

**WSR 17-14-005**  
**PERMANENT RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**

[Filed June 22, 2017, 7:53 a.m., effective July 23, 2017]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SSB 5262 was passed by the 2017 legislature which increased the tonnage limitations and revised the license requirements for petitioners on foreign flagged yachts and small passenger vessels. This amendment to RCW 88.16.070 becomes effective July 23, 2017.

Purpose: To align the language of this rule so it is consistent with the statute. The proposed changes are also intended to modify the fee structure for applying for an exemption from pilotage requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 363-116-360.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Adopted under notice filed as WSR 17-10-048 on April 28, 2017.

Changes Other than Editing from Proposed to Adopted Version: The adopted changes to the fee schedule for a three month or less exemption for yachts include \$700 for vessels up to and including 100 feet LOA, \$1,000 for vessels up to and including 200 feet LOA and 750 gross tons, \$1,500 for a new category of vessels up to and including 200 feet LOA and 751 to 1,300 gross tons; a one year or less exemption for yachts \$1,000 for vessels up to and including 100 feet LOA, \$1,400 for vessels up to and including 200 feet LOA and 750 gross tons, \$1,500 for a new category for vessels up to and including 200 feet LOA and 751 to 1,300 gross tons; for an annual renewal \$600 for vessels up to and including 100 feet LOA, \$800 for vessels up to and including 200 feet LOA and 750 gross tons, \$1,500 for a new category of vessels up to and including 200 feet LOA and 751 to 1,300 gross tons, \$1,000 for passenger vessels up to and including 100 feet LOA, \$1,200 for passenger vessels up to and including 200 feet LOA.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: June 15, 2017.

Peggy Larson  
Executive Director

AMENDATORY SECTION (Amending WSR 12-21-077, filed 10/19/12, effective 11/19/12)

**WAC 363-116-360 Exempt vessels.** (1) Under the authority of RCW 88.16.070, application may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels, which are not more than ~~((five))~~ one thousand three hundred gross tons (international), do not exceed two hundred feet in length, is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or yachts, which are not more than ~~((seven))~~ one thousand three hundred ~~((fifty))~~ gross tons (international), and do not exceed two hundred feet in length. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least forty-eight hours prior to planned vessel operations where possible. Petitions filed with less than forty-eight hours notice may be considered by the chair at the chair's discretion on a board-approved form. The form shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the areas and dates of planned operations, and such other information as the board shall require.

(b) Pay the appropriate initial application or renewal fee with the submittal of the petition, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be considered at its next regularly or specially scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist.

(3) Any grant of an exemption, including interim exemptions, may contain such conditions as the board, or in the case of an interim exemption, the chair, deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include: A requirement that the vessel employ the services of a pilot on its initial voyage into state pilotage waters; and/or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than sixteen hundred gross tons or as a master of inland steam or motor vessels of not more than five hundred gross tons, such license to include a current radar endorsement; and/or that the vessel possess specific navigational charts, publications and navigational equipment necessary to ensure safe operation.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	3 Months or Less	1 Year or Less	Annual Renewal
<b>A. Yachts</b>			
Up to and including 50 feet LOA	\$50	\$50	\$50
Up to and including 100 feet LOA	<del>((450))</del> <u>700</u>	<del>((750))</del> <u>1000</u>	<del>((300))</del> <u>600</u>
Up to and including 200 feet LOA and 750 gt	<del>((750))</del> <u>1000</u>	<del>((1125))</del> <u>1400</u>	<del>((450))</del> <u>800</u>
Up to and including 200 feet LOA and 751 to 1300 gt	<u>1500</u>	<u>1500</u>	<u>1500</u>
<b>B. Passenger Vessels</b>			
Up to and including 100 feet LOA	1125	1500	<del>((600))</del> <u>1000</u>
Up to and including 200 feet LOA	1500	1500	<del>((750))</del> <u>1200</u>

(6) Petitions for annual renewals must be submitted within one year of the expiration of the previous exemption.

**WSR 17-14-020  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed June 23, 2017, 8:18 a.m., effective July 1, 2017]

Effective Date of Rule: July 1, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage value rule is required by statute (RCW 84.33.091) to be effective on July 1, 2017.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Adopted under notice filed as WSR 17-10-072 on May 3, 2017.

A final cost-benefit analysis is available by contacting D. M. Casselman, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1583, fax (360) 534-1606, email danitzac@dor.wa.gov.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Date Adopted: June 23, 2017.

Kevin Dixon  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 17-02-003, filed 12/22/16, effective 1/1/17)

**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 ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2017:

**Washington State Department of Revenue  
STUMPAGE VALUE TABLE**  
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2017  
Stumpage Values per Thousand Board Feet Net Scribner Log Scale<sup>(1)</sup>  
Starting July 1, 2012, there are no separate Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
<del>((Douglas-fir<sup>(2)</sup></del>	DF	1	\$318	\$311	\$304	\$297	\$290
		2	420	413	406	399	392
		3	410	403	396	389	382
		4	456	449	442	435	428
		5	423	416	409	402	395
		6	273	266	259	252	245
Western-Hemlock and Other Conifer <sup>(3)</sup>	WH	1	240	233	226	219	212
		2	281	274	267	260	253
		3	262	255	248	241	234
		4	286	279	272	265	258
		5	282	275	268	261	254
		6	236	229	222	215	208
Western-Redcedar <sup>(4)</sup>	RC	1-5	1111	1104	1097	1090	1083
		6	935	928	921	914	907
Ponderosa-Pine <sup>(5)</sup>	PP	1-6	193	186	179	172	165
Red-Alder	RA	1-5	477	470	463	456	449
Black-Cottonwood	BC	1-5	80	73	66	59	52

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Hardwood	OH	1-5	282	275	268	261	254
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	711	704	697	690	683
Western Redcedar Poles	RCL	1-5	1545	1538	1531	1524	1517
		6	1228	1221	1214	1207	1200
Chipwood <sup>(6)</sup>	CHW	1-5	13	12	11	10	9
		6	3	2	1	1	1
Small Logs <sup>(6)</sup>	SML	6	23	22	21	20	19
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-6	289	282	275	268	261
Posts <sup>(8)</sup>	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees <sup>(9)</sup>	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees <sup>(9)</sup>	TFX	1-6	0.50	0.50	0.50	0.50	0.50
Douglas-fir <sup>(2)</sup>	DF	1	<u>\$357</u>	<u>\$350</u>	<u>\$343</u>	<u>\$336</u>	<u>\$329</u>
		2	<u>460</u>	<u>453</u>	<u>446</u>	<u>439</u>	<u>432</u>
		3	<u>454</u>	<u>447</u>	<u>440</u>	<u>433</u>	<u>426</u>
		4	<u>497</u>	<u>490</u>	<u>483</u>	<u>476</u>	<u>469</u>
		5	<u>458</u>	<u>451</u>	<u>444</u>	<u>437</u>	<u>430</u>
		6	<u>277</u>	<u>270</u>	<u>263</u>	<u>256</u>	<u>249</u>
Western Hemlock and Other Conifer <sup>(3)</sup>	WH	1	<u>241</u>	<u>234</u>	<u>227</u>	<u>220</u>	<u>213</u>
		2	<u>330</u>	<u>323</u>	<u>316</u>	<u>309</u>	<u>302</u>
		3	<u>264</u>	<u>257</u>	<u>250</u>	<u>243</u>	<u>236</u>
		4	<u>318</u>	<u>311</u>	<u>304</u>	<u>297</u>	<u>290</u>
		5	<u>301</u>	<u>294</u>	<u>287</u>	<u>280</u>	<u>273</u>
		6	<u>249</u>	<u>242</u>	<u>235</u>	<u>228</u>	<u>221</u>
Western Redcedar <sup>(4)</sup>	RC	1-5	<u>1082</u>	<u>1075</u>	<u>1068</u>	<u>1061</u>	<u>1054</u>
		6	<u>1110</u>	<u>1103</u>	<u>1096</u>	<u>1089</u>	<u>1082</u>
Ponderosa Pine <sup>(5)</sup>	PP	1-6	<u>191</u>	<u>184</u>	<u>177</u>	<u>170</u>	<u>163</u>
Red Alder	RA	1-5	<u>483</u>	<u>476</u>	<u>469</u>	<u>462</u>	<u>455</u>
Black Cottonwood	BC	1-5	<u>100</u>	<u>93</u>	<u>86</u>	<u>79</u>	<u>72</u>
Other Hardwood	OH	1-5	<u>284</u>	<u>277</u>	<u>270</u>	<u>263</u>	<u>256</u>
		6	<u>23</u>	<u>16</u>	<u>9</u>	<u>2</u>	<u>1</u>
Douglas-fir Poles & Piles	DFL	1-5	<u>706</u>	<u>699</u>	<u>692</u>	<u>685</u>	<u>678</u>
Western Redcedar Poles	RCL	1-5	<u>1514</u>	<u>1507</u>	<u>1500</u>	<u>1493</u>	<u>1486</u>
		6	<u>1377</u>	<u>1370</u>	<u>1363</u>	<u>1356</u>	<u>1349</u>
Chipwood <sup>(6)</sup>	CHW	1-5	<u>11</u>	<u>10</u>	<u>9</u>	<u>8</u>	<u>7</u>
		6	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
Small Logs <sup>(6)</sup>	SML	6	<u>29</u>	<u>28</u>	<u>27</u>	<u>26</u>	<u>25</u>
RC Shake & Shingle Blocks <sup>(7)</sup>	RCS	1-6	<u>289</u>	<u>282</u>	<u>275</u>	<u>268</u>	<u>261</u>
Posts <sup>(8)</sup>	LPP	1-6	<u>0.35</u>	<u>0.35</u>	<u>0.35</u>	<u>0.35</u>	<u>0.35</u>
DF Christmas Trees <sup>(9)</sup>	DFX	1-6	<u>0.25</u>	<u>0.25</u>	<u>0.25</u>	<u>0.25</u>	<u>0.25</u>

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Christmas Trees <sup>(9)</sup>	TFX	1-6	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>	<u>0.50</u>

- (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, Lodgepole Pine in SVA 6, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine in SVA 6, and all Pines in SVA 1-5.
- (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%) 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 2 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))~~ July 1 through ~~((June 30))~~ December 31, 2017:

**TABLE 9—Harvest Adjustment Table  
Stumpage Value Areas 1, 2, 3, 4, and 5  
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2017**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
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
<b>II. Logging conditions</b>		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of 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.	-\$145.00
<b>III. Remote island adjustment:</b>		
	For timber harvested from a remote island	-\$50.00
<b>IV. Thinning</b>		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table  
Stumpage Value Area 6  
~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2017**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
<b>I. Volume per acre</b>		
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
<b>II. Logging conditions</b>		
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

Permanent

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
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.	
<b>III. Remote island adjustment:</b>		
	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.

**WSR 17-14-026**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 23, 2017, 5:28 p.m., effective July 24, 2017]

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

Purpose: Chapter 246-339 WAC, Blood establishments, the department of health is adopting a new chapter to Title 246 WAC to establish requirements and set fees related to an online public registry to ensure the safety and transparency of blood collecting or distributing establishments pursuant to SHB 2580 (chapter 47, Laws of 2016).

Statutory Authority for Adoption: RCW 43.70.040 and chapter 70.335 RCW.

Adopted under notice filed as WSR 17-06-046 on February 27, 2017.

Changes Other than Editing from Proposed to Adopted Version: The adopted rules were revised in WAC 246-339-020, 246-339-030 (1)(b), and 246-339-035 (1)(a)(ii) to add language from chapter 70.335 RCW that cites "unless the applicant is a hospital that meets the criteria in RCW 70.335.-020(1)" to ensure hospitals were exempt from the FDA licensure requirement.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

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Date Adopted: June 23, 2017.

John Wiesman, DrPH, MPH  
Secretary

**Chapter 246-339 WAC**  
**BLOOD ESTABLISHMENTS**

NEW SECTION

**WAC 246-339-001 Purpose.** The purpose of this chapter is to implement chapter 70.335 RCW by establishing an online public registry and all necessary requirements for registered blood-collecting or distributing blood establishments or organizations that supply blood products for allogeneic transfusion in Washington state. This public registry of Washington state registered blood establishments is intended

to help ensure public transparency, trust, and confidence in the safety of the community blood supply.

NEW SECTION

**WAC 246-339-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Allogeneic transfusion" means a blood transfusion where the donated blood comes from an individual other than the recipient.

(2) "Autologous donation" means the infusion or transfer of human blood cells back into the individual from whom the cells were recovered.

(3) "Blood establishment" means a blood-collecting or distributing blood establishment or organization that collects or distributes blood for allogeneic transfusion in Washington state. This chapter does not apply to a hospital licensed under chapter 70.41 or 71.12 RCW unless the hospital collects blood directly from donors for the purpose of allogeneic transfusions. For the purposes of this chapter, blood establishment does not include organizations that collect source plasma as defined in this section.

(4) "Change in standing" means that a blood establishment is the subject of titled letters, fines, suspensions, or revocations of its United States Food and Drug Administration (FDA) license, or judicial consent decrees.

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

(6) "Directed donation" means a donation of blood or blood products to a specific recipient who is personally known by the donor before donation.

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

(8) "Judicial consent decree" means an agreement between the FDA and a blood establishment that outlines steps that a blood establishment must take in order to return to full, independent production. The consent decree mandates that a blood establishment initiate change, and that change is usually associated with the way the blood establishment is manufacturing a product in order to bring it into compliance with the FDA's requirements.

(9) "Source plasma" means the fluid portion of human blood collected and intended as source material for further manufacturing use. The definition excludes single donor plasma products intended for intravenous use.

(10) "Titled letter" or "warning letter" means an FDA-issued correspondence that notifies blood establishments about violations that the FDA has documented during its inspections or investigations. Typically, a warning letter notifies a responsible individual or firm that the FDA considers one or more products, practices, processes, or other activities to be in violation of the Federal Food, Drug, and Cosmetic Act (the act), its regulations, and other federal statutes.

NEW SECTION

**WAC 246-339-020 Registration of a blood establishment.** Starting July 1, 2017, any blood establishment collecting or distributing blood for the purpose of allogeneic transfusion in Washington state must be registered with the

department in accordance with chapter 70.335 RCW. To be eligible for registration with the department, the blood establishment must hold a current FDA blood establishment license, and must provide to the department proof of the blood establishment's current FDA licensure at the time of initial registration or renewal registration unless the applicant is a hospital that meets the criteria in RCW 70.335.020(1). Applicants for initial registration and renewal registration with the department must follow the procedures established under this chapter.

#### NEW SECTION

**WAC 246-339-025 Exemptions for blood establishment registration.** A blood establishment is exempt from the requirements of this chapter if it meets one or more of the following:

(1) Hospitals licensed under chapter 70.41 or 71.12 RCW unless the hospital collects and distributes blood directly from donors for the purpose of allogeneic transfusions.

(2) Organizations that collect source plasma for the production of plasma derivatives by fractionation.

(3) Cases of individual patient medical need, as determined by a qualified health care provider, such as:

(a) An autologous or directed donation as defined in WAC 246-339-010; and

(b) An out-of-state blood establishment that supplies blood products for allogeneic transfusion based upon a request from a Washington state registered blood establishment in order to meet individual patient need, as determined by a qualified health care provider.

#### NEW SECTION

**WAC 246-339-030 Initial application for blood establishment registration.** Initial application procedure. To register with the department a blood establishment must:

(1) Submit a completed application on forms provided by the department that are signed by the owner or authorized representative that includes all of the following:

(a) The name, current and valid email address, mailing address, and telephone number of the blood establishment.

(b) Proof of the blood establishment's current FDA licensure unless the applicant is a hospital that meets the criteria in RCW 70.335.020(1).

(c) A list of all of the blood establishment's clients in Washington state as required by chapter 70.335 RCW, including current and valid email addresses for all clients of a blood establishment.

(d) A copy of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license in the two years prior to submission of the initial application to the department:

(i) Titled letters, fines, license suspensions, or revocations issued by the FDA.

(ii) Judicial consent decrees.

(e) Any other information required by the department.

(2) Submit the designated fee(s) with the application as required by WAC 246-339-990.

#### NEW SECTION

**WAC 246-339-035 Renewal registration process.** (1) The department will issue a renewal registration for a Washington state registered blood establishment when the owner or authorized representative of the blood establishment:

(a) Submits a completed application provided by the department at least five working days prior to the expiration of the current registration, which is signed by the owner or authorized representative that includes the following:

(i) The name, current and valid email address, mailing address, and telephone number of the blood establishment.

(ii) Proof of the blood establishment's current FDA licensure unless the applicant is a hospital that meets the criteria in RCW 70.335.020(1).

(iii) A list of all of the blood establishment's clients in Washington state as required by chapter 70.335 RCW, including current and valid email addresses for all clients of a blood establishment.

(iv) A copy of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license in the two years prior to the submission of a renewal application to the department:

(A) Titled letters, fines, or license suspensions or revocations issued by the FDA.

(B) Judicial consent decrees.

(v) Any other information as required by the department.

(b) Submits the designated fee(s) with the application for renewal registration pursuant to WAC 246-339-990.

(c) Meets all of the requirements set forth under chapter 70.335 RCW and this chapter.

(2) The renewal registration will expire one year from the date of issuance.

#### NEW SECTION

**WAC 246-339-040 Change of ownership requirements.** (1) If there is a change in ownership of a Washington state registered blood establishment, the new owner must submit to the department within five working days of the change in ownership:

(a) New blood establishment application packet per WAC 246-339-030; and

(b) Any applicable fees as required in WAC 246-339-990.

(2) The registration will expire one year from the date of issuance as provided in WAC 246-339-035.

(3) The Washington state blood establishment registration is not transferable.

#### NEW SECTION

**WAC 246-339-045 Blood establishment notification requirements.** A Washington state registered blood establishment will notify the department within fourteen days of a change in standing of its FDA license. The notification will include:

(1) The name, email address, mailing address, and telephone number of the blood establishment.

(2) A list of all of the blood establishment's clients in Washington including their current and valid email addresses.

(3) Copies of any of the following disciplinary actions issued upon, or active against, the blood establishment's FDA license:

- (a) Titled letters, fines, or license suspensions or revocations issued by the FDA.
- (b) Judicial consent decrees.

**NEW SECTION**

**WAC 246-339-050 Grounds for action against blood establishments.** (1) The department will deny an initial or renewal application for registration if the applicant or Washington state registered blood establishment no longer holds a license issued by the FDA.

(2) The department may suspend or revoke a registration of a Washington state registered blood establishment if the blood establishment no longer holds a license issued by the FDA.

(3) In accordance with chapter 70.335 RCW, the department will issue a summary suspension of the registration if a Washington state registered blood establishment no longer holds a license issued by the FDA. The summary suspension will remain in effect until proceedings are completed under RCW 43.70.115 and will be limited to the issue of whether the blood establishment is qualified to hold a registration under this chapter or chapter 70.335 RCW.

(4) The department may investigate and maintain an action under RCW 70.335.050 if a blood establishment has operated without having a valid registration under this chapter.

**NEW SECTION**

**WAC 246-339-990 Fees.** (1) Registrations must be renewed every year from the date of issuance.

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

Fee Type	Amount
Initial application fee	\$13,000.00
Annual renewal fee	13,000.00
Late renewal fee	300.00
Application fee - Change of ownership	13,000.00

**WSR 17-14-035**

**PERMANENT RULES**

**UNIVERSITY OF WASHINGTON**

[Filed June 26, 2017, 3:25 p.m., effective July 27, 2017]

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

Purpose: Housekeeping amendments to Title 478 WAC rules; periodic corrections and clarifications to the University of Washington's (UW) Title 478 WAC rules help keep these

WAC rules accurate and up-to-date. Reasons for amendments include:

- Amendments that "clarify Language of a rule without changing its effect";
- Amendments that "make address or name changes";
- Amendments that "only correct typographical errors"; and
- Amendments for which "the content of the proposed rules is explicitly and specifically dictated by statute."

Citation of Existing Rules Affected by this Order: Amending WAC 478-04-020, 478-117-005, 478-117-010, 478-117-020, 478-117-310, 478-120-024, 478-120-145, 478-132-030, 478-136-015, 478-136-030, 478-136-041, 478-136-060, 478-137-010, 478-137-020, 478-137-030, 478-137-050, 478-138-030, 478-140-018, 478-156-016, 478-160-085, 478-324-090, 478-324-130, 478-324-150, 478-324-180, 478-324-190, 478-324-200, 478-324-210, 478-355-010, 478-355-020, 478-355-030, and 478-355-060.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: RCW 28B.20.130 and UW *Board of Regents Governance*, Standing Orders, Chapter 8, Section 2.

Adopted under notice filed as WSR 17-08-015 on March 27, 2017.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 31, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 31, Repealed 0.

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

Date Adopted: June 26, 2017.

Barbara Lechtanski  
Director of Rules Coordination

**AMENDATORY SECTION** (Amending WSR 03-24-046, filed 11/26/03, effective 12/27/03)

**WAC 478-04-020 Organization—Operation—Information.** (1) Organization. The University of Washington is established in Title 28B RCW as a public institution of higher education. The institution is governed by a ten-member board of regents, appointed by the governor. The board employs a president, who acts as the chief executive officer of the institution. The president establishes the structure of the administration.

(2) Operation. The administrative office of the University of Washington is at the following address:

University of Washington  
Office of the President

301 Gerberding Hall  
Box 351230  
Seattle, WA 98195-1230

(3) Information. Additional and detailed information concerning the educational offerings may be obtained from the ~~((catalog, copies of which are available at the following address:~~

University of Washington  
Office of the Registrar  
209 Schmitz Hall  
Box 355850  
Seattle, WA 98195-5850)) University of Washington's web site: www.washington.edu.

AMENDATORY SECTION (Amending WSR 02-08-023, filed 3/26/02, effective 5/1/02)

**WAC 478-117-005 Authority.** RCW 28B.50.140(10) authorizes the board of trustees of Cascadia ~~((Community))~~ College to adopt rules for pedestrian and vehicular traffic on the college campus. RCW 28B.10.560 similarly authorizes the board of regents of the University of Washington to adopt rules governing pedestrian and vehicular traffic and parking upon lands and facilities of the university. The rules set forth in this chapter have been jointly developed and agreed upon by the two institutions of higher education, and adopted and codified in separate chapters of the Washington Administrative Code by each of the two institutions.

AMENDATORY SECTION (Amending WSR 02-08-023, filed 3/26/02, effective 5/1/02)

**WAC 478-117-010 Objectives of parking and traffic rules.** The objectives of these rules are:

- (1) To protect and control pedestrian and vehicular traffic on the campus of University of Washington, Bothell and Cascadia ~~((Community))~~ College.
- (2) To assure access at all times for emergency equipment.
- (3) To minimize traffic disturbances.
- (4) To facilitate the operation of the institutions by assuring access to vehicles.
- (5) To allocate limited parking space for the most efficient use.
- (6) To protect state property.

AMENDATORY SECTION (Amending WSR 02-08-023, filed 3/26/02, effective 5/1/02)

**WAC 478-117-020 Definitions.** The following definitions apply to this chapter:

- (1) Campus: The colocated campus of University of Washington, Bothell and Cascadia ~~((Community))~~ College.
- (2) College: Cascadia ~~((Community))~~ College, and collectively those responsible for its control and operations.
- (3) Employee: An employee of the college or the university.
- (4) Institutions: The college and the university.

(5) Public safety officers: Employees of the college or the university who are responsible for campus security, safety, and parking and traffic control.

(6) Student: A person enrolled in the college or the university.

(7) University: The University of Washington, Bothell, and collectively those responsible for its control and operations.

(8) Vehicle: An automobile, truck, motorcycle, motorized scooter, or bicycle.

(9) Visitor: A person who is neither an employee nor a student of the college or the university.

AMENDATORY SECTION (Amending WSR 02-08-023, filed 3/26/02, effective 5/1/02)

**WAC 478-117-310 Fines and impounding.** (1) The current schedule of fines shall be published by the institutions and made available for review in the ~~((central plant building))~~ Chase House.

(2) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. Fines must be delivered in person to the citation hearing office or postmarked on or before the due date specified in these rules to avoid additional penalties. If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the institution shall impose an additional fine of ten dollars per offense and may:

- (a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid.
- (b) Delay registration for the following quarter.
- (c) Impound the violator's vehicle.
- (d) Deny future parking privileges to the violator.
- (e) Refuse to issue keys to a violator who is an employee or student.

(3) In addition to imposing fines, public safety officers may impound or immobilize any vehicle parked on campus in violation of these rules. The expenses of impounding, immobilization, and storage shall be charged to the owner or operator, or both, of the vehicle and must be paid before the vehicle's release. Grounds for impounding vehicles shall include, but not be limited to, the following:

- (a) Blocking a roadway so as to impede the flow of traffic.
- (b) Blocking a walkway so as to impede the flow of pedestrian traffic.
- (c) Blocking a fire hydrant or fire lane.
- (d) Creating a safety hazard.
- (e) Blocking another legally parked vehicle.
- (f) Parking in a marked "tow-away" zone.
- (g) Leaving a vehicle unattended on campus for longer than two days.
- (h) Failing to pay a fine imposed under this chapter.

Not more than twenty-four hours after impoundment of any vehicle, the institution shall mail a notice to the registered owner of the vehicle and to any other person who claims the right to possession of the vehicle, if those persons can be identified. The institutions shall not be liable for loss or damage of any kind resulting from impounding, immobili-



zation, or storage. Impounding a vehicle does not remove the obligation for any fines associated with the violation.

(4) An accumulation of traffic violations by a student may be cause for discipline under the student conduct code of the student's institution.

**AMENDATORY SECTION** (Amending WSR 16-05-097, filed 2/17/16, effective 3/28/16)

**WAC 478-120-024 Prohibited conduct.** Specific instances of misconduct include, but are not limited to:

(1) **Abuse of others.** Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

(2) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a member of a university disciplinary committee or the faculty appeal board, any conduct officer, or any reviewing officer; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

(3) **Academic misconduct.** Academic misconduct includes:

(a) "Cheating," which includes, but is not limited to:

(i) The use of unauthorized assistance in taking quizzes, tests, or examinations; or

(ii) The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s).

(b) "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s). Falsification also includes falsifying scientific and/or scholarly research.

(c) "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

(i) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

(ii) The unacknowledged use of materials prepared by another person or acquired from an entity engaging in the selling of term papers or other academic materials.

(d) Prohibited collaboration.

(e) Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

(f) Multiple submissions of the same work in separate courses without the express permission of the instructor(s).

(g) Taking deliberate action to destroy or damage another's academic work in order to gain an advantage for oneself or another.

(h) The recording of instructional content without the express permission of the instructor(s), and/or the dissemination or use of such unauthorized records.

(4) **Acts of dishonesty.** Acts of dishonesty include:

(a) Knowingly furnishing false information to any university official;

(b) Impersonating, or providing false information in the name of, any university official;

(c) Forging, altering, or misusing any university document or record, or instrument of identification;

(d) Falsely claiming an academic credential; and

(e) Providing dishonest or misleadingly incomplete information or answers on application forms or in response to other official university requests for information.

(5) **Aiding, solicitation, and attempt.** The following conduct is prohibited:

(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;

(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or

(c) Attempting to commit any act of misconduct prohibited by this conduct code.

(6) **Alcohol violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.

(7) **Computer abuses.** Computer abuses include, but are not limited to:

(a) Unauthorized use of university computer resources;

(b) Use of another person's university user name and/or password;

(c) Use of university computing facilities and resources to interfere with the work of another student, an instructor, or other university official;

(d) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;

(e) Use of a computer or software to interfere with normal operations of the university's computing systems;

(f) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and

(g) Any violation of the university's computer use policies.

(8) **Creating a public nuisance in neighboring communities.** In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a university campus as follows:

(a) A student or a student organization may be subject to disciplinary proceedings if the university is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses, including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of university community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.

(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.

(9) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(10) **Disruption or obstruction.**

(a) Disruption or obstruction includes intentionally and substantially obstructing or disrupting, through words or conduct, the teaching or learning environment of any university educational setting, or any university functions or activities.

(b) An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is disorderly or disruptive and such conduct may also be the subject of disciplinary proceedings under this conduct code.

(11) **Domestic violence.** Domestic violence includes:

(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:

(i) A current or former spouse or intimate partner;

(ii) A person with whom the person shares a child in common;

(iii) A person with whom one is cohabitating or has cohabitated; or

(iv) A person with whom one resides including a roommate, suitemate, or housemate.

(b) Sexual assault of one family or household member by another family or household member; or

(c) Stalking, as defined in subsection (23) of this section, of one family or household member by another family or household member.

(12) **Drug violations.**

(a) The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802) on university premises or during university sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law is prohibited.

(b) The possession, use, distribution, or growing of marijuana in all forms is prohibited on university premises or during university sponsored activities.

(c) A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of drugs. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the use or possession of drugs (in violation of this subsection) in connection with an incident of sexual misconduct.

(13) **Failure to comply.** Failure to comply includes:

(a) Any failure to comply with the directions of a university official acting in the performance of his or her duties and/or the failure to identify oneself to a university official when requested to do so.

(b) Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, or any order or directive of the university or any of its schools, colleges, and departments.

(c) Any failure to comply with any interim measures implemented pursuant to WAC 478-120-038.

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

(15) **Hazing.**

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm. Consent of a victim or victims is not a defense to an allegation of hazing.

(b) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.

(16) **Indecent exposure.** Indecent exposure includes the exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

(17) **Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons.**

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on university premises, except for authorized university purposes, or unless prior written approval has been obtained from the chief of the university police department, or any other university official designated by the president of the university.

(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

- (i) The action of gunpowder or other explosives;
- (ii) The action of compressed air; or
- (iii) The power of springs or other forms of propulsion.

(c) The exhibition or display of a replica ((☞)) of a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(18) **Relationship violence.** Relationship violence, also referred to as "dating violence," is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(a) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(b) For the purposes of this definition, relationship or dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(c) Relationship or dating violence does not include acts covered under the definition of domestic violence.

(19) **Retaliation.** Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, or improperly influence any person who:

- (a) Files a complaint, grievance, or allegation of misconduct under any university policy or rule or under any law;
- (b) Participates in and/or cooperates with an investigation;
- (c) Appears as a witness at a hearing; or
- (d) Opposes an unlawful act, discriminatory practice, or policy.

(20) **Sexual assault.**

(a) Sexual assault is sexual contact with another person without, or that exceeds, that person's consent.

(b) For the purposes of this subsection, "sexual contact" includes:

(i) Any touching of another person for the purposes of sexual gratification; or

(ii) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(c) For the purposes of this subsection:

(i) "Consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicating freely given agreement between the parties to engage in the sexual contact.

(A) Past consent does not imply future consent.

(B) Consent given to one person does not imply consent given to another person.

(C) Consent to one sexual act does not imply consent to other sexual acts.

(D) Lack of resistance to sexual contact does not imply consent.

(E) Consent can be withdrawn at any time.

(ii) Consent cannot be given or granted by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, mentally or physically impaired due to an intellectual or other disability, or mentally or physically incapacitated due to the effects of drugs or alcohol.

(A) Indicators that a person may be incapacitated by drugs or alcohol and therefore, cannot grant consent include, but are not limited to: Stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, passing out, or vomiting.

(B) A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

(d) Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence.

(i) Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact.

(ii) Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against that person's will, without the use of physical force. Pressure can mean verbal or emotional pressure.

(e) Sexual assault also includes sexual contact with a person who is under the statutory age of consent in accordance with chapter 9A.44 RCW.

(f) Use of alcohol or drugs is not a valid defense to a violation of this subsection.

(21) **Sexual exploitation.** Sexual exploitation includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(22) **Sexual harassment.** Sexual harassment is language or conduct of a sexual nature that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance or a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(23) **Stalking.**

(a) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for the person's safety or safety of others; or

(ii) Suffer substantial emotional distress.

(b) For the purposes of this subsection, "course of conduct" means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(c) For the purposes of this subsection, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(24) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.

(25) **Unauthorized keys, entry or use.** The unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises is prohibited, as is the unauthorized entry upon or use of university premises or property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(26) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy.

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(27) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

(28) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.

(29) **Violation of law.** Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.

AMENDATORY SECTION (Amending WSR 16-05-097, filed 2/17/16, effective 3/28/16)

**WAC 478-120-145 Recording and maintenance of records.** (1) Records related to disciplinary proceedings shall be maintained consistent with university records retention policies and this conduct code.

(2) The president, vice president for student life at the University of Washington Seattle campus, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, shall keep records related to all disciplinary actions reported to their respective offices and may notify the dean or director of the college, school, or program, in which a respondent is enrolled, of any action related to disciplinary proceedings involving the respondent, provided that the school official to whom the information is being disclosed has a legitimate educational interest in receiving such information, as permitted by FERPA.

(3) Records related to disciplinary proceedings shall be kept separate from academic records, and respondents' official academic transcripts shall not contain any notation of disciplinary action taken pursuant to this conduct code.

(4) The deans of a college or school at the University of Washington Seattle, the deans or directors of a school or program at the University of Washington Bothell and Tacoma campuses, or their delegates, shall maintain records related to all disciplinary matters reported to their respective offices and shall notify the office of the vice president for student life, the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, of any disciplinary action imposed against a respondent, who is enrolled in their college, school, or program. The university officials named in this section shall also inform the appropriate registrar of any action affecting a student's official standing in the university (e.g., suspension or dismissal).

(5) The chairs of the faculty appeal board and university disciplinary committees shall maintain the official record (as indicated in RCW 34.05.476) of each disciplinary hearing until a final order is issued or entered. At such time the respective chair will transmit the official record to the vice president for student life, the chancellor for the University of Washington Bothell, or the chancellor for the University of Washington Tacoma, whoever is appropriate, or their delegates, who will maintain the official record in accordance with this section.

(6) Disciplinary records of respondents not exonerated shall be maintained for seven years after the resolution of all disciplinary proceedings (including the resolution of any petition for judicial review filed in superior court) or until the

administrative purpose for retention has been served, whichever is later. Final orders imposing suspension or dismissal may be maintained indefinitely.

(7) Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and chapter 478-140 WAC.

**AMENDATORY SECTION** (Amending WSR 03-08-040, filed 3/27/03, effective 4/1/04)

**WAC 478-132-030 University calendar.** The calendar at the university consists of four quarters, which normally begin and end as follows:

(1) The autumn quarter shall begin on the last Wednesday in September and end on the twelfth Friday thereafter.

(2) The winter quarter shall begin on the first Monday after January 1 and end on the eleventh Friday thereafter. When January 1 falls on Sunday, the winter quarter shall begin on Tuesday January 3; when January 1 falls on Monday, the winter quarter shall begin on Wednesday January 3.

(3) The spring quarter shall begin on the second Monday after the close of winter quarter and end on the eleventh Friday thereafter. The June commencement for UW Seattle shall be the Saturday immediately following the last day of spring quarter.

(4) The summer quarter shall begin on the second Monday following the June commencement and end on the ninth Friday thereafter.

(5) Certain academic programs may begin or end on schedules different from those in subsections (1) through (4) of this section with the approval of the provost. In such cases, it will be the responsibility of the appropriate dean to provide advance notice to the affected students.

**AMENDATORY SECTION** (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

**WAC 478-136-015 Delegated and administrative responsibilities.** (1) The board of regents has delegated to the president of the university the authority to regulate the use of university facilities.

Under this authority, the president has acted or will act as follows:

(a) Delegate to the chair for the committee on the use of university facilities with respect to facilities located on or governed by those located on the Seattle campus and for all other university facilities except for those located on the campuses for which there is a chancellor, the authority to review the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate. Inquiries to the chair for the Seattle campus should be directed to:

University of Washington Seattle  
Seattle Chair of the Committee on the Use of  
University Facilities  
Box ((351241)) 352230  
Seattle, WA ((98195-1241)) 98195-2230

(or phone: 206-543-9233, or email sprogram@uw.edu).

(b) Delegate to the chancellors of the University of Washington campuses, with respect to facilities located on or governed by those located on their campus, the authority to review the use of university facilities; to establish within the framework of this policy guidelines and procedures governing such use; to approve or disapprove requested uses; and to establish policies regarding fees and rental schedules where appropriate.

(c) Delegate the chancellors the authority to subdelegate the authorities provided for in (b) of this subsection to a chair of the committee on the use of university facilities for facilities located on or governed by those located on their respective campuses. For the current UW campuses, other than the Seattle campus, inquiries concerning the use of university facilities may be directed to:

University of Washington Bothell  
Bothell Chair of the Committee on the Use of  
University Facilities  
Office of the Vice Chancellor for Administration and  
Planning  
Box 358520  
18115 Campus Way N.E.  
Bothell, WA 98011

or

University of Washington Tacoma  
Tacoma Chair of the Committee on the Use of  
University Facilities  
1900 Commerce Street, GWP 312  
Box 358430  
Tacoma, WA 98402

(or, for the University of Washington Tacoma, phone: 253-692-5645).

(d) Directs the chairs for each committee on the use of university facilities to confer with one another to promote a uniform application of this chapter.

(2) Sponsorship of an event by an academic or administrative unit of the university implies that an official with authority to make such decisions for the academic or administrative unit has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded, on behalf of his or her academic or administrative unit, that the event is consistent with this chapter.

(3) Approval of a facilities use request by the appropriate committee chair means that the committee chair has determined that the proposed event is consistent with this chapter.

**AMENDATORY SECTION** (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

**WAC 478-136-030 Limitations on use.** (1) First priority for the use of campus facilities shall be given to regularly scheduled university activities. Additionally, use of university facilities may be subject to reasonable time, place, and manner restrictions that take into account, among other considerations, the general facilities policy; the direct and indi-

rect costs to the institution; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the campus community, surrounding neighborhoods, and the general public.

(2) Freedom of expression is a highly valued and indispensable quality of university life. However, university facilities may not be used in ways which obstruct or disrupt university operations, the freedom of movement, or any other lawful activities. No activity may obstruct entrances, exits, staircases, doorways, hallways, or the safe and efficient flow of people and vehicles.

(3) University facilities may be used for political activities (including events and forums regarding ballot propositions and/or candidates who have filed for public office) only if the event has been sponsored by an administrative or academic unit and approved by the appropriate committee chair, and subject to the following limitations:

(a) The full rental cost of the facility must be paid and state funds may not be used to pay rental costs or any other costs associated with the event.

(b) All candidates who have filed for office for a given position, regardless of party affiliation, must be given equal access to the use of facilities within a reasonable time.

(c) No person shall solicit contributions on university property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(d) University facilities may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(4) University facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities serve an educational purpose, as determined by the appropriate chair of the committee on the use of university facilities (see also subsection (7) of this section, concerning residence halls).

Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular university media or publications. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) When permission is granted to use university facilities for approved instructional or related purposes, as a condition of approval, the user of university facilities agrees to include in all materials nonendorsement statements in the form approved by the appropriate committee chair. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/televast information related to the user's activities offered in university facilities. The committee chair may determine the content, size of print and placement of the nonendorsement language. The university will not make its facilities available for instructional or related purposes that compete with courses or programs offered by the university.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the

university community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Solicitation and distribution of materials in university residence halls are governed by residence hall policies. No solicitation of a commercial nature is permitted in university residence halls. Commercial advertising may be allowed, and is restricted to certain designated areas of each residence hall, when it is related to the university's mission and approved by the department of housing and food services.

(8) Outdoor electronic amplification is prohibited with the following exceptions:

(a) The lawn area immediately west of the Seattle campus Husky Union Building (HUB) will be available for open-air speaking events using directional and volume-controlled speech amplification equipment provided by the university. Use of the Husky Union Building lawn site will be available to registered or official student organizations and faculty or staff groups on a first-come, first-served basis. The amplification system will be issued upon presentation of a currently valid student, faculty or staff identification card at the Husky Union Building Reservation Office.

(b) The committee chair with authority to permit the use of a facility may grant permission for the use of amplification equipment in other outdoor locations. Permission should be requested from the appropriate committee chair sufficiently in advance of the program to allow timely consideration.

(9)(a) No person may use university facilities to camp, except if permission to do so has been granted in accordance with the provisions of chapters 478-116 and 478-136 WAC or except as provided in (b) of this subsection. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws.

(b) This provision does not prohibit use of the university residence facilities in accordance with chapter 478-156 WAC or the use of facilities where the employee remains overnight to fulfill the responsibilities of his or her position or where a student remains overnight to fulfill the requirements of his or her course of study.

(10) Within the limits of applicable laws, the University of Washington is committed to establishing and maintaining safe conditions for persons attending football games in Husky Stadium or other athletic events or concerts in university facilities. Accordingly, the rules enumerated below will apply to all such events and be strictly enforced.

(a) The possession or consumption of alcoholic beverages or illegal drugs is prohibited, except for alcohol allowed under a permit or license as provided in WAC 478-136-041. In addition to having the beverages or drugs confiscated, violators may be subject to university disciplinary action and/or legal proceedings, and removal from the events.

(b) Air horns, glass bottles, cans, picnic baskets, bota bags, ice chests, and thermoses (in excess of two-quart capacity) are prohibited. Individuals possessing such will not be admitted to, or will be removed from, Husky Stadium or

other athletic or concert facilities until the items have been stored temporarily at locations provided for that purpose or disposed of in some other manner.

(c) Except for designated outdoor smoking sites, as provided in WAC 478-136-035, smoking is prohibited in all portions of all athletic stadia, including, but not limited to, the seating areas, public concourses, and enclosed and covered spaces.

(d) All persons entering events in Husky Stadium or other athletic venues or events in other university auditoria or facilities shall be subject to having all containers, bags, backpacks, coolers, or similar items visually inspected. Security personnel shall first ask permission to visually inspect the item and advise the person that he/she may refuse. Persons who refuse to allow inspection shall be allowed to return the item to a vehicle or otherwise dispose of it, after which admission shall be allowed. Persons who refuse the visual inspection and refuse to dispose of the item shall be denied entry.

(11) Only public service announcements and acknowledgment of sponsors will be allowed on scoreboards at athletic venues.

(a) For purposes of this section, a public service announcement is defined as an announcement which promotes the activities or services of federal, state or local governments, including the University of Washington, or non-profit organizations, or generally contributes to the community's welfare and interests.

(b) In acknowledgment of their sponsorship of the scoreboards or sponsorship of events and programs, sponsors may propose public service announcements for display on the scoreboard during athletic events. The public service announcement may be accompanied by a sponsor's name or logo but may not directly promote the products or services of the company. The text and graphics of public service announcements must be submitted at least three days in advance to the department of intercollegiate athletics for approval by the university.

(c) In addition to these public service announcements, sponsors also may be acknowledged by the display of corporate logos, trademarks, or other approved messages upon panels located on the scoreboard.

(12) The university will not make its facilities or services available to organizations which do not assure the university that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(13) The university will not make its facilities or services available to organizations which do not assure the university that they do not discriminate against any person (~~because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran~~) as defined in the university's Executive Order No. 31, Non-discrimination and Affirmative Action, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(14) Individuals who violate the university's use of facilities rules and approved users who violate university contract

terms for use of facilities may be advised of the specific nature of the violation and, if continued, individuals may be requested to leave university property or be refused future use of university facilities. Failure to comply with a request to leave university property could subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

AMENDATORY SECTION (Amending WSR 14-13-079, filed 6/16/14, effective 7/17/14)

**WAC 478-136-041 Alcoholic beverage policy.** Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(1) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor (~~control~~) and cannabis board.

(2) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor (~~control~~) and cannabis board must be followed.

(3) Alcoholic beverages may be possessed, sold, served, and consumed at the University of Washington club, as so designated by the university board of regents to the Washington state liquor (~~control~~) and cannabis board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor (~~control~~) and cannabis board.

(4) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor (~~control~~) and cannabis board.

(5) Except as provided in subsections (3) and (4) of this section, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor (~~control~~) and cannabis board (including third-party vendors with a caterer's business license with liquor endorsement) and only as follows:

(a) Events at which alcohol is to be possessed, sold, served, or consumed must be approved by the appropriate committee chair for the committee on the use of university facilities and an application to the chair must be accompanied by a request for written authorization under subsection (6) of this section or proof that the seller holds an appropriate license; and

(b) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must:

(i) Be within designated areas and must have restricted attendance; or

(ii) Operate under a sport entertainment facility license issued by the Washington state liquor (~~control~~) and cannabis board; and

(c) A university unit, or an individual or organization applying for a permit/license must have obtained approval under subsection (6) of this section; and

(d) Sale, service, and consumption of alcohol is to be confined to the specified room or area identified on the license or permit.

(6) Written authorization to apply for a special occasion license or a banquet permit must be obtained from the appropriate committee chair for the committee on the use of university facilities prior to applying for a special occasion license or banquet permit from the Washington state liquor ~~((control))~~ and cannabis board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor ~~((control))~~ and cannabis board at least forty-five days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor ~~((control))~~ and cannabis board.

(7) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

**AMENDATORY SECTION** (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

**WAC 478-136-060 Safety and liability.** (1) It is the responsibility of any person or organization requesting the use of university facilities to comply with all applicable university policies, procedures, rules and regulations, and applicable local, state and federal laws, including but not limited to fire, health and safety regulations.

(2) Permission to a nonuniversity organization, a registered student organization, or an official student government for the use of university facilities is granted with the express understanding and condition that such organization assumes full responsibility for any loss, damage or claims arising out of such use.

When the event involves physical activity, the sale of alcohol, or otherwise will increase the risk of bodily injury above the level inherent in the facilities to be used, proof of appropriate liability insurance coverage with limits of at least \$1,000,000 per occurrence must be provided to the university's office of compliance and risk ~~((management))~~ services before approval for the requested use will be granted.

**AMENDATORY SECTION** (Amending WSR 06-13-022, filed 6/13/06, effective 8/1/06)

**WAC 478-137-010 Purpose.** The colocated campus of the University of Washington, Bothell, and Cascadia ~~((Community))~~ College operates joint facilities that provide benefits to each educational institution. The purpose of this chapter is to define the facilities jointly operated by the institutions and to ensure that these joint facilities are reserved primarily for activities related to the educational missions of the institutions. Further, the joint facilities may be used for a variety of activities, providing the primary function the facility or space was intended to serve is not compromised. Reasonable time, place, and manner restrictions may be placed on the use of joint facilities.

The rules set forth in this chapter have been jointly developed and agreed upon by the two institutions of higher education, and adopted and codified in separate chapters of the Washington Administrative Code by each of the institutions. Rules for the use of dedicated facilities of the University of Washington, Bothell, and Cascadia ~~((Community))~~

College are governed by chapter 478-136 WAC and chapter ~~((432Z-140))~~ 132Z-141 WAC, respectively.

**AMENDATORY SECTION** (Amending WSR 06-13-022, filed 6/13/06, effective 8/1/06)

**WAC 478-137-020 Definitions.** (1) "College" shall mean Cascadia ~~((Community))~~ College.

(2) "Institutions" shall mean University of Washington, Bothell, and Cascadia ~~((Community))~~ College.

(3) "Joint facilities" shall mean those structures, spaces, campus grounds, and parking lots operated jointly by the institutions. Specific rules also apply to parking lots (chapters 132Z-116 and 478-117 WAC).

(4) "University" shall mean University of Washington, Bothell.

(5) "Use of facilities" includes, but is not limited to: The holding of classes, events, the posting and removal of signs, all forms of advertising, commercial and community activities, and charitable solicitation.

(6) "Wetlands" shall mean campus grounds to the east of Campus Way N.E. and east of 110th N.E. between N.E. 185th and Beardslee Blvd., and the Chase House.

**AMENDATORY SECTION** (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

**WAC 478-137-030 Administrative authority.** (1) The board of regents of the University of Washington and the board of trustees for Cascadia ~~((Community))~~ College have delegated to the chancellor of the university and the president of the college, respectively, the authority to regulate the use of joint facilities on the colocated campus.

(2) Under this authority, the chancellor of the university and the president of the college designate the coordination for use of joint facilities to an appointed joint committee on facility use and designate the use of the wetlands to the wetlands oversight committee. The chancellor of the university and the president of the college shall each appoint representatives to the joint committee on facility use to develop suggested event procedures. Each designee shall review the use of the facilities; establish administrative procedures governing such use that are consistent with these rules; approve or disapprove requested uses and establish policies regarding fees and rental schedules unique to joint facilities as appropriate. Additionally, the joint committee on facility use shall act as an appeals board for decisions of the wetlands oversight committee regarding wetlands use requests. Inquiries concerning the use of joint facilities may be directed to:

University of Washington, Bothell  
Office of Administrative Services  
Joint Facilities Use Coordinator  
Box 358535  
18115 Campus Way N.E.  
Bothell, WA 98011  
(Phone: 425-352-3556 or email: facuse@uwb.edu); and  
Cascadia ~~((Community))~~ College  
~~((Finance and Operations))~~  
Office of Administrative Services



((~~Director of Auxiliary Services and Capital Projects~~))  
Facilities Coordinator  
 18345 Campus Way N.E.  
 Bothell, WA 98011  
 (Phone: ((~~425-352-8269~~)) 425-352-8000).

(3) Preliminary approval of an event by an academic or administrative unit of the university or college implies that a responsible official has applied his or her professional judgment to the content of the program, the qualifications of the individuals conducting the event, the manner of presentation, and has concluded that the event is consistent with the teaching, research, and/or public service mission of the institutions.

(4) Final approval of a joint facilities use request by the appropriate designee on the use of joint facilities implies that the designee has reviewed the proposed event with regard to: The rules in this chapter; the direct and indirect costs to the institutions; environmental, health and safety concerns; wear and tear on the facilities; appropriateness of the event to the specific facility; and the impact of the event on the institutions, surrounding neighborhoods and the general public.

(5) The institutions will not make their joint facilities or services available to organizations that do not assure the institutions that they will comply with the terms of the Americans with Disabilities Act (ADA, 42 U.S.C. 12132, 12182) and the Rehabilitation Act of 1973 (RA, 29 U.S.C. 794). Uses must not impose restrictions nor alter facilities in a manner which would violate the ADA or RA.

(6) The institutions will not make their joint facilities or services available to organizations which do not assure the institutions that they do not discriminate against any person (~~((because of race, color, religion, national origin, sex, sexual orientation, age, handicap, or status as a Vietnam era or disabled veteran))~~), as defined in the university's Executive Order No. 31, Nondiscrimination and Affirmative Action and the college's nondiscrimination statement, except where such organizations have been exempted from provisions of applicable state or federal laws or regulations.

(7) Individuals who violate the institutions' use of joint facilities regulations and approved users who violate the institutions' contract terms for use of joint facilities may be advised of the specific nature of the violation and individuals may be requested to leave the property or be refused future use of joint facilities. Failure to comply with a request to leave the property may subject such individuals to arrest and criminal prosecution under provisions of applicable state, county, and city laws.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-137-050 Limitations on use.** (1) Freedom of expression is a highly valued and indispensable quality of university and college life. However, joint facilities may not be used in ways that obstruct or disrupt the institutions' operations, the freedom of movement, or any other lawful activities. Additionally, use of joint facilities may be subject to reasonable time, place and manner restrictions.

(2) Joint facilities may be used for events and forums regarding ballot propositions and/or candidates who have

filed for public office providing the event has received preliminary approval by an administrative or academic unit of one of the institutions and final approval by the appropriate facility designee. There are, however, certain limitations on the use of joint facilities for these political activities.

(a) First priority for the use of joint facilities shall be given to regularly scheduled university and college activities.

(b) Joint facilities may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office only when the full rental cost of the facility is paid. Use of state funds for payment of facility rental costs is prohibited.

(c) Forums or debates may be scheduled at full facility rental rates if all parties to a ballot proposition election or all candidates who have filed for office for a given position, regardless of party affiliation, are given equal access to the use of facilities within a reasonable time.

(d) No person shall solicit contributions on joint property for political uses, except in instances where this limitation conflicts with applicable federal law regarding interference with the mails.

(e) Public areas outside joint facility buildings may be used for political purposes such as events and forums regarding ballot propositions and/or candidates who have filed for public office, excluding solicitation of funds, provided the other normal business of the institutions is not disrupted and entrances to and exits from buildings are not blocked.

(f) Joint facilities or services may not be used to establish or maintain offices or headquarters for political candidates or partisan political causes.

(3) Joint facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are consistent with the institution's mission, as determined by the appropriate designee.

(4) Nothing in these rules is intended to alter or affect the regular advertising, promotional, or underwriting activities carried on, by, or in the regular media or publications of the institutions. Policies concerning advertising, promotional or underwriting activities included in these media or publications are under the jurisdiction of and must be approved by their respective management or, where applicable, advisory committees, in accordance with applicable state and federal laws.

(5) In accordance with WAC 478-137-010 the institutions will make their joint facilities available only for purposes related to their educational missions, including but not limited to instruction, research, public assembly, community programs, and student activities. When permission is granted to use joint facilities for approved instructional or related purposes, as a condition of approval, the user of joint facilities agrees to include in all materials nonendorsement statements in the form approved by the appropriate designee. "Materials" includes all communications, advertisement, and any other printed, electronic, or broadcast/telecast information related to the user's activities offered in joint facilities. The designee will determine the content, size of print and placement of the nonendorsement language. The institutions will not make their joint facilities available for instructional or related purposes that compete with courses or programs offered by the university or college.

(6) Solicitation, or distribution of handbills, pamphlets and similar materials by anyone, whether a member of the university and college community or of the general public, is not permitted in those areas of campus to which access by the public is restricted or where such solicitation or distribution would significantly impinge upon the primary business being conducted.

(7) Electronic amplification on the grounds of the campus shall not be permitted unless approved by the joint committee on facility use.

(8) No person may use joint facilities to camp. "Camp" means to remain overnight, to erect a tent or other shelter, or to use sleeping equipment, a vehicle, or a trailer camper, for the purpose of or in such ways as will permit remaining overnight. Violators are subject to arrest and criminal prosecution under applicable state, county and city laws. This provision does not prohibit use of joint facilities where a university or college employee remains overnight to fulfill the responsibilities of his or her position.

(9) The institutions are committed to maintaining a safe and healthful work and educational environment for all faculty, staff, students, and visitors. In accordance with the Washington Clean Indoor Air Act (chapter 70.160 RCW), the Use of University of Washington facilities (chapter 478-136 WAC) and Cascadia (~~Community~~) College facility use (chapter (~~132Z-140~~) 132Z-141 WAC), the following smoking policy is intended to protect nonsmokers from exposure to smoke in their campus-associated environments and to protect life and property against fire hazards. "Smoke" or "smoking" refers to the carrying or smoking of any kind of lighted pipe, cigar, cigarette, electronic cigarette, or any other kind of lighted smoking equipment.

(a) Smoking is prohibited inside all university or college vehicles, inside buildings and parking structures owned or occupied by the university or college and/or used by university or college faculty, staff or students and at any outside areas or locations that may directly or indirectly affect the air supply of buildings or carry smoke into buildings.

(b) The institutions may designate specific outdoor locations as smoking areas. Signage will be placed to indicate the designated locations.

(c) Any student, staff, or faculty member who violates the smoking policy may be subject to disciplinary action. In addition, violations of the smoking policy may be subject to appropriate enforcement.

(10) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only if the procedures set forth in this section are followed.

(a) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor (~~control~~) and cannabis board.

(b) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor (~~control~~) and cannabis board must be followed.

(c) Alcoholic beverages may be possessed, sold, served, and consumed at joint facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor (~~control~~) and cannabis board.

(d) Except as provided in (c) of this subsection, alcoholic beverages may be possessed, sold, served, and consumed at joint facilities only under permits/licenses issued by the Washington state liquor (~~control~~) and cannabis board and only as follows:

(i) Events at which alcohol is to be sold must be approved by the joint committee on facility use and an application to the committee must be accompanied by a request for written authorization under (e) or (f) of this subsection or proof that the seller holds an appropriate license; and

(ii) A university or college unit or an individual or organization applying for a permit/license must have obtained approval under (e) or (f) of this subsection; and

(iii) Sale, service, and consumption of alcohol is to be confined to the specified room or area identified on the license or permit.

(e) Written authorization to apply for a special occasion license to sell alcoholic beverages at joint facilities must be obtained from the joint committee on facility use prior to applying for a special occasion license from the Washington state liquor (~~control~~) and cannabis board. Authorization should be requested through the facilities use coordinator for the joint committee on facility use sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor (~~control~~) and cannabis board at least forty-five days or more before the event.) Written authorization to apply for such license shall accompany the license application filed with the Washington state liquor (~~control~~) and cannabis board.

(f) Written authorization to apply for a banquet permit to serve and consume alcoholic beverages at joint facilities must be obtained from the university chancellor or college president prior to applying for the permit from the Washington state liquor (~~control~~) and cannabis board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. Written authorization to apply for such permit shall accompany the permit application filed with the Washington state liquor (~~control~~) and cannabis board.

(g) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

**AMENDATORY SECTION** (Amending WSR 10-23-039, filed 11/10/10, effective 12/11/10)

**WAC 478-138-030 Use of university stadium boat moorage facilities—Stadium boat moorage facilities—**

**Area defined.** (1)(a) The stadium boat moorage facilities shall consist of those docks and floats located on Lake Washington in Union Bay which provide water access to the University of Washington shoreline on home football game days, or for other special events as determined by the university.

(b) The stadium boat moorage facilities shall also include such other specified areas along or adjacent to the university shoreline, as designated by the (~~senior~~) executive vice president for finance and (~~facilities~~) administration, that provide access to the university shoreline on home football game days, or for other special events as determined by the university. The activities for which these additional sta-

dium boat moorage facilities may be used include, but are not limited to: Moorage of water related vessels; and loading, unloading, or transporting passengers to and from water related vessels. All other uses of the university shoreline shall be under the authority of the ~~((senior))~~ executive vice president for finance and ~~((facilities))~~ administration.

(c) Use of the university shoreline and moorage facilities for waterfront activities not designated for that area, or otherwise not in compliance with this chapter will subject the violators to arrest under provisions of RCW 9A.52.080 (Criminal trespass in the second degree), City of Seattle 12A.08.040 (Criminal trespass), or other applicable law.

(2) In the event the university permits a ~~((non-university))~~ nonuniversity vessel use of the stadium boat moorage facilities for moorage, loading and unloading passengers, shuttling passengers to and from anchored vessels, or other related activities, the university does not assume responsibility for nor guarantee the expertise or training of the vessels' pilots or that such vessels are maintained in a safe condition or are adequately equipped with life vests and other safety devices as required by the United States Coast Guard and the Washington state utilities and transportation commission.

The ~~((senior))~~ executive vice president for finance and ~~((facilities))~~ administration shall have the authority to establish such conditions as are necessary or appropriate to enhance safety and to protect the university from liability in connection with the use of the stadium boat moorage facilities.

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

**WAC 478-140-018 Education records—Student's right to inspect.** (1) A student has the right to inspect and review his or her education records except where otherwise provided in this chapter.

(a) The term "education records" means those records, files, documents and other materials which contain information directly related to a student and are maintained by the university.

(b) Types of education records, and the university officials responsible for those records, include, but are not limited to:

(i) Official transcripts of courses taken and grades received, records relating to prior education experience, and admission records. The executive director of admissions and records, whose office is located in Schmitz Hall, is responsible for the maintenance of such records. In addition, the director of graduate admissions, whose office is located in Loew Hall, is responsible for the maintenance of certain admission and current education status records for graduate students, as are the admission directors of the professional schools of dentistry, law, medicine and pharmacy.

(ii) Tuition and fee payment records. The ~~((manager))~~ director of the student ~~((accounts office))~~ fiscal services, located in Schmitz Hall, is responsible for the maintenance of such records.

(iii) Student disciplinary records. The vice president for student ~~((affairs, whose office is located in Schmitz Hall,))~~ life is responsible for the maintenance of such records.

(iv) Education records relating to a student's particular field of study may be maintained by the departments and colleges throughout the university. Where such education records are so maintained, the respective chair or dean of the department or college is responsible for maintenance of the records.

(c) The term "education records" does not include:

(i) Any record of instructional, supervisory, administrative or educational personnel which is in the sole possession of the maker thereof and not accessible or revealed to any other person except a substitute. For the purposes of this subsection, substitute means:

(A) A person who is providing instruction in place of or as assistant to the regularly assigned faculty member in a course in which knowledge of the performance of individual students is essential to the provision of instruction, or

(B) A person who is supervising a student's thesis or research progress in place of or as an assistant to the regularly assigned faculty member during a prolonged absence.

(ii) Records created and maintained by the University of Washington police department for the purposes of law enforcement, except that education records created by another university department remain education records while in the possession of the police department.

(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes; however, records concerning a student who is employed as a result of his or her status as a student (e.g., graduate student service appointments) shall not be considered to relate exclusively to a student's capacity as an employee.

(iv) Health care records on a student that are created or maintained by a health care provider or health care facility in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, the student, or a health care provider of the student's choice (see also chapter 70.02 RCW).

(v) Records of an institution which contain only information relating to a person after that person is no longer a student at the university (e.g., information pertaining to the accomplishment of an alumnus or alumna).

(2)(a) Confidential recommendations, evaluations or comments concerning a student, shall nonetheless be made available to the student, except as provided in (b), (c) and (d) of this subsection.

(b) The student may specifically waive his or her right to inspect and review education records where the information consists only of confidential recommendations respecting the student's:

(i) Admission to the University of Washington or any other educational institution, or component part thereof, or

(ii) Application for employment, or

(iii) Receipt of an honor or honorary recognition.

(c) A student's waiver of his or her right to inspect and review confidential statements shall be valid only if:

(i) The student is, upon request, notified of the names of all persons making confidential statements concerning the student, the dates of such confidential statements and the purpose or purposes for which the statements were provided, and

(ii) Such confidential statements are used solely for the purpose or purposes for which they were provided, and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from or receipt of any other services or benefits from the university, and

(iv) Such waiver is in writing and signed and dated by the student.

(d) Such a waiver may be revoked, in writing, by the student; however, the revocation will be effective only for confidential statements or records dated after the date of the revocation.

(e) Confidential recommendations, evaluations or comments concerning a student prior to January 1, 1975, shall not be subject to release under WAC 478-140-018 (2)(a); however, upon request the student shall be notified of the names of the authors of all such confidential records, the dates appearing on such confidential records and the purpose for which each such confidential record was provided. Such records shall remain confidential and shall be released only with the consent of the author. Such records shall be used by the university only for the purpose or purposes for which they were provided.

(3) Where requested education records include information on more than one student, the student making the request shall be entitled to inspect, review or be informed of only the specific portion of the record about that student.

(4) A student may not inspect and review education records that are or contain financial records of his or her parents.

(5) Students may obtain copies of their education records. Charges for copies shall not exceed the cost normally charged by a University of Washington copy center (except in cases where charges have previously been approved for certain specified services).

(a) The university may refuse to provide copies of education records including transcripts and diplomas in the following circumstances:

(i) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exams may be protected;

(ii) If the student has outstanding debts owed to the university, so that the university may facilitate collection of such debts;

(iii) If disciplinary action is pending or sanctions are not completed.

(b) The university must provide copies of education records, subject to the provisions of (a) of this subsection, in the following circumstances:

(i) If failure to do so would effectively prevent the student from inspecting and reviewing a record;

(ii) When records are released pursuant to a student's consent and the student requests copies; and

(iii) When the records are transferred to another educational agency or institution where the student seeks or intends to enroll and the student requests copies.

(6) The office of the registrar is the only office which may issue an official transcript of the student's academic record.

(7) Student education records may be destroyed in accordance with a department's routine retention schedule. In no

case will any record which is requested by a student for review in accordance with WAC 478-140-018 or 478-140-021 be removed or destroyed prior to providing the student access.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-156-016 Family housing apartments—Assignment and unit size eligibility.** Residents must be enrolled as full-time students at the University of Washington three of the four quarters of an academic year, and be married couples; registered, same-sex domestic partners (that is, the partnerships are registered with jurisdictions where domestic partner registrations are offered); or single parents with dependent children. In addition, financial eligibility must be verified prior to move-in for those students in priority groups (1) through (3), which are described in WAC 478-156-017. The office of student financial aid will update financial need figures for family housing eligibility and will evaluate the resources of each new applicant to determine if their requirements for financial assistance exceed the established need figures. ~~((Separate financial need figures are established for each unit size.))~~ Any expenses related to the processing of the financial aid form will be borne by the applicant or the current resident. Assignment eligibility criteria for each unit size of university-owned housing is specific to the property and outlined on the University of Washington, Seattle housing and food services web site.

Changes to these eligibility criteria shall be approved through the office of the vice president for student life after consultation with student leadership from the Associated Students of the University of Washington (ASUW) and the Graduate and Professional Student Senate (GPSS).

AMENDATORY SECTION (Amending WSR 10-23-039, filed 11/10/10, effective 12/11/10)

**WAC 478-160-085 Application to graduate school.** Prospective applicants to the graduate school may obtain information about degree programs and the online application process on the graduate school web site or by an email request to uwgrad@u.washington.edu ~~((f))~~ for U.S. citizens, permanent residents ~~((and))~~, immigrants ~~((h))~~, or ~~((to gradvisa@u.washington.edu for))~~ international applicants.

Questions may be directed to uwgrad@u.washington.edu, or the graduate school at the following address:

University of Washington  
Office of Graduate Admissions  
301 Loew Hall  
P.O. Box 84808  
Seattle, WA 98124-6108

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

**WAC 478-324-090 Additional considerations in determination of significance and scoping.** (1) Scoping shall be used for ~~((EIS's))~~ EISs and supplemental ~~((EIS's))~~ EISs.

(2) The university shall notify members of the SEPA advisory committee, the city-university community advisory committee, agencies with jurisdiction, and others on the university SEPA mailing list of the DS and the initiation of this scoping process. Written comments shall be provided to the university within twenty-one days of the issuance of the DS.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-324-130 Establishment of the SEPA information web site.** (1) The University of Washington capital ((~~projects~~)) planning and development office shall serve as the location for the university's SEPA information web site.

(2) The following documents shall be maintained at the SEPA information web site:

(a) All SEPA public information registers for a period of one year from the date of publication.

(b) All environmental checklists, determinations of non-significance and determinations of significance for a period of one year from the date of issue.

(c) All current scoping and public hearing notices.

(d) All draft and final EISs for a period of three years after the date of publication.

(e) All draft and final EISs which have been incorporated by reference shall be maintained at the SEPA information web site for the same time period as the underlying document is maintained.

(f) A current list of individuals designated as responsible officials for university compliance with SEPA.

(g) A current membership list of the SEPA advisory committee.

(h) Agendas and minutes of the SEPA advisory committee for a period of one year after the date of issue.

(3) The documents at the SEPA information web site shall be available for public inspection online.

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

**WAC 478-324-150 Additional definitions.** (1) "Final action" means the university's decision to proceed or not proceed with a proposal and is so defined in compliance with public notice requirements, RCW 43.21C.080. For proposals involving a series of decision points, the final action shall be clearly identified in the environmental checklist and/or EIS. The point at which the final action is made during the planning process may vary depending upon the nature of the proposal, but at no time shall the final action occur before fourteen days following issuance of a DNS or seven days following issuance of an FEIS.

(2) "SEPA mailing list" means a current list maintained at the capital ((~~projects~~)) planning and development office at the university of all individuals, groups, and agencies who have communicated to the university their interest in SEPA policies, procedures, and documents. This list shall include the city-university community advisory committee and all community organizations represented on the committee, including those with alternative representation.

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

**WAC 478-324-180 Designation of responsible official.** The associate vice president for capital ((~~projects~~)) planning and development or his or her designee shall serve as the responsible official for all university projects.

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

**WAC 478-324-190 Procedures on consulted agencies.** The capital ((~~projects~~)) planning and development office shall be responsible for coordinating, receiving, and reviewing comments and requests for information from agencies regarding threshold determinations, scoping, ((~~EIS's~~)) EISs, and supplemental ((~~EIS's~~)) EISs.

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

**WAC 478-324-200 Determining the lead agency.** (1) Except as otherwise specially provided herein, the university shall serve as the lead agency for all proposals.

(2) When the total proposal will involve both private and university construction activity, it shall be characterized as either a private or a university project for the purposes of lead agency designation, depending upon whether the primary sponsor or initiator of the project is the university or a private party. Any project in which university and private interests are too intertwined to make this characterization shall be considered a university project.

(3) The university's responsibilities as lead agency include complying with the threshold determination procedures; the initiation and administration of the scoping process; the supervision or actual preparation of draft ((~~EIS's~~)) EISs, including the circulation of such statements, the conduct of any public hearings or public meetings required by these rules; and the supervision or preparation of required final ((~~EIS's~~)) EISs and supplemental ((~~EIS's~~)) EISs.

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

**WAC 478-324-210 Determination of lead unit.** (1) For university actions subject to SEPA, the capital ((~~projects~~)) planning and development office shall be charged with the university's lead agency responsibilities.

(2) The capital ((~~projects~~)) planning and development office shall have primary university responsibility for providing procedural advice with regard to these rules.

(3) All university units with environmental expertise should strive to make their services available to the capital ((~~projects~~)) planning and development office to assist in the university's compliance with SEPA.

AMENDATORY SECTION (Amending WSR 01-08-007, filed 3/22/01, effective 4/22/01)

**WAC 478-355-010 Authority.** This chapter is enacted by the board of regents of the University of Washington pur-

suant to RCW 39.04.155 authorizing the university to establish a small works roster for public works projects with an estimated cost of less than ~~((two))~~ three hundred thousand dollars.

AMENDATORY SECTION (Amending WSR 12-03-038, filed 1/9/12, effective 2/9/12)

**WAC 478-355-020 Purpose.** To expedite the award of public work contracts at minimum cost, the University of Washington ~~((senior))~~ executive vice president for finance and ~~((facilities))~~ administration is authorized to establish a small works roster.

AMENDATORY SECTION (Amending WSR 12-03-038, filed 1/9/12, effective 2/9/12)

**WAC 478-355-030 Project construction cost.** Whenever the estimated project construction cost of any University of Washington public work is less than ~~((two))~~ three hundred thousand dollars, the University of Washington ~~((senior))~~ executive vice president for finance and ~~((facilities))~~ administration is authorized to use the small works roster in lieu of public advertisement for bids. In the event the legislature further increases the small works roster limit, the university is authorized to use the small works roster for any projects up to the subsequently authorized limit.

AMENDATORY SECTION (Amending WSR 12-03-038, filed 1/9/12, effective 2/9/12)

**WAC 478-355-060 Administration.** The ~~((senior))~~ executive vice president for finance and ~~((facilities))~~ administration is authorized to establish procedures for university use of its small works roster.

## WSR 17-14-045

### PERMANENT RULES

### DEPARTMENT OF ECOLOGY

[Order 16-13—Filed June 28, 2017, 9:34 a.m., effective July 29, 2017]

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

Purpose: Ecology is amending chapter 173-321 WAC, Public participation grants. The rule establishes eligibility requirements and funding criteria for grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations, as authorized by chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act.

Citation of Existing Rules Affected by this Order: Amending chapter 173-321 WAC, Public participation grants.

Statutory Authority for Adoption: Chapter 70.105D RCW; RCW 70.105D.070, 70.105D.070(8).

Adopted under notice filed as WSR 17-08-094 on April 5, 2017.

A final cost-benefit analysis is available by contacting Publication Coordinator, Department of Ecology, Waste 2 Resources Program, P.O. Box 47600, Olympia, WA 98504-

7600, phone (360) 407-6707, fax (360) 407-6102, email [kimi461@ecy.wa.gov](mailto:kimi461@ecy.wa.gov).

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: June 28, 2017.

Maia D. Bellon  
Director

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-010 Purpose and authority.** (1) The department is directed by ~~((the))~~ chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act to provide grants up to sixty thousand dollars to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest groups. The purpose of these grants ((shall be used)) is to facilitate public participation in the investigation and ((remediation)) remedying of a release or threatened release of a hazardous substance and to facilitate ((public participation in the)) implementation of the state's solid and hazardous waste management priorities.

(2) The department will give priority consideration for public participation grant funding to applicants who meet any of the following criteria:

(a) Facilitate public participation in hazardous substance release sites;

(b) Facilitate public participation in highly impacted or low-income communities;

(c) Have not received funding in the last two biennia.

(3) The purpose of this chapter is to ~~((set forth))~~ provide eligibility criteria and funding requirements for grant projects.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-020 Definitions.** As used in this chapter:

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or ~~((such person authorized to act for the director))~~ designee.

(3) "Emergency" means an occurrence warranting public participation ~~((which))~~ that occurs after the deadline for grant

applications and before the opening of a new grant application period, such as:

(a) An unforeseen release of a hazardous substance at an existing site or a newly discovered site;

(b) An unanticipated decision by the department concerning remedial action at a site or publication of a remedial ~~((investigation, feasibility))~~ investigation/feasibility study or risk assessment; or

(c) Discovery of a technical assistance need ~~((which))~~ that could not have been foreseen before the grant application deadline.

(4) "Emergency grant" means a public participation grant in the hazardous substance release category for an emergency as defined in this section.

(5) ~~((("Expendable personal property" means all tangible personal property other than nonexpendable personal property.))~~ "Equipment" means tangible, personal property having a useful life of more than one year and an acquisition cost of more than five thousand dollars per functional unit.

(6) "Facility" means:

(a) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, waste pile, pond, lagoon, impoundment, ditch, landfill, tank, storage container, motor vehicle, rolling stock, vessel, or aircraft; or

(b) Any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(7) "Grant applicant" means any ~~((person))~~ individual or organization requesting a public participation grant.

(8) "Hazardous substance" means~~(:~~

~~(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6) or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;~~

~~(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;~~

~~(c) Any substance that, on March 1, 1989, is a hazardous substance under 101 (14) of the Federal Cleanup Law, 42 U.S.C. Sec. 960(14);~~

~~(d) Petroleum or petroleum products; and~~

~~(e) Any substance or category of substances including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment. Except that:~~

~~The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local laws.))~~ any hazardous substance as defined in chapter 70.105 RCW.

(9) "Hazardous waste management priorities" as defined in ~~((RCW 70.105.150 are the priorities in the management of hazardous waste which should be followed))~~ chapter 70.105 RCW are in descending order ~~((as applicable))~~:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

~~(10) ((("Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of three hundred dollars or more per unit.~~

~~((11))~~ "Highly impacted community" means a community that the department of health has determined is likely to bear a disproportionate burden of public health and economic risks from environmental pollution.

~~((11))~~ "Individual" means a natural person.

~~((12))~~ "Lobbying" means attempting to influence the passage or defeat of any legislation by the legislature or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Lobbying does not include an organization's act of communicating with the members of that organization unless the communication is for the purpose of influencing legislation.

~~((13))~~ "Low-income" means households where the household income is less than or equal to twice the federal poverty level.

~~((14))~~ "Low-income community" means a community where the proportion of an area's low-income population is greater than the comparison area (for example, city, county, state).

~~((15))~~ "Not-for-profit public interest organization" means any corporation, trust, association, cooperative, or other organization ~~((which))~~ that:

(a) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(b) Is not organized primarily for profit; and

(c) Uses its net proceeds to maintain, improve, and/or expand its operations.

~~((12))~~ ~~((16))~~ "Owner/operator" means any person defined as an owner or operator under RCW 70.105D.020 (12).

~~((13))~~ ~~((17))~~ "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

~~((14))~~ ~~((17))~~ "Personal property" means property of any kind except real property. It may be tangible (having physical existence) or intangible (having no physical existence), such as patents, inventions, and copyrights.

~~((15))~~ ~~((18))~~ "Potentially liable person" means any person ~~((whom))~~ the department finds, based on credible evidence, to be liable under RCW 70.105D.040. ~~((The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.~~

~~((16))~~ ~~((19))~~ "Real property" means land, ~~((land))~~ improvements, structures, and ~~((appurtenances thereto, excluding moveable machinery and equipment))~~ additional pieces associated to them.

~~((17))~~ ~~((20))~~ "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

~~((18))~~ (21) "Remedy(~~(-remediation,)~~) or remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities ~~((with respect to))~~ of any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

~~((19))~~ (22) "Solid waste management priorities" as defined in chapter 70.95 RCW are ~~((the priorities in the management of solid waste which should be followed))~~ in order of descending priority ~~((as applicable))~~:

- (a) Waste reduction;
- (b) Recycling with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed waste.

(23) "Supplies" means all tangible personal property other than tools or equipment necessary to carry out a scope of work with a useful life of less than one year and an acquisition cost of less than one thousand dollars.

(24) "Tools" means tangible, personal property having a useful life of more than one year and an acquisition cost of less than five thousand dollars per functional unit.

AMENDATORY SECTION (Amending WSR 89-21-072, filed 10/17/89, effective 11/17/89)

**WAC 173-321-030 Relationship to other legislation and administrative rules.** (1) The individuals or organizations receiving a grant ~~((shall))~~ must comply fully with all applicable federal, state, and local laws, orders, regulations, and permits.

(2) Nothing in this chapter ~~((shall))~~ will influence, affect, or modify existing department programs, regulations, or enforcement of applicable laws relating to solid and hazardous waste management and cleanup.

(3) All grants ~~((shall be))~~ are subject to the existing, applicable accounting and auditing requirements of state laws and regulations.

(4) The department will prepare ~~((a guidance manual))~~ guidelines to facilitate compliance with these regulations. Guidelines will be updated each biennium.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-040 Applicant eligibility.** (1) Public participation grants ~~((may only be awarded to groups of three or more unrelated persons or))~~ are awarded only to individuals who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations.

(2) ~~((All applicants must demonstrate their ability to appropriately administer grant funds.~~

(3) Applications for a hazardous substance release grant, including emergency grants, must include information on:

(a) ~~The nature of the release or threatened release of the hazardous substance;~~

(b) ~~The location of the release or threatened release of the hazardous substance;~~

(c) ~~How the applicant group may be adversely affected by the release or threatened release of the hazardous substance;~~

(d) ~~How the applicant group will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance;~~

(e) ~~A complete project description;~~

(f) ~~How the applicant group represents the environmental, health, and economic interests of individuals affected by the release or threatened release of the hazardous substance;~~

(g) ~~The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;~~

(h) ~~For emergency grants, a description of why an emergency exists, as defined in WAC 173-321-020(3); and~~

(i) ~~Any other information specified by the department as needed to award a grant.~~

(4) ~~Applications for a waste management priorities grant must include information on:~~

(a) ~~How the applicant group will promote or implement the state solid or hazardous waste management priorities;~~

(b) ~~How the applicant group will promote public participation in the grant project described in the application;~~

(c) ~~A complete project description;~~

(d) ~~The applicant group's history and experience, if any, in conducting activities similar to those described in the grant application;~~

(e) ~~Any other information specified by the department as needed to award a grant.~~

~~((5))~~ The following ~~((persons or groups of persons shall be))~~ individuals or organizations are ineligible for grant funding:

(a) Any person potentially liable, as defined under RCW 70.105D.040;

(b) Local governments including any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county;

(c) Federal and state governments, or agencies thereof;

(d) Federally recognized Indian tribes, as a governing body~~((:))~~ with the following exceptions:

(i) ~~Individual tribe members ((of three or more persons are eligible to apply for a public participation grant;~~

(e) ~~Organizations sustained by public funding;~~

(f) ~~who may be adversely affected by the release or threatened release of a hazardous substance; and~~

(ii) Not-for-profit tribal organizations.

(e) Public and private universities; and

~~((g))~~ (f) Any organization located outside of Washington state boundaries.

~~((6))~~ Grant applications failing to qualify may be resubmitted~~(.)~~ (g) Any individual or organization that does not meet the eligibility requirements of subsection (1) of this section.



AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-050 Application evaluation criteria.**

(1) The department will provide public notice of the application period, deadlines, and guidelines. The department will provide multi-lingual and culturally appropriate outreach to potential grant applicants.

(2) Applications will only be accepted through the department's online application system.

(3) Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.

(4) Except for emergency grants ((which will be reviewed and evaluated by the department within twenty working days of receipt of the application, all other)), grant applications must be received ((will be reviewed and evaluated by the department within thirty working days after the close of the regular grant application period. Incomplete applications will not be evaluated)) by the application deadline in order to be considered.

(5) Applications will be ranked ((according to how each application meets the criteria set forth below)) by the numerical value calculated using evaluation criteria set out in the guidelines provided to potential grant applicants.

(6) Grants will be awarded, within the limits of available funds, to the highest ranking applications. The department may fund all or portions of eligible grant applications.

((2) Priority consideration for public participation grant funding will be given to:

(a) Applicants requesting a hazardous substance release grant;

(b) New applicants; and

(c) Applicants that demonstrate the ability to provide accurate technical information on complex waste management issues.

(3) General criteria. All public participation grants will be evaluated against the following criteria:

(a) The type and extent of the applicant group's past history and experience conducting activities similar to those described in the grant application;

(b) The group's basic funding, with consideration given to groups with limited resources;

(c) The group's ability to appropriately manage grant funds;

(d) Except for emergency grants, if more than one group is interested in the same project, priority consideration will be given to groups who consolidate;

(e) Availability of funding sources for the project;

(f) Past performance under a public participation grant;

(g) The group's ability to define the environmental issue and identify what changes will occur in the problem as a result of the project; and

(h) Demonstration of the use of Bennett's hierarchy or similar methodology with a focus on outcome and clear commitment to follow through to end results.

(4) Special criteria:

(a) Hazardous substance release grants. Hazardous substance release grants, including emergency grants, will be evaluated against the following criteria:

(i) The degree to which the applicant group may be adversely or potentially adversely impacted by the release or threatened release of the hazardous substance, including but not limited to adverse or potential adverse impacts to surface and drinking waters, soils, flora or fauna, species diversity, air quality, property values, marketability of agricultural crops, and recreational areas;

(ii) The degree to which the applicant group represents the environmental, health, and economic interests of individual group members;

(iii) The degree to which the proposed project will promote public participation in the investigation or remediation of the release or threatened release of the hazardous substance.

(b) Waste management priorities grants. Waste management priorities grants will be evaluated against the following criteria:

(i) The degree to which the proposed public participation activity will promote or implement the state solid or hazardous waste management priorities;

(ii) The degree to which the proposed project will facilitate public understanding of the state solid and hazardous waste management priorities;

(iii) The degree to which the proposed public participation activities are consistent with or improve upon existing solid or hazardous waste management plans.)

(7) The department will not fund applications failing to meet the grant eligibility criteria and may reopen the application period for additional applications.

(8) The evaluation criteria will include at a minimum:

(a) Whether the applicant meets one or more of the priority considerations outlined in WAC 173-321-010(2);

(b) The extent to which the individual applicant or the community served by the not-for-profit organization applicant is impacted by the hazardous substance release or the waste management issue addressed by the project;

(c) The extent to which the applicant has demonstrated the ability to manage grant funds in compliance with applicable requirements and in a cost-effective manner;

(d) The extent to which the applicant has demonstrated the ability to measure the project's outcomes;

(e) The applicant's past performance under a public participation grant, including whether the applicant appropriately managed grant funds, complied with grant requirements, and was able to demonstrate achievement of project goals. Only past grant recipients will be evaluated under this criterion.

(9) The department's announcement of the grants awarded will include:

(a) The public notice used to announce the application period;

(b) A ranked list of all applicants and a description of their proposed projects;

(c) How the applications were evaluated; and

(d) The amount awarded to each recipient.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-060 Eligible project costs.** (1) Eligible project costs ~~((for substance release grants shall include but not be limited to))~~ include costs associated with:

- (a) Hiring technical assistants to review and interpret documents;
- (b) Public involvement and public education activities;
- (c) Reviewing specific plans for environmental testing and analysis, reviewing reports summarizing the results of such plans and making recommendations for modifications to such plans~~((:))~~;

~~((d))~~ ~~((Expendable personal property;~~

~~((e))~~ ~~((Other public participation activities as determined by the department on a case-by-case basis.~~

~~((2))~~ Eligible project costs for waste management priority grants shall include but not be limited to:

~~((a))~~ ~~((Assisting in developing and implementing programs that promote or improve state or local solid or hazardous waste management plans;~~

~~((b))~~ ~~((c))~~ ~~((Assisting in developing programs or activities that promote and are consistent with the state solid or hazardous waste management priorities;~~

~~((e))~~ ~~((Expendable personal property;~~

~~((d))~~ ~~((f))~~ ~~((Other ((public participation)) activities as determined by the department on a case-by-case basis;~~

~~((g))~~ ~~((Supplies and tools necessary to the foregoing activities. All costs must be in compliance with the department's "Administrative Requirements for Recipients of Ecology Grants and Loans" and the funding program guidelines.~~

~~((3))~~ ~~((2))~~ Ineligible projects and grant costs ~~((shall))~~ include but are not ~~((be))~~ limited to:

(a) Independently collecting or analyzing samples at a facility ~~((sites))~~;

(b) Hiring attorneys for legal actions against potentially liable persons, facility owners, or the department. Applicants ~~((who receive a grant award shall))~~ must notify the department if legal action is intended or taken on the subject of the grant project ~~((or application))~~;

(c) ~~((Legislative))~~ Lobbying ~~((activities))~~;

(d) Real property;

(e) ~~((Nonexpendable personal property))~~ Equipment.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-070 Grant funding.** (1) The department ~~((may fund up to one hundred percent of eligible project costs))~~ will determine the amount of funding available for public participation grants and establish an application and funding cycle on a biennial basis.

(2) The maximum grant allowance ~~((shall be))~~ is sixty thousand dollars per year.

(3) Public participation grants may be renewed annually. ~~((A new grant application must be submitted to be evaluated and ranked for additional funding.~~

(4) The department reserves the right to refuse funding to any and all applications failing to meet the grant eligibility criteria and may reopen the application period for additional

applications.)) Grant renewal criteria will be outlined in the program guidelines.

(4) If the total amount of funding requested by all applicants exceeds the biennial budget, the department may limit the number of grants awarded to individual persons or organizations, regardless of ranking.

(5) Grant funds that are not used by a recipient will be offered to other grant recipients or applicants based on the original application ranking. However, additional funding cannot result in a grant that exceeds sixty thousand dollars per year.

(6) The department will produce a report at the close of the biennium outlining the grant program performance. The report will include, at minimum, the type and location of grant projects and the outcomes achieved.

AMENDATORY SECTION (Amending WSR 01-05-024, filed 2/12/01, effective 3/15/01)

**WAC 173-321-080 Grant administration.** (1) ~~((The department shall establish grant application funding cycles each year.~~

~~((2))~~ ~~((Public notice of application funding cycles shall be published statewide.~~

~~((3))~~ ~~((A grant application package will be sent to all persons interested in applying for public participation grants. Grant application packages will include notice of grant application deadlines, grant guidelines, and application forms.~~

~~((4))~~ ~~((Grant applications will be evaluated by the department. To be funded, applications must include all required elements as outlined in the guidelines.~~

~~((5))~~ ~~((The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation, and such other conditions not reasonably foreseeable which may preclude awarding such grants.~~

~~((6))~~ ~~((The department, on at least a biennial basis, will determine the amount of funding available for public participation grants and establish an application and funding cycle. The minimum amount of money available for public participation grants established by the Model Toxics Control Act shall be one percent of the moneys deposited into the state and the local toxics control accounts.~~

~~((7))~~ ~~((2))~~ The department ~~((shall))~~ is not ~~((be held))~~ responsible for payment of salaries, consultant fees, or other costs related to a contract of the grantee.

~~((8))~~ ~~((To the extent that the Constitution and laws of the state of Washington permit,))~~ ~~((3))~~ The grantee ~~((shall))~~ must indemnify and hold the department harmless~~((:))~~ from and against~~((:))~~ any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.

~~((9))~~ ~~((4))~~ All grants under this chapter ~~((shall))~~ must be consistent with the department's "Administrative Requirements for Recipients of Ecology Grants and Loans" ((WDOE publication No. 91-18, revised October 2000)) and the funding program guidelines.

**WSR 17-14-055**  
**PERMANENT RULES**  
**STATE BOARD OF HEALTH**

[Filed June 28, 2017, 4:39 p.m., effective August 1, 2019]

Effective Date of Rule: August 1, 2019.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The state board of health anticipates restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules will continue through June 2019.

Purpose: **This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, two years because of anticipated state budget shortfalls in the 2017-2019 biennium, and previous legislative direction. These rules provide minimum environmental health and safety standards for schools.**

FILING NOTE: New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health (board) on August 12, 2009, under proposed rule making (CR-102), WSR 09-14-136. The board filed a rule-making order (CR-103), WSR 10-01-174, on December 22, 2009, setting the effective date of the rules as July 1, 2010. However, in advance of the board's actions, the 2009 legislature adopted a proviso in the state operating budget (ESHB 1244) suspending implementation of the new rules until the legislature acts to formally fund implementation. The proviso has been added to all subsequent state operating budgets. In response, the board has taken the following series of actions to delay implementation of the new rules:

- Voted on March 10, 2010, to file an amended Rule-Making Order, WSR 10-12-018, on May 21, 2010, to change the effective date to July 1, 2011;
- Voted on April 13, 2011, to file an amended Rule-Making Order, WSR 11-10-080, on May 3, 2011, to delay the effective date another two years to July 1, 2013;
- Voted on March 13, 2013, to file an amended Rule-Making Order, WSR 13-09-040, on April 11, 2013, to delay the effective date another two years to July 1, 2015; and
- Voted on March 11, 2015, to file an amended Rule-Making Order, WSR 15-09-070, on April 15, 2015, to delay the effective date of the rules another two years to July 1, 2017.

The implementation restrictions and lack of funding are expected to continue in the 2017-2019 biennial budget, prompting the board to again vote at its June 14, 2017, meeting to delay the effective date of the new rules to August 1, 2019. The added month provides more time for the board to consider further action if needed following the end of the 2019 legislative session.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: See WSR 10-01-174.

A final cost-benefit analysis is available by contacting Stuart Glasoe, P.O. Box 47990, Olympia, WA 98504-7990, phone (360) 236-4111, fax (360) 236-4088, email stuart.glasoe@sboh.wa.gov.

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

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

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

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

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

Date Adopted: June 28, 2014.

Michelle A. Davis  
Executive Director

**WSR 17-14-062**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 29, 2017, 11:44 a.m., effective July 30, 2017]

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

Purpose: Chapter 246-830 WAC, Massage practitioners, the department of health (department) and board of massage (board) are adopting amendments to the chapter to clarify, streamline, and modernize the regulations of licensed massage practitioners in Washington state.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-830-010, 246-830-040, 246-830-401, 246-830-477, 246-830-610, 246-830-620, 246-830-630, 246-830-640, 246-830-650, 246-830-660, 246-830-670 and 246-830-680; and amending WAC 246-830-005, 246-830-020, 246-830-035, 246-830-201, 246-830-290, 246-830-420, 246-830-430, 246-830-435, 246-830-440, 246-830-450, 246-830-475, 246-830-485, and 246-830-490.

Statutory Authority for Adoption: RCW 18.108.025 (1)(a) and 18.108.085 (1)(a).

Other Authority: RCW 43.70.041 and chapter 18.108 RCW.

Adopted under notice filed as WSR 17-07-113 on March 21, 2017.

Changes Other than Editing from Proposed to Adopted Version:

Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
<p>WAC 246-830-005 Definitions.</p> <p>(3) "Apprentice" means an individual enrolled in an apprenticeship program, and who is held to the same standards as students in massage schools or programs.</p> <p>(4) "Apprenticeship program" means education and training in massage administered by an apprenticeship educator and trainer that satisfies the education and training requirements for massage set forth in this chapter.</p> <p>(5) "Apprenticeship educator and trainer" means a massage practitioner licensed under chapter 18.108 RCW with at least five current years of experience in full-time practice.</p> <p>(17) "Massage transfer program" "Massage transfer program" means a board approved program that allows massage programs and massage schools to accept credits and clock hours that have not been approved by the board pursuant to WAC 246-830-037.</p>	<p>WAC 246-830-005 Definitions.</p> <p>(3) "Apprentice" means an individual enrolled in an apprenticeship program, and who is held to the same standards as students in massage schools or <u>massage</u> programs.</p> <p>(4) "Apprenticeship educator and trainer" means a massage practitioner licensed under chapter 18.108 RCW with at least five current years of experience in full-time practice.</p> <p>(5) "Apprenticeship program" means education and training in massage administered by an apprenticeship educator and trainer that satisfies the education and training requirements for massage set forth in this chapter.</p> <p>(17) "Massage transfer program" means a board approved <u>massage</u> program that allows <u>board approved</u> massage programs and massage schools to accept credits and clock hours <u>from massage schools, massage programs, colleges or universities</u> that have not been approved by the board, pursuant to WAC 246-830-037.</p>	<p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>Program staff reformatted subsections four and five to keep the definitions in alphabetical order.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p>
<p>WAC 246-830-020 Applications.</p> <p>(1) An applicant for a massage practitioner license must submit to the department:</p> <p>(1)(b) Proof of successful completion of the required education and training of a massage program on an official transcript or school completion form sent directly from the applicant's school or program;</p>	<p>WAC 246-830-020 Applications.</p> <p>(1) An applicant for a massage practitioner license must <u>be eighteen years of age or older and must</u> submit to the department:</p> <p>(1)(b) Proof of successful completion of the required education and training of a <u>massage school, massage program, or apprenticeship program</u> on an official transcript or school completion form sent directly from the applicant's <u>massage school, massage program or apprenticeship</u> program;</p>	<p>The board and department agreed that the additional language aligns with statute.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p>
<p>WAC 246-830-035 Licensing without examination by endorsement.</p> <p>(1)(b) The applicant has a massage license in good standing from the initiating jurisdiction; and</p>	<p>WAC 246-830-035 Licensing <u>for out-of-state applicants</u>.</p> <p>(1)(b) The applicant has a massage license in good standing <u>as verified by the appropriate jurisdiction</u>; and</p>	<p>The board and department agreed that this suggestion better reflects the intention of the rule.</p> <p>The board and department agreed to this suggestion because individuals might not hold an active massage license in the jurisdiction in which they were initially licensed.</p>

Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
(3) The applicant must successfully pass one of the following examinations after their graduation date:	(3) The applicant must <u>have</u> successfully passed one of the following examinations after their graduation date:	The board and department agreed to this suggestion because out-of-state applicants will have already successfully passed the examination.
<p>WAC 246-830-037 Transfer programs and transfer of prior education and clock hours.</p> <p>(1) Board approved massage schools or massage programs may operate transfer programs that accept an individual's credits or clock hours from massage schools or massage programs that have not been approved by the board, subject to the following conditions:</p> <p>(1)(a) The massage school or massage program from where credits or clock hours are being transferred is:</p> <p>(1)(b) The massage school or massage program from where credits or clock hours are being transferred provides an official transcript;</p> <p>(1)(c) Courses for which credits or clock hours are granted must be substantially equivalent in content and academic rigor to the courses and clock hours presently offered by the massage school or massage program. In order to determine substantial equivalency, the massage school or massage program will evaluate the courses and clock hours. If clock hours are missing, or require additional credits for the subjects, the massage school or massage program may grant partial credit, as appropriate.</p> <p>(2) A transfer program must be approved by the board prior to a program enrolling a transfer student via the use of transfer credits or clock hours.</p> <p>(3) An authorized representative of the school or program must submit to the board a completed application packet provided by the department. Approval of a transfer program will follow the same process as outlined in WAC 246-830-420.</p>	<p>WAC 246-830-037 Transfer programs and transfer of prior education and clock hours.</p> <p>(1) Board approved massage schools or massage programs may operate transfer programs that accept an individual's credits or clock hours from massage schools, <u>massage programs, colleges or universities</u>, subject to the following conditions:</p> <p>(1) (a) The massage school, <u>massage program, college or university</u> from where credits or clock hours are being transferred is:</p> <p>(1) (b) The massage school, <u>massage program, college or university</u> from where credits or clock hours are being transferred provides an official transcript;</p> <p>(1) (c) Courses for which credits or clock hours are granted must be substantially equivalent in content and academic rigor to the courses and clock hours presently offered by the massage school or massage program. In order to determine substantial equivalency, the massage school or massage program will evaluate the courses and clock hours. <u>If components are missing, the massage school or massage program shall require credits or clock hours for those subjects while granting partial credit as appropriate.</u></p> <p>(2) A transfer program must be approved by the board prior to a <u>massage school or massage</u> program enrolling a transfer student via the use of transfer credits or clock hours.</p> <p>(3) An authorized representative of the <u>massage school or massage</u> program must submit to the board a completed application packet provided by the department. Approval of a transfer program will follow the same process as outlined in WAC 246-830-420.</p>	<p>The board and department agreed to the suggestion because additional language aligns with statute.</p> <p>The board and department agreed to the suggestion because the additional language aligns with statute</p> <p>The board and department agreed to the suggestion because the additional language aligns with statute.</p> <p>The board and department agreed that this suggestion provides better readability.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p>
WAC 246-830-200 Massage practitioner examination.	WAC 246-830-200 Massage practitioner examination.	

Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
An applicant who does not pass an examination after three attempts must provide proof to the board of having successfully completed additional clinical training or course work as determined by the board before being permitted three additional attempts to pass an exam.	The proposed rule was withdrawn.	The board and department agreed to this suggestion. It was determined by the board and department that a new section was not needed and could be incorporated into WAC 246-830-201.
<p>WAC 246-830-201 Examination.</p> <p>An applicant for a massage practitioner license must successfully pass one of the following examinations:</p> <p>(1) Federation of Massage Therapy Board and massage and bodywork licensing examination; or</p> <p>(2) National certification examination for massage therapy and bodywork; or</p> <p>(3) A board-approved examination.</p>	<p>WAC 246-830-201 Examination.</p> <p>An applicant for a massage practitioner license must successfully pass one of the following examinations:</p> <p>(1) Federation of Massage Therapy Board and massage and bodywork licensing examination; or</p> <p>(2) National certification examination for massage therapy and bodywork; or</p> <p>(3) A board-approved examination.</p> <p><u>(4) An applicant who does not pass an examination after three attempts must provide proof to the board of having successfully completed additional clinical training or course work as determined by the board before being permitted three additional attempts to pass an exam.</u></p>	<p>No change.</p> <p>No change.</p> <p>No change.</p> <p>No change.</p> <p>The board and department agreed to this suggestion. It was determined by the board and department that proposed WAC 246-830-200 could be incorporated into WAC 246-830-201.</p>
<p>WAC 246-830-401 Board authority.</p> <p>The board reviews and approves massage schools, massage programs and apprenticeship programs to assure preparation for safe practice as a massage practitioner by requiring massage schools, massage programs and apprenticeship programs to meet minimum standards. The board also sets standards for licensure by endorsement and massage transfer programs.</p>	<p>WAC 246-830-401 Board authority.</p> <p>The rule was stricken.</p>	<p>The board and department agreed that this rule isn't necessary because it is more restrictive than what the board's authority is in the statute.</p>
<p>WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program.</p> <p>(1) To qualify as a board approved massage school, massage program or apprenticeship program, an authorized representative of the school or program must submit to the board a completed application packet provided by the department. A completed application packet must include, but not be limited to:</p>	<p>WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program.</p> <p>(1) To qualify as a board approved massage school, massage program or apprenticeship program, an authorized representative of the <u>massage school, massage program or apprenticeship program</u> must submit to the board a completed application packet provided by the department. A completed application packet must include, but not be limited to:</p>	<p>The board and department agreed to this revision because it is a clarification of the rule.</p>

Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
<p>(1)(d) A student clinic must be supervised by the clinical supervisor who is a licensed massage practitioner with at least two-years practical experience.</p> <p>(1)(e) Health, sanitation, and facilities must be maintained in accordance with local ordinances. The following documentation must be submitted:</p> <p>(1)(h)(iv) Designation of an authorized representative of the school.</p> <p>(5)(b) Notify the board of any changes in overall curriculum plan or curriculum content changes prior to implementation by filing an addendum. The board may grant or deny the proposed change; and</p>	<p>(1)(d) A student clinic must be supervised by a clinical supervisor who is a licensed massage practitioner with at least two-years practical experience.</p> <p>(1)(e) Health, sanitation, and facilities must be maintained in accordance with local ordinances <u>and these rules</u>. The following documentation must be submitted:</p> <p><u>(1)(i)</u> Designation of an authorized representative of the school <u>or program</u>.</p> <p>(5)(b) Notify the board of any changes in overall curriculum plan or curriculum content changes <u>under section (1)(a)</u> prior to implementation by filing an addendum. The board may grant or deny the proposed change; and</p>	<p>The board and department agreed that change corrects the sentence's grammar.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>~ The board and department agreed to this revision because it is a clarification of the rule.</p> <p>~ Program corrected the sequencing under subsection one to indicate a new sub-subsection.</p> <p>Program staff added this clarification to indicate that changes to a board approved massage program are specific to subsection (1)(a).</p>
<p>WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic.</p> <p>(2) Academic standards. The massage school, massage program, or apprenticeship program trainer must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the program and graduation is dependent on mastery of the knowledge and skills presented in the massage school, massage program, or apprenticeship program.</p> <p>(3) Faculty. An apprenticeship trainer and faculty member must be qualified by training and experience to give effective instruction in the subject(s) taught. An apprenticeship trainer and faculty member who teaches hands on courses must have a minimum of two-years experience in the subject matter being taught. The apprenticeship trainer and faculty member should develop and evaluate the curriculum instructional methods and facilities; student discipline, welfare, and counseling; assist in the establishment of administrative and educational policies, and scholarly and professional</p>	<p>WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic.</p> <p>(2) Academic standards. The massage school, massage program, or apprenticeship program <u>educator and</u> trainer must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the <u>massage</u> program and graduation is dependent on mastery of the knowledge and skills presented in the massage school, massage program, or apprenticeship program.</p> <p>(3) Faculty. An apprenticeship program <u>educator and</u> trainer and faculty member must be qualified by training and experience to give effective instruction in the subject(s) taught. An apprenticeship trainer and faculty member who teaches hands on courses must have a minimum of two-years experience in the subject matter being taught. The apprenticeship trainer and faculty member should develop and evaluate the curriculum instructional methods and facilities; student discipline, welfare, and counseling; assist in the establishment of administrative and educational policies, and schol-</p>	<p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p>

Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
<p>growth. A massage school, massage program, or apprenticeship program must not discriminate on the basis of sex, race, age, color, religion, physical handicap, or national or ethnic origin in the recruitment and hiring of faculty.</p>	<p>arly and professional growth. A massage school, massage program, or apprenticeship program must not discriminate on the basis of sex, race, age, color, religion, physical handicap, national or ethnic origin, <u>or other basis prohibited by law</u> in the recruitment and hiring of faculty.</p>	<p>The board and department agreed to this suggestion to include proposed language that will align and comply with state and federal discrimination laws.</p>
<p>WAC 246-830-490 Intraoral massage training.</p> <p>(2) Supervised training must be obtained from a massage practitioner endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.</p>	<p>WAC 246-830-490 Intraoral massage <u>education and</u> training.</p> <p>(2) Supervised <u>education and</u> training must be obtained from a massage practitioner endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.</p>	<p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>The board and department agreed to this revision because it is a clarification of the rule.</p>
<p>WAC 246-830-515 Operation of a massage business.</p> <p>A person who owns or operates a massage business may be subject to legal action for practice without a license under RCW 18.130.190 if the massage business advertises massage and the massage business employs individuals to provide massages who are not licensed under this chapter.</p>	<p>WAC 246-830-515 Operation of a massage business.</p> <p>A person who owns or operates a massage business may be subject to legal action for practice without a license under RCW 18.130.190 if the massage business advertises massage and the massage business employs individuals to provide massages who are not licensed under chapter <u>18.108 RCW</u>.</p>	<p>The board and department agreed with the suggestion because a person is licensed under the statutory requirements, not the WAC.</p>
<p>WAC 246-830-550 Scope of practice—Limitations.</p> <p>(2) A massage practitioner must maintain evidence of the completion of at least sixteen specialized in-person contact hours of education and training if they are performing massage in the perineal area in addition to obtaining prior written informed consent.</p>	<p>WAC 246-830-550 Standards of practice—Limitations.</p> <p>(2) A massage practitioner must maintain evidence of the completion of at least sixteen specialized in-person contact hours of education and training if they are performing massage in the perineal area in addition to obtaining prior written <u>and verbal</u> informed consent. <u>This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.</u></p>	<p>The board and department agreed to include the suggestions because it enhances public protection.</p>
<p>WAC 246-830-555 Breast massage.</p> <p>(1)(b) Use appropriate draping techniques as identified in WAC 246-830-560 (draping section).</p>	<p>WAC 246-830-555 Breast massage.</p> <p>(1)(b) Use appropriate draping techniques as identified in WAC 246-830-560.</p>	<p>The board and department agreed to this suggestion because it is a formatting correction.</p>



Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
(3)(b) An additional written and signed or initialed consent from the client or patient for massage of the nipple and areolas.	(3)(b) An additional <u>prior</u> written and <u>verbal informed</u> consent from the client or patient for massage of the nipple and areolas. <u>This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.</u>	<p>The board and department agreed to add the word "prior" because it enhances public protection.</p> <p>The board and department agreed to include "written and verbal informed consent" because it enhances public protection.</p> <p>The board and department agreed to include the last suggested sentence because it enhances public protection.</p>
<p>WAC 246-830-560 Draping.</p> <p>(2) Massage practitioners must use safe and functional coverage and draping practices during the practice of massage when the client or patient is disrobed. The drape(s) must be sufficient to ensure the genitals and the gluteal cleft below tip of coccyx, anus and rectum are not exposed, and the breast area is not exposed except as allowed in subsections (3) and (4) of this section. Safe and functional coverage and draping means:</p> <p>(2)(b) Massage or movement of the body does not expose genitals or gluteal cleft below tip of coccyx, anus and rectum, or does not expose the breast area except as allowed in subsections (3) and (4) of this section.</p> <p>(3) With informed and written consent of the client or patient, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area.</p>	<p>WAC 246-830-560 <u>Coverage and draping.</u></p> <p>(2) Massage practitioners must use safe and functional coverage and draping practices during the practice of massage when the client or patient is disrobed. The drape(s) must be sufficient to ensure the genitals and the gluteal cleft <u>distal to</u> the coccyx, anus and rectum are not exposed, and the breast area is not exposed except as allowed in subsections (3) and (4) of this section. Safe and functional coverage and draping means:</p> <p>(2)(b) Massage or movement of the body does not expose genitals or gluteal cleft <u>distal to</u> the coccyx, anus and rectum, or does not expose the breast area except as allowed in subsections (3) and (4) of this section.</p> <p>(3) With <u>prior written, verbal, and signed informed</u> consent of the client or patient, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area.</p>	<p>The board and department agreed to this revision because it is a clarification of the rule.</p> <p>The board and department agreed to the suggestion because it accurately reflects medical terminology.</p> <p>The board and department agreed to the suggestion because it accurately reflects medical terminology.</p> <p>The board and department agreed to the suggestion to add "prior" because it enhances public protection.</p> <p>The board and department agreed to include "written, signed, and verbal informed consent" because it enhances public protection.</p>
<p>WAC 246-830-565 Recordkeeping.</p> <p>(1) A massage practitioner providing professional services to a client or patient, must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services, and in sufficient detail to support and enable anticipated continuity of care. The documentation must include:</p>	<p>WAC 246-830-565 Recordkeeping.</p> <p>(1) A massage practitioner providing professional services to a client or patient must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services and, <u>when applicable</u>, in sufficient detail to support and enable anticipated continuity of care. The documentation must include:</p>	<p>The board and department agreed to the suggestions because it provides clarification of the intent of the rule and enhances public protection.</p>



Rule as Proposed in WSR 17-07-113	Rule as Adopted	Reason for Change
(3) Correspondence relating to any referrals concerning the evaluation or treatment of the client or patient must be retained in the client or patient record.	(3) Correspondence relating to any referrals <u>by other health care providers</u> concerning the <u>diagnosis</u> , evaluation or treatment of the client or patient must be retained in the client or patient record.	The board and department agreed to the suggestion because it provides clarification of the intent of the rule.
<p>WAC 246-830-570 Record retention.</p> <p>(3) All records must be secured with properly limited access.</p> <p>(4) After the retention period, the massage practitioner may dispose of the record. Disposal must be done in a secure and confidential manner in compliance with HIPAA as applicable and that includes:</p>	<p>WAC 246-830-570 Record retention.</p> <p>(3) <u>A massage practitioner must also comply with record retention requirements of chapter 70.02 RCW.</u></p> <p>(4) All records must be secured with properly limited access <u>in compliance with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA).</u></p> <p>(5) After the retention period, the massage practitioner may dispose of the record. Disposal must be done in a secure and confidential manner in compliance with <u>chapter 70.02 RCW and HIPAA and must include as appropriate:</u></p>	<p>The board and department agreed to the suggestion to include proposed language that will align and comply with state and federal record retention laws.</p>

A final cost-benefit analysis is available by contacting Megan Maxey, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4945, fax (360) 236-2901, email [megan.maxey@doh.wa.gov](mailto:megan.maxey@doh.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 13, Repealed 12.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 14, Amended 13, Repealed 12.

Date Adopted: June 28, 2017.

John Wiesman, DrPH, MPH  
Secretary  
Reynaldo Guajardo, LMT  
Board of Massage Chairman

**AMENDATORY SECTION** (Amending WSR 03-11-033, filed 5/15/03, effective 6/15/03)

**WAC 246-830-005 Definitions.** ((For the purpose of administering chapter 18.108 RCW, the following definitions shall apply:

(1) "Massage" is as defined in RCW 18.108.010.

(2) "Massage school" is an institution which has the sole purpose of offering training in massage therapy.

(3) "Massage program" is training in massage therapy offered by an academic institution which also offers training in other areas of study. A program is an established area of study offered on a continuing basis.

(4) "Apprenticeship program" is defined for the purposes of this chapter as training in massage administered by an apprenticeship trainer that satisfies the educational requirements for massage set forth in WAC 246-830-430, 246-830-440, and 246-830-450. This training shall be offered by an apprenticeship trainer to no more than three apprentices at one time and shall be completed within two years.

(5) "Apprenticeship trainer" is defined as a massage practitioner licensed in the state of Washington with not less than five current years of experience in full-time practice.

(6) "Apprentice" is defined as an individual enrolled in an apprenticeship program, and shall be held to the same standards as students in schools or programs.

(7) "Student" means an individual currently enrolled in an approved school, program, or apprenticeship program, who is practicing massage solely for the purposes of education as is incidental to their current course work and who is not receiving compensation for said practice.

(8) "Direct supervision" means a faculty member is on the premises, is quickly and easily available and the client has been examined by the faculty member at such time as acceptable massage practice requires.

(9) "Animal" means any species normally recognized as treatable by veterinary medicine.

(10) "Large animal" means any species commonly recognized as livestock and exotics. Livestock includes horses, cattle, swine and sheep.

(11) "Small animal" means ~~any species commonly recognized as domesticated. Domesticated includes canine, feline and other small animals.~~) The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Animal" means any species normally recognized as treatable by veterinary medicine.

(2) "Animal massage therapist" means an individual licensed to practice massage therapy under chapter 18.108 RCW with additional education and training in animal massage therapy as required under this chapter and holds the animal massage therapist endorsement required by RCW 18.108.230.

(3) "Apprentice" means an individual enrolled in an apprenticeship program, and who is held to the same standards as students in massage schools or massage programs.

(4) "Apprenticeship educator and trainer" means a massage therapist licensed under chapter 18.108 RCW with at least five current years of experience in full-time practice.

(5) "Apprenticeship program" means education and training in massage administered by an apprenticeship educator and trainer that satisfies the education and training requirements for massage set forth in this chapter.

(6) "Board" means the Washington state board of massage.

(7) "Breast massage" means the specific and deliberate manipulation of breast tissue. Massage of the surrounding chest and shoulder muscles such as massage of the intercostal, pectoral, or axillary muscles is not considered breast massage. Breast massage is only allowed as authorized by WAC 246-830-555.

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

(9) "Direct supervision" means supervision by a faculty member who is a clinical supervisor of the massage school or massage program and is on the premises, in the student clinic and is readily available to students and clients or patients.

(10) "Evaluation" means the assessment of soft tissue in order to facilitate decision making regarding effective forms and techniques of massage, and identifying cautions and contraindications to ensure client or patient safety. Evaluation does not mean diagnosis.

(11) "Intraoral massage" means the manipulation or pressure of soft tissue inside the mouth or oral cavity for therapeutic purposes.

(12) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes techniques such as tapping, compressions, friction, reflexology, Swedish gymnastics or movements, gliding, kneading, shaking, and fascial or connective tissue stretching, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of thrusting force, nor does it include genital manipulation. See WAC 246-830-550 for additional limitations on massage practice.

(13) "Massage business" means the operation of a business where massages are given.

(14) "Massage program" or "program" means education and training in massage therapy approved by the board. A program is an established area of study offered on a continuing basis.

(15) "Massage school" or "school" means an institution which has the sole purpose of offering education and training in massage therapy approved by the board.

(16) "Massage therapist" means an individual licensed as a massage therapist under chapter 18.108 RCW.

(17) "Massage transfer program" means a board approved massage program that allows board approved massage programs and massage schools to accept credits and clock hours from massage schools, massage programs, colleges or universities that have not been approved by the board, pursuant to WAC 246-830-037.

(18) "Secretary" means the secretary of the department of health or the secretary's designee.

(19) "Student" means an individual currently enrolled in a massage school, massage program or apprenticeship program who is practicing massage solely for the purposes of education and training as part of their current course work and who is not receiving compensation for said practice.

#### NEW SECTION

**WAC 246-830-015 Professional title.** In accordance with chapter 18.108 RCW, effective July 1, 2017, all references to "massage practitioner" in this chapter mean "massage therapist." After July 1, 2017, all individuals licensed to practice massage therapy under chapter 18.108 RCW will retain the title of massage practitioner until their next license renewal but will remain subject to the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 92-02-018, filed 12/23/91, effective 1/23/92)

**WAC 246-830-020 Applications.** ((Application forms for licensure shall be prepared by the secretary and shall provide for the statement of all information required for the license in question. An applicant shall be required to furnish to the secretary a current photograph of passport size, approximately two inches by two inches, with the original application and satisfactory evidence to establish that all requirements for the license have been fulfilled by the applicant, including the requirement that the applicant be of good moral character and is not in violation of chapter 18.130 RCW.)) (1) An applicant for a massage therapist license must be eighteen years of age or older and must submit to the department:

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

(b) Proof of successful completion of the required education and training of a massage school, massage program, or apprenticeship program on an official transcript or school completion form sent directly from the applicant's massage school, massage program or apprenticeship program;

(c) Proof of successful completion of a board approved examination under WAC 246-830-201;

(d) Proof of successful completion of the Washington state massage jurisprudence examination;

(e) Proof of successful completion of four clock hours of AIDS education as required by chapter 246-12 WAC, Part 8;

(f) Proof of certification in American Red Cross first aid and American Heart Association CPR or the equivalent. CPR training must be in person;

(g) The required nonrefundable application fee in WAC 246-830-990; and

(h) If required by the department, fingerprint cards for a national or state fingerprint based background check pursuant to RCW 18.130.064(2).

(2) The secretary may request additional supporting documentation as necessary.

(3) The secretary will not grant a license under this chapter to any person who has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances within the eight years immediately preceding the date of application, except as provided in RCW 9.97.020.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-830-035 Licensing ((without examination)) for out-of-state applicants.** ~~((1) A license to practice massage shall be issued without examination provided an individual holds a current license to practice massage in another jurisdiction that has examination and education requirements substantially equivalent to those in Washington.~~

~~(2) An individual applying for a license without examination shall submit to the department:~~

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

~~(b) The required nonrefundable application fee;~~

~~(c) Documentation that the examination and education requirements of the other jurisdiction are substantially equivalent to those in Washington;~~

~~(d) Successful completion of an open book test provided by the department which demonstrates a working knowledge of Washington law as contained in chapters 18.108 and 18.130 RCW, and chapter 246-830 WAC;~~

~~(e) Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;~~

~~(f) Written certification from all jurisdictions in which the applicant has practiced massage verifying that the applicant has a record of good standing and has not been the subject of any disciplinary action.~~

~~(3) Restrictions:~~

~~(a) All applicants shall be subject to the grounds for denial or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160;~~

~~(b) An individual who has failed the Washington state licensing examination shall not be eligible for licensing without examination.~~

~~(4) If application for licensing without examination is denied, the applicant may apply for licensing as set forth in RCW 18.108.070.~~

~~(5) A license issued without examination is subject to an original license fee and all other renewal requirements set~~

~~forth in this chapter.)) (1) A massage therapist applicant holding a massage license in another state or foreign jurisdiction may be granted a Washington massage license if:~~

~~(a) The board determines the other state's or foreign jurisdiction's education and training requirements are substantially equivalent to Washington's. Substantial equivalency means a course of study at a massage school or massage program that requires a minimum of five hundred hours approved by the equivalent licensing agency or agencies in the state or foreign jurisdiction in which it is located at the time of applicant's graduation;~~

~~(b) The applicant has a massage license in good standing as verified by the appropriate jurisdiction; and~~

~~(c) If there is a gap in practice of three or more years immediately prior to applying for a license by endorsement, the applicant must provide documentation of twenty-four hours of hands on delivery of massage therapy services.~~

~~(2) If an applicant does not meet the requirements of this section, then the applicant may fulfill the remaining education and training requirements as outlined in WAC 246-830-037.~~

~~(3) The applicant must have successfully passed one of the following examinations:~~

~~(a) Federation of State Massage Therapy Board massage and bodywork licensing examination;~~

~~(b) National certification examination for therapeutic massage and bodywork; or~~

~~(c) A board-approved examination.~~

~~(4) The applicant must satisfy the requirements in WAC 246-830-020 (1)(a) through (h).~~

#### NEW SECTION

**WAC 246-830-037 Transfer programs and transfer of prior education and clock hours.** (1) Board approved massage schools or massage programs may operate transfer programs that accept an individual's credits or clock hours from massage schools, massage programs, colleges or universities, subject to the following conditions:

(a) The massage school, massage program, college or university from where credits or clock hours are being transferred is:

(i) Accredited by a national or regional education accreditation organization;

(ii) Approved by a state authority with responsibility for oversight of educational or vocational programs; or

(iii) Approved by a state agency that regulates massage schools or massage programs and is a member of the federation of state massage therapy boards.

(b) The massage school, massage program, college or university from where credits or clock hours are being transferred provides an official transcript;

(c) Courses for which credits or clock hours are granted must be substantially equivalent in content and academic rigor to the courses and clock hours presently offered by the massage school or massage program. In order to determine substantial equivalency, the massage school or massage program will evaluate the courses and clock hours. If components are missing, the massage school or massage program shall require credits or clock hours for those subjects while

granting partial credit as appropriate. Documentation of the massage school's or massage program's decision-making rationale must be maintained in the student's file; and

(d) Documentation of all previous formal education and training applicable to completion of a massage school or massage program is included in each student's permanent file.

(2) A transfer program must be approved by the board prior to a massage school or massage program enrolling a transfer student via the use of transfer credits or clock hours.

(3) An authorized representative of the massage school or massage program must submit to the board a completed application packet provided by the department. Approval of a transfer program will follow the same process as outlined in WAC 246-830-420.

(4) Approval of a transfer program is valid for three years after initial approval and every five years for reapproval. The board may place restrictions on or may revoke or suspend approval of a transfer program that fails to comply with the requirements in this section or in RCW 18.108.028.

**((EXAMINATION))**

AMENDATORY SECTION (Amending WSR 91-01-077, filed 12/17/90, effective 1/31/91)

**WAC 246-830-201 ((Scope of)) Examination.** ~~((+) The examination for a massage practitioner's license shall, except as noted in subsection (2) of this section, consist of written questions as well as a practical demonstration of massage therapy.~~

~~(2) An applicant handicapped by blindness will not be subject to a written examination. A blind applicant will be asked questions orally to appropriately test the range and depth of his/her knowledge of the subjects shown in subsection (3) of this section.~~

~~(3) Questions will be sufficient in number to satisfy the board of massage that the applicant has been given an adequate opportunity to express his or her knowledge relating to subjects as stated in RCW 18.108.073(2).~~

~~(4) The practical demonstration of massage will be conducted before the examiner(s) and the applicant will be required to perform massage therapy. The following will be evaluated:~~

- ~~(a) Professional manner;~~
- ~~(b) Lubrication;~~
- ~~(c) Overall demonstration of work: Pressure, rhythm, smoothness, organization;~~
- ~~(d) Interaction with client;~~
- ~~(e) Effleurage;~~
- ~~(f) Petrissage;~~
- ~~(g) Friction;~~
- ~~(h) Vibration;~~
- ~~(i) Tapotement;~~
- ~~(j) Joint demonstration and Swedish gymnastics;~~
- ~~(k) Specific muscle demonstration;~~
- ~~(l) Client endangerment;~~
- ~~(m) Draping and turning;~~

~~((n) Treatment of various conditions.)) An applicant for a massage therapist license must successfully pass one of the following examinations:~~

~~(1) Federation of Massage Therapy Board and massage and bodywork licensing examination; or~~

~~(2) National certification examination for massage therapy and bodywork; or~~

~~(3) A board-approved examination.~~

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

AMENDATORY SECTION (Amending WSR 94-13-181, filed 6/21/94, effective 7/22/94)

**WAC 246-830-290 Documents in a foreign language.**

All application documents submitted in a foreign language ~~((shall))~~ must be accompanied by an accurate translation of those documents into the English language. Translated documents ~~((shall))~~ must bear a notarized affidavit certifying that the translator is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. ~~((Costs of translation of all documents shall be at the expense of))~~ The applicant is responsible for the costs of translating the documents.

AMENDATORY SECTION (Amending WSR 95-11-108, filed 5/23/95, effective 6/23/95)

**WAC 246-830-420 Approval of massage school, massage program, or apprenticeship program.** ~~((The board may accept proof of a national professional association's approval of a school or program based on standards and requirements which are substantially equivalent to those identified in this chapter, in lieu of the requirements contained in this chapter. Approval in this manner may be requested on a form provided by the department. The board will consider for approval any school, program, or apprenticeship program which meets the requirements as outlined in this chapter.~~

~~(1) Approval of any other school or program may be requested on a form provided by the department.~~

~~(2) Application for approval of a school or program, shall be made by the authorized representative of the school or the administrator of the apprenticeship agreement.~~

~~(3) The authorized representative of the school or the administrator of the apprenticeship program may request approval of the school or program, as of the date of the application or retroactively to a specified date.~~

~~(4) The application for approval of a school, program, or apprenticeship program shall include, but not be limited to, documentation required by the board pertaining to: Syllabus, qualifications of instructors, training locations, and facilities, outline of curriculum plan specifying all subjects and length in hours such subjects are taught, class objectives, and a sample copy of one of each of the following exams: Anatomy, physiology, and massage therapy.~~

(5) Any school, program, or apprenticeship program that is required to be licensed by private vocational education (see chapter 28C.10 RCW or Title 28B RCW), or any other statute, must complete these requirements before being considered by the board for approval.

(6) The board will evaluate the application and, if necessary, conduct a site inspection of the school, program, or apprenticeship program, prior to granting approval by the board.

(7) Upon completion of the evaluation of the application, the board may grant or deny approval or grant approval conditioned upon appropriate modification to the application.

(8) In the event the department denies an application or grants conditional approval, the authorized representative of the applicant's school or program may request a review within thirty days of the board's adverse decision/action. Should a request for review of an adverse action be made after thirty days following the board's action, the contesting party may obtain review only by submitting a new application.

(9) The authorized representative of an approved school, program or the administrator of an apprenticeship agreement shall notify the board of significant changes with respect to information provided on the application within sixty days.

(10) The board may inspect or review an approved school, program, or apprenticeship program at reasonable intervals for compliance. Approval may be withdrawn if the board finds failure to comply with the requirements of law, administrative rules, or representations in the application.

(11) The authorized representative of a school, program or administrator of an apprenticeship agreement must immediately correct the deficiencies which resulted in withdrawal of the board's approval. (1) To qualify as a board approved massage school, massage program or apprenticeship program, an authorized representative of the massage school, massage program or apprenticeship program must submit to the board a completed application packet provided by the department. A completed application packet must include, but not be limited to:

(a) A curriculum designed to meet or exceed the requirements listed in WAC 246-830-430. The following documentation must be submitted:

(i) Table of courses offered;

(ii) Syllabus for each course that includes course title, subject matter, course hours, all instructor(s) name(s), measurable course objectives, methods of evaluation, course schedule, and textbooks or other instructional materials;

(iii) A sample copy of each of the following exams: Anatomy and physiology, pathology, kinesiology, practicum criteria, ethics and professionalism, and laws pertaining to massage;

(iv) Statement describing how a student will obtain first-aid and CPR training; and

(v) Institutional philosophy or mission statement.

(b) A plan for how the massage school, massage program or apprenticeship program will evaluate its academic standards. The following documentation must be submitted:

(i) Statement or policy on minimum standards for measuring student progress; and

(ii) Copies of policies and procedures, to include a policy on nondiscrimination.

(c) Documentation explaining how the massage school or massage program determines training and experience qualifications for faculty members. The following documentation must be submitted:

(i) Policy on minimum competency standards for instructors and a statement that all massage school, massage program or apprenticeship program instructors meet those standards;

(ii) Resumes for each instructor; and

(iii) A listing of all instructors and the courses each instructor plans to teach.

(d) A student clinic must be supervised by a clinical supervisor who is a licensed massage therapist with at least two-years practical experience. The clinical supervisor is responsible for reviewing the health history of the student's client or patient, and must review and approve the student's massage plan.

The following documentation must be submitted:

(i) A copy of policies pertaining to student clinic;

(ii) Disclosure statement form provided to client or patient;

(iii) Copy of client or patient intake and screening form; and

(iv) Copy of client or patient feedback form.

(e) Health, sanitation, and facilities must be maintained in accordance with local ordinances and these rules. The following documentation must be submitted:

(i) Floor plan of facility;

(ii) Floor plan of student clinic;

(iii) Equipment in classroom;

(iv) Equipment in student clinic; and

(v) List of library contents and computer or online resources available to students.

(f) A copy of policies on faculty and student conduct.

(g) Records must be stored in a secured location and be made available upon a student's written request. The following documentation must be submitted:

(i) A copy of a sample transcript; and

(ii) A policy on release of student records consistent with applicable law(s).

(h) Eligibility to operate a massage school or massage program. The following documentation must be submitted:

(i) Verification that the school is approved to operate in the state of Washington by the workforce training and education coordinating board;

(ii) Verification that the school is licensed by private vocational education (see chapter 28C.10 RCW or Title 28B RCW); or

(iii) Verification that the program is part of a college or university that is nationally or regionally accredited.

(i) Designation of an authorized representative of the school or program.

(2) The board may conduct a site inspection of the massage school, massage program or apprenticeship program prior to granting approval.

(3) The board may grant or deny approval or grant conditional approval contingent upon changes to the application requested by the board.

(4) To maintain approval status with the board, a massage school, massage program or apprenticeship program must apply for reapproval during the third year after initial approval and during the fifth year for each reapproval thereafter. Failure to apply for renewal by the expiration date of the massage school, massage program or apprenticeship program approval will mean that the approval is expired and no longer valid.

(5) In order to maintain board approval, a massage school, massage program or apprenticeship program must:

(a) Comply with any changes in training standards and guidelines adopted by the board;

(b) Notify the board of any changes in overall curriculum plan or curriculum content changes under subsection (1)(a) of this section prior to implementation by filing an addendum. The board may grant or deny the proposed change; and

(c) Notify the board of changes in authorized representative or instructors within thirty days of such change.

(6) An apprenticeship program is limited to no more than three apprentices per apprenticeship educator or trainer, and the apprenticeship must be completed within two years.

#### NEW SECTION

**WAC 246-830-422 Denial, suspension, or revocation of approval for a massage school, massage program, transfer program or apprenticeship program.** (1) When the board determines that a massage school, massage program, transfer program or apprenticeship program fails to meet the standards for education and training as required in this chapter, the board may:

(a) Deny approval to a new massage school, massage program, transfer program or apprenticeship program; or

(b) Suspend or revoke approval of an approved massage school, massage program, transfer program or apprenticeship program.

(2) The board may conduct a review or site visit to investigate any allegation that a massage school, massage program, transfer program or apprenticeship program has not met, or has failed to maintain, the standards set forth in this chapter including, but not limited to:

(a) Selling or offering to sell transcripts, or providing or offering to provide transcripts, without requiring attendance, or full attendance;

(b) Failure to require students to attend all of the classes listed on the transcript or school completion form;

(c) Failure to require students to attend all of the hours listed on the transcript or school completion form;

(d) Engaging in fraudulent practices including, but not limited to, the creation of fake documents to aid or abet students seeking licensure, aiding or abetting a student in cheating on the licensing examination, aiding or abetting students to use false documents or to present false testimony in hearings, aiding or abetting students in engaging in fraudulent practices with respect to hearings, making false claims, or otherwise engaging in fraudulent practices;

(e) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of any statute or rule applicable to a massage school, massage program, transfer program or apprenticeship program;

(f) Failure to create or maintain accurate records including, but not limited to, student attendance records and student transcripts or school completion form;

(g) Failure to identify transfer credit or clock hours from other institutions including name of other institution(s), credit or clock hours transferred, and class requirements met by transfer credit or clock hours on transcripts or school completion form;

(h) A finding by a state or local agency, or a private certifying, permitting, or accreditation agency related to massage, that a massage school, massage program, transfer program or apprenticeship program has engaged in any of the conduct identified in this subsection; or

(i) Failure of a massage school, massage program, transfer program or apprenticeship program that has requested board approval to meet or maintain the requirements for approval set forth in this chapter.

(3) Board approval expires and is no longer valid if the massage school, massage program, transfer program or apprenticeship program does not submit an application for renewal prior to the expiration date of the board's approval.

#### NEW SECTION

**WAC 246-830-423 Reinstatement of approval for a massage school, massage program, transfer program or apprenticeship program.** The board may consider reinstatement of a massage school, massage program, transfer program or apprenticeship program upon submission of satisfactory evidence that the massage school, massage program, transfer program or apprenticeship program meets the standards contained in WAC 246-830-420.

#### NEW SECTION

**WAC 246-830-425 Appeal rights when the board has denied, suspended, or revoked approval.** (1) A massage school, massage program, transfer program or apprenticeship program that has been denied approval or had its approval suspended or revoked may appeal the board's decision according to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, Parts IV and V, and chapter 246-11 WAC.

(2) The board adopts the model procedural rules for adjudicative proceedings as adopted by the department and contained in chapter 246-11 WAC.

AMENDATORY SECTION (Amending WSR 95-11-108, filed 5/23/95, effective 6/23/95)

**WAC 246-830-430 Training.** (1) A massage (~~education program shall~~) school, massage program or apprenticeship program education and training must have a curriculum and system of education and training consistent with its particular area of practice. The education and training in massage therapy (~~shall~~) will consist of a minimum of five hundred hours. An hour of education and training is defined as fifty minutes of actual instructional time. Certification in American Red Cross first aid and American Heart Association CPR or the equivalent (~~shall be~~) is required. CPR training must be in person. This requirement is in addition to the



five hundred hours of education and training in massage therapy. These five hundred hours are not to be completed in less than six months and ~~((shall))~~ must consist of the following:

(a) One hundred thirty hours of anatomy, physiology, and kinesiology including palpation, range of motion, and physics of joint function. There must be a minimum of forty hours of kinesiology.

(b) Fifty hours of pathology including indications and contraindications consistent with the particular area of practice.

(c) Two hundred sixty-five hours of theory and practice of massage to include techniques, remedial movements, body mechanics of the ~~((practitioner))~~ therapist, and the impact of techniques on pathologies. A maximum of fifty of these hours may include time spent in a student clinic. Hydrotherapy ~~((shall))~~ must be included when consistent with the particular area of practice.

(d) Fifty-five hours of clinical/business practices, at a minimum to include hygiene, recordkeeping, medical terminology, professional ethics, business management, human behavior, client or patient interaction, and state and local laws.

(2) To receive credit in an apprenticeship program for previous education and training, this education and training must have been completed within the five-year period prior to enrollment in the apprenticeship program.

(3) A student(s) attending ((schools and)) a massage school, massage program, transfer program or apprenticeship program(s) outside the state of Washington ((shall acquire a working knowledge of the laws of Washington state applying to massage therapy)) must pass a jurisprudence exam.

(4) A massage school, massage program, transfer program or apprenticeship program may exempt a student from curriculum requirements when the student's successful performance on an examination that the massage school, massage program, transfer program or apprenticeship program administers demonstrates that the student has attained competency in that subject area as a result of prior postsecondary learning or training.

AMENDATORY SECTION (Amending WSR 03-11-033, filed 5/15/03, effective 6/15/03)

**WAC 246-830-435 Animal massage training.** (1) For the purpose of animal massage ~~((practitioner))~~ therapist endorsement as provided in chapter 18.108 RCW, board approval will be given to any education and training program that consists of a minimum of one hundred hours. An hour of education and training is defined as fifty minutes out of a clock hour of actual instructional time. These one hundred hours must consist of the following:

(a) Twenty-five hours of animal massage technique;

(b) Twenty-five hours of animal kinesiology;

(c) Twenty hours of animal anatomy and physiology;

(d) Four hours of animal first aid which includes knowledge of normal vital signs, identification of emergency or life threatening situations, emergency first-aid application, and legal boundaries of emergency situations; and

(e) Twenty-six hours of proper handling techniques which must include instruction on the ability to control the

animal to minimize risk of harm to the animal and the animal massage ~~((practitioner))~~ therapist.

(2) Any school or training program that is required to be licensed by private vocational education (see chapter 28C.10 RCW or Title 28B RCW), or any other statute, must complete those requirements before the board will consider the training for approval.

AMENDATORY SECTION (Amending WSR 95-11-108, filed 5/23/95, effective 6/23/95)

**WAC 246-830-440 Curriculum—Academic standards—Faculty—Student clinic.** (1) The curriculum of the ~~((school, program,))~~ massage school, massage program, transfer program or apprenticeship program ((shall)) must be designed and presented to meet or exceed the ~~((requirement of))~~ required five hundred hours.

(2) Academic standards. The ~~((school, program))~~ massage school, massage program, or apprenticeship program educator and trainer ((shall)) must regularly evaluate the quality of its instruction and have a clearly defined set of standards of competence required of its students. Promotion to each successive phase of the massage program and graduation ~~((shall be))~~ is dependent on mastery of the knowledge and skills presented in the massage school, massage program, or apprenticeship program.

(3) Faculty. An apprenticeship program educator and trainer((s)) and faculty member((s shall)) must be qualified by training and experience to give effective instruction in the subject(s) taught. An apprenticeship trainer and faculty member who teaches hands on courses must have a minimum of two-years experience in the subject matter being taught. The apprenticeship trainer and faculty member should develop and evaluate the curriculum instructional methods and facilities; student discipline, welfare, and counseling; assist in the establishment of administrative and educational policies, and scholarly and professional growth. A massage school((s)), massage program((s)), or apprenticeship program((s shall)) must not discriminate on the basis of sex, race, age, color, religion, physical handicap, ~~((of))~~ national or ethnic origin, or other basis prohibited by law in the recruitment and hiring of faculty.

(4) Student clinic (optional program). ~~((The clinical facilities shall))~~ Any setting in which a student clinic occurs must be adequate in size, number, and resources to provide for student practice of massage on the general public. ~~((There shall))~~ A clinic must be properly equipped rooms for consultations, massage therapy or treatment, and equipment as required in the practice of massage. A faculty member who is a ~~((licensed))~~ massage ((practitioner and adequately experienced)) therapist with at least two-years of experience in massage therapy must ((be present in the clinic at all times the clinic is open and in)) provide direct supervision ((of)) as a clinical supervisor, per WAC 246-830-420 (1)(d), and have final decisions in((;)) the massage ((therapy)) treatment which is rendered to clients or patients by students. A faculty member in the role of a clinical supervisor must ensure a ratio of no less than one faculty member to ten students who are actively performing massage treatment.

AMENDATORY SECTION (Amending WSR 95-11-108, filed 5/23/95, effective 6/23/95)

**WAC 246-830-450 Health, sanitation, and facility standards.** ~~((All schools, programs, and apprenticeship programs shall))~~ A message school, message program, or apprenticeship program must have adequate facilities and equipment available for students learning massage therapy. All facility equipment ~~((shall))~~ must be maintained in accordance with local rules and ordinances in addition to those ~~((imposed))~~ required by chapter 246-830 WAC. Instructional and practice equipment ~~((shall))~~ must be similar to that found in common occupational practice. ~~((An adequate reference library, appropriate to the subjects being taught, shall be available.))~~ A message school, message program, or apprenticeship program will provide students with access to a variety of current and up-to-date reference and information resources that are pertinent to massage education and training.

AMENDATORY SECTION (Amending WSR 09-11-016, filed 5/7/09, effective 6/7/09)

**WAC 246-830-475 Continuing education requirements.** (1) To renew a license, ~~((licensed))~~ a message ((practitioners)) therapist must complete twenty-four hours of continuing education every two years.

(a) A minimum of eight hours must be direct supervised massage skills training; and

(b) A minimum of four hours must be in professional ethics, communication, ~~((and/or))~~ or Washington state massage laws and regulations. Two of these hours must include professional roles and boundaries; and

(c) The remaining twelve hours may be met by meeting the requirements in subsection (2) of this section.

(2) For the purposes of this chapter, continuing education is defined as any of the following activities that involve direct application of massage therapy knowledge, skills, and business practices:

(a) Attendance at a local, state, national, or international continuing education program.

(b) First aid, CPR, or emergency related classes.

(c) Self-study through the use of multimedia devices or the study of books, research materials, and/or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of twelve hours is allowed per reporting period.

(ii) Books, research materials, and/or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the licensee. A maximum of two hours is allowed per reporting period.

(d) Teaching a course for the first time, not to exceed eight hours.

(e) Business and management courses not to exceed eight hours.

(f) Specialized training. Training must be provided for a fee by an individual who has no less than three years of expertise in that area.

(g) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of twelve hours is allowed per reporting period.

(h) Active service on massage related boards or committees. A maximum of twelve hours is allowed per reporting period.

AMENDATORY SECTION (Amending WSR 00-07-086, filed 3/15/00, effective 4/15/00)

**WAC 246-830-485 Somatic education training program exemption.** (1) The secretary ~~((will consider approval for))~~ may approve an exemption from this chapter ~~((any))~~ for an individual who has completed a somatic education and training program that has a professional organization with a permanent administrative location that oversees the practice of somatic education and training and that has the following:

(a) Standards of practice;

(b) A training accreditation process;

(c) An instructor certification process;

(d) A ~~((practitioner))~~ therapist certification process;

(e) A code of ethics or code of professional conduct.

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

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

(4) The secretary may request from an approved education and training program, and the program ~~((shall))~~ must provide, updated information every three years to ensure the program's compliance with this rule. Approval may be withdrawn if the program fails to maintain the requirements of this rule. Where a determination has been made that the program no longer meets the requirements of this rule and a decision is made to withdraw approval, an approved program may appeal through the brief adjudicative proceeding as authorized in chapter 246-10 WAC.

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

AMENDATORY SECTION (Amending WSR 08-17-001, filed 8/6/08, effective 9/6/08)

**WAC 246-830-490 Intraoral massage education and training.** ~~((Licensed))~~ A message ((practitioners)) therapist may perform intraoral massage after completing specific intraoral massage education and training and after receiving an intraoral massage endorsement to their massage ~~((practitioner))~~ therapist license.

To qualify for an intraoral massage endorsement ~~((you))~~ a message therapist must complete the following education and training:

(1) Sixteen hours of direct supervised education and training, which must include:

(a) Hands-on intraoral massage techniques, cranial anatomy, physiology, and kinesiology; ~~((and))~~

~~((Hygienic practices, safety and sanitation; and  
(e)))~~ Pathology and contraindications~~((:)); and~~

(c) Hygienic practices, safety and sanitation. Hygienic practices, safety and sanitation includes, but is not limited to:

(i) Gloves ~~((shall))~~ must be worn during treatment and training which involves intraoral procedures~~((:));~~

(ii) Fresh gloves ~~((shall))~~ must be used for every intraoral client or patient contact~~((:));~~

(iii) Gloves that have been used for intraoral treatment must not be reused for any other purpose; and

(iv) Gloves ~~((shall))~~ must not be washed or reused for any purpose. The same pair of gloves ~~((shall))~~ must not be used, removed, and reused for the same client or patient at the same visit or for any other purpose. ~~((Gloves that have been used for intraoral treatment shall not be reused for any other purpose; and))~~

(2) Supervised education and training must be obtained from a ~~((licensed))~~ massage ~~((practitioner))~~ therapist endorsed in intraoral massage or from an individual who is licensed, certified, or registered and who has performed intraoral massage services within their authorized scope of practice.

### ~~((DISCIPLINARY))~~

### MESSAGE BUSINESS

#### NEW SECTION

**WAC 246-830-500 Equipment and sanitation.** (1) A massage therapist using hydrotherapies including, but not limited to, cabinet, vapor or steam baths, whirlpool, hot tub or tub baths must have available adequate shower facilities.

(2) All cabinets, showers, tubs, basins, massage or steam tables, hydrotherapy equipment, and all other fixed equipment used must be thoroughly cleansed using an effective bactericidal agent.

(3) Combs, brushes, shower caps, mechanical, massage and hydrotherapy instruments, or bathing devices that come in contact with the body must be sterilized or disinfected by modern and approved methods and instruments. Devices, equipment or parts thereof having been used on one person must be sterilized or disinfected before being used on another person.

(4) Impervious material must cover, full length and width, all massage tables or pads, pillows, bolsters, and face cradles directly under fresh sheets and linens or disposable paper sheets.

(5) A massage therapist must provide single service materials or clean linen such as sheets, towels, gowns, pillow cases, and all other linens used in the practice of massage. Linens must be stored in a sanitary manner.

(6) All towels and linens used for one client or patient must be laundered or cleaned before they are used on any other client or patient.

(7) All soiled linens must be immediately placed in a covered receptacle.

(8) Soap and clean towels must be provided by the massage therapist for use by massage therapists, clients or patients and any employees.

(9) All equipment must be clean, well maintained and in good repair.

#### NEW SECTION

**WAC 246-830-510 Hygiene.** To maintain a professional standard of hygiene in their practice, a massage therapist must:

(1) Cleanse their exposed body part used for applying treatment, before and after each treatment, using a sink with hot water or a chemical germicidal product;

(2) Maintain a barrier of unbroken skin on their exposed body part used for applying treatment during each treatment and in the case of broken skin use a finger cot, glove or chemical barrier product to cover the affected area during treatment; and

(3) Wear clothing that is clean.

#### NEW SECTION

#### **WAC 246-830-515 Operation of a massage business.**

A person who owns or operates a massage business may be subject to legal action for practice without a license under RCW 18.130.190 if the massage business advertises massage and the massage business employs individuals to provide massages who are not licensed under chapter 18.108 RCW.

### **PRACTICE REQUIREMENTS AND LIMITATIONS**

#### NEW SECTION

**WAC 246-830-550 Standards of practice—Limitations.** (1) It is not consistent with the standard of practice for a massage therapist to touch the following body parts on a client or patient:

(a) Gluteal cleft distal to the coccyx, anus and rectum;

(b) Inside the mouth unless an intraoral endorsement has been issued;

(c) Penis;

(d) Prostate;

(e) Scrotum;

(f) Vagina, to include:

(i) Intravaginal;

(ii) Labia (majors and minors);

(iii) Clitoris;

(iv) Urethra; or

(g) Breasts, unless in accordance with WAC 246-830-555.

(2) A massage therapist must maintain evidence of the completion of at least sixteen specialized in-person contact hours of education and training if they are performing massage in the perineal area in addition to obtaining prior written and verbal informed consent. This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.

(3) A massage therapist must not engage in sexual misconduct as described in WAC 246-16-100. Sexual misconduct will constitute grounds for disciplinary action.

#### NEW SECTION

**WAC 246-830-555 Breast massage.** (1) Prior to performing breast massage, a massage therapist must:

(a) Acquire a prior signed written consent. The written consent for breast massage may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed. The written consent must:

- (i) Be maintained with the client or patient's records;
- (ii) Include a statement that the client or patient may discontinue the treatment at any time for any reason;
- (iii) If the client or patient is under eighteen years of age, prior written consent must be obtained from a parent or legal guardian; and
- (iv) Include a statement that the client or patient has the option to have a witness present, and that the witness must be provided by the client or patient.

(b) Use appropriate draping techniques as identified in WAC 246-830-560.

(2) In addition to the requirements identified in subsection (1) of this section, a massage therapist must maintain evidence of the completion of at least sixteen hours of specialized in-person education and training in breast massage beyond the minimum competencies. Education and training in breast massage includes, but is not limited to: Breast anatomy and physiology, pathology, indications, contraindications, therapeutic treatment techniques, draping, appropriate therapist-client or patient boundaries, expected outcomes, and client or patient safety related to breast massage.

(3) In addition to the requirements in subsections (1) and (2), prior to performing a massage of the nipples and areolas, a massage therapist must obtain additional documentation as follows:

- (a) A written prescription or referral from a licensed medical health care provider for this specific treatment; or
- (b) An additional prior written and verbal informed consent from the client or patient for massage of the nipple and areolas. This written consent may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.

#### NEW SECTION

**WAC 246-830-560 Coverage and draping.** (1) A massage therapist must:

- (a) Allow a client or patient privacy to dress or undress except as may be necessary in emergencies or custodial situations; and
- (b) Always provide the client or patient a gown or draping except as may be necessary in emergencies.

(2) Massage therapists must use safe and functional coverage and draping practices during the practice of massage when the client or patient is disrobed. The drape(s) must be sufficient to ensure the genitals and the gluteal cleft distal to the coccyx, anus and rectum are not exposed, and the breast area is not exposed except as allowed in subsections (3) and

(4) of this section. Safe and functional coverage and draping means:

(a) The massage therapist explains, maintains and respects coverage and draping boundaries; and

(b) Massage or movement of the body does not expose genitals or gluteal cleft distal to the coccyx, anus and rectum, or does not expose the breast area except as allowed in subsections (3) and (4) of this section.

(3) With prior written, verbal, and signed informed consent of the client or patient, the gluteal and breast drapes may be temporarily moved in order to perform therapeutic treatment of the area. In addition, with informed and written consent, a client or patient may choose to have their upper torso undraped during the entire massage.

(4) If variations to this coverage and draping rule occur, a massage therapist must:

(a) Maintain evidence of education and training in specific modalities that require variations in coverage and draping;

(b) Receive voluntary and informed consent of the client or patient prior to any variation of coverage or draping; and

(c) Document in the client's or patient's record the rationale for any variation of coverage or draping.

(5) Any written consent required by this section may be included within an overall general consent to massage document, if clearly delineated and either specifically initialed or signed.

#### NEW SECTION

**WAC 246-830-565 Recordkeeping.** (1) A massage therapist providing professional services to a client or patient must document services provided. Documentation should be appropriate to the venue, the type and complexity of those services and, when applicable, in sufficient detail to support and enable anticipated continuity of care. The documentation must include:

(a) Client or patient name and contact information or name and contact information of a parent or guardian if a client or patient is a minor;

(b) Age of client or patient;

(c) Health history sufficient to ascertain if there are cautions or contraindications to safe application of massage therapy, and an update of the current health status at each session;

(d) Date massage therapy is provided and the duration of treatment;

(e) The types of techniques and modalities applied;

(f) The location or areas of the body that received massage therapy;

(g) Written consent to treat;

(h) If breast massage is performed, an additional written consent to treat per WAC 246-830-555, and documentation of a therapeutic rationale;

(i) If breast massage of the nipples and areolas are involved, documentation of the prescription or referral per WAC 246-830-555 (3)(a), or an additional written consent to treat per WAC 246-830-555 (3)(b);

(j) Documentation of any written consent or any modification in coverage and draping as required by WAC 246-830-560; and

(k) For massage therapy where the focus is on treating a health condition, the following additional information is required:

- (i) Symptoms, for example, pain, loss of function, and muscle stiffness;
- (ii) Evaluation and findings, for example, movement, posture, palpation assessment and findings;
- (iii) Outcome measures, for example, improvement in symptoms, movement, posture, palpation, and function;
- (iv) Treatment plan for future sessions; and

(1) If performing massage in the perineal area, an additional written and verbal informed consent to treat per WAC 246-830-550(2).

(2) Client or patient records must be legible, permanent, and recorded within twenty-four hours of treatment. Documentation that is not recorded on the date of service must designate both the date of service and the date of the chart note entry. Corrections or additions to the client's or patient's records must be corrected by a single line drawn through the text and initialed so the original entry remains legible. In the case of computer-organized documentation, unintended entries may be identified and corrected, but must not be deleted from the record once the record is signed and completed or locked. Errors in spelling and grammar may be corrected and deleted.

(3) Correspondence relating to any referrals by other health care providers concerning the diagnosis, evaluation or treatment of the client or patient must be retained in the client or patient record.

(4) Client or patient records should clearly identify the massage therapist who is the provider of services by name and signature or electronic signature and date of service.

#### NEW SECTION

**WAC 246-830-570 Record retention.** (1) A massage therapist who treats clients or patients eighteen years of age and older must keep client or patient records for at least three years from the date of last treatment.

(2) A massage therapist who treats clients or patients under the age of eighteen years old must keep client or patient records for at least three years after the client or patient reaches eighteen years old.

(3) A massage therapist must also comply with record retention requirements of chapter 70.02 RCW.

(4) All records must be secured with properly limited access in compliance with chapter 70.02 RCW and the Health Insurance Portability and Accountability Act (HIPAA).

(5) After the retention period, the massage therapist may dispose of the record. Disposal must be done in a secure and confidential manner in compliance with chapter 70.02 RCW and HIPAA and must include as appropriate:

- (a) Shredding;
- (b) Deleting, erasing, or reformatting electronic media; and
- (c) Other readable forms of media that are defaced or rendered unusable or unreadable.

## CREDENTIAL STATUS

### NEW SECTION

**WAC 246-830-575 Expired credential—Return to active status.** (1) A person holding an expired credential may not practice until the credential is returned to active status.

(2) If the credential has been expired for less than three years, he or she must meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the credential has been expired for three years or more, he or she must comply with chapter 246-12 WAC, Part 2, and submit proof of completion of twenty-four hours of continuing education which was completed within the past two years of the date of application for renewal.

### NEW SECTION

**WAC 246-830-580 Inactive credential.** A massage therapist may obtain an inactive credential as described in chapter 246-12 WAC, Part 4.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-830-010 Meetings of the board.
- WAC 246-830-040 Equipment and sanitation.
- WAC 246-830-477 Inactive credential.
- WAC 246-830-610 Definitions.
- WAC 246-830-620 Mandatory reporting.
- WAC 246-830-630 Health care institutions.
- WAC 246-830-640 Massage practitioner associations or societies.
- WAC 246-830-650 Health care service contractors and disability insurance carriers.
- WAC 246-830-660 Professional liability carriers.
- WAC 246-830-670 Courts.
- WAC 246-830-680 State and federal agencies.

## WSR 17-14-067

### PERMANENT RULES

### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed June 29, 2017, 1:50 p.m., effective July 30, 2017]

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

Purpose: The agency is amending WAC 182-544-0325 Vision care—Covered eyeglass frames—Clients age twenty and younger, to remove the limitation for durable or flexible frames and add limitations for incidental repairs to eyeglass frames and replacement of lost or broken eyeglass frames. The agency is amending WAC 182-544-0350 Vision care—Covered eyeglass lenses—Clients age twenty and younger, to

add limitations for lost or broken eyeglass lenses; add diagnosed medical conditions for coverage of polycarbonate lenses; and move subsections (3)(b) through (d) to subsection (1). The other sections of chapter 182-544 WAC contain housekeeping changes and some clarifying language. WAC 182-531-1000 Ophthalmic services, contains housekeeping changes and adds clarifying language in regards to eye examinations.

Citation of Rules Affected by this Order: Amending WAC 182-531-1000, 182-544-0010, 182-544-0050, 182-544-0150, 182-544-0250, 182-544-0300, 182-544-0325, 182-544-0350, 182-544-0400, 182-544-0500, 182-544-0550, 182-544-0560, 182-544-0575, and 182-544-0600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-09-067 on April 18, 2017.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 182-531-1000(2)**, removed reference to limitation extension:

(2) The agency ~~considers requests for a limitation extension for~~ covers additional eye examinations and refraction services ~~outside the limitations described in subsection (1) of this section~~ when:

**WAC 182-544-0010(4)**, added reference to WAC 182-500-0070:

(4) The agency evaluates requests for covered services that do not meet clinical criteria based on the definition of medical necessity in WAC 182-500-0070 and the process found in WAC 182-501-0165.

**WAC 182-544-0325(1)**, removed limitation:

(1) The medicaid agency covers durable or flexible frames when the client has a diagnosed medical condition that ~~has contributed to two or more contributes to~~ broken eyeglass frames ~~in a twelve-month period.~~

**WAC 182-544-0575**, added subsection (3) regarding the early and periodic screening, diagnosis, and treatment (EPSDT) program:

(3) When a noncovered service is recommended based on the early and periodic screening, diagnosis, and treatment (EPSDT) program, the agency evaluates the request for medical necessity based on the definition in WAC 182-500-0070 and the process in WAC 182-501-0165.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 14, Repealed 0.

Date Adopted: June 29, 2017.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-531-1000 Ophthalmic services.** Refer to chapter ~~((388-544))~~ 182-544 WAC for vision-related hardware coverage ~~((for clients twenty years of age and younger)).~~

(1) The ~~((department covers, without prior authorization,))~~ medicaid agency covers eye examinations, refraction and fitting services ~~((with the following limitations)).~~ The agency pays for these services without prior authorization as follows:

(a) Once every twenty-four months for asymptomatic clients age twenty-one ~~((years of age))~~ and older;

(b) Once every twelve months for asymptomatic clients age twenty ~~((years of age))~~ and younger; or

(c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.

(2) The ~~((department))~~ agency covers additional eye examinations and refraction services ~~((outside the limitations described in subsection (1) of this section))~~ when:

(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;

(b) The client is on medication that affects vision; or

(c) ~~((The service))~~ An eye examination or refraction is necessary due to lost or broken ((eyeglasses/contacts)) eyeglasses or contacts. In this case:

(i) No type of authorization is required for clients age twenty ~~((years of age))~~ or younger or for clients of the division of developmental disabilities, regardless of age.

(ii) Providers must follow the ~~((department's))~~ agency's expedited prior authorization process to receive payment for clients age twenty-one ~~((years of age))~~ or older. Providers must also document the following in the client's file:

(A) The eyeglasses or contacts are lost or broken; and

(B) The last examination was at least eighteen months ago.

(3) The ~~((department))~~ agency covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. Providers must document all of the following in the client's record:

(a) The extent of the testing;

(b) Why the testing was reasonable and necessary for the client; and

(c) The medical basis for the frequency of testing.

(4) The ~~((department))~~ agency covers orthoptics and vision training therapy. Providers must obtain prior authorization from the ~~((department))~~ agency.

(5) The ~~((department))~~ agency covers ocular prosthetics for clients when provided by any of the following:

(a) An ophthalmologist;

(b) An ocularist; or

(c) An optometrist who specializes in prosthetics.

(6) The ~~((department))~~ agency covers cataract surgery, without prior authorization when the following clinical criteria are met:

- (a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or
- (b) One or more of the following conditions:
  - (i) Dislocated or subluxated lens;
  - (ii) Intraocular foreign body;
  - (iii) Ocular trauma;
  - (iv) Phacogenic glaucoma;
  - (v) Phacogenic uveitis;
  - (vi) Phacoanaphylactic endophthalmitis; or
  - (vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(7) The ~~((department))~~ agency covers strabismus surgery as follows:

(a) For clients age seventeen ~~((years of age))~~ and younger. The provider must clearly document the need in the client's record. The ~~((department))~~ agency does not require authorization for clients age seventeen ~~((years of age))~~ and younger; and

(b) For clients age eighteen ~~((years of age))~~ and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

- (i) The client has double vision; and
- (ii) The surgery is not being performed for cosmetic reasons.

(8) The ~~((department))~~ agency covers blepharoplasty or blepharoptosis surgery for clients when all of the clinical criteria are met. To receive payment, providers must follow the ~~((department's))~~ agency's expedited prior authorization process. The clinical criteria are:

(a) The client's excess upper eyelid skin is blocking the superior visual field; and

(b) The blocked vision is within ten degrees of central fixation using a central visual field test.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0010 Vision care—General.** (1) The ~~((department))~~ medicaid agency covers the vision care services listed in this chapter for clients age twenty and younger, according to ~~((department))~~ agency rules and subject to the limitations and requirements in this chapter. The ~~((department))~~ agency pays for vision care when it is:

- (a) Covered;
- (b) Within the scope of the ~~((eligible))~~ client's ~~((medical care program))~~ benefit package;
- (c) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;
- (d) Authorized, as required within this chapter, chapter ~~((s 388-501 and 388-502))~~ 182-501 WAC, and the ~~((department's))~~ agency's published billing instructions ~~((and numbered memoranda))~~; and

(e) Billed according to this chapter, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, and the ~~((department's))~~ agency's published billing instructions ~~((and numbered memoranda))~~.

(2) The ~~((department))~~ agency does not require prior authorization for covered vision care services that meet the clinical criteria set forth in this chapter.

(3) The ~~((department))~~ agency requires prior authorization for covered vision care services when the clinical criteria set forth in this chapter are not met, including the criteria associated with the expedited prior authorization process.

(4) The ~~((department))~~ agency evaluates ~~((these))~~ requests ~~((on a case-by-case basis to determine whether they are medically necessary, according to))~~ for covered services that do not meet clinical criteria based on the definition of medical necessity in WAC 182-500-0070 and the process ((found)) in WAC ((388-501-0165)) 182-501-0165.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0050 Vision care—Definitions.** The following definitions and those found in chapter 182-500 WAC ((388-500-0005)) apply to this chapter. Unless otherwise defined in this chapter, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

**"Blindness"** - A diagnosis of visual acuity for distance vision of twenty/two hundred or worse in the better eye with best correction or a limitation of the client's visual field (widest diameter) subtending an angle of less than twenty degrees from central.

**"Conventional soft contact lenses"** or **"rigid gas permeable contact lenses"** - FDA-approved contact lenses that do not have a scheduled replacement (discard and replace with new contacts) plan. The soft lenses usually last one year, and the rigid gas permeable lenses usually last two years. Although some of these lenses are designed for extended wear, the ~~((department))~~ medicaid agency generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Disposable contact lenses"** - FDA-approved contact lenses that have a planned replacement schedule (e.g., daily, every two weeks, monthly, quarterly). The contacts are then discarded and replaced with new ones as scheduled. Although many of these lenses are designed for extended wear, the ~~((department))~~ agency generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Expedited prior authorization"** - A form of authorization used by the provider to certify that the ~~((department-published))~~ agency-published clinical criteria for a specific vision care service(s) have been met.

**"Extended wear soft contacts"** - Contact lenses that are designed to be worn for longer periods than daily wear (remove at night) lenses. These can be conventional soft contact lenses or disposable contact lenses designed to be worn for several days and nights before removal.

**"Hardware"** - Eyeglass frames and lenses and contact lenses.

**"Prior authorization"** - A form of authorization used by the provider to obtain the ~~((department's))~~ agency's written approval for a specific vision care service(s). The ~~((department's))~~ agency's approval is based on medical necessity and

must be received before the service(s) are provided to clients as a precondition for payment.

**"Specialty contact lens design"** - Custom contact lenses that have a more complex design than a standard spherical lens. These specialty contact lenses (e.g., lenticular, aspheric, or myodisc) are designed for the treatment of specific disease processes, such as keratoconus, or are required due to high refractive errors. This definition of specialty contact lens does not include lenses used for surgical implantation.

**"Stable visual condition"** - A client's eye condition has no acute disease or injury; or the client has reached a point after any acute disease or injury where the variation in need for refractive correction has diminished or steadied. The client's vision condition has stabilized to the extent that eyeglasses or contact lenses are appropriate and that any prescription for refractive correction is likely to be sufficient for one year or more.

**"Visual field exams or testing"** - A process to determine defects in the field of vision and test the function of the retina, optic nerve and optic pathways. The process may include simple confrontation to increasingly complex studies with sophisticated equipment.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0150 Vision care—Provider requirements.** (1) Enrolled/contracted eye care providers must:

- (a) Meet the requirements in chapter ~~((388-502))~~ 182-502 WAC;
  - (b) Provide only those services that are within the scope of the provider's license;
  - (c) Obtain all hardware (including the tinting of eyeglass lenses) and contact lenses for clients from the ~~((department's))~~ medicaid agency's designated supplier as published in the ~~((department's))~~ agency's current vision care billing instructions; and
  - (d) Return all unclaimed hardware and contact lenses to the ~~((department's))~~ agency's designated supplier using a postage-paid envelope furnished by the supplier.
- (2) The following providers are ~~((eligible))~~ to enroll/contract with the ~~((department))~~ agency to provide and bill for vision care services furnished to ~~((eligible))~~ clients:
- (a) Ophthalmologists;
  - (b) Optometrists;
  - (c) Opticians; and
  - (d) Ocularists.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0250 Vision care—Covered eye services (examinations, refractions, visual field testing, and vision therapy).** See WAC ~~((388-531-1000))~~ 182-531-1000 Ophthalmic services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0300 Vision care—Covered eyeglasses (frames ~~((and/or))~~ and lenses) ~~((and repair))~~—Clients age twenty ((years of age)) and younger. ~~((This section applies to eligible clients who are twenty years of age and younger.))~~**

(1) The ~~((department))~~ medicaid agency covers eyeglasses ~~((, without prior authorization,))~~ once every twelve months for ~~((eligible))~~ clients when the following clinical criteria are met:

- (a) The ~~((eligible))~~ client has a stable visual condition;
- (b) The ~~((eligible))~~ client's treatment is stabilized;
- (c) The prescription is less than eighteen months old; and
- (d) One of the following minimum correction needs in at least one eye is documented in the client's file:
  - (i) Sphere power equal to, or greater than, plus or minus 0.50 diopter;
  - (ii) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or
  - (iii) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.

(2) ~~((The department covers eyeglasses (frames/lenses); for eligible clients with))~~ If the client has a diagnosis of accommodative esotropia or any strabismus correction ~~((, without prior authorization. In this case,))~~, the limitations of subsection (1) of this section do not apply.

(3) The ~~((department))~~ agency covers one pair of back-up eyeglasses for ~~((eligible))~~ clients who wear contact lenses as their primary visual correction aid (see WAC ~~((388-544-0400))~~ 182-544-0400(1)) limited to once every two years ~~((for eligible clients twenty years of age or younger)).~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0325 Vision care—Covered eyeglass frames and repairs—Clients age twenty ((years of age)) and younger.** ~~((This section applies to eligible clients who are twenty years of age and younger.))~~

(1) The ~~((department))~~ medicaid agency covers durable or flexible frames ~~((, without prior authorization,))~~ when the ~~((eligible))~~ client has a diagnosed medical condition that ~~((has contributed to two or more))~~ contributes to broken eyeglass frames ~~((in a twelve month period)).~~ To receive payment, the provider must ~~((:~~

- ~~((a) Follow the department's expedited prior authorization process; and~~
- ~~((b))~~ order the "durable" or "flexible" frames through the ~~((department's))~~ agency's designated supplier.

(2) The ~~((department))~~ agency covers all of the following for ~~((eligible))~~ clients ~~((without prior authorization))~~:

(a) Coating contact eyeglass frames to make the frames nonallergenic. ~~((Eligible))~~ Clients must have a medically diagnosed and documented allergy to the materials in the available eyeglass frames.

(b) Four incidental repairs to a client's eyeglass frames in a calendar year. To receive payment, all of the following must be met:



(i) The provider typically charges the general public for the repair or adjustment;

(ii) The contractor's one year warranty period has expired; and

(iii) The cost of the repair does not exceed the ~~((department's))~~ agency's cost for replacement frames and a fitting fee.

(c) Up to two replacement eyeglass frames ((that)) in a calendar year when the eyeglass frames have been lost or broken. Lost or broken eyeglass frames must be documented in the client's medical record.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0350 Vision care—Covered eyeglass lenses—Clients age twenty ((years of age)) and younger.** ~~((This section applies to eligible clients who are twenty years of age and younger.))~~

(1) The ~~((department))~~ medicaid agency covers the following plastic scratch-resistant eyeglass lenses ~~((without prior authorization))~~:

- (a) Single vision lenses;
- (b) Round or flat top D-style bifocals;
- (c) Flat top trifocals; ~~((and))~~
- (d) Slab-off and prism lenses (including Fresnel lenses);
- (e) Plastic photochromatic lenses when the client's medical need is diagnosed and documented as ocular albinism or retinitis pigmentosa;

(f) Polycarbonate lenses when the client's medical need is diagnosed and documented as one of the following:

(i) Blind in one eye and needs protection for the other eye, regardless of whether a vision correction is required;

(ii) Infants and toddlers with motor ataxia;

(iii) Strabismus or amblyopia;

(iv) Seizure disorder, cerebral palsy, autism, attention deficit hyperactivity disorder (ADHD), developmental delay, Down syndrome, bipolar, schizophrenia, or multiple sclerosis.

(g) Bifocal lenses to be replaced with single vision or trifocal lenses, or trifocal lenses to be replaced with bifocal or single vision lenses when:

(i) The client has attempted to adjust to the bifocals or trifocals for at least sixty days;

(ii) The client is unable to make the adjustment; and

(iii) The trifocal lenses being replaced are returned to the provider.

(2) Eyeglass lenses ~~((, as described in))~~ covered under subsection (1) of this section must be placed into a frame that is, or was, purchased by the ((department)) agency.

(3) The ~~((department covers, without prior authorization,))~~ agency covers the following high index lenses for ((eligible)) clients when ((the)) clinical criteria are met((:

~~((a))~~ High index lenses. Providers must follow the department's expedited prior authorization process). The ~~((eligible))~~ client's medical need in at least one eye must be diagnosed and documented as:

~~((+))~~ (a) A spherical refractive correction of plus or minus six diopters or greater; or

~~((+))~~ (b) A cylinder correction of plus or minus three diopters or greater.

~~((b))~~ Plastic photochromatic lenses. The eligible client's medical need must be diagnosed and documented as ocular albinism or retinitis pigmentosa.

~~((e))~~ Polycarbonate lenses. The eligible client's medical need must be diagnosed and documented as one of the following:

~~((i))~~ Blind in one eye and needs protection for the other eye, regardless of whether a vision correction is required;

~~((ii))~~ Infants and toddlers with motor ataxia;

~~((iii))~~ Strabismus or amblyopia.

~~((d))~~ Bifocal lenses to be replaced with single vision or trifocal lenses, or trifocal lenses to be replaced with bifocal or single vision lenses when:

~~((i))~~ The eligible client has attempted to adjust to the bifocals or trifocals for at least sixty days; and

~~((ii))~~ The eligible client is unable to make the adjustment; and

~~((iii))~~ The trifocal lenses being replaced are returned to the provider.

(4) The ~~((department covers, without prior authorization,))~~ agency covers the tinting of plastic lenses when the ((eligible)) client's medical need is diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:

(a) Blindness;

(b) Chronic corneal keratitis;

(c) Chronic iritis, iridocyclitis;

(d) Diabetic retinopathy;

(e) Fixed pupil;

(f) Glare from cataracts;

(g) Macular degeneration;

(h) Migraine disorder;

(i) Ocular albinism;

(j) Optic atrophy ~~((and/or))~~ or optic neuritis;

(k) Rare photo-induced epilepsy conditions; or

(l) Retinitis pigmentosa.

(5) The ~~((department))~~ agency covers up to four replacement lenses ((for eligible clients without prior authorization)) in a calendar year when the lenses are lost or broken. Lost or broken lenses must be documented in the client's medical record.

(6) The ~~((department))~~ agency covers replacement lenses ((, without prior authorization,)) when the ((eligible)) client meets one of the following clinical criteria ((, To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are)):

(a) Eye surgery or the effects of prescribed medication or one or more diseases affecting vision:

(i) The client has a stable visual condition;

(ii) The client's treatment is stabilized;

(iii) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and

(iv) The previous and new refraction are documented in the client's medical record.

(b) Headaches, blurred vision, or visual difficulty in school or at work. In this case, all of the following must be documented in the client's ~~((file))~~ medical record:

- (i) Copy of current prescription (less than eighteen months old);
- (ii) Date of last dispensing, if known;
- (iii) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and
- (iv) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0400 Vision care—Covered contact lenses—Clients age twenty ((years of age)) and younger.** ~~((This section applies to eligible clients who are twenty years of age and younger.))~~

(1) The ~~((department))~~ medicaid agency covers contact lenses ~~((without prior authorization,))~~ as the ~~((eligible))~~ client's primary refractive correction method when the ~~((eligible))~~ client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. See subsection (4) of this section for exceptions to the plus or minus 6.0 diopter criteria. The spherical correction may be from the prescription for the glasses or the contact lenses and may be written in either "minus cyl" or "plus cyl" form.

(2) The ~~((department))~~ agency covers the following contact lenses ~~((with limitations))~~:

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses; or

(ii) Four pairs of three-month replacement contact lenses.

(3) The ~~((department))~~ agency covers soft toric contact lenses ~~((without prior authorization,))~~ for ~~((eligible))~~ clients with astigmatism when the following clinical criteria are met:

(a) The ~~((eligible))~~ client's cylinder correction is plus or minus 1.0 diopter in at least one eye; and

(b) The ~~((eligible))~~ client meets the spherical correction listed in subsection (1) of this section.

(4) The ~~((department))~~ agency covers contact lenses ~~((without prior authorization,))~~ when the following clinical criteria are met. In these cases, the limitations in subsection (1) of this section do not apply.

(a) For ~~((eligible))~~ clients diagnosed with high anisometropia.

(i) The ~~((eligible))~~ client's refractive error difference between the two eyes is at least plus or minus 3.0 diopters between the sphere or cylinder correction; and

(ii) Eyeglasses cannot reasonably correct the refractive errors.

(b) Specialty contact lens designs for ~~((eligible))~~ clients who are diagnosed with one or more of the following:

(i) Aphakia;

(ii) Keratoconus; or

(iii) Corneal softening.

(c) Therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

(5) The ~~((department))~~ agency covers replacement contact lenses for ~~((eligible))~~ clients when lost or damaged.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0500 Vision care—Covered ocular prosthetics.** See WAC ~~((388-531-1000))~~ 182-531-1000 Ophthalmic services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0560 Vision care—Authorization.** (1) The ~~((department))~~ medicaid agency requires providers to obtain authorization for covered vision care services as required in this chapter ~~((; chapters 388-501 and 388-502 WAC, and in published department billing instructions and/or numbered memoranda or when the clinical criteria required in this chapter are not met)).~~

(a) For prior authorization (PA), a provider must submit a written request to the ~~((department))~~ agency as specified in the ~~((department's))~~ agency's published vision care billing instructions.

(b) For expedited prior authorization (EPA), a provider must meet the clinically appropriate EPA criteria outlined in the ~~((department's))~~ agency's published vision care billing instructions. The appropriate EPA number must be used when the provider bills the ~~((department))~~ agency.

(c) Upon request, a provider must provide documentation to the ~~((department))~~ agency showing how the client's condition met the criteria for PA or EPA.

(2) Authorization requirements in this chapter are not a denial of service.

(3) When a service requires authorization, the provider must properly request authorization in accordance with the ~~((department's))~~ agency's rules ~~((;))~~ and billing instructions ~~((; and numbered memoranda)).~~

(4) When authorization is not properly requested, the ~~((department))~~ agency rejects and returns the request to the provider for further action. The ~~((department))~~ agency does not consider the rejection of the request to be a denial of service.

(5) The ~~((department's))~~ agency's authorization of service(s) does not necessarily guarantee payment.

(6) The ~~((department))~~ agency evaluates requests for authorization of covered vision care services that exceed limitations in this chapter on a case-by-case basis in accordance with WAC ~~((388-501-0169))~~ 182-501-0169.

(7) The ~~((department))~~ agency may recoup any payment made to a provider if the ~~((department))~~ agency later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC ~~((388-502-0100-1(e)))~~ 182-502-0100.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0575 Vision care—Noncovered eye-glasses and contact lenses.** (1) The ~~((department))~~ agency does not cover the following:

- (a) Executive style eyeglass lenses;
- (b) Bifocal contact lenses;
- (c) Daily and two week disposable contact lenses;
- (d) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
- (e) Custom colored contact lenses;
- (f) Glass lenses;
- (g) Nonglare or anti-reflective lenses;
- (h) Progressive lenses;
- (i) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");
- (j) Upgrades at private expense to avoid the ~~((department's))~~ medicaid agency's contract limitations (e.g., frames that are not available through the ~~((department's))~~ agency's contract or noncontract frames or lenses for which the client or other person pays the difference between the ~~((department's))~~ agency's payment and the total cost).

(2) A noncovered service may be requested as an exception to rule (ETR)(3) as described in WAC ((388-501-0160, may be requested for a nonecovered service)) 182-501-0160.

(3) When a noncovered service is recommended based on the early and periodic screening, diagnosis, and treatment (EPSDT) program, the agency evaluates the request for medical necessity based on the definition in WAC 182-500-0070 and the process in WAC 182-501-0165.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0600 Vision care—Payment methodology.** (1) To receive payment, vision care providers must bill the ~~((department))~~ agency according to this chapter, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, and the ~~((department's))~~ medicaid agency's published billing instructions and numbered memoranda.

(2) The ~~((department))~~ agency pays one hundred percent of the ~~((department))~~ agency contract price for covered eye-glass frames, lenses, and contact lenses when these items are obtained through the ~~((department's))~~ agency's approved contractor.

(3) See WAC ~~((388-531-1850))~~ 182-531-1850 for professional fee payment methodology.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-544-0550 Vision care—Covered eye surgery.** See WAC ~~((388-531-1000 Ophthalmie))~~ 182-531-1000 Ophthalmic services.

**WSR 17-14-077**

**PERMANENT RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed June 29, 2017, 3:08 p.m., effective July 30, 2017]

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

Purpose: RCW 50.29.010 gives the department [the authority] to waive the delinquent tax rate when an otherwise qualified employer acts in good faith and application of the delinquent tax rate would be inequitable. The amendments to WAC 192-320-060 [192-320-036] define good faith and inequity. They also clarify the department's authority to retroactively apply the delinquent tax rate.

Citation of Existing Rules Affected by this Order: Amending WAC 192-320-060 [192-320-036].

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 17-10-005 on April 20, 2017.

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

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

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

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

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

Date Adopted: June 26, 2017.

Dale Peinecke  
Commissioner

AMENDATORY SECTION (Amending WSR 10-23-065, filed 11/12/10, effective 12/13/10)

**WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011?** (1) An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if ~~((they constitute))~~:

(a) The unpaid taxes, interest, and penalties add up to less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit the required tax and wage reports((-

~~((3)(a)))~~; or

(b) The unpaid taxes, interest, and penalties were found in a voluntary audit unless the department determines the employer did not make a good faith effort to comply with the law.

(3)(a) Under RCW 50.29.080, the department may re-determine an employer's previously assigned tax rate and retroactively assign delinquent tax rates to prior years if the department discovers an employer did not correctly report its taxes and wages.

(b) In the event an employer does not register with the department, the department may assign the delinquent tax rate beginning the calendar year after the July 1st following the first quarter an employer paid wages.

(4)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the ((commissioner)) department that he or she acted in good faith and that ((application of the rate for delinquent taxes)) applying the delinquent tax rate would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the ((commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due)) department. The ((commissioner's)) department's decision ((shall)) will be subject to review only under the arbitrary and capricious standard and ((shall)) will be reversed in administrative proceedings only for manifest injustice ((based on clear and convincing evidence)).

(b) ((The commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

The limitations in (b) of this subsection do not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(e) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment

contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax could have been paid prior to September 30th and no reasonable alternative personnel were available and any amounts due are paid no later than December 31st of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.) If the department finds the employer knew or should have known its actions or inactions would result in a failure to submit all reports, taxes, penalties and interest by September 30th, then the department will find that an employer did not act in good faith and that application of the delinquent tax rate will not be inequitable.

(c) In determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable, the department may consider all facts surrounding the delinquent reports, taxes, penalties and interest.

(i) The department will consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate will be inequitable. No single factor is conclusive. The factors include, but are not limited to:

(A) Whether there were events beyond the employer's reasonable control;

(B) Whether departmental error led to the delinquency;

(C) Whether the employer made only isolated errors instead of repeated errors;

(D) If the employer was a domestic service employer under RCW 50.04.160;

(E) Whether the employer, upon learning of the delinquency, made a diligent effort to pay overdue taxes, penalties, and interest and file overdue reports within ninety days;

(F) The amount of taxes, penalties and interest an employer failed to pay compared to the amount of taxes an employer reported and paid during the same time period;

(G) The number of employees an employer failed to report compared to the number of employees an employer reported during the same time period;

(H) The additional amount of taxes, penalties, and interest resulting from the application of delinquent tax rates compared to the amount of taxes, penalties, and interest the employer failed to pay originally.

(ii) The department will not consider the following factors when determining if an employer acted in good faith and if application of the delinquent tax rate would be inequitable:

(A) An employer's lack of available funds to pay taxes, penalties, and interest;

(B) Delay by the employer or its representative in opening mail or receiving other notices from the department relating to tax filing and payment.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due ~~((shall))~~ will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it ~~((shall))~~ will be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department ~~((shall))~~ will use the higher of the rate calculated under RCW 50.29.025 (2)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection ~~((shall))~~ will not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the ~~((agency))~~ department, the additional rate ~~((shall))~~ will be one-half percent less than it would otherwise have been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate ~~((shall))~~ will immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due ~~((shall))~~ will be assigned a social cost factor rate in rate class 40. The tax

rate caps for "qualified employers" in RCW 50.29.025 ~~((shall))~~ will not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" ~~((shall))~~ will be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

## WSR 17-14-090

### PERMANENT RULES

### DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed June 30, 2017, 12:28 p.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: The department [is] creating new sections, amending existing sections, and repealing sections in chapter 388-829 WAC, community residential service business training requirements, to clarify language, update policy, and align the chapter with RCW 74.39A.074, 74.39A.341, 74.39A.351, and 18.88B.041.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-829-0070, 388-829-0077, 388-829-0115, 388-829-0120, 388-829-0140, 388-829-0145, 388-829-0150, 388-829-0160, 388-829-0200, 388-829-0205, 388-829-0210, 388-829-0220, 388-829-0225, 388-829-0226, 388-829-0230, 388-829-0235, 388-829-0240, 388-829-0245, 388-829-0246, 388-829-0250, 388-829-0300, 388-829-0305, 388-829-0310, 388-829-0350, 388-829-0360, 388-829-0365, 388-829-0370, 388-829-0380, 388-829-0385, 388-829-0390, 388-829-0395, 388-829-0400, 388-829-0420 and 388-829-0425; and amending WAC 388-829-0001, 388-829-0005, 388-829-0010, 388-829-0015, 388-829-0025, 388-829-0030, 388-829-0040, 388-829-0045, 388-829-0050, 388-829-0055, 388-829-0060, 388-829-0065, 388-829-0075, 388-829-0080, 388-829-0100, 388-829-0105, and 388-829-0130.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 74.39A.074, 74.39A.341, 74.39A.351, 18.88B.041.

Adopted under notice filed as WSR 17-10-036 on April 26, 2017.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 407-1581, fax (360) 407-0955, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 17, Repealed 34.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 17, Repealed 34.

Date Adopted: June 30, 2017.

Bill Moss  
Acting Secretary

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-15 issue of the Register.

**WSR 17-14-093**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

(Occupational Therapy Practice Board)

[Filed June 30, 2017, 3:15 p.m., effective July 1, 2017]

Effective Date of Rule: July 1, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: RCW 43.70.442 requires that occupational therapists begin complying with this rule beginning July 1, 2017.

Purpose: WAC 246-847-066 Suicide assessment training standards, the adopted rule clarifies that by July 1, 2017, occupational therapy professionals must complete three hours of training every six years in suicide assessment, including screening and referral from the department of health's approved model list of trainings. This is to implement 2015 changes to RCW 43.70.442.

Citation of Existing Rules Affected by this Order: Amending WAC 246-847-066.

Statutory Authority for Adoption: RCW 18.59.130 and 43.70.442.

Adopted under notice filed as WSR 17-08-080 on April 4, 2017.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1)(c) was amended. The "or" separating (i) and (ii) was replaced with "and" to clarify that both requirements apply, depending on the licensee's situation.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

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

Date Adopted: June 30, 2017.

Beth Rollinger  
Board Chair

AMENDATORY SECTION (Amending WSR 14-05-016, filed 2/10/14, effective 2/15/14)

**WAC 246-847-066 Suicide assessment training standards.** (1) A qualifying training in suicide assessment must:

(a) Be an empirically supported training in suicide assessment that includes risk assessment, screening, and referral;

(b) Be provided by a single provider and must be at least three hours in length which may be provided in one or more sessions; and

(c)(i) Until July 1, 2017, meet any other requirements of RCW 43.70.442; and

(ii) Beginning July 1, 2017, be taken from a provider listed on the department's suicide prevention training model list.

(2) The hours spent completing a training program in suicide assessment under this section count toward meeting any applicable continued competency requirements.

(3) Nothing in this section is intended to expand or limit the occupational therapist or occupational therapy assistant scope of practice.