, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 11-02-019, § 458-40-540, filed 12/29/10, effective 1/1/11; WSR 10-02-031, § 458-40-540, filed 12/29/09, effective 1/1/10; WSR 09-02-044, § 458-40-540, filed 12/31/08, effective 1/1/09; WSR 08-02-063, § 458-40-540, filed 12/28/07, effective 1/1/08; WSR 07-02-038, § 458-40-540, filed 12/26/06, effective 1/1/07. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.140. WSR 06-02-006, § 458-40-540, filed 12/22/05, effective 1/1/06; WSR 05-02-037, § 458-40-540, filed 12/30/04, effective 1/1/05. Statutory Authority: RCW 82.32.300 and 84.33.140. WSR 04-02-018, § 458-40-540, filed 12/30/03, effective 1/1/04. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-540, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-540, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.120. WSR 01-02-018, § 458-40-540, filed 12/21/00, effective 1/1/01; WSR 00-02-018, § 458-40-540, filed 12/27/99, effective 1/1/00; WSR 99-02-030, § 458-40-540, filed 12/30/98, effective 1/1/99; WSR 98-02-014, § 458-40-540, filed 12/30/97, effective 1/1/98; WSR 97-07-041, § 458-40-540, filed 3/14/97, effective 4/14/97; WSR 96-02-055, § 458-40-540, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.300 and 84.33.120. WSR 95-02-039, § 458-40-540, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 82.32.300. WSR 94-02-046, § 458-40-540, filed 12/30/93, effective 1/1/94. Statutory Authority: RCW 84.33.120. WSR 93-02-024, § 458-40-540, filed 12/31/92, effective 1/1/93; WSR 91-24-026, § 458-40-540, filed 11/26/91, effective 1/1/92. Statutory Authority: RCW 84.33.120 and 84.08.010. WSR 90-24-012, § 458-40-540, filed 11/27/90, effective 12/28/90; WSR 89-23-095, § 458-40-540, filed 11/21/89, effective 12/22/89. Statutory Authority: RCW 84.33.120 and 84.33.130. WSR 88-23-055 (Order FT-88-3), § 458-40-540, filed 11/15/88; WSR 87-22-068 (Order FT-87-3), § 458-40-540, filed 11/4/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-02-023 (Order 86-4), § 458-40-540, filed 12/31/86.]

AMENDATORY SECTION (Amending WSR 22-14-029, filed 6/24/22, effective 7/1/22)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((July 1 through December 31, 2022))~~ January 1 through June 30, 2023:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

((July 1 through December 31, 2022))

January 1 through June 30, 2023

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	1	\$(509) <u>547</u>
		2	((611)) <u>591</u>
		3	((658)) <u>597</u>
		4	((640)) <u>627</u>
		5	((559)) <u>561</u>
		9	((495)) <u>533</u>
Western Hemlock and Other Conifer ⁽³⁾	WH	1	((342)) <u>345</u>
		2	((448)) <u>458</u>
		3	((404)) <u>418</u>
		4	((418)) <u>406</u>
		5	((399)) <u>408</u>
		9	((328)) <u>331</u>
Western Redcedar ⁽⁴⁾	RC	1-5	((1472)) <u>1358</u>
		9	((1458)) <u>1344</u>
Ponderosa Pine ⁽⁵⁾	PP	1-5	((185)) <u>200</u>
		9	((171)) <u>186</u>
Red Alder	RA	1-5	((521)) <u>564</u>
		9	((507)) <u>550</u>
Black Cottonwood	BC	1-5	((39)) <u>23</u>
		9	((25)) <u>2</u>
Other Hardwood	OH	1-5	((251)) <u>243</u>
		9	((237)) <u>229</u>
Douglas-fir Poles & Piles	DFL	1-5	((975)) <u>1061</u>
		9	((961)) <u>1047</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar Poles	RCL	1-5	((1763)) 1745
		9	((1749)) 1731
Chipwood ⁽⁶⁾	CHW	1-5	((1)) 8
		9	((1)) 6
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-9	((322)) 588
Posts ⁽⁸⁾	LPP	1-9	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-9	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-9	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes all Pines in SVA 1-5 & 9.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.
- (9) Stumpage value per lineal foot.

Washington State Department of Revenue
EASTERN WASHINGTON STUMPAGE VALUE TABLE
 ((July 1 through December 31, 2022))
 January 1 through June 30, 2023

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
 Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir ⁽²⁾	DF	6	\$((410)) 416
		7	((424)) 430
Western Hemlock and Other Conifer ⁽³⁾	WH	6	((304)) 336
		7	((318)) 350
Western Redcedar ⁽⁴⁾	RC	6	((1689)) 1662
		7	((1703)) 1676
Ponderosa Pine ⁽⁵⁾	PP	6	((171)) 186
		7	((185)) 200
Other Hardwood	OH	6	1
		7	9

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Western Redcedar Poles	RCL	6	((1894)) <u>1833</u>
		7	((1905)) <u>1847</u>
Chipwood ⁽⁶⁾	CHW	6	1
		7	1
Small Logs ⁽⁶⁾	SML	6	23
		7	25
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	6-7	((322)) <u>588</u>
Posts ⁽⁸⁾	LPP	6-7	0.35
DF Christmas Trees ⁽⁹⁾	DFX	6-7	0.25
Other Christmas Trees ⁽⁹⁾	TFX	6-7	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage value per 8 lineal feet or portion thereof.

(9) Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50 percent) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.,) over two acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from January 1 through June 30, (~~2022~~) 2023:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
 ((~~July 1 through December 31, 2022~~)) January 1 through June 30, 2023

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	\$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-\$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
 ((~~July 1 through December 31, 2022~~)) January 1 through June 30, 2023

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$200.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$0.00
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will

consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

[Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 22-14-029, § 458-40-660, filed 6/24/22, effective 7/1/22. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-660, filed 12/20/21, effective 1/1/22. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 21-13-100, § 458-40-660, filed 6/18/21, effective 7/1/21. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-660, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-14-067, § 458-40-660, filed 6/26/20, effective 7/1/20; WSR 20-02-053, § 458-40-660, filed 12/23/19, effective 1/1/20; WSR 19-14-013, § 458-40-660, filed 6/21/19, effective 7/1/19; WSR 19-02-069, § 458-40-660, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-14-023, § 458-40-660, filed 6/26/18, effective 7/1/18; WSR 18-02-058, § 458-40-660, filed 12/29/17, effective 1/1/18; WSR 17-14-020, § 458-40-660, filed 6/23/17, effective 7/1/17; WSR 17-02-003, § 458-40-660, filed 12/22/16, effective 1/1/17. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 16-14-035, § 458-40-660, filed 6/28/16, effective 7/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 16-01-069, § 458-40-660, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 15-14-019, § 458-40-660, filed 6/22/15, effective 7/1/15; WSR 15-01-095, § 458-40-660, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 14-14-079, § 458-40-660, filed 6/27/14, effective 7/1/14; WSR 14-01-097, § 458-40-660, filed 12/17/13, effective 1/1/14; WSR 13-14-056, § 458-40-660, filed 6/28/13, effective 7/1/13; WSR 13-02-034, § 458-40-660, filed 12/21/12, effective 1/1/13; WSR 12-14-065, § 458-40-660, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-660, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 11-14-051, § 458-40-660, filed 6/29/11, effective 7/1/11; WSR 11-02-014, § 458-40-660, filed 12/29/10, effective 1/1/11; WSR 10-14-095, § 458-40-660, filed 7/6/10, effective 7/6/10; WSR 10-02-032, § 458-40-660, filed 12/29/09, effective 1/1/10; WSR 09-14-109, § 458-40-660, filed 6/30/09, effective 7/1/09; WSR 09-02-043, § 458-40-660, filed 12/31/08, effective 1/1/09; WSR 08-14-085, § 458-40-660, filed 6/27/08, effective 7/1/08; WSR 08-02-064, § 458-40-660, filed 12/28/07, effective 1/1/08; WSR 07-14-095, § 458-40-660, filed 6/29/07, effective 7/1/07; WSR 07-02-039, § 458-40-660, filed 12/26/06, effective 1/1/07; WSR 06-14-064, § 458-40-660, filed 6/30/06, effective 7/1/06; WSR 06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; WSR 05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; WSR 05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; WSR 04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; WSR 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; WSR 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory

Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-660, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; WSR 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. WSR 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. WSR 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; WSR 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; WSR 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; WSR 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; WSR 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; WSR 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; WSR 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. WSR 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; WSR 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; WSR 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. WSR 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. WSR 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. WSR 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; WSR 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; WSR 93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; WSR 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; WSR 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; WSR 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. WSR 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; WSR 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; WSR 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; WSR 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; WSR 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. WSR 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; WSR 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; WSR 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; WSR 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; WSR 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WSR 22-23-138
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 21, 2022, 12:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-025.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-424-0001 Citizenship and immigration status—Definitions, 388-424-0020 How does my alien status impact my eligibility for federally funded basic food benefits?, and 388-466-0005 Immigration status requirements for refugee cash assistance.

Hearing Location(s): On December 27, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 28, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by December 27, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS Rules Consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by December 13, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to align department policies with federal legislation and authorization from the Office of Refugee Resettlement, which expands eligibility for federally funded benefits to humanitarian parolee arrivals displaced from Ukraine.

Emergency amendments to implement this change took effect June 24, 2022, under WSR 22-14-020, and extended under WSR 22-21-092 filed on October 17, 2022.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: See federal law below.

Rule is necessary because of federal law, Additional Ukraine Supplemental Appropriations Act, 2022 (Public Law 117-128).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Max Gibbs-Ruby, P.O. Box 45470, Olympia, WA 98504-5470, Max.Gibbs-Ruby@dshs.wa.gov.

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

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

cal or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Additional Ukraine Supplemental Appropriations Act, 2022 (Public Law 117-128).

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 18, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4943.5

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-424-0001 Citizenship and immigration status—Definitions. For the purposes of determining an individual's citizenship and immigration status for public assistance, the following definitions apply:

(1) **"Lawfully present"** are immigrants or noncitizens who have been inspected and admitted into the United States and have not overstayed the period for which they were admitted, or have current permission from the U.S. Citizenship and Immigration Services (CIS) to stay or live in the U.S.

(2) **"Qualified aliens"** are lawfully present immigrants defined in federal law as one of the following:

(a) Individuals lawfully admitted for permanent residence (LPRs).

(b) Individuals who are admitted to the U.S. as refugees under INA §207. The following individuals are treated the same as refugees in their eligibility for public assistance:

(i) Hmong or Highland Lao are members of a Hmong or Highland Lao-tian tribe which rendered military assistance to the U.S. during the Vietnam era (August 5, 1964, to May 7, 1975), and are "lawfully present" in the U.S. This category also includes the spouse (including unremarried widow or widower) or unmarried dependent child of such tribal members.

(ii) Victims of trafficking according to federal law are:

(A) Individuals who have been certified as victims of trafficking by the federal U.S. Department of Health and Human Services (HHS), Office on Trafficking in Person (OTIP), or have been granted a T visa.

(B) Immediate family members of trafficking victims. Immediate family members are the spouse or child of a victim of any age and the parent or unmarried minor sibling if the victim is under 21 years old.

(iii) Afghan nationals and their spouses and children, paroled into the U.S. between July 31, 2021, and September 30, 2022, after

evacuation from Afghanistan to the U.S., or to a location overseas (-): or

(A) an individual who was paroled into the U.S. after September 30, 2022, and is the spouse or child of an Afghan national as defined in subsection (iii) of this section;

(B) an individual who is the parent or legal guardian of an individual defined in subsection (iii) of this section who is determined to be an unaccompanied child;

(iv) Special immigrants from Iraq and Afghanistan are individuals granted:

(A) Special immigrant status under INA §101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006.

(v) Individuals from Ukraine and their family members admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who are:

(A) Citizens or nationals of Ukraine;

(B) Non-Ukrainian individuals who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;

(C) Individuals who were first granted humanitarian parole, and then obtained temporary protected status (TPS). They are eligible for federally funded assistance until the end of their parole term due to underlying receipt of humanitarian parole;

(D) A spouse or child of an individual described in subsections (A)-(C) of this section who is paroled into the United States after September 30, 2023;

(E) A parent, legal guardian, or primary caregiver of an unaccompanied refugee minor or an unaccompanied child described in subsections (A)-(C) of this section who is paroled into the United States after September 30, 2023.

(c) Individuals who have been granted asylum under INA §208.

(d) Cuban/Haitian entrants. These are nationals of Cuba or Haiti who were paroled into the U.S. or given other special status.

(e) Abused spouses or children, parents of abused children, or children of abused spouses:

(i) When the alien no longer resides with the person who committed the abuse, and has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse or unmarried child under age 21 of a lawful permanent resident (LPR);

(B) A notice of "prima facie" approval of a pending self-petition under the violence against women act (VAWA); or

(C) Proof of a pending application for suspension of deportation or cancellation of removal under VAWA.

(ii) Children of an abused spouse do not need their own separate pending or approved petition, but are included in their parent's petition if it was filed before they turned 21 years old. Children of abused persons who meet the conditions (~~above~~) in this section retain their "qualified alien" status even after they turn 21 years old.

(f) Individuals who have been granted parole into the U.S. for at least a period of one year (or indefinitely) under INA §212 (d) (5), including "public interest" parolees.

(g) Individuals granted withholding of deportation or removal under INA §243(h) or §241 (b) (3).

(h) Individuals who were admitted to the U.S. as conditional entrants under INA §203 (a)(7) prior to April 1, 1980.

(i) Amerasians who were born to U.S. citizen armed services members in Southeast Asia during the Vietnam War.

(3) **"Nonqualified aliens"** are noncitizens who are lawfully present in the U.S. and who are not included in the definition of qualified aliens in subsection (1) of this section. Nonqualified aliens include but are not limited to:

(a) Citizens of Marshall Islands, Micronesia, or Palau;

(b) Immigrants paroled into the U.S. for less than one year;

(c) Immigrants granted temporary protected status; or

(d) Nonimmigrants who are allowed entry into the U.S. for a specific purpose usually for a limited time are also nonqualified. Examples include:

(i) Business visitors;

(ii) Students; and

(iii) Tourists.

(4) **"Survivors of certain crimes"** are noncitizens, and any of their qualifying family members, as defined in subsection (5) of this section, who have:

(a) Filed or are preparing to file an application for a T visa (trafficking victim);

(b) Filed or are preparing to file an application for a U visa (crime victim); or

(c) Been harmed by one of the specific crimes described below; and

(i) Was granted continued presence by U.S. Homeland Security; or

(ii) Has filed or is preparing to file an application for asylum status.

Specific crimes include:

(A) Those related to human trafficking, kidnapping, unlawful imprisonment, custodial interference, luring, trafficking, coercion of involuntary servitude, and others under chapter 9A.40 RCW;

(B) Sexual exploitation of children and others under chapter 9.68A RCW; or

(C) Substantially similar crimes under federal law or the laws of another state.

(5) **"Qualifying family members"** are the spouse and child(ren) of survivors of certain crimes, and the parents or unmarried minor siblings if the survivor is under 21 years old. Qualifying family members do not include a person charged with or convicted of attempt, conspiracy, solicitation, or commission of a crime, listed under subsection (4)(c) of this section, against the survivor of certain crimes.

(6) **"Undocumented aliens"** are noncitizens without a lawful immigration status as defined in subsections (2) or (3) of this section, and who:

(a) Entered the U.S. illegally; or

(b) Were lawfully admitted but whose status expired or was revoked per United States Citizenship and Immigration Services (USCIS).

(7) **"U.S. citizens"** are one of the following:

(a) Individuals born in the United States or its territories (Guam, Puerto Rico, and the U.S. Virgin Islands; also residents of the Northern Mariana Islands who elected to become U.S. citizens).

(b) American Indians born outside the U.S. without regard to immigration status or date of entry if:

(i) They were born in Canada and are 50 percent American Indian blood (but need not belong to a federally recognized tribe); or

(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation.

(c) Individuals who have become naturalized U.S. citizens.

(d) Individuals born abroad to at least one U.S. citizen parent depending on conditions at the time of their birth, per title 8, subchapter III, section 1401 of the United States Code.

(e) Individuals who turn 18 years of age on or after February 27, 2001, automatically become U.S. citizens if the following conditions are met while the individual is under age 18 per INA 320.

(i) The individual is granted lawful permanent resident (LPR) status;

(ii) At least one of the individual's parents is a U.S. citizen by birth or naturalization; and

(iii) The individual:

(A) Resides in the U.S. in the legal and physical custody of the citizen parent; or

(B) Was adopted according to the requirements of INA 101 and resides in the U.S. in the legal and physical custody of the citizen parent.

(f) Individuals, who turned 18 before February 27, 2001, would have automatically become a citizen if, while still under 18, they became a lawful permanent resident and both of their parents were naturalized. Such individuals also may have derived citizenship when only one parent naturalized, if the other parent was dead or a U.S. citizen by birth, or the individual's parents were separated and the naturalized parent had custody.

(8) **"U.S. nationals"** are persons who owe permanent allegiance to the U.S. and may enter and work in the U.S. without restriction. The following are the only persons classified as U.S. nationals:

(a) Persons born in American Samoa or Swain's Island after December 24, 1952; and

(b) Residents of the Northern Mariana Islands who did not elect to become U.S. citizens.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-424-0001, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.820, 74.08.090, 74.08A.120, 74.09.035. WSR 22-02-014, § 388-424-0001, filed 12/27/21, effective 2/1/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 20-09-044, § 388-424-0001, filed 4/8/20, effective 5/9/20. Statutory Authority: RCW 74.04.050, 74.04.057, and 74.08.090. WSR 11-16-056, § 388-424-0001, filed 7/29/11, effective 8/29/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0001, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0001, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0001, filed 7/7/04, effective 8/7/04.]

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-424-0020 How does my alien status impact my eligibility for federally funded Basic Food benefits? (1) If you are a U.S. citizen or U.S. national as defined in WAC 388-424-0001 and meet all other eligibility requirements, you may receive federal Basic Food benefits.

(2) If you are not a U.S. citizen or U.S. national, you must fall within (a) or (b) of this subsection, and meet all other eligibility requirements, in order to receive federal Basic Food benefits:

(a) You are a member of one of the following groups of lawful immigrants as defined in WAC 388-424-0001:

- (i) Amerasian;
- (ii) Asylee;
- (iii) Cuban or Haitian entrant;
- (iv) Deportation or removal withheld;
- (v) Refugee;

(vi) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022, or their spouse or child paroled into the U.S. after September 30, 2022;

- (vii) Special immigrant from Iraq or Afghanistan;
- (viii) Victim of trafficking;
- (ix) Noncitizen American Indian; or
- (x) Hmong or Highland Lao tribal member.

(b) ~~((+i))~~ You are a member of one of the following groups of qualified aliens as defined in WAC 388-424-0001:

- ~~((+A))~~ (i) Conditional entrant;
- ~~((+B))~~ (ii) Lawful permanent resident (LPR);
- ~~((+C))~~ (iii) Paroled for one year or more; ~~((+E))~~

(iv) Individuals from Ukraine granted humanitarian parole between February 24, 2022, and September 30, 2023; or

(A) their spouses and children paroled into the U.S. after September 30, 2023; or

(B) a parent, legal guardian, or primary caregiver of an unaccompanied refugee minor or an unaccompanied child described who is paroled into the U.S. after September 30, 2023; or

~~((+D))~~ (v) Abused spouse or child or parent or child of an abused spouse or child.

~~((+ii))~~ (vi) And, one of the following also applies to you:

(A) You have worked or can get credit for ~~((forty))~~ 40 Social Security Administration (SSA) work quarters - as described in WAC 388-424-0008;

(B) You are an active duty personnel or honorably discharged veteran of the U.S. military or you are the spouse, unmarried surviving spouse, or unmarried dependent child of someone who meets this requirement, as described in WAC 388-424-0007;

(C) You receive cash or medical benefits based on supplemental security income (SSI) criteria for blindness or disability;

(D) You have lived in the U.S. as a "qualified alien" as described in WAC 388-424-0001 for at least five years;

(E) You are under age ~~((eighteen))~~ 18; or

(F) You were lawfully residing in the U.S. on August 22, 1996, and were born on or before August 22, 1931.

(3) If you are a legal immigrant not eligible for federal benefits under Basic Food only because of your alien status, you may be eligible for state-funded food assistance program (FAP) benefits under WAC 388-400-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-424-0020, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-424-0020, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120. WSR 11-02-035, § 388-424-0020, filed 12/29/10, effective 2/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.020, and Sec. 8120 of Pub. L 111-118 (DOD appropriations law); USDA Food and Nutrition Service federal guidance from January 29, 2010; U.S. DHHS Administration for Children and Families, Office of Family Assistance federal guidance letter No. TANF-ACF-PI-2010-05 issued on June 16, 2010. WSR 10-15-045, § 388-424-0020, filed 7/13/10, effective 7/27/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.320, Pub. L. No. 110-181, National Defense Authorization Act for Fiscal Year 2008, Pub. L. No. 111-08, the Omnibus Appropriations Act of 2009, Division F, Title VI, Section 602; Office of Refugee Resettlement State Letter 09-17 from April 9, 2009; and federal guidance issued on May 15, 2009, by the Food and Nutrition Service, United States Department of Agriculture. WSR 09-21-046, § 388-424-0020, filed 10/14/09, effective 11/4/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-424-0020, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 04-15-004, § 388-424-0020, filed 7/7/04, effective 8/7/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 03-05-029, § 388-424-0020, filed 2/10/03, effective 4/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-046, § 388-424-0020, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.510, S. 1150, the Agricultural Research, Extension, and Education Reform Act of 1998. WSR 99-01-058, § 388-424-0020, filed 12/11/98, effective 1/11/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-424-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-518-1805.]

AMENDATORY SECTION (Amending WSR 22-12-038, filed 5/25/22, effective 6/25/22)

WAC 388-466-0005 Immigration status requirements for refugee cash assistance. (1) You may be eligible for refugee cash assistance (RCA) if you can provide documentation issued by the U.S. Citizenship and Immigration Services (USCIS), that you are:

- (a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);
- (b) Paroled into the U.S. as a refugee or asylee under section 212 (d) (5) of the INA;
- (c) Granted conditional entry under section 203 (a) (7) of the INA;
- (d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian Immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 Continuing Resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d) (5) of the INA;

(g) Certified as a victim of human trafficking by the federal office of refugee resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 Visa;

(i) Afghan nationals paroled into the U.S. between July 31, 2021, and September 30, 2022; or

(i) an individual who was paroled into the U.S. after September 30, 2022, and is the spouse or child of an Afghan national as defined in subsection (i) of this section;

(ii) an individual who is the parent or legal guardian of an individual defined in subsection (i) of this section who is determined to be an unaccompanied child;

(j) Admitted as Special Immigrant from Iraq or Afghanistan under section 101 (a) (27) of the INA, or special immigrant conditional permanent resident, or paroled under section 602 (B) (1) AAPA/Sec 1059(a) NDAA 2006((-));

(k) Individuals from Ukraine admitted as humanitarian parolees between February 24, 2022, and September 30, 2023, and whose parole has not been terminated by the Secretary of the Department of Homeland Security (DHS), who:

(i) are citizens or nationals of Ukraine;

(ii) are non-Ukrainian individuals, who were habitually residing in Ukraine, and have documentation confirming last habitual residence in Ukraine;

(iii) are individuals who were first granted humanitarian parole, and then obtained temporary protected status (TPS). They are eligible for refugee cash assistance until the end of their parole term due to underlying receipt of humanitarian parole;

(iv) are children or spouses of someone paroled into the U.S. under subsection (k) of this section and who are paroled into the U.S. after September 30, 2023; or

(v) is the parent, legal guardian, or primary caregiver of an individual described in subsection (k) of this section who is determined to be an unaccompanied child.

(2) A permanent resident alien meets the immigration status requirements for RCA if the individual was previously in one of the statuses described in subsections (1) (a) through ~~((g))~~ (k) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 22-12-038, § 388-466-0005, filed 5/25/22, effective 6/25/22. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2011 1st sp.s. c 15. WSR 12-19-037, § 388-466-0005, filed 9/12/12, effective 10/13/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.320, 74.08.090, and Public Law 110-161 Section 525; Public Law 110-181 Section 1244; FNS Admin Notice 08-17; State Letter 04-12 from the Office of Refugee Resettlement. WSR 08-14-116, § 388-466-0005, filed 6/30/08, effective 8/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-466-0005, filed 7/31/98, effective 9/1/98.]

**WSR 22-23-143
PROPOSED RULES****HEALTH CARE AUTHORITY**

[Filed November 21, 2022, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-059.

Title of Rule and Other Identifying Information: WAC

182-538D-0262 Behavioral health administrative service organizations and managed care organizations—Behavioral health ombuds office.

Hearing Location(s): On December 27, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_SNmskQlERbyW0KVphqsXXg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 28, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 27, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by December 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is repealing this rule, which requires behavioral health administrative agencies to maintain a behavioral health ombuds office for medicaid managed care enrollees. This service was replaced with a new state office of behavioral health consumer advocacy, effective October 1, 2022.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; chapter 71.40 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1254.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 21, 2022
Wendy Barcus
Rules Coordinator

OTS-4111.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-538D-0262 Behavioral health administrative service organizations and managed care organizations—Behavioral health ombuds office.

WSR 22-23-145
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 22, 2022, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-15-091.

Title of Rule and Other Identifying Information: Presumptive coverage of posttraumatic stress disorder (PTSD) as an occupational disease. WAC 296-14-300 Mental condition/mental disabilities.

Hearing Location(s): On January 13, 2023, at 9:00 a.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID: 936 165 5337; join by phone +1 253 215 8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>. The virtual meeting starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: March 21, 2023.

Submit Written Comments to: Jordan Ely, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email Jordan.Ely@Lni.wa.gov, fax 360-902-5029, by January 13, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Nathalie.Penberthy@Lni.wa.gov, by January 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on legislation passed in 2018 and 2020, this rule making proposes to amend WAC 296-14-300 Mental condition/mental disabilities. WAC 296-14-300 provides for coverage of mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom or that are characterized by excessive or abnormal thoughts, feelings, behaviors, or neurological symptoms that are not clinically related to occupational exposure. PTSD qualifies as such a medical condition and is covered as an occupational disease for certain industries.

Under legislation passed in 2018 and 2019, certain firefighters and law enforcement officers were added to the presumption that PTSD is an occupational disease as provided by RCW 51.08.142 and 51.32.185. For public safety telecommunicators, PTSD may be considered an occupational disease, as provided by RCW 51.08.142. This rule making adds those specified industries and presumptions into department rules on industrial insurance coverage.

Reasons Supporting Proposal: Legislation passed during the 2018 and 2020 sessions (chapter 264, Laws of 2018, SSB 6214 and chapter 234, Laws of 2020, SHB 2758) resulted in updates to RCW 51.08.142 and 51.32.185, and added a new section to chapter 51.08 RCW. This rule making proposes to amend existing rules conflicting with the law and clarify coverage of PTSD under workers' compensation. SSB 6214 provides a prima facie presumption for certain firefighters and law enforcement officers covered under workers' compensation for occupational disease PTSD. SHB 2758 added public safety telecommunicators as a job class where PTSD may be considered as an occupational disease.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.08.142, 51.32.185.

Statute Being Implemented: RCW 51.08.142, 51.32.185.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt under RCW 34.05.328 (5)(b)(iii) because the rule is adopting, without material change, language from RCW 51.08.142 and 51.32.185, as amended by SSB 6214 (2018) and SHB 2758 (2020).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The rule making is fully exempt from analysis under this section because the rule proposes to adopt, without material change, language from RCW 51.08.142 and 51.32.185, as amended by SSB 6214 (2018) and SHB 2758 (2020) under RCW 34.05.310 (4)(c).

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2022

Joel Sacks

Director

OTS-4168.3

AMENDATORY SECTION (Amending WSR 15-19-139, filed 9/22/15, effective 10/23/15)

WAC 296-14-300 Mental condition/mental disabilities. (1) Claims based on mental conditions or mental disabilities caused by stress do not fall within the definition of an occupational disease (~~in RCW 51.08.140~~).

Examples of mental conditions or mental disabilities caused by stress that do not fall within occupational disease shall include, but are not limited to, those conditions and disabilities resulting from:

- (a) Change of employment duties;
- (b) Conflicts with a supervisor;
- (c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;
- (d) Relationships with supervisors, coworkers, or the public;
- (e) Specific or general job dissatisfaction;

- (f) Work load pressures;
 - (g) Subjective perceptions of employment conditions or environment;
 - (h) Loss of job or demotion for whatever reason;
 - (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
 - (j) Objective or subjective stresses of employment;
 - (k) Personnel decisions;
 - (l) Actual, perceived, or anticipated financial reversals or difficulties occurring to the businesses of self-employed individuals or corporate officers.
- (2) (a) Stress resulting from exposure to a single traumatic event will be adjudicated as an industrial injury. See RCW 51.08.100.
- (b) Examples of single traumatic events include: Actual or threatened death, actual or threatened physical assault, actual or threatened sexual assault, and life-threatening traumatic injury.
- (c) These exposures must occur in one of the following ways:
- (i) Directly experiencing the traumatic event;
 - (ii) Witnessing, in person, the event as it occurred to others;
- or
- (iii) Extreme exposure to aversive details of the traumatic event.
- (d) Repeated exposure to traumatic events, none of which are a single traumatic event as defined in subsection (2) (b) and (c) of this section, is not an industrial injury (see RCW 51.08.100) or an occupational disease (see RCW 51.08.142). A single traumatic event as defined in subsection (2) (b) and (c) of this section that occurs within a series of exposures will be adjudicated as an industrial injury (see RCW 51.08.100).
- (3) For certain firefighters and law enforcement officers, there is a presumption that posttraumatic stress disorder (PTSD) is an occupational disease as provided by RCW 51.08.142 and 51.32.185.
- (4) For public safety telecommunicators, PTSD may be considered an occupational disease as provided by RCW 51.08.142.
- (5) Mental conditions or mental disabilities that specify pain primarily as a psychiatric symptom (e.g., somatic symptom disorder, with predominant pain), or that are characterized by excessive or abnormal thoughts, feelings, behaviors or neurological symptoms (e.g., conversion disorder, factitious disorder) are not clinically related to occupational exposure.

[Statutory Authority: RCW 51.04.020, 51.04.030, and 51.08.142. WSR 15-19-139, § 296-14-300, filed 9/22/15, effective 10/23/15. Statutory Authority: Chapters 51.08 and 51.32 RCW. WSR 88-14-011 (Order 88-13), § 296-14-300, filed 6/24/88.]

WSR 22-23-146
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed November 22, 2022, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-089.

Title of Rule and Other Identifying Information: Pension discount rate. Amending WAC 296-14-8810 Pension tables, pension discount rate and mortality tables in chapter 296-14 WAC, Industrial insurance.

Hearing Location(s): On January 4, 2023, at 1:00 p.m. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID: 936 165 5337; join by phone +1 253-215-8782 US (Tacoma). Find your local number <https://lni-wa-gov.zoom.us/j/9361655337>. The virtual meeting starts at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: January 31, 2023.

Submit Written Comments to: Suzy Campbell, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email suzanne.campbell@lni.wa.gov, fax 360-902-5029, by January 4, 2023, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Nathalie Penberthy, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email nathalie.penberthy@lni.wa.gov, by December 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured pensions. The PDR is the interest rate used to account for the time value money when evaluating the present value of future pension payments. This rule proposes to lower the PDR for self-insured employers from 5.7 percent to 5.6 percent, effective April 1, 2023.

Reasons Supporting Proposal: These reductions allow our financial statements to more accurately reflect our liabilities and overall financial position, and are consistent with recommendations from our annual independent actuarial review of our rate making.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust

fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.
 Scope of exemption for rule proposal:
 Is fully exempt.

November 22, 2022
 Joel Sacks
 Director

OTS-4163.1

AMENDATORY SECTION (Amending WSR 22-05-075, filed 2/15/22, effective 4/1/22)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;
- (iii) A pension discount rate of 4.0 percent for state fund pensions;
- (iv) A pension discount rate of ((~~5.7~~)) 5.6 percent for self-insured pensions, including the United States Department of Energy pensions; and
- (v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

[Statutory Authority: RCW 51.04.020, 51.44.070(1) and 51.44.080. WSR 22-05-075, § 296-14-8810, filed 2/15/22, effective 4/1/22; WSR 21-02-066, § 296-14-8810, filed 1/5/21, effective 4/1/21; WSR 20-02-114, § 296-14-8810, filed 1/2/20, effective 4/1/20; WSR 19-01-096, § 296-14-8810, filed 12/18/18, effective 4/1/19; WSR 18-05-081, § 296-14-8810, filed 2/20/18, effective 4/1/18; WSR 17-05-096, § 296-14-8810, filed 2/14/17, effective 4/1/17; WSR 16-05-087, § 296-14-8810, filed 2/16/16, effective 4/1/16; WSR 15-02-061, § 296-14-8810, filed 1/6/15, effective 4/1/15.]

WSR 22-23-147

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 22, 2022, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-19-087.

Title of Rule and Other Identifying Information: WAC

182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine.

Hearing Location(s): On December 27, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_SNmskQlERbyW0KVphqsXXg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 28, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 27, 2022, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by December 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to consolidate all telemedicine in one section for all programs. Additionally, "speech language pathology services by telemedicine when not available in person" will be removed. This was added in a rule making during the public health emergency in error. The consolidated telemedicine rules apply to all programs and will reside in new WAC 182-501-0300. This new section is being developed under a different rule making filed under WSR 22-22-068.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: ESSB 1196, 67th legislature, 2021 regular session; RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Alyssa Wagner, 626 8th Avenue S.E., Olympia, WA 98504, 360-725-1194.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2022
Wendy Barcus
Rules Coordinator

OTS-3975.2

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine. (~~Telemedicine, as defined in chapter 182-531 WAC, may be used to provide the following authorized services:~~
~~(1) Program supervision when the client is present;~~
~~(2) Family/caregiver training, which does not require the client's presence; and~~
~~(3) Speech language pathology services when otherwise not available in person.~~) Applied behavior analysis (ABA) services delivered using telemedicine may be reimbursed by the agency when billed in accordance with the rules regarding telemedicine and store-and-forward technology in WAC 182-501-0300 and the agency's published billing instructions.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Thurston County Superior Court in J.C. and H.S. v. Washington State Health Care Authority, no. 20-2-01813-34. WSR 22-08-035, § 182-531A-1200, filed 3/29/22, effective 4/29/22. Statutory Authority: RCW 41.05.021, 41.05.160. WSR 15-19-121, § 182-531A-1200, filed 9/21/15, effective 10/22/15; WSR 14-24-083, § 182-531A-1200, filed 12/1/14, effective 1/1/15.]

WSR 22-23-149

PROPOSED RULES

PARAEDUCATOR BOARD

[Filed November 22, 2022, 10:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-05-031.

Title of Rule and Other Identifying Information: Chapter 179-17 WAC, requirements to attain the advanced paraeducator certificate.

Hearing Location(s): On January 11, 2023, at 8:00 a.[m.], at Hilton Garden Inn Olympia, 2101 Henderson Park Lane S.E., Olympia, WA 98501. A link to listen to the meeting virtually will also be available several weeks prior to the meeting. More information regarding this can be found on our website <https://www.pesb.wa.gov/about-us/board-meetings/>.

Date of Intended Adoption: January 11, 2023.

Submit Written Comments to: Paraeducator Board, 600 Washington Street S.E., Room 151B, Olympia, WA 98504, email paraboard@k12.wa.us, by January 9, 2023.

Assistance for Persons with Disabilities: Contact professional educator standards board, phone 360-725-6275, email pesb@k12.wa.us, by December 28, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend rule to state when a paraeducator may begin training to meet the requirements of the advanced paraeducator certificate. The amendment will articulate that training may begin after a date of issuance.

Reasons Supporting Proposal: The amendment will align the rule with language impacting other educators in the state. In addition, the rule change will clearly articulate when a paraeducator may begin training to complete the advanced certificate.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: Paraeducator board, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Liisa Preslan, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-790-2103; Enforcement: Erica Hernandez-Scott, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-890-2443.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no cost to the state.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2022
Liisa Preslan
Rules Coordinator

OTS-3979.1

AMENDATORY SECTION (Amending WSR 18-17-012, filed 8/2/18, effective 9/2/18)

WAC 179-17-030 Minimum requirements. Prior to completing continuing education credit hours for the advanced paraeducator certificate, the ~~((paraeducator must meet requirements and apply for))~~ Washington office of superintendent of public instruction must issue the general paraeducator certificate to the paraeducator.

[Statutory Authority: Chapter 28A.413 RCW. WSR 18-17-012, § 179-17-030, filed 8/2/18, effective 9/2/18.]

WSR 22-23-153
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 22, 2022, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-088.

Title of Rule and Other Identifying Information: Proposed amendments to the electrical rules, WAC 296-46B-945 Qualifying for master, journey level, specialty electrician examinations.

Hearing Location(s): On January 4, 2023, at 9:00 a.m., at Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501, or join by Zoom meeting at <https://lni-wa-gov.zoom.us/j/87951302240?pwd=MFpPVjhnWHVFS2p1YjRpd1ZhZkMwQT09>, Passcode Hearing!1, or join by phone 1-253-215-8782, Meeting ID 879 5130 2240, Passcode 434720791. The in-person and virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: January 31, 2023.

Submit Written Comments to: Alicia Curry, L&I, Field Services and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5:00 p.m. on January 4, 2023.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-584-4146, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by December 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes amendments to the qualifications for journey level electrician examinations under WAC 296-46B-945. Rules are required to implement SSB 6126 (chapter 249, Laws of 2018). SSB 6126 enacted apprenticeship requirements for journey level electrician examination candidates that take effect July 1, 2023.

SSB 6126 gives L&I the authority, until July 1, 2025, to permit applicants that have obtained experience and training equivalent to a journey level apprenticeship program to take the examination, if the applicant has "good cause" for not completing the minimum hours of work applicable on July 1, 2023 (RCW 19.28.195). L&I is authorized to exercise this discretion until July 1, 2025.

Under the proposed rules, L&I is exercising the discretion provided in the law to allow temporary alternative pathways to qualify for the 01 journey level electrician examination through a "good cause" exemption.

The proposed amendments:

- Remove language that applies to qualifying for 01 journey level electrician examination with on-the-job training that becomes obsolete on July 1, 2023, due to passage of SSB 6126.
- Provide exceptions to apprenticeship completion requirements to qualify for 01 journey level electrician examination for "good cause" until July 1, 2025. Due to the universal effects of the COVID-19 pandemic, "good cause" will be granted until July 1, 2025, to journey level examination candidates who meet the experience identified under the exceptions. The proposed changes for the exceptions include:
 - o Modifying the requirements to qualify for the 01 journey level electrician examination for apprentices registered in chapter 49.04 RCW programs. Allows apprentices to qualify

for examination before completing an apprenticeship program once they complete the education and work experience required of the apprenticeship program.

- o Recognizing examination based state-licensed electricians from other jurisdictions that require 8,000 hours of experience (4,000 hours must be new commercial or industrial installations) to qualify for the 01 journey level electrician examination.
- o Recognizing individuals with 8,000 hours of electrical experience gained in a construction battalion while serving in the armed forces of the United States to qualify for the 01 journey level electrician examination.
- o Recognizing individuals from other jurisdictions that have 16,000 hours working in the electrical construction trade (4,000 hours must be commercial or industrial installations) to qualify for the 01 journey level electrician examination. Individuals under this provision include those who work in states that have no licensing requirements for electricians or states where licensing is not examination based.
- o Recognizing individuals with 4,000 hours performing industrial or commercial installations accrued prior to July 1, 2023. The individual can continue accruing remaining specialty experience and qualify for the journey level electrician examination without joining an apprenticeship program.
- Include how L&I will approve qualified hours gained by applicants for the journey level examination under the good cause exemptions.
- Modify rules for general housekeeping, such as reference corrections, renumbering, formatting, replacing written numbers with numerals, etc.

Reasons Supporting Proposal: L&I is implementing SSB 6126 that takes effect July 1, 2023. L&I is exercising the discretion provided in the law to allow temporary alternative pathways to qualify for the journey level exam through a "good cause" exemption.

Statutory Authority for Adoption: SSB 6126, chapter 249, Laws of 2018; and chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.191 and 19.28.251.

Statute Being Implemented: SSB 6126, chapter 249, Laws of 2018; and chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.191 and 19.28.195.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Wayne Molesworth, Program Manager, Tumwater, Washington, 360-480-5673; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, L&I, Field Services and Public Safety, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-584-4146, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.
 Scope of exemption for rule proposal:
 Is partially exempt.

	Proposed WAC Sections and Title	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 296-46B-945 Qualifying for master, journey level, specialty electrician examinations.	This section is partially exempt under RCW 34.05.310 (4)(c) and 34.05.310 (4)(d) because it adopts changes that are specifically and explicitly dictated by chapter 19.28 RCW and without changing the substance or effect of requirements.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not change the mandatory qualification or standard for the issuance of a journey level electrician certification, and the statutory requirement for completion of an apprenticeship program remains. The proposed rules add alternative pathways available under the good cause exemption that are available to any candidate who meet the criteria. As such, the proposed rules do not impose additional costs on individuals seeking journey level examination eligibility or their employers; rather the proposed rules reduce costs by providing alternative pathways.

November 22, 2022
 Joel Sacks
 Director

OTS-4124.7

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

WAC 296-46B-945 Qualifying for master, journey level, specialty electrician examinations. (1) General.

- (a) All applicants must be at least (~~sixteen~~) 16 years of age.
- (b) All applicants, from in or out of state, must demonstrate the completion of basic trainee classes described in WAC 296-46B-970 (4) (c) (ii) (D).
 - (i) Twenty-four hours where (~~two thousand~~) 2,000 or more; but less than (~~four thousand~~) 4,000 hours of work experience is required.
 - (ii) Forty-eight hours where (~~four thousand~~) 4,000 or more; but less than (~~six thousand~~) 6,000 hours of work experience is required.
 - (iii) Seventy-two hours where (~~six thousand~~) 6,000 or more; but less than (~~eight thousand~~) 8,000 hours of work experience is required.
 - (iv) Ninety-six hours where (~~eight thousand~~) 8,000 or more of work experience is required.

Qualifying for the master electrician examination.

(2) An individual may take the master electrician's certificate of competency examination if the individual meets the requirements described in RCW 19.28.191 (1) ~~((d) or (e))~~ (a) or (b).

Qualifying for the master electrician examination from out-of-state.

(3) No credit may be applied from out-of-state toward qualifying for a master electrician certificate of competency examination.

Qualifying for the journey level electrician competency examination.

~~(4) ((Until July 1, 2023, an individual may take the journey level electrician's certificate of competency examination if the individual held a current electrical training certificate and has worked for an employer who employs at least one certified master electrician, journey level, or specialty electrician on staff and the individual:~~

~~(a) Has been employed, in the electrical construction trade, under the direct supervision of a master electrician, journey level electrician or specialty electrician working in the appropriate specialty in the proper ratio, per RCW 19.28.161, for four years (eight thousand hours). Of the eight thousand hours:~~

~~(i) At least two years (four thousand hours) must be in new industrial and/or new commercial electrical installation (excluding all work described for specialty electricians or technicians) under the direct supervision of a master journey level electrician or journey level electrician while working for a general electrical contractor; and~~

~~(ii) Not more than a total of two years (four thousand hours) may be for work described as an electrical specialty in WAC 296-46B-920(2).~~

~~(b) Has completed a four-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of a master journey level or journey level electrician in the proper ratio, per RCW 19.28.161; or~~

~~(c) Has completed a two-year electrical construction training program as described in RCW 19.28.191 for journey level electricians, and two years (four thousand hours) of work experience in new industrial and/or new commercial electrical installations (excluding work described for specialty electricians or electrical technicians) under the direct supervision of a journey level electrician while working for a general electrical contractor in the proper ratio, per RCW 19.28.161. See WAC 296-46B-971 for additional training school information.~~

~~Beginning July 1, 2023)) Except as provided under subsection (5) of this section, to qualify to take the journey level electrician's certificate of competency examination, an individual must have successfully completed an apprenticeship program approved under chapter 49.04 RCW or equivalent apprenticeship program approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of ~~((eight thousand))~~ 8,000 hours. Four thousand of the hours must be in industrial or commercial electrical installation under the supervision of a master journey level electrician or journey level electrician and not more than a total of ~~((four thousand))~~ 4,000 hours in all specialties under the supervision of a master journey level electrician, journey level electrician, master specialty electrician working in that elec-~~

trician's specialty, or specialty electrician working in that electrician's specialty.

Electrical construction training hours gained in specialties requiring less than two years (i.e., (~~four thousand~~) 4,000 hours) will not be credited towards qualification for a journey level electrician examination.

The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience and apprenticeship graduation certificates used to verify eligibility for the examination.

(5) (a) Until July 1, 2025, under temporary authority provided by RCW 19.28.195 and due to the universal effects of the COVID-19 pandemic, candidates are eligible to qualify for a journey level certification examination after department review and approval without completing an apprenticeship required under subsection (4) of this section if they have:

(i) Successfully completed the work experience and education requirements of an 8,000 hour electrical construction trade apprenticeship program approved under chapter 49.04 RCW. Four thousand of the hours shall be new industrial or commercial installations.

(ii) A journey level electrician certificate obtained through examination by another state licensing jurisdiction in the United States that requires at least 8,000 hours of supervised experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW. Four thousand of the hours shall be new industrial or commercial installations. All experience applied toward qualifying for examination must be experience gained in the state that issued the certificate or military service or both. Credit allowed for military service shall not exceed that allowed in (a) (iii) of this subsection and subsection (12) of this section. Documentation of experience shall be the same as required in subsection (10) of this section;

(iii) Eight thousand hours of experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW while serving in a construction battalion in the armed forces of the United States.

(iv) Sixteen thousand hours of out-of-state experience in the electrical construction trade installing and maintaining electrical wiring and equipment of a type regulated by chapter 19.28 RCW. Four thousand of the hours shall be new industrial or commercial installations. Work experience documentation submitted to prove the candidate has worked the hours claimed must be an original notarized letter of work experience accompanied by documentation, see subsection (8) of this section, that can be used to verify the individual has worked the hours being requested. Documentation must be provided by:

(A) An appropriately state-licensed electrical contractor;

(B) Registered apprenticeship training director;

(C) Nationally recognized contractor/labor organization; or

(D) The individual's lawful employer.

(v) Before July 1, 2025, acquired 8,000 hours of experience as follows:

(A) Before July 1, 2023, they lawfully worked in the electrical construction trade for at least 4,000 hours while performing new industrial or commercial installation work not included for specialties in WAC 296-46B-920(2). Proof of hours worked in Washington must be received in accordance with WAC 296-46B-942 (8) (d); and

(B) Before July 1, 2025, they lawfully gained the balance of 8,000 hours of experience referenced under (a) (v) of this subsection through one or more of following:

(I) Experience performing work described in the following specialties defined in WAC 296-46B-920(2): residential (02); pump and irrigation (03); signs (04); limited energy system (06); HVAC/refrigeration (06A); or nonresidential maintenance (07). Proof of hours worked in Washington must be received in accordance with WAC 296-46B-942 (8) (d).

(II) Experience hours gained through completion of a two-year electrical training program approved under WAC 296-46B-971. Military experience as allowed in subsection (12) of this section shall be allowed for journey level examination candidates.

(III) Experience in another country as allowed in subsection (13) of this section.

(b) Candidates shall only qualify for examination under temporary allowances in (a) of this subsection if their applications for examination and supporting documentation are received by the department before July 1, 2025.

Qualifying for a specialty electrician certificate of competency or examination.

~~((+5))~~ (6) After review and approval by the department, an individual may qualify for a specialty electrician's examination and certificate of competency if the individual held a current electrical training certificate, and has worked for an employer who employs at least one certified master journey level electrician, journey level electrician, appropriate master specialty electrician, or appropriate specialty electrician on staff and the individual:

(a) Has been employed, in the electrical construction trade, under the direct supervision of an appropriate electrician in the appropriate specialty as follows:

Table 945-1 Experience Hours

Specialty	Minimum Hours of Work Experience Required to be Eligible for Examination ⁽⁴⁾⁽⁵⁾	Minimum Hours of Work Experience Required for Certification
Residential certificate (02)	4,000 ⁽³⁾	4,000
Pump and irrigation certificate (03)	4,000 ⁽³⁾	4,000
Domestic pump certificate (03A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Signs certificate (04)	4,000 ⁽³⁾	4,000
Limited energy system certificate (06)	4,000 ⁽³⁾	4,000
HVAC/refrigeration system certificate (06A)	4,000 ⁽³⁾	4,000 ⁽⁷⁾
HVAC/refrigeration – Restricted (06B)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Nonresidential maintenance certificate (07)	4,000 ⁽³⁾	4,000
Nonresidential lighting maintenance and lighting retrofit certificate (07A)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Residential maintenance certificate (07B)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Restricted nonresidential maintenance certificate (07C)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Appliance repair certificate (07D)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Equipment repair certificate (07E)	1,000 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾
Door, gate, and similar systems certificate (10)	720 ⁽¹⁾⁽²⁾	2,000 ⁽⁶⁾

Notes:

- (1) Until the examination is successfully completed, the trainee must work under ~~((one hundred))~~ 100 percent supervision. Once the appropriate examination is successfully completed, the modified supervision trainee may work under zero percent supervision.
- (2) The trainee may have only one zero percent supervision certificate in a specialty (valid for no more than two years). If the trainee has not gained the required work experience by the time the zero percent supervision certificate has expired, the trainee must get a ~~((seventy-five))~~ 75 percent supervision certificate and work under supervision until all required work experience hours are gained and credited towards the minimum work experience requirement.
- (3) This specialty is not eligible for unsupervised trainee status as allowed in chapter 19.28 RCW.
- (4) The trainee and their employer and/or apprenticeship training director must attest to the accuracy of all information contained on affidavits of experience used to verify eligibility for the examination.
- (5) Neither previous work experience credit nor training school credit is allowed as a substitute for the initial hours of minimum work experience required to be eligible for examination unless the trainee's work experience hours under direct supervision are provided as required in RCW 19.28.191 (1)~~((e))~~ (d)(ii).
- (6) Electrical construction training hours gained in specialties requiring ~~((two thousand))~~ 2,000 hours or less for certification will not be credited towards qualification for journey level electrician or any of the ~~((four thousand))~~ 4,000 hour specialties, except as allowed by (7), below.
- (7) The ~~((two thousand))~~ 2,000 minimum hours of work experience required for certification as an HVAC/refrigeration-restricted (06B) specialty electrician may be credited as ~~((two thousand))~~ 2,000 hours towards the ~~((four thousand))~~ 4,000 minimum hours of work experience required for certification as an HVAC/refrigeration (06A) specialty electrician. Hours of work experience credited from the HVAC/refrigeration-restricted (06B) specialty cannot be credited towards qualification for taking the general electrician (01) examination or minimum work experience requirements.
- (8) Experience hours may be coincidentally credited towards qualifying for electrician and plumber certifications. See RCW 19.28.191 (1) ~~((e))~~ (d)(iv).

(b) Or has completed an appropriate two-year apprenticeship program in the electrical construction trade that is registered with the state apprenticeship council while working under the direct supervision of an electrician in the appropriate specialty in the proper ratio, per RCW 19.28.161.

Qualifying for a certificate of competency when the Washington electrical work experience is exempt from certification requirements in RCW 19.28.261.

~~((+6))~~ (7) After review and approval by the department, an individual may be granted work experience credit to take the ~~((journey level/specialty))~~ specialty electrician's competency examination when an original notarized letter of work experience accompanied by verifiable documentation is provided. ~~((—))~~ See subsection ~~((+7))~~ (8) of this section. For journey level competency examination candidates, see subsection (4) of this section for requirements.

For the purposes of this section, exempt work does not include work performed on property owned, in whole or part, by the individual seeking credit.

All exempt individuals must have a valid electrical training certificate when working to gain electrical work experience.

Work experience requested by an individual for telecommunications work must be gained while working for (01) general electrical, (02) residential, or (06) limited energy system electrical contractors as allowed by those scopes of work. When the work was performed, the individual must have a valid training certificate, be under the supervision of an appropriately certified journey level, residential or limited energy electrician, and be in compliance with RCW 19.28.191.

General - Qualifying hours gained by applicants seeking work experience credit without a Washington electrician training certificate.

~~((+7))~~ (8) The type of on-the-job work experience must be similar to the credit being applied for and lawfully gained in the state or other entity where the work was performed. The individual must submit verifiable documentation (e.g., payroll, time sheets, permits, supervision, etc.) that the department may use to ascertain the type of work performed and the number of hours worked for each type (i.e., specialty) of work.

Training hours credited for specialties requiring less than two years (i.e., ~~((four thousand))~~ 4,000 hours) may not be credited towards qualification for general journey level electrician.

The documentation must include a complete description of the individual's usual duties with percentages attributed to each type (e.g., wiring, material handling, shop, low voltage, etc.)

The department may reduce the number of hours allowed if the:

- (a) Individual did not have supervision during the training period when supervision was required by the jurisdiction where the training occurred;
- (b) Training hours are not related to electrical construction;
- (c) Training hours are not related to the specialty being applied for;
- (d) Documentation submitted by the individual does not fully verify the requested work experience; or
- (e) Work credit was not lawfully gained.

Training school credit.

~~((8))~~ (9) No more than ~~((fifty))~~ 50 percent of the minimum work experience needed to qualify for specialty electrician certification is allowed for any training school program (e.g., a specialty requiring ~~((two thousand))~~ 2,000 hours of minimum required work experience may receive no more than ~~((one thousand))~~ 1,000 hours credit from an electrical construction training program).

See RCW 19.28.191 (1) ~~((h))~~ (e) for training school credit allowed for journey level applicants.

See WAC 296-46B-971 for additional information on training schools.

Qualifying for the journey level/specialty electrician competency examination when work was performed in a state requiring electrician certification for the work performed.

~~((9))~~ (10) After review and approval by the department, an individual may be granted on-the-job work experience towards qualifying to take the ~~((journey level/specialty))~~ specialty electrician's competency examination for hours worked in the other state when the state certifies to the department:

- (a) The type and number of hours of work performed within the state. Credit will not be allowed for work not done within the certifying state.
- (b) That the work was legally performed under the other state's licensing and certification requirements; and
- (c) The other state's certificate of competency was obtained by examination.

If the experience is for other than a new commercial or industrial installation, the individual must identify the specialty credit desired and provide verifiable documentation identifying the other state's allowed scope of work for the specialty, see subsection ~~((7))~~ (8) of this section.

For journey level competency examination candidates, see subsection (4) of this section for requirements.

Qualifying for the journey level/specialty electrician competency examination when work was performed in a state that does not require electrician certification for the work performed.

~~((10))~~ (11) After review and approval by the department, an individual may be granted work experience credit to take the ~~((journey level/specialty))~~ specialty electrician's competency examination when an original notarized letter of work experience accompanied by documentation, see subsection ~~((7))~~ (8) of this section, that can be

used to verify the individual has worked the hours being requested is provided by:

- (a) An appropriately state licensed electrical contractor;
- (b) Registered apprenticeship training director;
- (c) Nationally recognized contractor/labor organization; or
- (d) The individual's lawful employer.

For journey level competency examination candidates, see subsection (4) of this section for requirements.

Military experience.

~~((11))~~ (12) After review and approval by the department, an individual who has worked in the electrical construction trade performing work described in WAC 296-46B-920 while serving in the armed forces of the United States may be eligible to take the examination for the certificate of competency as a ~~((journey level or))~~ specialty electrician. Credit may be allowed for hours worked or training received.

If an individual has military experience in a specialized electrical field (e.g., rating) that is similar to a specialty electrician category listed in WAC 296-46B-920, credit may be allowed toward the appropriate specialty certificate. Nuclear, marine, shipyard, shipboard, radar, weapons, aeronautical experience, or similar experience may be acceptable for no more than ~~((fifty))~~ 50 percent of the minimum required work experience for qualifying for electrician examination.

The department will evaluate and determine whether the submitted experience is related specifically to the electrical construction/maintenance trade regulated by chapter 19.28 RCW.

For allowances for crediting military experience toward qualifying for a journey level competency examination, see temporary allowance in subsection (5) (a) (iii) of this section effective until July 1, 2025. After that date, see allowance in RCW 19.28.191 (1) (e) (effective July 1, 2023).

Experience in another country.

~~((12))~~ (13) After review and approval by the department, and if an individual has a journey level electrician certificate from a country outside the United States that requires that at least four years of electrical construction training and certification is obtained by examination, the individual may be eligible for ~~((four thousand))~~ 4,000 hours of the specialty credit allowed towards the qualification to take the Washington journey level electrician examination.

No more than ~~((two years))~~ 4,000 hours of the required training to become a Washington journey level electrician may be for work described for specialty electricians or technicians in WAC 296-46B-920. In addition to the maximum of ~~((four thousand))~~ 4,000 hours credit that may be allowed by this subsection, an additional ~~((four thousand))~~ 4,000 hours of new commercial/industrial experience must be obtained using a training certificate in the state while registered in a journey level electrician apprenticeship program required by RCW 19.28.161 (2) (a) (i) (effective July 1, 2023) under the supervision of a master journey level electrician or journey level electrician.

Documentation substantiating the individual's out of country experience must be submitted in English.

~~((13))~~ (14) Out of country experience credit is not allowed toward a specialty electrician certificate.

~~((14))~~ (15) Canadian journey person construction electricians with at least four years of electrical construction training who have obtained a construction electrician Red Seal endorsement by success-

fully completing a Red Seal examination are eligible to take the examination for the journey level electrician certificate of competency if they have possessed a Red Seal endorsement for one year.

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-945, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW. WSR 14-11-075, § 296-46B-945, filed 5/20/14, effective 7/1/14; WSR 13-03-128, § 296-46B-945, filed 1/22/13, effective 3/1/13. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-945, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-945, filed 11/25/08, effective 12/31/08; WSR 06-24-041, § 296-46B-945, filed 11/30/06, effective 12/31/06; WSR 06-05-028, § 296-46B-945, filed 2/7/06, effective 5/1/06; WSR 05-10-024, § 296-46B-945, filed 4/26/05, effective 6/30/05. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2003 c 399, 2003 c 211, 2003 c 78, and 2003 c 242. WSR 04-12-049, § 296-46B-945, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2002 c 249, chapters 34.05 and 19.28 RCW. WSR 03-09-111, § 296-46B-945, filed 4/22/03, effective 4/22/03.]

WSR 22-23-161
PROPOSED RULES
GAMBLING COMMISSION
[Filed November 22, 2022, 5:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-078.

Title of Rule and Other Identifying Information: Amending WAC 230-14-260 Inventory control.

Hearing Location(s): On January 5, 2023, at 9:30 a.m., at Washington State Gambling Commission (WSGC), 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location is tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: January 5, 2023.

Submit Written Comments to: Jess Lohse, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by December 27, 2022.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by December 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment would: (1) Allow pull-tab licensees to write the date they put a pull-tab game in play on the flare instead of a purchase invoice; (2) clarify what records pull-tab licensees must record I.D. stamp numbers on; (3) eliminate duplicative language related to distributors and invoice requirements; and (4) amend language referring to I.D. stamps for consistency within the rule.

Reasons Supporting Proposal: WSGC received a petition from a licensee proposing to amend rules so that pull-tab licensees no longer need to write the date they put a pull-tab game in play on purchase invoices. Some pull-tab licensees already write the date in play information on records besides the purchase invoices and feel there is duplication. Amending rules may allow some licensees flexibility related to pull-tab inventory control.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Taek Kim, owner of Meeker Street Bar & Grill, Kent, Washington, public.

Name of Agency Personnel Responsible for Drafting: Jess Lohse, ARC, 4565 7th Avenue S.E., Lacey, WA 98503, 206-786-3530; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-507-3456; and Enforcement: Gary Drumheller, AD, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

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

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The amendment to WAC 230-14-260 provides an alternative recordkeeping option for pull-tab licensees with regards to

accounting for pull-tab inventory. The rule in question requires licensees to write the date they place a pull-tab series in play on the purchase invoice. The rule amendment does not change that requirement; however, it allows a licensee to write the date they place a pull-tab series in play on the flare instead of the purchase invoice. The rule change simplifies recordkeeping for licensees and places no additional burdens or restrictions on them. Licensees will not incur any additional costs if the rule amendment is approved.

November 21, 2022
 Jess Lohse
 Acting Rules Coordinator

OTS-4166.1

AMENDATORY SECTION (Amending WSR 08-03-053, filed 1/11/08, effective 2/11/08)

WAC 230-14-260 Inventory control. (1) Punch board and pull-tab operators must control and account for each punch board and pull-tab series they obtain. Operators must:

(a) Enter the I.D. stamp numbers for the series (~~in all records~~) on purchase invoices and monthly income summaries; and

(b) Attach the packing slip to the original invoice if the pull-tab series is packed in more than one container; and

(c) Record each pull-tab dispenser they purchase (~~(-~~

~~(2) Distributors must record every purchase of punch boards or pull-tabs on an invoice. Operators must use this record to account for each series between the time they purchase it and the time they remove it from play. Invoices must include space for the operator to attach:~~

~~(a) The I.D. stamp numbers for each board or series; and~~

~~(b) The date they placed the punch board or pull-tab series out for play.~~

~~(3))~~; and

(d) Record the date they place each series in play on a purchase invoice. Alternatively, operators may record the date they place each series in play on the game's flare.

(2) When operators receive punch boards or pull-tab series, they must ensure that the manufacturer or distributor recorded all required data by comparing the ((Washington state identification)) I.D. stamp number attached to each punch board and pull-tab series to the number recorded on the purchase invoice.

~~((4))~~ (3) Operators may use a separate computerized inventory record as long as they:

(a) Use an I.D. stamp or print a computer generated facsimile of the I.D. stamp number on the inventory record; and

(b) Record all other required information.

[Statutory Authority: RCW 9.46.070. WSR 08-03-053 (Order 622), § 230-14-260, filed 1/11/08, effective 2/11/08; WSR 07-17-058 (Order 614), § 230-14-260, filed 8/10/07, effective 1/1/08.]