# WSR 18-01-002
## PERMANENT RULES
## DEPARTMENT OF REVENUE

[Filed December 6, 2017, 1:18 p.m., effective January 6, 2018]

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

Purpose: WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs, this rule describes the process of how to request access to public records and the associated charges for responding to public records requests.

Citation of Rules Affected by this Order: Amending WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.

Statutory Authority for Adoption: Chapter 42.56 RCW (Public Records Act) and RCW 82.01.060(2) (Department of revenue's rule-making authority).

Adopted under notice filed as WSR 17-21-041 on October 12, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 6, 2017.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-105, filed 12/18/14, effective 1/18/15)

**WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs.** (1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and written requests for copies of the department's public records, decisions, and other matters, are handled by the ((~~centralized administration of the public records officer or designee, sometimes collectively referred to as the department's public records unit. This rule describes this centralized administration. The public records officer or designee may be contacted at their centralized location described in subsection (6) of this rule~~)) information governance office.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

(a) Name of the person requesting the records or a point of contact;

(b) Calendar date on which the request is made;

(c) Specific records requested, if not identified in the public records index located online at dor.wa.gov, then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, email address, and telephone number.

(5) **Web site public records email request available.** The department has developed an "email request form" to assist requestors in obtaining public records. This email request form is located on the department's web site at www.dor.wa.gov (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the ((~~public records officer or designee of the department~~)) information governance office. Written requests for identifiable public records may be submitted to the ((~~department's public records officer or designee~~)) information governance office by mail, email message, ((~~secure message~~)) through the department's web site, facsimile transmission, or delivered in person to the following addresses and physical location:

((~~Mail delivery:~~
~~Department of Revenue~~
~~Public Records Unit~~
~~P.O. Box 47478~~
~~Olympia, WA 98504-7478;~~

~~Email message: dorpublicrecords@dor.wa.gov;~~
~~Internet web site: dor.wa.gov (search: "public records");~~
~~Facsimile transmission (fax): 360-705-6655;~~

~~Street address:~~
~~6500 Linderson Way S.W., Suite 102~~
~~Tumwater, WA 98501-6561.~~))

**In-person delivery to physical address:**
Department of Revenue
Information Governance Office
6400 Linderson Way S.W., Suite 288
Tumwater, WA 98501-6516

**Mail delivery:**
Department of Revenue
Information Governance Office
P.O. Box 47456
Olympia, WA 98504-7478

**Email message:** dorpublicrecords@dor.wa.gov
**Department's web site:** dor.wa.gov
**Facsimile transmission (fax):** 360-705-6655

(7) **Response.** Within five business days of the receipt of the initial public records request by the ((~~public records officer or designee~~)) information governance office, the department will:

• Provide the record;

• Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;

• Seek a clarification of the request; or

• Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the ((~~public records officer or designee~~)) information governance office will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department ((~~of revenue (department)~~)) maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department ((~~in the central administrative offices of the taxpayer services division at the address and location described in subsection (6) of this rule,~~)) will be available for inspection and copying at the ((~~central administrative~~)) information governance office during the ((~~customary~~)) office hours of ((~~the department. For the purposes of these rules in this chapter, the customary office hours are~~)) 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) ((~~**Copying.** There is no fee for the inspection of public records. The department may charge fifteen cents per page for standard black and white paper photocopying. For other than standard photocopies a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged. The department will publish copying fees to make them readily available to the public. Any fee will be limited to reimbursing the department for its costs incident to such copying. The present fees for copying can be found on the department's internet web site: dor.wa.gov (search: "public records").~~)) **Fees.**

(a) There is no fee for the inspection of public records.

(b) The department will take reasonable steps to provide records in the most efficient manner available in its normal operations. However, the department will generally charge fees for providing copies, whether hardcopy or electronic, to public records requests and may combine the following fees to the extent that more than one type of fee applies to copies produced in response to a particular request:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records using standard black and white paper photocopying. For other than standard photocopies, a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically; and

(v) The actual cost of any digital storage media or device provided by the department, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The department must provide, if asked by the requestor, a summary of the applicable charges before any copies are made. Based on the summary of applicable charges, the requestor may revise the request to reduce the number of copies to be made, thus reducing the charges.

(12) **Fee exception.** The department may not impose the copying fee under subsection (11) of this rule for access to or downloading of records the department routinely posts on dor.wa.gov prior to receipt of a request unless the requestor has specifically requested that the department provide copies of the records through other means.

(13) **Customized service charge.** In addition to the fees imposed under subsection (11) of this rule, the department may also impose a customized service charge. The amount of the customized service charge may:

(a) Be imposed if the department estimates the request will require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when the department does not use the compilations or customized electronic access services for other department purposes;

(b) Reimburse the department up to the actual cost of providing the services in subsection (13) of this rule; and

(c) Be imposed on the requestor only if the department notified the requestor of the charge. Additionally, the department must provide the requestor:

(i) An explanation of why the charge applies;

(ii) A description of the specific information technology expertise required to fulfill the request;

(iii) A reasonable estimate of the charge; and

(iv) The opportunity to alter the request in order to avoid or reduce the amount of the charge.

(14) **Deposit.** In addition to the fees and charges in subsections (11) and (13) of this rule, the department may also require a deposit not to exceed ten percent of the estimated cost of providing copies for a request. If the department makes a request available on a partial or installment basis, the

agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the department is not obligated to fulfill the balance of the request.

(15) **Waiver or alteration of fees.** The department may waive any fee assessed for a public records request pursuant to department rules and regulations. The department may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this rule, or in response to a voluminous or frequently occurring request.

## WSR 18-01-019
### PERMANENT RULES
## DEPARTMENT OF REVENUE

[Filed December 8, 2017, 9:28 a.m., effective January 8, 2018]

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

Purpose: RCW 82.04.460(2) requires the department to adopt a rule for apportioning, for B&O tax purposes, the income of financial institutions engaged in business both in and outside Washington. Pursuant to the statute, this rule must generally be consistent with the model adopted by the Multistate Tax Commission (MTC), to the extent feasible. Accordingly, the department adopted WAC 458-20-19404 (Rule 19404) to explain how financial institutions must apportion gross income. The department is updating Rule 19404 to remain consistent with the MTC's model method of apportionment for financial institutions, which was amended effective January 1, 2016. The department is also adopting new WAC 458-20-19404A, which will cover the apportionment methodology for financial institutions for the period June 1, 2010, through December 31, 2015. Rule 19404 will cover periods after December 31, 2015.

Citation of Rules Affected by this Order: New WAC 458-20-19404A Financial institutions—Income apportionment (prior to January 1, 2016); and amending WAC 458-20-19404 Financial institutions—Income apportionment (as of January 1, 2016).

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

Adopted under notice filed as WSR 17-15-077 on July 14, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 8, 2017.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-04-004, filed 1/22/15, effective 2/22/15)

**WAC 458-20-19404 Financial institutions—Income apportionment.** (1) **Introduction.**

(a) Effective June 1, 2010, ((~~section 108, chapter 23, Laws of 2010 1st sp. sess. changed Washington's~~)) Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state.

(b) RCW 82.04.460(2) requires the department, to the extent feasible, to adopt the multistate tax commission's recommended formula for apportionment and allocation of net income for financial institutions, with the exceptions that the definition of financial institution in the appendix to the recommended formula is advisory only and only the receipts factor will be used to apportion income.

(c) On July 29, 2015, the multistate tax commission approved amendments to its recommended formula for the apportionment and allocation of net income of financial institutions including amendments to how the receipts factor is calculated. The amendments are effective for tax years starting on or after January 1, 2016.

(d) This rule applies to the apportionment of income taxable under RCW 82.04.290 for periods beginning January 1, 2016.

(e) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401((~~,~~)) Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402((~~,~~)) Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403((~~,~~)) Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194((~~,~~)) Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-19404A Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to gross income for financial institutions during the period June 1, 2010, through December 31, 2015.

(vi) WAC 458-20-14601((~~,~~)) Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(((~~c~~))) (f) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193, Inbound and outbound interstate sales of tangible personal property.

(2) **Apportionment ((~~and allocation~~)).**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. ((~~Any other~~)) Apportionable income that is not taxable under RCW 82.04.290 must be apportioned pursuant to WAC 458-20-19402((~~,~~)) Single factor receipts apportionment—Generally or WAC 458-20-19403((~~,~~)) Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401((~~,~~)) Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not ((~~includable~~)) from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All ((~~apportionable income~~)) service and other activities income, regardless of where that income is attributed, shall be apportioned to this state by multiplying such income, less any deductions or exemptions authorized under chapter 82.04 RCW, by the apportionment((~~s~~)) percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. ((~~Persons should~~)) For further guidance on the requirements of each accounting method refer to WAC 458-20-197((~~,~~)) When tax liability arises and WAC 458-20-199((~~,~~)) Accounting methods ((~~for further guidance on the requirements of each accounting method~~)).

(d) Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(((~~d~~))) (e) Interest and penalties on reconciliations under (((~~c~~))) (d) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(((~~e~~))) (f) If the ((~~allocation and~~)) apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement ((~~and~~)) or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged merchandise or services to the card.

(d) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(((~~(d)~~))) (e) **"Credit card"** means ((~~credit, travel or entertainment card.~~

~~(e) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.~~

~~(f)~~)) a card, or other means of providing information, that entitles the holder to charge the cost of purchases, or a cash advance, against a line of credit.

(f) **"Debit card"** means a card, or other means of providing information, that enables the holder to charge the cost of purchases, or a cash withdrawal, against the holder's bank account or a remaining balance on the card.

(g) **"Department"** means the department of revenue.

(((~~(g)~~))) (h) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(((~~(h)~~))) (i) **"Financial institution"** means:

(i) Any corporation or other business entity ((~~chartered~~)) authorized under ((~~Title 30~~)) Title 30A, 31, 32, or 33 RCW((~~, or~~)) to engage in business in Washington, provided that persons authorized to act as a loan servicer pursuant to chapter 31.04 RCW or as a check casher or check seller pursuant to chapter 31.45 RCW shall not be considered a financial institution solely on that basis; or

(ii) Registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(((~~(ii)~~))) (iii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(((~~(iii)~~))) (iv) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(((~~(iv)~~))) (v) Any bank or thrift institution incorporated or organized under the laws of any state;

(((~~(v)~~))) (vi) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 to 631;

(((~~(vi)~~))) (vii) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(((~~(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;~~)))

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(((~~(i)~~))) (j) **"Gross income of the business," "gross income,"** or **"income"**:

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose ((~~of (3)(i)~~)) of this subsection, affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(((~~(j)~~))) (k) **"Interest, fees, and penalties"** means any fees related to a loan, credit card, or other extension of credit and includes any fees charged a prospective borrower prior to funding of a loan regardless of whether the loan is eventually funded.

(l) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(((~~(k)~~))) (m) **"Loan secured by real property"** means that more than fifty percent ((~~or more~~)) of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(((~~(l)~~))) (n) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in payment for merchandise or services sold to the card holder, net of any card holder charge-back and unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or purchases made by its card holder.

(((~~(m)~~))) (o) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(((~~(n)~~))) (p) **"Person"** has the meaning given in RCW 82.04.030.

(((~~(o)~~))) (q) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and

systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(((~~(p)~~))) (r) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state((~~, less the exemptions and deductions allowable under chapter 82.04 RCW~~)).

(((~~(q)~~))) (s) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(((~~(r)~~))) (t) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(((~~(s)~~))) (u) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state ((~~has~~)) would have jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401.

(iii) For purposes of (((~~(s) of~~))) this subsection (3)(u), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(((~~(t)~~))) (v) **"Taxable period"** means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the ((~~apportionable~~)) service and other activities income of the taxpayer in this state during the taxable period and the denominator of which is the ((~~apportionable~~)) service and other activities income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest ((~~from~~)), fees, and penalties imposed in connection with loans secured by real property.

(i) The numerator of the receipts factor includes interest ((~~and~~)), fees ((~~or~~)) and penalties ((~~in the nature of interest from~~)) imposed in connection with loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest ((~~from~~)), fees, and penalties imposed in connection with loans not secured by real property. The numerator of the receipts factor includes interest ((~~and~~)), fees ((~~or~~)), and penalties ((~~in the nature of interest from~~)) imposed in connection with loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties ((~~in the nature of interest from~~)) imposed in connection with loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection (((~~(4)~~))) and the denominator of which is the total amount of interest and fees or penalties ((~~in the nature of interest from~~)) imposed in connection with loans not secured by real property.

(e) Receipts from ((~~credit card receivables~~)) fees, interest, and penalties charged to card holders. The numerator of the receipts factor includes fees, interest, and ((~~fees or~~)) penalties ((~~in the nature of interest from credit card receivables and income from fees~~)) charged to card holders((~~, such as~~)) including, but not limited to, annual fees and overdraft fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest ((~~and fees or penalties in the nature of interest from credit card receivables and fees~~)), fees, and penalties charged to credit card holders.

(g) ((~~Credit~~)) Card issuer's reimbursement fees. The numerator of the receipts factor includes:

(i) All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and ((~~fees or~~)) penalties ((~~in the nature of interest from credit card receivables and fees~~)) charged to credit card holders.

(ii) All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.

(iii) All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(h) Receipts from merchant discount.

(i) If the taxpayer can readily determine the location of the merchant and if the merchant is in this state, the numerator of the receipts factor includes receipts from merchant discount ((~~if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any cardholder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.~~

~~(i)~~)) (ii) If the taxpayer cannot readily determine the location of the merchant, the numerator of the receipts factor includes such receipts from the merchant discount multiplied by a fraction:

(A) In the case of a merchant discount related to the use of a credit card, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders; and

(B) In the case of a merchant discount related to the use of a debit card, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders; and

(C) In the case of a merchant discount related to the use of all other types of cards, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders that is included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.

(iii) The taxpayer's method for sourcing each receipt from a merchant discount must be consistently applied to such receipt in all states that have adopted sourcing methods substantially similar to (h)(i) and (ii) of this subsection and must be used on all subsequent returns for sourcing receipts from such merchant unless the department permits or requires application of the alternative method.

(i) **Receipts from ATM fees.** The receipts factor includes all ATM fees that are not forwarded directly to another bank.

(i) The numerator of the receipts factor includes fees charged to a card holder for the use at an ATM of a card issued by the taxpayer if the card holder's billing address is in this state.

(ii) The numerator of the receipts factor includes fees charged to a card holder, other than the taxpayer's card holder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in this state.

(j) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest ((~~and fees or penalties in the nature of interest from~~)), fees, and penalties imposed in connection with loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties ((~~in the nature of interest from~~)) imposed in connection with loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

((~~(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4), if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.~~))

(k) Receipts from the financial institution's investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities that are reported on the taxpayer's financial statements, call reports, or similar reports are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and

activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from both investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in ((~~the~~)) each investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an ((~~investment~~)) asset or ((~~activity or trading asset or~~)) activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an ((~~investment~~)) asset or ((~~activity or trading asset or~~)) activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) All other receipts. The numerator of the receipts factor includes all other receipts from engaging in activities subject to tax under RCW 82.04.290 pursuant to the rules set forth in WAC 458-20-19402 Single factor receipts apportionment—Generally.

(m) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after ((~~June 1, 2010~~)) January 1, 2016.

NEW SECTION

**WAC 458-20-19404A Financial institutions—Income apportionment.** (1) **Introduction.**

(a) Effective June 1, 2010, Washington changed its method of apportioning certain gross income from engaging in business as a financial institution. This rule addresses how such gross income must be apportioned when the financial institution engages in business both within and outside the state and applies to the period June 1, 2010, through December 31, 2015, only. See WAC 458-20-19404 Financial institutions—Income apportionment for the proper apportionment methodology for periods beginning January 1, 2016.

(b) Taxpayers may also find helpful information in the following rules:

(i) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities. This rule describes minimum nexus standards that are effective after May 31, 2010.

(ii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment that is effective after May 31, 2010.

(iii) WAC 458-20-19403 Single factor receipts apportionment—Royalties. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment. It applies only to the periods January 1, 2006, through May 31, 2010.

(v) WAC 458-20-14601 Financial institutions—Income apportionment. This rule describes the apportionment of income for financial institutions for periods prior to June 1, 2010.

(c) Financial institutions engaged in making interstate sales of tangible personal property should also refer to WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

(2) **Apportionment and allocation.**

(a) Except as otherwise specifically provided, a financial institution taxable under RCW 82.04.290 and taxable in another state must attribute and apportion its service and other activities income as provided in this rule. Any other apportionable income must be apportioned pursuant to WAC 458-20-19402 Single factor receipts apportionment—Generally or WAC 458-20-19403 Single factor receipts apportionment—Royalties. "Apportionable income" means gross income of the business generated from engaging in apportionable activities as defined in WAC 458-20-19401 Minimum nexus thresholds for apportionable activities, including income received from apportionable activities performed outside this state if the income would be taxable under chapter 82.04 RCW if received from activities in this state, less any deductions allowable under chapter 82.04 RCW. All gross income that is not includable from apportionable activities must be allocated pursuant to chapter 82.04 RCW. A financial institution organized under the laws of a foreign country, the Commonwealth of Puerto Rico, or a territory or possession of the United States, except such institutions that are exempt under RCW 82.04.315, whose effectively connected income (as defined under the federal Internal Revenue Code) is taxable both in this state and another state, other than the state in which it is organized, must allocate and apportion its gross income as provided in this rule.

(b) All apportionable income shall be apportioned to this state by multiplying such income by the apportionment percentage. The apportionment percentage is determined by the taxpayer's receipts factor (as described in subsection (4) of this rule).

(c) The receipts factor must be computed according to the method of accounting (cash or accrual basis) used by the taxpayer for Washington state tax purposes for the taxable period. Persons should refer to WAC 458-20-197 When tax liability arises and WAC 458-20-199 Accounting methods for further guidance on the requirements of each accounting method. Generally, financial institutions are required to file returns on a monthly basis. To enable financial institutions to more easily comply with this rule, financial institutions may file returns using the receipts factor calculated based on the most recent calendar year for which information is available. If a financial institution does not calculate its receipts factor based on the previous calendar year for which information is available, it must use the current year information to make that calculation. In either event, a reconciliation must be filed for each year not later than October 31st of the following year. The reconciliation must be filed on a form approved by the department. In the case of consolidations, mergers, or divestitures, a taxpayer must make the appropriate adjustments to the factors to reflect its changed operations.

(d) Interest and penalties on reconciliations under (c) of this subsection apply as follows:

(i) In either event (refund or additional taxes due), interest will apply in a manner consistent with tax assessments.

(ii) Penalties as provided in RCW 82.32.090 will apply to any such additional tax due only if the reconciliation for a tax year is not completed and additional tax is not paid by October 31st of the following year.

(e) If the allocation and apportionment provisions of this rule do not fairly represent the extent of its business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity:

(i) Separate accounting;

(ii) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(iii) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's receipts.

(3) **Definitions.** The following definitions apply throughout this rule unless the context clearly requires otherwise:

(a) **"Billing address"** means the location indicated in the books and records of the taxpayer on the first day of the taxable period (or on such later date in the taxable period when the customer relationship began) as the address where any notice, statement and/or bill relating to a customer's account is mailed.

(b) **"Borrower or credit card holder located in this state"** means:

(i) A borrower, other than a credit card holder, that is engaged in a trade or business and maintains its commercial domicile in this state; or

(ii) A borrower that is not engaged in a trade or business or a credit card holder, whose billing address is in this state.

(c) **"Commercial domicile"** means:

(i) The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or

(ii) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed and directed. It is presumed, subject to rebuttal by a preponderance of the evidence, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, irrespective of where the services of such employees are performed, as of the last day of the taxable period.

(d) **"Credit card"** means credit, travel or entertainment card.

(e) **"Credit card issuer's reimbursement fee"** means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services to the credit card.

(f) **"Department"** means the department of revenue.

(g) **"Employee"** means, with respect to a particular taxpayer, any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

(h) **"Financial institution"** means:

(i) Any corporation or other business entity chartered under Title 30, 31, 32, or 33 RCW, or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;

(ii) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. Sec. 21 et seq.;

(iii) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813 (b)(1);

(iv) Any bank or thrift institution incorporated or organized under the laws of any state;

(v) Any corporation organized under the provisions of 12 U.S.C. Secs. 611 through 631;

(vi) Any agency or branch of a foreign depository as defined in 12 U.S.C. Sec. 3101 that is not exempt under RCW 82.04.315;

(vii) Any credit union, other than a state or federal credit union exempt under state or federal law;

(viii) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired.

(i) **"Gross income of the business," "gross income,"** or **"income"**:

(i) Has the same meaning as in RCW 82.04.080 and means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(ii) Does not include amounts received from an affiliated person if those amounts are required to be determined at arm's length per sections 23A or 23B of the Federal Reserve Act. For the purpose of this subsection (3)(i), affiliated means the affiliated person and the financial institution are under common control. Control means the possession (directly or indirectly), of more than fifty percent of power to direct or cause the direction of the management and policies of each entity. Control may be through voting shares, contract, or otherwise.

(iii) Financial institutions must determine their gross income of the business from gains realized from trading in stocks, bonds, and other evidences of indebtedness on a net annualized basis.

(j) **"Loan"** means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC), or other mortgage-backed or asset-backed security; and other similar items.

(k) **"Loan secured by real property"** means that fifty percent or more of the aggregate value of the collateral used to secure a loan or other obligation was real property, when valued at fair market value as of the time the original loan or obligation was incurred.

(l) **"Merchant discount"** means the fee (or negotiated discount) charged to a merchant by the taxpayer for the privilege of participating in a program whereby a credit card is accepted in payment for merchandise or services sold to the card holder.

(m) **"Participation"** means an extension of credit in which an undivided ownership interest is held on a *pro rata* basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower.

(n) **"Person"** has the meaning given in RCW 82.04.030.

(o) **"Regular place of business"** means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(p) **"Service and other activities income"** means the gross income of the business taxable under RCW 82.04.290, including income received from activities outside this state if the income would be taxable under RCW 82.04.290 if received from activities in this state, less the exemptions and deductions allowable under chapter 82.04 RCW.

(q) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(r) **"Syndication"** means an extension of credit in which two or more persons fund and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.

(s) **"Taxable in another state"** means either:

(i) The taxpayer is subject to business activities tax by another state on its service and other activities income; or

(ii) The taxpayer is not subject to a business activities tax by another state on its service and other activities income, but that state has jurisdiction to subject the taxpayer to a business activities tax on such income under the substantial nexus standards explained in WAC 458-20-19401. For purposes of this subsection (3)(s), "business activities tax" means a tax measured by the amount of, or economic results of, business activity conducted in a state. The term includes taxes measured in whole or in part on net income or gross income or receipts. Business activities tax does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(t) **"Taxable period"** means the calendar year during which tax liability is incurred.

(4) **Receipts factor.**

(a) General. The receipts factor is a fraction, the numerator of which is the apportionable income of the taxpayer in this state during the taxable period and the denominator of which is the apportionable income of the taxpayer inside and outside this state during the taxable period. The method of calculating receipts for purposes of the denominator is the same as the method used in determining receipts for purposes of the numerator.

(b) Interest from loans secured by real property.

(i) The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans secured by real property if the property is located within this state. If the property is located both within this state and one or more other states, the income described in this subsection (4)(b)(i) is included in the numerator of the receipts factor if more than fifty percent of the fair market value of the real property is located within this state. If more than fifty percent of the fair market value of the real property is not located within any one state, then the income described in this subsection (4)(b)(i) must be included in the numerator of the receipts factor if the borrower is located in this state.

(ii) The determination of whether the real property securing a loan is located within this state must be made as of the time the original agreement was made and any and all subsequent substitutions of collateral must be disregarded.

(c) Interest from loans not secured by real property. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from loans not secured by real property if the borrower is located in this state.

(d) Net gains from the sale of loans. The numerator of the receipts factor includes net gains from the sale of loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of Section 1286 of the federal Internal Revenue Code.

(i) The amount of net gains (but not less than zero) from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(ii) The amount of net gains (but not less than zero) from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(e) Receipts from credit card receivables. The numerator of the receipts factor includes interest and fees or penalties in the nature of interest from credit card receivables and income from fees charged to card holders, such as annual fees, if the billing address of the card holder is in this state.

(f) Net gains from the sale of credit card receivables. The numerator of the receipts factor includes net gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(g) Credit card issuer's reimbursement fees. The numerator of the receipts factor includes all credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor pursuant to (e) of this subsection and the denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card receivables and fees charged to card holders.

(h) Receipts from merchant discount. The numerator of the receipts factor includes receipts from merchant discount if the commercial domicile of the merchant is in this state. Such receipts must be computed net of any card holder charge backs, but must not be reduced by any interchange transaction fees or by any issuer's reimbursement fees paid to another for charges made by its card holders.

(i) Loan servicing fees.

(i)(A) The numerator of the receipts factor includes loan servicing fees derived from loans secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (b) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property.

(B) The numerator of the receipts factor includes loan servicing fees derived from loans not secured by real property multiplied by a fraction, the numerator of which is the amount included in the numerator of the receipts factor under (c) of this subsection and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property.

(ii) If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the receipts factor includes such fees if the borrower is located in this state.

(j) Receipts from services. The numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection (4) if the service is performed in this state. If the service is performed both inside and outside this state, the numerator of the receipts factor includes receipts from services not otherwise apportioned under this subsection, if a greater proportion of the activity producing the receipts is performed in this state based on cost of performance.

(k) Receipts from investment assets and activities and trading assets and activities.

(i) Interest, dividends, net gains (but not less than zero) and other income from investment assets and activities and from trading assets and activities are included in the receipts factor. Investment assets and activities and trading assets and activities include, but are not limited to: Investment securities; trading account assets; federal funds; securities purchased and sold under agreements to resell or repurchase; options; futures contracts; forward contracts; notional principal contracts such as swaps; equities; and foreign currency transactions. With respect to the investment and trading assets and activities described in (k)(i)(A) and (B) of this subsection, the receipts factor includes the following:

(A) The receipts factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements.

(B) The receipts factor includes the amount by which interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.

(ii) The numerator of the receipts factor includes interest, dividends, net gains (but not less than zero) and other receipts from investment assets and activities and from trading assets and activities described in (k)(i) of this subsection that are attributable to this state.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such funds and such securities.

(C) The amount of interest, dividends, gains and other income from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(i)(A) and (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the average value of such trading assets which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the average value of all such assets.

(D) For purposes of (k)(ii) of this subsection, the average value of trading assets owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization.

(iii) In lieu of using the method set forth in (k)(ii) of this subsection, the taxpayer may elect, or the department may require in order to fairly represent the business activity of the taxpayer in this state, the use of the method set forth in this paragraph.

(A) The amount of interest, dividends, net gains (but not less than zero) and other income from investment assets and activities in the investment account to be attributed to this state and included in the numerator is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross receipts from such assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(B) The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(A) of this subsection from such funds and such securities by a fraction, the numerator of which is the gross income from such

funds and such securities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such funds and such securities.

(C) The amount of interest, dividends, gains and other receipts from trading assets and activities including, but not limited to, assets and activities in the matched book, in the arbitrage book and foreign currency transactions (but excluding amounts described in (k)(ii)(A) or (B) of this subsection), attributable to this state and included in the numerator is determined by multiplying the amount described in (k)(i)(B) of this subsection by a fraction, the numerator of which is the gross income from such trading assets and activities which are properly assigned to a regular place of business of the taxpayer within this state and the denominator of which is the gross income from all such assets and activities.

(iv) If the taxpayer elects or is required by the department to use the method set forth in (k)(iii) of this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior permission from the department to use, or the department requires a different method.

(v) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of this state by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside this state. If the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one regular place of business and one such regular place of business is in this state and one such regular place of business is outside this state, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Such policies and guidelines are presumed, subject to rebuttal by preponderance of the evidence, to be established at the commercial domicile of the taxpayer.

(l) Attribution of certain receipts to commercial domicile. All receipts which would be assigned under this rule to a state in which the taxpayer is not taxable are included in the numerator of the receipts factor, if the taxpayer's commercial domicile is in this state.

(5) **Effective date.** This rule applies to gross income that is reportable with respect to tax liability beginning on and after June 1, 2010, and before January 1, 2016.

## WSR 18-01-020
### PERMANENT RULES
### DEPARTMENT OF RETIREMENT SYSTEMS

[Filed December 8, 2017, 1:28 p.m., effective January 8, 2018]

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

Purpose: Purchasing additional service credit to clarify that the benefit increase resulting from the purchase of additional service credit will become effective the day after full payment is received, even if the member is retiring retroactively.

Citation of Rules Affected by this Order: Amending WAC 415-02-177.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 17-22-129 on November 1, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: December 6, 2017.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 16-04-048, filed 1/27/16, effective 2/27/16)

**WAC 415-02-177 May I purchase additional service credit?** (1) **What is the option for purchasing additional service credit?** The following statutes provide an option for eligible members to purchase additional service credit that provides a guaranteed, lifetime increase to their monthly retirement benefit:

(a) RCW 41.26.199 for LEOFF Plan 1 members;

(b) RCW 41.26.432 for LEOFF Plan 2 members;

(c) RCW 41.40.034 for PERS Plan 1, 2, and 3 members;

(d) RCW 41.37.265 for PSERS Plan 2 members;

(e) RCW 41.35.183 for SERS Plan 2 and 3 members;

(f) RCW 41.32.066 for TRS Plan 1, 2, and 3 members; and

(g) RCW 43.43.233 for WSPRS Plan 1 and 2 members.

(2) **Am I eligible to purchase additional service credit?**

(a) You may purchase additional service credit if you are eligible to retire from one or more of the following plans and you elect a monthly benefit rather than a lump sum payment:

(i) LEOFF Plan 1 or 2 under RCW 41.26.090 or 41.26.430;

(ii) PERS Plan 1, 2, or 3 under RCW 41.40.180, 41.40.630, or 41.40.820;

(iii) PSERS Plan 2 under RCW 41.37.210;

(iv) SERS Plan 2 or 3 under RCW 41.35.420 or 41.35.680;

(v) TRS Plan 1, 2, or 3 under RCW 41.32.480, 41.32.765, or 41.32.875; or

(vi) WSPRS Plan 1 or 2 under RCW 43.43.250.

(b) If you retire as a result of a disability, you may purchase additional service credit if you meet the requirements in (a) of this section.

(3) **How much additional service credit may I purchase?** If you are eligible, you may purchase from one to sixty months of additional service credit in whole month increments.

(4) **May I use the additional purchased service credit to qualify for normal retirement or an early retirement?** No. You may not use the purchased service credit to qualify for normal retirement or to qualify for an early retirement.

(5) **When must I apply to purchase additional service credit?** You must submit your request to purchase additional service credit to the department at the same time you submit your application for retirement.

(6) **How much will my monthly retirement benefit increase if I purchase additional service credit?** The increase in your monthly retirement benefit will be calculated using the benefit formula for your system and plan, with a reduction for early retirement, if applicable.

**Example 1 (PERS Plan 2):** John is a member of PERS Plan 2. He applies for retirement, effective the first month after his 62nd birthday and chooses to purchase an additional sixty months (five years) of service credit. His average final compensation (AFC) is $4000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding early retirement factor (ERF) for retiring three years early (actuarial factors change periodically). As a result, John's monthly benefit will increase by $289.60 per month, calculated as follows:

Amount of increase = 2% x additional service credit years x AFC x ERF
= 2% x 5 years x $4000 x .7240000
= $289.60

**Example 2 (TRS Plan 3):** Jane is a member of TRS Plan 3. She applies for retirement, effective the first month after her 62nd birthday and chooses to purchase an additional sixty months (five years) of service credit. Her AFC is $4000 per month. For illustration purposes in this example only, we will use .7240000 as the corresponding ERF for retiring three years early (actuarial factors change periodically). As a result, Jane's monthly retirement benefit will increase by $144.80 per month, calculated as follows:

Amount of increase = 1% x additional service credit years x AFC x ERF
= 1% x 5 years x $4000 x .7240000
= $144.80

**Example 3 (LEOFF Plan 2):** Jim is a member of LEOFF Plan 2. He applies for retirement, effective the first month after his 53rd birthday and chooses to purchase an additional sixty months (five years) of service credit. His final average salary (FAS) is $4000 per month. No ERF is needed for this calculation as Jim has already reached normal retirement age for LEOFF Plan 2. Jim's monthly retirement benefit will increase by $400 per month, calculated as follows:

Amount of increase = 2% x additional service credit years x FAS
= 2% x 5 years x $4000
= $400

(7) **How is the cost of the additional purchased service credit calculated?** The cost to purchase additional service credit is calculated by dividing the amount of the increase in subsection (6) of this section by the age-based annuity factor in effect at the time of retirement. (See WAC 415-02-340 for more information.)

**Example.** In subsection (6) of this section, Example 1, it was determined that John's retirement benefit would increase by $289.60 per month. For illustration purposes in this example only, we will use .0065016 as the annuity factor for John's retirement date (actuarial factors change periodically). As a result, John's cost to purchase the five years of additional service credit would be $44,542.88, calculated as follows:

Cost = Amount of increase ÷ age-based annuity factor
= $289.60 ÷ .0065016
= $44,542.88

(8) **How and when do I pay for the additional service credit?** The department will generate a bill to you for the cost of the additional service credit.

(a) Payment may be made with an eligible rollover, a direct rollover or a trustee-to-trustee transfer, if allowed by the transferring plan. Payment may also be made with after-tax dollars, such as money from a personal savings account. However, IRS regulations limit the amount of after-tax dollars you may use to purchase additional service credit.

(b) Payment must be made in full within ninety days after the bill issue date.

(9) **When will my benefit increase be effective?** The increase in your benefit will be effective the day after the department receives your full payment.

**Example 1:** If your full payment is received on August 31st, your benefit increase will be effective for the entire month of September and every month thereafter.

**Example 2:** If your full payment is received August 13th, your August benefit payment will be prorated to provide an increase for the days from August 14th through August 31st. Your September benefit and future monthly payments will reflect the entire monthly increase from purchasing the additional service credit.

(10) **If I choose a benefit option with a survivor feature, will my survivor's monthly benefit reflect the additional purchased service credit?** Yes. Depending upon the rules for your retirement system and plan and the benefit option you choose at retirement, your survivor's monthly benefit will be a percentage of the gross monthly retirement benefit you were receiving at the time of your death. Since the additional service you purchased is included in the calculation of your monthly benefit, the survivor option you designate for your monthly benefit will also be applied to the benefit from the purchased service credit. You cannot choose a different survivor. If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly retirement benefit will increase to the amount it would have been had you not selected a survivor option.

(((~~(10)~~))) (11) **Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the additional purchased service credit?**

(a) For all systems and plans, except as noted in (b) of this subsection, your COLA will be based on your gross monthly retirement benefit, including the increase due to the purchased service credit.

(b) If you retire from PERS Plan 1 or TRS Plan 1 and you do not elect the optional auto COLA, you will not receive a COLA on the additional purchased service credit amount.

(((~~(11)~~))) (12) **If I purchase additional service credit and then return to work, how will my retirement benefit be affected?** Your entire retirement benefit, including the amount attributable to purchased service credit, is subject to the return to work provisions of your system and plan. The following rules describe the impact on your benefit if you return to work as a retiree of the referenced systems and plans:

| | |
|---|---|
| PERS Plans 1, 2, and 3: | WAC 415-108-710 |
| TRS Plan 1: | WAC 415-112-541 |
| TRS Plans 2 and 3: | WAC 415-112-542 |
| SERS Plans 2 and 3: | WAC 415-110-710 |
| PSERS Plan 2: | WAC 415-106-700 |
| LEOFF Plan 2: | WAC 415-104-111 |

(((~~(12)~~))) (13) **If I retire and purchase less than sixty months of additional service credit, may I purchase more at a later time?** No. You may not purchase additional months of service credit from the same plan unless you return to membership and retire again from the same system and plan. You must meet the eligibility requirements provided in subsection (2) of this section at the time you retire again. You may not purchase more than a total of sixty months of service credit regardless of how many times you retire again from the same system and plan.

(((~~(13)~~))) (14) **May I purchase service credit from more than one retirement plan?**

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase up to sixty months of additional service credit from each of your dual member plans.

(b) If you retire from more than one plan, but are not a dual member under chapter 415-113 WAC, you may purchase up to sixty months of additional service credit from each plan in which you meet the eligibility requirements in subsection (2) of this section.

(((~~(14)~~))) (15) **How are the funds I paid to purchase the additional service credit treated upon my death (and the death of my survivor, if applicable)?**

(a) Plans 1 and 2. The amount paid to purchase the additional service credit is credited to your individual account as part of your accumulated contributions. Distribution of accumulated contributions after your death (and the death of your survivor, if any) is governed by the statutes and rules applicable to your plan. See:

(i) WAC 415-108-326 for PERS Plan 1 and 2;
(ii) WAC 415-112-504(9) for TRS Plan 1;
(iii) WAC 415-112-505(7) for TRS Plan 2;
(iv) WAC 415-110-610(7) for SERS Plan 2;
(v) WAC 415-106-600(7) for PSERS Plan 2;
(vi) WAC 415-103-215 for WSPRS Plan 1;
(vii) WAC 415-103-225(7) for WSPRS Plan 2;
(viii) WAC 415-104-202 for LEOFF Plan 1; or
(ix) WAC 415-104-215(7) for LEOFF Plan 2.

(b) Plan 3. If you and your survivor (if you selected a survivor option) die before the amount of your purchased service credit has been paid back to you in your monthly retirement benefit, the difference will be refunded to your designated beneficiary.

## WSR 18-01-022
### PERMANENT RULES
## PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 8, 2017, 2:14 p.m., effective January 8, 2018]

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

Purpose: Amends WAC 181-86-145 to remove reference to "post mark" since all notifications are now electronic.

Citation of Rules Affected by this Order: Amending WAC 181-86-145.

Adopted under notice filed as WSR 17-18-003 on August 24, 2017.

Statutory Authority for Adoption: [RCW 28.410.220].

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone 360-725-6238, fax 360-586-4548, email david.brenna @k12.wa.us, web site www.pesb.wa.gov.

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

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 8, 2017.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-20-029, filed 9/23/13, effective 10/24/13)

**WAC 181-86-145 Appeal procedure—Informal SPI review.** Any person who appeals the decision or order to deny his or her application, the issuance of a reprimand, or the order to suspend or revoke his or her certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of ((~~post-marked mailing~~)) notification from the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes his or her application should have been granted or why his or her certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, he or she shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or certificate holder and/or counsel for the applicant or certificate holder with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee: Provided, That notice of appeal must be received at least fifteen calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision (i.e., findings of fact and conclusions of law) on the appeal within thirty calendar days from the date of post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may uphold, reverse, or modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) Provided, That in the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

## WSR 18-01-024
### PERMANENT RULES
### STATE BOARD OF HEALTH

[Filed December 8, 2017, 4:10 p.m., effective March 1, 2018]

Effective Date of Rule: March 1, 2018.

Purpose: The rules update the definitions in WAC 246-650-010 and revise WAC 246-650-020 to add X-linked adrenoleukodystrophy (X-ALD) to the list of mandatory conditions for newborn screening conducted by the department of health.

Citation of Rules Affected by this Order: Amending WAC 246-650-010 and 246-650-020.

Statutory Authority for Adoption: RCW 70.83.050.

Other Authority: RCW 70.83.020.

Adopted under notice filed as WSR 17-14-102 on July 3, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-650-020, changed the language from "mental retardation" to "intellectual disability" in the definition of amino acid disorders in order to use more respectful terminology consistent with chapter 94, Laws of 2010.

A final cost-benefit analysis is available by contacting Alexandra Montano, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-236-4106, fax 360-236-4088, TTY 360-833-6388 or 711, email Alexandra.Montano@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 the Request of a Nongovernmental Entity: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: December 8, 2017.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 14-21-017, filed 10/2/14, effective 11/2/14)

**WAC 246-650-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

For the purposes of this chapter:

(1) "Amino acid disorders" means disorders of metabolism characterized by the body's inability to correctly process amino acids or the inability to detoxify the ammonia released during the breakdown of amino acids. The accumulation of amino acids or their by-products may cause severe complications including ((~~mental retardation~~)) intellectual disability, coma, seizures, and possibly death. For the purpose of this chapter amino acid disorders include: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria (HCY), maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR I).

(2) "Board" means the Washington state board of health.

(3) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(4) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(5) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(6) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

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

(8) "Fatty acid oxidation disorders" means disorders of metabolism characterized by the inability to efficiently use fat to make energy. When the body needs extra energy, such as during prolonged fasting or acute illness, these disorders can lead to hypoglycemia and metabolic crises resulting in serious damage affecting the brain, liver, heart, eyes, muscle, and possibly death. For the purpose of this chapter fatty acid oxidation disorders include: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium-chain acyl-CoA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD).

(9) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-$PO_4$ in the blood. If undetected and untreated, accumulated galactose-1-$PO_4$ may cause significant tissue and organ damage often leading to sepsis and death.

(10) "Hemoglobinopathies" means a group of hereditary blood disorders caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(11) "Organic acid disorders" means disorders of metabolism characterized by the accumulation of nonamino organic acids and toxic intermediates. This may lead to metabolic crisis with ketoacidosis, hyperammonemia and hypoglycemia resulting in severe neurological and physical damage and possibly death. For the purpose of this chapter organic acid disorders include: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), and propionic acidemia (PROP).

(12) "Newborn" means an infant born in any setting in the state of Washington.

(13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "health care information" as used in chapter 70.02 RCW.

(14) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

(15) "Severe combined immunodeficiency (SCID)" means a group of congenital disorders characterized by profound deficiencies in T- and B- lymphocyte function. This results in very low or absent production of the body's primary infection fighting processes that, if left untreated, results in severe recurrent, and often life-threatening infections within the first year of life.

(16) "X-linked adrenoleukodystrophy (X-ALD)" means a peroxisomal disorder caused by mutations in the ABCD1 gene located on the X chromosome. If untreated this can lead to adrenocortical deficiency, damage to the nerve cells of the brain, paralysis of the lower limbs, mental decline, disability, or death.

AMENDATORY SECTION (Amending WSR 14-21-017, filed 10/2/14, effective 11/2/14)

**WAC 246-650-020 Performance of screening tests.** (1) Hospitals and other providers of birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders;

(ii) Disorders of concern as listed in WAC 246-650-020(2);

(iii) The requirement for newborn screening;

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020; and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn no later than forty-eight hours following birth.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory so that it will be received no later than seventy-two hours following collection of the specimen, excluding any day that the state laboratory is closed.

(2) Upon receipt of specimens, the department shall:

(a) Record the time and date of receipt;

(b) Perform appropriate screening tests for:

(i) Biotinidase deficiency;

(ii) Congenital hypothyroidism;

(iii) Congenital adrenal hyperplasia;

(iv) Galactosemia;

(v) Hemoglobinopathies;

(vi) Cystic fibrosis;

(vii) The amino acid disorders: Argininosuccinic acidemia (ASA), citrullinemia (CIT), homocystinuria, maple syrup urine disease (MSUD), phenylketonuria (PKU), and tyrosinemia type I (TYR 1);

(viii) The fatty acid oxidation disorders: Carnitine uptake defect (CUD), long-chain L-3-OH acyl-CoA dehydrogenase deficiency (LCHADD), medium chain acyl-coA dehydrogenase deficiency (MCADD), trifunctional protein deficiency (TFP), and very long-chain acyl-CoA dehydrogenase deficiency (VLCADD);

(ix) The organic acid disorders: 3-OH 3-CH3 glutaric aciduria (HMG), beta-ketothiolase deficiency (BKT), glutaric acidemia type I (GA 1), isovaleric acidemia (IVA), methylmalonic acidemia (CblA,B), methylmalonic acidemia (*mutase deficiency*) (MUT), multiple carboxylase deficiency (MCD), propionic acidemia (PROP);

(x) Severe combined immunodeficiency (SCID);

(xi) X-linked adrenoleukodystrophy (X-ALD).

(c) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(d) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

(3) Once the department notifies the attending health care provider of significant screening test results, the attending health care provider shall notify the department of the date upon which the results were disclosed to the parent or guardian of the infant. This requirement expires January 1, 2020.

## WSR 18-01-040
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed December 12, 2017, 10:53 a.m., effective January 12, 2018]

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

Purpose: The department is amending WAC 388-478-0015 Need standards for cash assistance, to revise the basic need standards for cash assistance. The department is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

Citation of Rules Affected by this Order: Amending WAC 388-478-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090.

Adopted under notice filed as WSR 17-21-072 on August 18 [October 16], 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 1, Repealed 0.

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

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

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

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

Date Adopted: December 11, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-23-146, filed 11/22/16, effective 1/1/17)

**WAC 388-478-0015 Need standards for cash assistance.** The need standards for cash assistance units are:

(1) For assistance units with an obligation to pay shelter costs:

| Assistance unit size | Need standard |
|---|---|
| 1 | ((~~$1,348~~)) $1,388 |

| Assistance unit size | Need standard |
|---|---|
| 2 | ((~~1,706~~)) 1,756 |
| 3 | ((~~2,106~~)) 2,168 |
| 4 | ((~~2,485~~)) 2,558 |
| 5 | ((~~2,864~~)) 2,948 |
| 6 | ((~~3,243~~)) 3,339 |
| 7 | ((~~3,749~~)) 3,859 |
| 8 | ((~~4,149~~)) 4,271 |
| 9 | ((~~4,549~~)) 4,683 |
| 10 or more | ((~~4,949~~)) 5,095 |

(2) For assistance units with shelter provided at no cost:

| Assistance unit size | Need standard |
|---|---|
| 1 | ((~~$645~~)) $643 |
| 2 | ((~~816~~)) 813 |
| 3 | ((~~1,008~~)) 1,004 |
| 4 | ((~~1,189~~)) 1,185 |
| 5 | ((~~1,371~~)) 1,365 |
| 6 | ((~~1,552~~)) 1,546 |
| 7 | ((~~1,794~~)) 1,787 |
| 8 | ((~~1,986~~)) 1,978 |
| 9 | ((~~2,177~~)) 2,169 |
| 10 or more | ((~~2,369~~)) 2,359 |

## WSR 18-01-047
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed December 12, 2017, 12:48 p.m., effective January 12, 2018]

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

Purpose: The department is amending WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding?, to align with recent changes to RCW 26.44.100 requiring the department to send unfounded finding letters to subjects via mail or email instead of certified mail, return receipt requested.

Citation of Rules Affected by this Order: Amending WAC 388-15-069.

Statutory Authority for Adoption: RCW 26.44.100, 74.13.031, and chapter 26.44 RCW.

Adopted under notice filed as WSR 17-21-084 on October 17, 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 1, Repealed 0.

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

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

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

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

Date Adopted: December 11, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-041, filed 7/28/15, effective 8/28/15)

**WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding?** (1) CPS notifies the alleged perpetrator of the founded finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(2) CPS notifies the alleged perpetrator of the unfounded finding by sending the CPS finding notice via mail, to the last known address, or email. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(3) When CA is actively working with the alleged perpetrator and the certified mail sent pursuant to subsection (1) of this section is returned, CA will attempt to personally serve the CPS founded findings letter to the alleged perpetrator.

## WSR 18-01-048
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed December 12, 2017, 1:00 p.m., effective January 12, 2018]

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

Purpose: The Washington state legislature modified RCW 74.13.031 by expanding the age youth can reenroll into the extended foster care (EFC) program. The age limit has been raised from nineteen years old to twenty-one years old.

The following sections are being revised to align with this change: WAC 388-25-0506 Who is eligible for extended foster care?, 388-25-0528 How does a youth agree to participate in the extended foster care program?, and 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care?

Citation of Rules Affected by this Order: Amending WAC 388-25-0506, 388-25-0528, and 388-25-0534.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

Adopted under notice filed as WSR 17-21-085 on October 17, 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 3, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 11, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-14-065, filed 6/30/16, effective 7/31/16)

**WAC 388-25-0506 Who is eligible for extended foster care?** (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW, placed in foster care as defined in WAC 388-25-0508 by CA, and:

(a) Enrolled in school as described in WAC 388-25-0512 ((~~in a high school or high school equivalency program~~));

(b) ((~~Enrolled as described in WAC 388-25-0512 in a post-secondary academic or vocational education program;~~

~~(c)~~)) Have applied for ((~~and~~)), or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program (((~~(~~))as described in WAC 388-25-0514((~~)~~)); ((~~or~~

~~(d)~~)) (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 388-25-0515;

(((~~(e)~~))) (d) Engaged in employment for eighty hours or more per month; ((~~or~~

~~(f)~~)) (e) Unable to engage in subsection (1)(a) through (((~~(e)~~))) (d) of this section due a documented medical condition((~~.~~)) as described in WAC 388-25-0519; or

(((~~(2) Have~~))) (f) Did not enroll in the extended foster care program and;

(i) Had their dependency dismissed on their eighteenth birthday ((~~as the youth did not meet any of the criteria found in subsections (1)(a) through (f) of this section, or did not agree to participate in the program and the youth~~));

(ii) Is requesting to ((~~participate~~)) enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of nineteen((~~.~~)); and

(iii) Meets one of the criteria found in subsections (1)(a) through (e) of this section.

(2) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA one time before the age of twenty-one. The youth must meet one of the criteria in subsections (1)(a) through (((~~f~~))) (e) when requesting to ((~~participate~~)) reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 16-06-044, filed 2/24/16, effective 3/26/16)

**WAC 388-25-0528 How does a youth agree to participate in the extended foster care program?** (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen if the department denied entry into the program.

(3) An eligible nondependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one as long as the youth has not previously entered into a VPA for extended foster care services.

(4) In order to continue receiving extended foster care services after entering into a ((~~voluntary placement agreement~~)) VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a ((~~voluntary placement agreement~~)) VPA.

AMENDATORY SECTION (Amending WSR 14-13-051, filed 6/12/14, effective 7/13/14)

**WAC 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns ((~~nineteen~~)) twenty-one, ((~~can~~)) may he or she reapply for extended foster care?** (1) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth:

(((~~(1) The youth~~))) (a) Has not turned ((~~nineteen~~)) twenty-one; ((~~and~~

~~(2) The youth~~)) (b) Meets one of the conditions for eligibility in WAC ((~~388-25-0506~~)) 388-25-0506 (1)(a) through (e); and

(((~~(3) The youth~~))) (c) Has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

(2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty-one.

## WSR 18-01-049
### PERMANENT RULES
### DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed December 12, 2017, 1:06 p.m., effective January 12, 2018]

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

Purpose: The department is amending WAC 388-106-0225 How do I pay for medicaid personal care?, as a result of the passage of SB 5118 to reflect an increase in the personal needs allowance effective July 1, 2017, and each fiscal year thereafter. This adjustment is subject to legislative funding.

Citation of Rules Affected by this Order: Amending WAC 388-106-0225.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 17-21-076 on October 16, 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 1, Repealed 0.

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

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

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

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

Date Adopted: December 11, 2017.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-11-049, filed 5/15/15, effective 7/1/15)

**WAC 388-106-0225 How do I pay for ((~~MPC~~)) medicaid personal care?** You pay for medicaid personal care (MPC) as follows:

(1) If you live in your own home, you do not ((~~participate toward~~)) share in the cost of your personal care services.

(2) If you live in a residential facility ((~~and are:~~

~~(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to~~)), you:

(a) Keep a personal needs allowance ((~~of sixty-two dollars and seventy-nine cents~~)) as described in WAC 182-513-1105;

(b) ((~~An SSI beneficiary who receives SSI and another source of income, you only~~)) Pay for ((~~board and~~)) room((~~. You are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents.~~)) and board as described in WAC 182-513-1105; and

(c) ((~~An SSI-related person under WAC 182-512-0050, you~~)) May be required to ((~~participate towards~~)) share in the cost of your personal care ((~~services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in~~)) under WAC 182-513-1205. ((~~You are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents.~~

~~(d) An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an adult family home (AFH), you are allowed to keep a personal needs allowance (PNA) of thirty-eight dollars and eighty-four cents per month. The remainder of your income must be paid to the AFH as your room and board up to the ALTSA room and board standards; or~~

~~(e) An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an assisted living facility, you are authorized a personal needs grant of up to thirty-eight dollars and eighty-four cents per month;~~

~~(f) A Washington apple health MAGI-based client as determined by WAC 182-505-0250, you pay only for room and board. If your income is less than the ALTSA room and board standard, you are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents and the remainder of your income goes to the provider for room and board.~~))

(3) ((~~Personal needs allowance (PNA) standards and the ALTSA room and board standard can be found at http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx.~~

~~(4)~~)) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the medicaid resident dies in the facility; or

(b) Day of service before the day the medicaid resident is discharged.

## WSR 18-01-053
### PERMANENT RULES
### DEPARTMENT OF AGRICULTURE

[Filed December 13, 2017, 7:29 a.m., effective January 13, 2018]

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

Purpose: These rules reduce the size of the seed commission board from eight members to five members and increase the assessment authority cap from five cents per hundredweight to ten cents per hundredweight. The commission determined that an increase in the range of allowable assessment rates is necessary for the board to address the increased costs of testing requirements and research needs, and will allow the commission to continue to carry out its mandated mission. In addition, the small number of seed potato growers necessitates a smaller commission board.

Citation of Rules Affected by this Order: Amending WAC 16-520-020, 16-520-027, and 16-520-040.

Statutory Authority for Adoption: RCW 15.66.055.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-14-019 on June 23, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 11, 2017.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

**WAC 16-520-020 Seed potato commission—Structure, powers, duties, and procedure.** (1) **Establishment and membership.** A seed potato commission is hereby established to administer this marketing order. The commission shall be composed of ((~~three~~)) two members who shall be affected producers elected by the producers as provided in the act, and ((~~four~~)) two members who shall be appointed by the director. In addition, the director shall be a voting member of the commission.

(a) Elected producer positions on the board shall be designated as positions 2((~~, 3,~~)) and 4.

(b) Director-appointed positions on the board shall be designated as positions 1((~~, 5, 6, and 7~~)) and 3.

(c) The position representing the director shall be designated as position ((~~8~~)) 5.

(2) **Membership qualifications.** Commission members shall be citizens and residents of this state, over the age of eighteen years and producer members of the commission shall be producers of seed potatoes in the state of Washington. The qualifications of producer members of the commission as herein set forth must continue during their term of office. Members appointed by the director shall be either producers or others active in matters relating to seed potatoes.

(3) **Term of office.** (((~~a~~))) The term of office of commission members shall be three years from the date of their election or appointment and until their successors are elected or appointed and qualified so that one-third of the terms will commence as nearly as practicable each year.

(((~~(b) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the prior marketing order's elected board members in positions 1, 5, 6, and 7 shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order to serve out the remainder of their terms.~~)))

(4) **Nomination, appointment and election of commission members.** Nomination, appointment, and election of commission members shall be as set forth in the act and specified by the director. Dates for this process are as follows:

(a) Not earlier than March 19 and not later than April 3 of each year, the director shall give notice by mail to all affected producers that an open commission position(s) will occur in the commission and call for nominations. Nominating petitions shall be signed by three persons qualified to vote for the candidates. The notice shall state the final date for filing nominating petitions which shall be not earlier than April 7 and not later than April 12 of such year.

(b) The director shall conduct an election or advisory vote by mail to all affected producers in the district wherein the open commission position(s) will occur not earlier than April 17 and not later than May 2 of each year. Ballots shall be returned not later than June 1 of each year. An election or advisory vote shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) When only one nominee is nominated by the affected producers for a director-appointed position, RCW 15.66.120 shall apply.

(d) Except with respect to the initial seed potato commission, the members of the commission not elected by the producers or appointed by the director shall be elected by a majority of the commission within ninety days prior to the expiration of the term.

(5) **Vacancies.**

(a) In the event of a vacancy in an elected position, the remaining members shall select a qualified person to fill the term. The appointment shall be made at the commission's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in chapter 15.66 RCW.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

**WAC 16-520-027 Procedure for commission.** (1) The commission may by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(2) The commission shall hold at least two regular meetings during each fiscal year with the time and date thereof to be fixed by the resolution of the commission. Notice of the time and place of regular meetings shall be published on or before January of each year in the *Washington State Register*. Notice of any change to the meeting schedule shall be provided in compliance with chapter 42.30 RCW, the Open Public Meetings Act.

(3) The commission may hold special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice to the members, provided, that the notice to a member of any special meeting may be waived by a waiver from that member of the board. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

(4) Any action taken by the commission shall require the majority vote of the members present provided a quorum is present.

(5) A quorum of the commission shall consist of at least ((~~five~~)) three members.

(6) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which rate shall not exceed the compensation rate set by RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence and travel expenses in accordance with RCW 43.03.050 and 43.03.060. The commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

**WAC 16-520-040 Assessments and assessment funds.** (1) **Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by him or her or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. ((~~The assessment shall be three cents per hundredweight.~~)) The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ((~~five~~)) ten cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by him or her on his or her own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of five hundred pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) **Collection of assessment.**

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the twentieth day of the succeeding month for the previous month's collections. Each handler shall at the times as required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds.**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.

## WSR 18-01-054
### PERMANENT RULES
## DEPARTMENT OF AGRICULTURE
[Filed December 13, 2017, 7:59 a.m., effective January 13, 2018]

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

Purpose: This rule-making order amends chapter 16-233 WAC, Worker protection standards, by adopting the revised federal worker protection standard specified in 40 C.F.R. § 170.

Citation of Rules Affected by this Order: New WAC 16-233-006, 16-233-011, 16-233-016, 16-233-021, 16-233-026, 16-233-031, 16-233-036, 16-233-041, 16-233-101, 16-233-106, 16-233-111, 16-233-116, 16-233-121, 16-233-126, 16-233-201, 16-233-206, 16-233-211, 16-233-216, 16-233-221, 16-233-301, 16-233-306, 16-233-311 and 16-233-316; repealing WAC 16-233-005, 16-233-010, 16-233-020, 16-233-025, 16-233-100, 16-233-105, 16-233-110, 16-233-115, 16-233-120, 16-233-125, 16-233-130, 16-233-135, 16-233-140, 16-233-145, 16-233-150, 16-233-155, 16-233-200, 16-233-205, 16-233-210, 16-233-215, 16-233-220, 16-233-225, 16-233-230, 16-233-235, 16-233-240, 16-233-245, 16-233-250 and 16-233-255; and amending WAC 16-233-001.

Statutory Authority for Adoption: RCW 15.58.040 and 17.21.030.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-12-112 on June 7, 2017.

Changes Other than Editing from Proposed to Adopted Version: Two sections (labeled WAC 16-233-026 and 16-233-211 in the OTS-8260.2 language draft) are not adopted because both sections had an effective date of "prior to January 1, 2018." Since the rule amendments will not be effective prior to January 1, 2018, the two sections are obsolete. WAC 16-233-027 and 16-233-212 have been renumbered to WAC 16-233-026 and 16-233-211, respectively. All references to these four sections have been updated throughout the language. In addition, all references to an effective date have been deleted because the entire rule will be effective thirty-one days after filing. The federal regulations were initially scheduled to go into effect in two stages - part in 2017 and part in 2018. However, there was a delay by the Environmental Protection Agency in implementing the new regulations. All amendments to the new federal regulations now go into effect January 2, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 23, Amended 1, Repealed 28; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 1, Repealed 28.

Date Adopted: December 13, 2017.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 09-15-139, filed 7/21/09, effective 8/21/09)

**WAC 16-233-001 Federal worker protection standards—Washington state department of labor and industries.** This chapter contains the federal Environmental Protection Agency (EPA) worker protection standards as listed in 40 C.F.R., Part 170. Revisions to the federal language have been incorporated into this chapter in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of labor and industries in chapter 296-307 WAC, Part I.

NEW SECTION

**WAC 16-233-006 Scope and purpose—40 C.F.R., § 170.301.** This regulation is primarily intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers, handlers and other persons when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires handlers to wear the labeling-specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications.

NEW SECTION

**WAC 16-233-011 Applicability—40 C.F.R., § 170.303.** (1) This regulation applies whenever a pesticide product bearing a label requiring compliance with this chapter is used in the production of agricultural plants on an agricultural establishment, except as provided in subsections (2) and (3) of this section.

(2) This regulation does not apply when a pesticide product bearing a label requiring compliance with this chapter is used on an agricultural establishment in any of the following circumstances:

(a) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(b) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(c) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(d) As attractants or repellents in traps.

(e) On the harvested portions of agricultural plants or on harvested timber.

(f) For research uses of unregistered pesticides.

(g) On pasture and rangeland where the forage will not be harvested for hay.

(h) In a manner not directly related to the production of agricultural plants including, but not limited to, structural pest control and control of vegetation in noncrop areas.

(3) Where a pesticide product's labeling-specific directions for use or other labeling requirements are inconsistent with requirements of this chapter, users must comply with the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

NEW SECTION

**WAC 16-233-016 Definitions—40 C.F.R., § 170.305.** Terms used in this chapter have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this chapter, shall have the following meanings:

(1) "Agricultural employer" means any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

(2) "Agricultural establishment" means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

(3) "Agricultural plant" means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains; fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

(4) "Application exclusion zone" means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

(5) "Chemigation" means the application of pesticides through irrigation systems.

(6) "Closed system" means an engineering control used to protect handlers from pesticide exposure hazards when mixing and loading pesticides.

(7) "Commercial pesticide handler employer" means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

(8) "Commercial pesticide handling establishment" means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

(9) "Crop advisor" means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants and who holds a current Washington state department of agriculture commercial consultant license in the agricultural areas in which they are advising.

(10) "Designated representative" means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by WAC 16-233-021(8) in accordance with WAC 16-233-026(2).

(11) "Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

(12) "Employ" means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

(13) "Enclosed cab" means a cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab.

(14) "Enclosed space production" means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.

(15) "Fumigant" means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

(16) "Hand labor" means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks.

(17) "Handler" means any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

(a) Mixing, loading, or applying pesticides.

(b) Disposing of pesticides.

(c) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide

containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

(d) Acting as a flagger.

(e) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(f) Assisting with the application of pesticides.

(g) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

(h) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

(i) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the pesticide product labeling has been met.

(18) "Handler employer" means any person who is self-employed as a handler or who employs any handler.

(19) "Immediate family" is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling, *i.e.,* the child of an aunt or uncle.

(20) "Labor contractor" means a person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

(21) "Outdoor production" means production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.

(22) "Owner" means any person who has a present possessory interest (*e.g.,* fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this chapter.

(23) "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(24) "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

(25) "Safety data sheet" has the same meaning as the definition in 29 C.F.R. Sec. 1910.1200(c).

(26) "Treated area" means any area to which a pesticide is being directed or has been directed.

(27) "Use," *as in "to use a pesticide"* means any of the following:

(a) Pre-application activities including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(b) Application of the pesticide.

(c) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(d) Other pesticide-related activities including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(28) "Worker" means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

(29) "Worker housing area" means any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

NEW SECTION

**WAC 16-233-021 Agricultural employer duties—40 C.F.R., § 170.309.** Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler and any early entry worker is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers information and directions sufficient to ensure that each worker and handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any workers or handlers to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this chapter.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(7) Ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with WAC 16-233-026 if workers or handlers are on the establishment and within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) Ensure that whenever handlers employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of, the specific location and description of any treated areas on the agricultural establishment where a restricted-entry interval is in effect that the handler may be in (or may walk within 1/4 mile of), and any restrictions on entering those areas.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 16-233-026(2), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

**WAC 16-233-026 Display requirements for pesticide safety information and pesticide application and hazard information—40 C.F.R., § 170.311.** (1) *Display of pesticide safety information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 16-233-021(8), pesticide safety information must be displayed in accordance with this subsection.

(a) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The pesticide safety information must include all of the following points:

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated areas and application exclusion zones.

(viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides.

(ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(x) The name, address, and telephone number of the Washington state department of agriculture.

(c) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(ix) of this subsection.

(d) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to subsection (2)(b) of this section for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 16-233-126, 16-233-221 or 16-233-311, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for eleven or more workers or handlers.

(e) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(f) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(2) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 16-233-021(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this subsection.

(a) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(e) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(f) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(g) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.,* search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(h) *Access to pesticide application and hazard information by treating medical personnel.* Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years in (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(i) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed.

The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in subsection (2)(i)(ii) of this section.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.,* planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (*e.g.,* mailing address or e-mail address).

(iii) If the written request from a designated representative contains all of the necessary information specified in subsection (2)(i)(ii) of this section, the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.,* search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

**WAC 16-233-031 Commercial pesticide handler employer duties—40 C.F.R., § 170.313.** Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this chapter.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 16-233-121.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9)(a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during

his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this chapter for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

**WAC 16-233-036 Prohibited actions—40 C.F.R., § 170.315.** No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this chapter applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of the Washington state department of agriculture regarding conduct that the worker or handler reasonably believes violates this chapter, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this chapter. Any such intimidation, threat, coercion, or discrimination violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 12 (a)(2)(G), 7 U.S.C. 136j (a)(2)(G).

NEW SECTION

**WAC 16-233-041 Violations of this chapter—40 C.F.R., § 170.317.** (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person "…to use or cause to be used any pesticide contrary to label directions…." When 40 C.F.R., Part 170 is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

(2) A person who has a duty under this chapter, as referenced on the pesticide product labeling, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, FIFRA Section 12 (a)(2)(G), and is subject to civil penalties under RCW 15.58.335, 15.58.260, and 17.21.315.

(3) FIFRA Section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships including, but not limited to, labor contractors.

(4) The requirements of this chapter, including the decontamination requirements, must not, for the purposes of Title 29 U.S.C. Sec. 653 (b)(1), be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the WISHA Field Sanitation Standard, WAC 296-307-095, OSHA Field Sanitation Standard, 29 C.F.R. Sec. 1928.110, or other agricultural nonpesticide hazards.

## REQUIREMENTS FOR PROTECTION OF AGRICULTURAL WORKERS

NEW SECTION

**WAC 16-233-101 Training requirements for workers—40 C.F.R., § 170.401.** (1) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 16-233-201.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230: Provided, That a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty-one days after a notice of availability of such training materials appears in the FEDERAL REGISTER, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be eighteen years old to perform early-entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

**WAC 16-233-106 Establishment-specific information for workers—40 C.F.R., § 170.403.** Before any worker performs any activity in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand, all of the following establishment-specific information:

(1) The location of pesticide safety information required in WAC 16-233-026(1).

(2) The location of pesticide application and hazard information required in WAC 16-233-026(2).

(3) The location of decontamination supplies required in WAC 16-233-126.

NEW SECTION

**WAC 16-233-111 Entry restrictions associated with pesticide applications—40 C.F.R., § 170.405.** (1) *Outdoor production pesticide applications.*

(a) The application exclusion zone is defined as follows:

(i) The application exclusion zone is the area that extends one hundred feet horizontally from the application equipment in all directions during application when the pesticide is applied by any of the following methods:

(A) Aerially.

(B) Air blast application.

(C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).

(D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends twenty-five feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in (a)(i)(A) through (D) of this subsection and is sprayed from a height of greater than twelve inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in (a)(i) and (ii) of this subsection.

(b) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

(c) After the application is complete, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the treated area.

(2) *Enclosed space production pesticide applications.*

(a) During any enclosed space production pesticide application described in column 1 of the table under (d) of this subsection, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the area specified in column 2 of the table under (d) of this subsection during the application and until the time specified in column 3 of the table under (d) of this subsection has expired.

(b) After the time specified in column 3 of the table under (d) of this subsection has expired, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the area specified in column 4 of the table under (d) of this subsection.

(c) When column 3 of the table under (d) of this subsection specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level required by the labeling. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

(i) Ten air exchanges are completed.

(ii) Two hours of ventilation using fans or other mechanical ventilating systems.

(iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by one hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by two hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(d) The following table applies to (a), (b), and (c) of this subsection.

**Table - Entry Restrictions During Enclosed Space Production Pesticide Applications**

| **1. When a pesticide is applied:** | **2. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in:** | **3. Until:** | **4. After the expiration of time specified in column 3, the area subject to the restricted-entry interval is:** |
|---|---|---|---|
| (a) As a fumigant | Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area | The ventilation criteria of subsection (2)(c) of this section are met | No post-application entry restrictions required by WAC 16-233-116 after criteria in column 3 are met |
| (b) As a<br>(i) Smoke, or<br>(ii) Mist, or<br>(iii) Fog, or<br>(iv) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns) | Entire enclosed space | The ventilation criteria of subsection (2)(c) of this section are met | Entire enclosed space |
| (c) Not as in (a) or (b), and for which a respiratory protection device is required for application by the pesticide product labeling | Entire enclosed space | The ventilation criteria of subsection (2)(c) of this section are met | Treated area |
| (d) Not as in (a), (b) or (c), and:<br>(i) From a height of greater than 12 inches from the planting medium, or<br>(ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater) | Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space | Application is complete | Treated area |
| (e) Otherwise | Treated area | Application is complete | Treated area |

NEW SECTION

**WAC 16-233-116 Worker entry restrictions after pesticide applications—40 C.F.R., § 170.407.** (1) After the application of any pesticide to an area of outdoor production, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(2) After the application of any pesticide to an area of enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column 4 of the table in WAC 16-233-111 (2)(d), before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(3) When two or more pesticides are applied to a treated area at the same time, the applicable restricted-entry interval is the longest of all applicable restricted-entry intervals.

NEW SECTION

**WAC 16-233-121 Oral and posted notification of worker entry restrictions—40 C.F.R., § 170.409.** (1) *General requirement.* The agricultural employer must notify workers of all entry restrictions required in WAC 16-233-111 and 16-233-116 in accordance with this section.

(a) *Type of notification required*:

(i) *Double notification.* If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with subsection (2) of this section and must also provide oral notification of the application to workers in accordance with subsection (3) of this section.

(ii) *Outdoor production areas subject to restricted-entry intervals greater than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(iii) *Outdoor production areas subject to restricted-entry intervals equal to or less than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(iv) *Enclosed space production areas subject to restricted-entry intervals greater than four hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(v) *Enclosed space production areas subject to restricted-entry intervals equal to or less than four hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(b) *Exceptions.* Notification does not need to be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in an enclosed space production area until the end of any restricted-entry interval, the worker will not enter any part of the entire enclosed structure or space.

(ii) From the start of the application to an outdoor production area until the end of any restricted-entry interval, the worker will not enter, work in, remain in, or pass on foot through the treated area or any area within 1/4 mile of the treated area on the agricultural establishment.

(iii) The worker was involved in the application of the pesticide as a handler, and is aware of all information required in subsection (3)(a) of this section.

(2) *Requirements for posted warning signs.* If notification by posted warning signs is required pursuant to subsection (1) of this section, the agricultural employer must, unless otherwise prescribed by the label, ensure that all warning signs meet the requirements of this subsection. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry is prohibited for the entire area while the signs are posted, except for entry permitted in WAC 16-233-306.

(a) *General.* The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in (c) of this subsection and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than twenty-four hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within three days after the end of the application or any restricted-entry interval, whichever is later, except that signs may remain posted after the restricted-entry interval has expired as long as all of the following conditions are met:

(A) The agricultural employer instructs any workers on the establishment that may come within 1/4 mile of the treated area not to enter that treated area while the signs are posted.

(B) The agricultural employer ensures that workers do not enter the treated area while the signs remain posted, other than entry permitted in WAC 16-233-306.

(v) Remain visible and legible during the time they are required to be posted.

(b) *Content.*

(i) The warning sign must have a white background. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," must be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" must be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:


(ii) The agricultural employer may replace the Spanish language portion of the warning sign with equivalent terms in an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The alternative language sign must be in the same format as the original sign and conform to all other requirements of (b)(i) of this subsection.

(c) *Size and posting.*

(i) The standard sign must be at least fourteen inches by sixteen inches with letters at least one inch in height.

(ii) When posting an outdoor production area using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within one hundred feet of the treated area and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting an enclosed space production area using the standard sign and the entire structure or space is subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116, the signs must be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When posting treated areas in enclosed space production using the standard sign and the treated area only comprises a subsection of the structure or space, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with "DANGER" and "PELIGRO" in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least three inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than fifty feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(v) If a smaller sign is used with "DANGER" and "PELIGRO" in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least one and a half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than twenty-five feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(vi) A sign with "DANGER" and "PELIGRO" in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than one and a half inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of this chapter.

(3) *Oral warnings - Requirement.* If oral notification is required pursuant to subsection (1) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the worker's work period. The warning must include all of the following:

(a) The location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(b) The dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(c) Instructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

NEW SECTION

**WAC 16-233-126 Decontamination supplies for workers—40 C.F.R., § 170.411.** (1) *Requirement.* The agricultural employer must provide decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide including, but not limited to, soil, water, and plants.

(2) *Materials and quantities.* The decontamination supplies required in subsection (1) of this section must include at least one gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(a) *Water.* At all times when this part requires agricultural employers to make water available to workers, the agri-

cultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) *Timing.*

(a) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least thirty days after the restricted-entry interval expires.

(b) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(4) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decontamination supplies must not be more than 1/4 mile from where workers are working, except that where workers are working more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

## REQUIREMENTS FOR PROTECTION OF AGRICULTURAL PESTICIDE HANDLERS

NEW SECTION

**WAC 16-233-201 Training requirements for handlers—40 C.F.R., § 170.501.** (1) *General requirement.* Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first-aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty days after a notice of availability of such training materials appears in the FEDERAL REGISTER, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xiv) of this subsection instead of the points listed in (b)(i) through (xiii) of this subsection.

(i) All the topics required in WAC 16-233-101 (3)(c).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least eighteen years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this chapter.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

**WAC 16-233-206 Knowledge of labeling, application-specific, and establishment-specific information for handlers—40 C.F.R., § 170.503.** (1) *Knowledge of labeling and application-specific information.*

(a) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

(b) The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities.

(c) The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in WAC 16-233-111 and 16-233-116 that may apply based on the handler's activity.

(2) *Knowledge of establishment-specific information.* Before any handler performs any handler activity on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand, all of the following establishment-specific information:

(a) The location of pesticide safety information required in WAC 16-233-026(1).

(b) The location of pesticide application and hazard information required in WAC 16-233-026(2).

(c) The location of decontamination supplies required in WAC 16-233-221.

NEW SECTION

**WAC 16-233-211 Requirements during applications to protect handlers, workers, and other persons—40 C.F.R., § 170.505.** (1) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) *Suspending applications.* The handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone described in WAC 16-233-111 (1)(a) or the area specified in column 2 of the table in WAC 16-233-111 (2)(d).

(3) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(4) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

**WAC 16-233-216 Personal protective equipment—40 C.F.R., § 170.507.** (1) *Handler responsibilities.* Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 16-233-316.

(2) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 C.F.R. Sec. 1910.134 (k)(1)(i) through (vi).

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 C.F.R. Sec. 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) *Use of personal protective equipment.*

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(4) *Cleaning and maintenance.*

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of 29 C.F.R. Sec. 1910.134 (d)(3)(iii)(B)(2).

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

NEW SECTION

**WAC 16-233-221 Decontamination and eye flushing supplies for handlers—40 C.F.R., § 170.509.** (1) *Requirement.* The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 16-233-216 (4)(i).

(2) *General conditions.* The decontamination supplies required in subsection (1) of this section must include: At least ten gallons of water for one employee and twenty gallons of water for two or more employees at the beginning of each handler's work period for routine washing and potential emergency decontamination; soap, single-use towels, and clean clothing for use in an emergency. The decontamination and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) *Water.* At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than 1/4 mile from the handler, except that where the handler activity is more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) *Mixing sites.* Decontamination supplies must be provided at any mixing site.

(b) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(c) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) *Emergency eye-flushing.*

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing/loading site immediately available to the handler, at least one system that is capable of delivering gently running water at a rate of at least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about fifteen minutes.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

## EXEMPTIONS, EXCEPTIONS AND EQUIVALENCY

NEW SECTION

**WAC 16-233-301 Exemptions—40 C.F.R., § 170.601.** (1) *Exemption for owners of agricultural establishments and their immediate families.*

(a) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following sections to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this chapter on their own agricultural establishment.

(i) WAC 16-233-021(3).
(ii) WAC 16-233-021 (6) through (10).
(iii) WAC 16-233-026.
(iv) WAC 16-233-101.
(v) WAC 16-233-106.
(vi) WAC 16-233-121.
(vii) WAC 16-233-126 and 16-233-221.
(viii) WAC 16-233-201.
(ix) WAC 16-233-206.
(x) WAC 16-233-211 (3) and (4).
(xi) WAC 16-233-216 (3) through (5).
(xii) WAC 16-233-311 (1) through (3) and (5) through (10).

(b) The owners of agricultural establishments must provide all of the applicable protections required by this chapter for any employees or other persons on the establishment that are not members of their immediate family.

(2) *Exemption for certified crop advisors.* Certified crop advisors may make their own determination for the appropriate personal protective equipment for entry into a treated area during a restricted-entry interval and substitute their self-determined set of personal protective equipment for the labeling-required personal protective equipment, and the requirements of WAC 16-233-021 (5) and (6), 16-233-031(11), 16-233-206(1), 16-233-216, and 16-233-221 do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

(a) The crop advisor is certified or licensed as a crop advisor by the Washington state department of agriculture.

(b) The certification or licensing program requires pesticide safety training that includes all the information in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(c) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

NEW SECTION

**WAC 16-233-306 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., § 170.603.** An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the

agricultural employer ensures all of the applicable conditions of this section and WAC 16-233-311 are met.

(1) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(2) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any twenty-four-hour period for any worker.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(3) *Exception for an agricultural emergency.*

(a) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(b) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) The Washington state department of agriculture declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the Washington state department of agriculture has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of (a) of this subsection.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any twenty-four-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first four hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(vi) A decontamination site has been provided in accordance with WISHA regulations.

(4) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) No worker is allowed in the treated area for more than eight hours in a twenty-four-hour period.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(e) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.

(f) With the exception of irrigation tasks, the need for the task could not have been foreseen.

(g) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.

(h) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

NEW SECTION

**WAC 16-233-311 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., § 170.605.** If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(1) The agricultural employer must ensure that the worker is at least eighteen years old.

(2) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.

(a) Location of early-entry area where work activities are to be performed.

(b) Pesticide(s) applied.

(c) Dates and times that the restricted-entry interval begins and ends.

(d) Which exception in WAC 16-233-306 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(e) Whether contact with treated surfaces is permitted under the exception.

(f) Amount of time the worker is allowed to remain in the treated area.

(g) Personal protective equipment required by the pesticide product labeling for early entry.

(h) Location of the pesticide safety information required in WAC 16-233-026(1) and the location of the decontamination supplies required in subsection (8) of this section.

(3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in WAC 16-233-216 (2)(a) through (i).

(5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 16-233-216 (3) and (4).

(6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(7) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(8) During any early-entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 16-233-221, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early-entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for eyeflushing that is immediately available to each worker who is performing early-entry activities.

(10) At the end of any early-entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

NEW SECTION

**WAC 16-233-316 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., § 170.607.** (1) *Body protection.*

(a) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(b) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(2) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(4) *Closed systems.*

(a) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in (b) of this subsection, and the handler employer meets the requirements in (c) of this subsection, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of "DANGER" or "WARNING" may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in (a)(i) of this subsection may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(b) The exceptions in (a) of this subsection apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its

contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(c) The exceptions in (a) of this subsection apply only where the handler employer has satisfied the requirements in WAC 16-233-031 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a pesticide; and special procedures or limitations regarding partially filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(5) *Enclosed cabs.*

(a) If a handler applies a pesticide from inside a vehicle's enclosed cab, and if the conditions listed in (b) of this subsection are met, exceptions to the personal protective equipment requirements specified on the product labeling for applicators are permitted as provided in (c) of this subsection.

(b) All of the personal protective equipment required by the pesticide product labeling for applicators must be immediately available and stored in a sealed container to prevent contamination. Handlers must wear the applicator personal protective equipment required by the pesticide product labeling if they exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in a treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(c) Handlers may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified personal protective equipment for skin and eye protection. If a filtering facepiece respirator (NIOSH approval number prefix TC-84A) or dust/mist filtering respirator is required by the pesticide product labeling for applicators, then that respirator need not be worn inside the enclosed cab if the enclosed cab has a properly functioning air ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions. If any other type of respirator is required by the pesticide labeling for applicators, then that respirator must be worn.

(6) *Aerial applications.*

(a) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(b) *Open cockpit.* Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(c) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) *Crop advisors.*

(a) Provided the conditions in (b) through (d) of this subsection are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eyewear for handlers.

(b) The application has been complete for at least four hours.

(c) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(d) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|---|---|
| WAC 16-233-005 | Scope and purpose—Worker protection standards—40 C.F.R., § 170.1. |
| WAC 16-233-010 | Definitions—Worker protection standards—40 C.F.R., § 170.3. |
| WAC 16-233-020 | General duties and prohibited actions—Worker protection standards—40 C.F.R., § 170.7. |
| WAC 16-233-025 | Violations of this chapter—Worker protection standards—40 C.F.R., § 170.9. |
| WAC 16-233-100 | Applicability of this chapter—Standards for workers—40 C.F.R., § 170.102. |

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|---|---|
| WAC 16-233-105 | Exceptions—Standards for workers—40 C.F.R., § 170.103. |
| WAC 16-233-110 | Exemptions—Standards for workers—40 C.F.R., § 170.104. |
| WAC 16-233-115 | Restrictions associated with pesticide applications—Standards for workers—40 C.F.R., § 170.110. |
| WAC 16-233-120 | Entry restrictions—Standards for workers—40 C.F.R., § 170.112. |
| WAC 16-233-125 | Notice of applications—Standards for workers—40 C.F.R., § 170.120. |
| WAC 16-233-130 | Providing specific information about applications—Standards for workers—40 C.F.R., § 170.122. |
| WAC 16-233-135 | Notice of applications to handler employers—Standards for workers—40 C.F.R., § 170.124. |
| WAC 16-233-140 | Pesticide safety training—Standards for workers—40 C.F.R., § 170.130. |
| WAC 16-233-145 | Posted pesticide safety information—Standards for workers—40 C.F.R., § 170.135. |
| WAC 16-233-150 | Decontamination—Standards for workers—40 C.F.R., § 170.150. |
| WAC 16-233-155 | Emergency assistance—Standards for workers—40 C.F.R., § 170.160. |
| WAC 16-233-200 | Applicability of this subpart—Standards for pesticide handlers—40 C.F.R., § 170.202. |
| WAC 16-233-205 | Exemptions—Standards for handlers—40 C.F.R., § 170.204. |
| WAC 16-233-210 | Restrictions during applications—Standards for pesticide handlers—40 C.F.R., § 170.210. |
| WAC 16-233-215 | Providing specific information about applications—Standards for pesticide handlers—40 C.F.R., § 170.222. |
| WAC 16-233-220 | Notice of applications to agricultural employers—Standards for pesticide handlers—40 C.F.R., § 170.224. |
| WAC 16-233-225 | Pesticide safety training—Standards for pesticide handlers—40 C.F.R., § 170.230. |
| WAC 16-233-230 | Knowledge of labeling and site-specific information—Standards for pesticide handlers—40 C.F.R., § 170.232. |
| WAC 16-233-235 | Safe operation of equipment—Standards for pesticide handlers—40 C.F.R., § 170.234. |
| WAC 16-233-240 | Posted pesticide safety information—Standards for pesticide handlers—40 C.F.R., § 170.235. |
| WAC 16-233-245 | Personal protective equipment—Standards for pesticide handlers—40 C.F.R., § 170.240. |
| WAC 16-233-250 | Decontamination—Standards for pesticide handlers—40 C.F.R., § 170.250. |
| WAC 16-233-255 | Emergency assistance—Standards for pesticide handlers—40 C.F.R., § 170.260. |

## WSR 18-01-055
### PERMANENT RULES
## SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed December 13, 2017, 9:13 a.m., effective January 15, 2018]

Effective Date of Rule: January 15, 2018.

Purpose: Amendments to Article II include the addition of a new section, Section 2.15 Intimidation. The amendments are to better protect the safety of Spokane regional clean air agency (SRCAA) staff by developing a local regulation that allows SRCAA to issue a notice of violation if SRCAA staff are directly or indirectly, assaulted, intimidated, threatened, coerced, harassed, or unlawfully imprisoned. The notice of violation may be issued regardless of a criminal charge or conviction related to the same conduct. The notice of violation may be followed with a civil penalty.

Citation of Rules Affected by this Order: New SRCAA Regulation I, Article II, Section 2.15.

Statutory Authority for Adoption: RCW 70.94.141.

Other Authority: Chapters 70.94, 9A.04, 9A.36, 9A.40, 9A.46, and 9A.76 RCW.

Adopted under notice filed as WSR 17-22-008 on October 19, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: December 7, 2017.

Margee Chambers
Rule Writer/SIP Planner

NEW SECTION, SRCAA Regulation I, Article II

**SECTION 2.15 INTIMIDATION**

A. No person shall, directly or indirectly, assault, intimidate, threaten, harass, coerce or unlawfully imprison the Control Officer or the Control Officer's authorized representative. The following definitions apply to this Section:

1. "Assault" includes, but is not limited to, actions constituting assault under RCW 9A.36 *et seq.*

2. "Intimidate" includes, but is not limited to, actions that discourage, restrain or deter action by inducing fear.

3. "Threaten" includes, but is not limited to, actions constituting threats under RCW 9A.76.180(3) and 9A.04.110(28).

4. "Harassment" includes, but is not limited to, actions constituting harassment under RCW 9A.46.020(1).

5. "Coercion" includes, but is not limited to, actions constituting coercion under RCW 9A.36.070(1).

6. "Unlawful imprisonment" includes, but is not limited to, restricting a person's movements without consent and without legal authority in manner which interferes substantially with his or her liberty as described in RCW 9A.40.010(6).

B. For any person found to have violated Section 2.15.A., the Agency may issue a separate Notice of Violation to the full extent authorized by Section 2.02.G and Section 2.11 of this Regulation.

C. A Notice of Violation under this Section may be issued regardless of a criminal charge or conviction related to the same conduct.

D. The civil penalty for a violation of this Section shall be $5,000.00. Requests for mitigation of a Notice of Violation issued under this Section shall be referred to and decided by the Board of Directors.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 18-01-078
### PERMANENT RULES
## WESTERN WASHINGTON UNIVERSITY

[Filed December 15, 2017, 9:27 a.m., effective January 15, 2018]

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

Purpose: In response to recent legislation relating to costs associated with responding to public records requests, fee waivers, and denial of certain requests, sections of chapter 516-09 WAC were amended to comply with state mandates. Also, the definition of public record was updated to match the current definition in RCW 42.56.010(3) and general housekeeping changes included removing outdated language as well as updating language to align with current practice.

Citation of Rules Affected by this Order: Amending WAC 516-09-020, 516-09-030, 516-09-03001, 516-09-040, and 516-09-070.

Statutory Authority for Adoption: RCW 28B.35.120(12) and 42.56.100.

Adopted under notice filed as WSR 17-21-023 on October 10, 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 3, Repealed 0.

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

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

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

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

Date Adopted: December 15, 2017.

Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-09-114, filed 4/20/16, effective 5/21/16)

**WAC 516-09-020 Agency description—Contact information—Public records officer.** (1) Western Washington University is an institution of higher education, authority for which is located in chapter 28B.35 RCW. The administrative offices of the university are located at the university's main campus at Bellingham, Washington. ((~~The university also has education centers in Seattle, Everett, Mountlake Terrace, Shoreline, Bremerton, Oak Harbor, Anacortes, and Port Angeles.~~))

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records officer located at the main campus listed below:

Public Records Officer
Western Washington University
516 High Street
Bellingham, WA 98225
Phone: 360-650-2728
Fax: 360-650-4228

Current contact information and additional information regarding release of public records can be found ((~~on the university web site at http://www.wwu.edu/publicrecords/index.shtml~~)) online at the public records officer's web site.

(3) The public records officer will oversee compliance with the act but another university staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the university will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-030 Availability of public records.** (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university in the presence of university staff. For the purposes of this chapter, the normal business hours for the public records office are from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding university holidays. Other hours of inspection may be arranged if the requestor and the public records officer or designee agree on a different time. Records must be inspected at the offices of the university in the presence of university staff.

(2) Index of records. The Western Washington University records retention schedule is the index of records ((~~created after June 30, 1990. Links to many of these schedules can be located at http://www.wwu.edu/depts/recmgmt/~~)) and is available online at the university archives and records management web site.

(3) ((~~Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization.~~)) A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site ((~~at www.wwu.edu~~)). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university must make the request in writing on the university's request form((~~, appended to this chapter and~~)) located at ((~~http://www.library.wwu.edu/info/pubrecords_request.pdf~~)) the public records officer's web site; or by letter, email, or fax addressed to the public records officer and including the following information:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) Date and time of the request;

(v) Identification of the public records adequate for the public records officer to locate the records; and

(vi) A verification that the records requested shall not be used to compile a commercial sales list.

((

WESTERN
WASHINGTON UNIVERSITY

**Western Washington University**
**Public Records Office**
**Western Libraries; HH231**
**516 High St.**
**Bellingham, WA 98225 – 9103**
**Phone: (360) 650- 3051**
**FAX: (360) 650- 3044**

## Request for Public Records

| IDENTIFICATION | |
|---|---|
| Name | Date of Request |
| Street Address | Phone |
| City / State / Zip | Representing |
| Records to be: _____ Viewed _____ Copied | |
| The University charges 15¢ per page for standard copies. There is no charge for viewing records. Requester must pay in advance by check, made payable to WWU; please remit to above address. Materials will be released when payment is received. | |

**NATURE OF REQUEST**

Description of Records – Please give a written description of the records you wish to see and, where possible, indicate dates, topic, and person(s) referenced. Please be as specific as possible.

I hereby certify that the information obtained as a result of this request for public records will not be used in whole or in part to compile a list for commercial purposes. **(RCW 42.56.070)**

Requester's Signature: _____

| DISPOSITION OF REQUEST – OFFICE USE ONLY | | |
|---|---|---|
| Date Received | Request Number | |
| Request Referred to: Name / Department | | Date Sent |
| 1. _____ | | _____ |
| 2. _____ | | _____ |
| O **REQUEST APPROVED** | Date: | By: |
| O _____ Copies @ 15¢ per page, for total of $ _____ . | | |
| O No charge; request was less than 10 pages. | | |
| O **REQUEST DENIED** | Date: | By: |
| Reasons for Denial: | | |

Revised May 2007

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(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records ((~~or a deposit. Pursuant to RCW 42.56.120, standard photocopies will be provided at a rate of no more than fifteen cents per page, or such amount as may be established in law~~)) per WAC 516-09-070.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-03001 "Public record" defined.** ((~~Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing,"~~)) A public record includes any writing containing information ((~~"~~))relating to the conduct of government((~~"~~)) or the performance of any governmental or proprietary function, ((~~"~~))prepared, owned, used, or retained((~~" by an~~)) by any state agency((~~.~~[1]

~~(1) **Writing.** A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "…handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.17.020(48). An email is a "writing."~~

~~(2) **Relating to the conduct of government.** To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the email itself were not.[2]~~

~~(3) **"Prepared, owned, used, or retained."** A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW 42.17.020(41).~~

~~A record can be "used" by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a "public record."[3] For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision-making process.[4] The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.[5]~~

~~Sometimes agency employees work on agency business from home computers. These home computer records (including email) were "used" by the agency and relate to the "conduct of government" so they are "public records." RCW 42.17.020(41). However, the act does not authorize unbridled searches of agency property.[6] If agency property is not subject to unbridled searches, then neither is the home computer of an agency employee. Yet, because the home computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers. Agencies should ask employees to keep agency-related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work emails back to the employee's agency email account. If the agency receives a request for records that are solely on employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.~~

~~Notes:~~

~~[1] *Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 748, 958 P.2d 260 (1998). For records held by the secretary of the senate or chief clerk of the house of representatives, a "public record" is a "legislative record" as defined in RCW 40.14.100. RCW 42.17.020(41).~~

~~[2] *Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691, 13 P.3d 1104 (2000).~~

~~[3] *Concerned Ratepayers v. Public Utility Dist. No. 1*, 138 Wn.2d 950, 958-61, 983 P.2d 635 (1999).~~

~~[4] *Id.*~~

~~[5] *See* Op. Att'y Gen. 11 (1989), at 4, n.2 ("We do not wish to encourage agencies to avoid the provisions of the public disclosure act by transferring public records to private parties. If a record otherwise meeting the statutory definition were transferred into private hands solely to prevent its public disclosure, we expect courts would take appropriate steps to require the agency to make disclosure or to sanction the responsible public officers.")~~

~~[6] *See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004).~~))

regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission, or internship; and do not have a supervisory role or delegated agency authority.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-040 Processing of public records requests—General.** (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification shall be requested and provided in writing by mail or fax. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(i) A request for all or substantially all records is not a valid request for identifiable records and will be denied. RCW 42.56.080(2).

(ii) A bot request that is one of multiple requests from the requestor to the agency within a twenty-four-hour period will be denied. A "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script. RCW 42.56.080(2).

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Informing persons of records request. In the event that the request seeks records of named persons to whom the records pertain, the public records officer may, prior to providing records, give notice to such persons named in the request whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university shall promptly provide space to inspect public records in the presence of university staff. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee shall make any copies of records requested by the requestor or arrange for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the university has completed a diligent search for the requested records, made any located nonexempt records available for inspection, and provided copies.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

**WAC 516-09-070 Costs of providing copies of public records.** ((~~(1)~~)) Costs for providing copies.

((~~(a) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records.~~

~~(b) Costs for duplicating electronic and other records. The university may charge actual costs for special arrangements necessary for providing copies of records when required by the requestor, e.g., costs of color copying, oversized records, tapes, CDs, or records in other formats. Prior to making duplicate copies~~)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce university resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records,

including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the public records officer shall establish, maintain, and make available for public inspection and copying a statement of costs that the university charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. Fees may be waived when the public records officer determines collecting a fee is not cost effective for the university.

Prior to providing records, the public records officer or designee may request ((~~a deposit of ten percent of~~)) the estimated cost of reproduction.

(((~~(2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(3) Payment. Payment may be made by cash, check, or money order to the university.~~))

## WSR 18-01-081
### PERMANENT RULES
### STATE BOARD OF HEALTH

[Filed December 15, 2017, 11:01 a.m., effective January 15, 2018]

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

Purpose: WAC 246-215-06570 Methods—Prohibiting animals (2009 FDA Food Code 6-501.115), 246-260-151 Restrictions on animals and 246-262-030 Construction permit, amending various sections within Title 246 WAC to reflect the use of respectful language when referring to individuals with disabilities.

Citation of Rules Affected by this Order: Amending WAC 246-215-06570, 246-260-151, and 246-262-030.

Statutory Authority for Adoption: For WAC 246-215-06570 is RCW 43.20.145(1); and for WAC 246-260-151 and 246-262-030 is RCW 70.90.120.

Other Authority: RCW 44.04.280.

Adopted under notice filed as WSR 17-19-056 on October 4 [September 13], 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 3, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: December 11, 2017.

Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 13-03-109, filed 1/17/13, effective 5/1/13)

**WAC 246-215-06570 Methods—Prohibiting animals (2009 FDA Food Code 6-501.115).** (1) Except as specified in subsections (2) and (3) of this section, live animals may not be allowed on the PREMISES of a FOOD ESTABLISHMENT.

(2) Live animals may be allowed in the following situations if the contamination of FOOD; clean EQUIPMENT, UTENSILS, LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result:

(a) Edible FISH or decorative FISH in aquariums, shellfish or crustacea on ice or under refrigeration, and shellfish and crustacea in display tank systems;

(b) Patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(c) In areas that are not used for FOOD preparation and that are usually open for customers, such as dining and sales areas, SERVICE ANIMALS that are controlled by ((~~the disabled EMPLOYEE or person~~)) an employee or individual with a disability, if a health or safety HAZARD will not result from the presence or activities of the SERVICE ANIMAL;

(d) Pets in the common areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if:

(i) Effective partitioning and self-closing doors separate the common dining areas from FOOD storage or FOOD preparation areas;

(ii) Condiments, EQUIPMENT, and UTENSILS are stored in enclosed cabinets or removed from the common dining areas when pets are present; and

(iii) Dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service; and

(e) In areas that are not used for FOOD preparation, storage, sales, display or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals.

(3) Live or dead FISH bait may be stored if contamination of FOOD; clean EQUIPMENT, UTENSILS, and LINENS; and unwrapped SINGLE-SERVICE and SINGLE-USE ARTICLES cannot result.

AMENDATORY SECTION (Amending WSR 04-18-096, filed 9/1/04, effective 10/31/04)

**WAC 246-260-151 Restrictions on animals.** Owners shall prevent animal access to the WRF pool, except service animals in the deck area accompanying users or spectators requiring them. A service animal is defined in RCW

70.84.021 and means an animal that is trained for the purposes of assisting or accommodating ((~~a disabled person's~~)) an individual with a sensory, mental, or physical disability.

AMENDATORY SECTION (Amending WSR 91-02-051, filed 12/27/90, effective 1/31/91)

**WAC 246-262-030 Construction permit.** (1) Persons planning to construct, alter, or modify a RWCF, excluding routine maintenance, shall provide the following to the department or local health officer for review and approval:

(a) A completed construction permit application:

(b) Three sets of plans and specifications prepared and signed by an engineer or architect; and

(c) A report prepared by an engineer certifying the design of the RWCF is consistent with accepted safety engineering practices and industrial standards. Such engineer shall have experience in safety design, including ergonomic aspects of biomechanics of RWCFs, amusement rides, or equal.

(2) Owners may schedule a predesign meeting with the designer and the department or local health officer to determine if the project is consistent with the intent of these rules;

(3) Following review of the completed permit application and plans and specifications, the department or local health officer shall:

(a) Forward written approval, including construction permit, or denial to the owner;

(b) Forward a copy of approved plans to the designer; and

(c) Forward a copy of the approval letter to the department or local health officer and local building department.

(4) The owner shall ensure any construction, modification, or alteration is completed according to approved plans and specifications;

(5) Upon completion of RWCF construction, alteration, or modification and prior to use, owners shall:

(a) Submit to the department or local health officer a construction report signed by an engineer or architect certifying that construction is substantially in compliance with approved plans and specification; and

(b) Notify the department or local health officer at least five working days prior to intended use of the facility.

(6) Owners of the RWCF must comply with all other applicable agency codes and standards. These include, but are not limited to:

(a) The National Electrical Code, chapter 19.28 RCW and chapter 296-46 WAC as determined by the electrical section of the Washington state department of labor and industries.

(b) Local gas piping and appliance codes, American Gas Association standards, and certification meeting the latest ANSI Z21.56 or other applicable and equivalent standards;

(c) Local building authority standards, including structural design of components;

(d) State and local plumbing authority standards;

(e) Washington state department of labor and industries requirements for pressure vessels under chapter 70.79 RCW and chapter 296-104 WAC; and

(f) Codes designated under chapter 70.92 RCW for ((~~handicapped accessibility~~)) accommodating persons with disabilities.

## WSR 18-01-083
### PERMANENT RULES
### DEPARTMENT OF HEALTH

[Filed December 15, 2017, 12:39 p.m., effective January 15, 2018]

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

Purpose: This exception rule making adopts several changes throughout chapter 246-247 WAC, Radiation protection—Air emissions. The adopted changes incorporate 40 C.F.R. 61, subparts H and I by reference without material change which was inadvertently deleted during a rule making in 2012, makes technical and editorial corrections, such as updating addresses, phone numbers, names, corrections to references, publication dates, repeals WAC 246-247-045, which references a national publication that was discontinued, and clarifies rule language by removing the phrase "and/or" in several sections.

Citation of Rules Affected by this Order: Repealing WAC 246-247-045; and amending WAC 246-247-010, 246-247-020, 246-247-030, 246-247-040, 246-247-060, 246-247-080, 246-247-085, 246-247-100, and 246-247-120.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Other Authority: RCW 70.98.050 and 70.98.080.

Adopted under notice filed as WSR 17-22-032 on October 24, 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 4, Repealed 1; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, 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 9, Repealed 1.

Date Adopted: December 12, 2017.

Clark Halvorson
Assistant Secretary

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-010 Applicability.** (1) The standards and requirements of this chapter apply statewide at the following types of facilities that emit radionuclides to the air:

(a) Facilities licensed by the department or by the United States Nuclear Regulatory Commission (NRC);

(b) United States Department of Energy (DOE) facilities;

(c) Non-DOE federal facilities;

(d) Uranium fuel cycle facilities;

(e) Uranium mills that are processing material; and

(f) Any other facility that the department determines emits or has the potential to emit radionuclides to the ambient air.

(2) The standards and requirements of this chapter apply to point sources, nonpoint sources, and fugitive emissions.

(3) The standards and requirements of this chapter apply to stationary and mobile emission units, whether temporary or permanent.

(4) The control technology standards and requirements of this chapter apply to the abatement technology and indication devices of facilities and emission units subject to this chapter. Control technology requirements apply from entry of radionuclides into the ventilated vapor space to the point of release to the environment.

(5) In accordance with RCW 70.94.161(10), air operating permits issued under chapter 173-401 WAC shall incorporate all applicable requirements of this chapter. Therefore, all facilities listed in subsection (1) of this section that are also subject to the operating permit regulations in chapter 173-401 WAC shall be considered in compliance with the requirements of this chapter if they comply with all the applicable requirements of the air operating permit issued under chapter 173-401 WAC. These applicable requirements shall be contained in the radioactive air emissions license which shall be incorporated as part of the air operating permit. In accordance with RCW 70.94.422(1), the department shall enforce all the requirements contained in the radioactive air emissions license.

(6) Should any of the federal regulations that have been adopted by reference in this chapter be rescinded, the affected facilities shall nonetheless comply with all other applicable requirements of this chapter.

(7) An applicant may ((~~obtain a copy of~~)) view any document referenced in this chapter by contacting the department's ((~~division~~)) office of radiation protection, radioactive air emissions ((~~and defense wastes~~)) section at (((~~(360) 236-3260~~)) 509-946-0363. Mail reports, applications, and other written correspondence to the Radioactive Air Emissions ((~~and Defense Wastes~~)) Section at ((~~7171 Cleanwater Lane, Building 5, P.O. Box 47827, Olympia, Washington, 98504-7827~~)) 309 Bradley Boulevard, Suite 201, Richland, Washington, 99352. An applicant may send reports, applications, and other written correspondence to AIRRichland@doh.wa.gov.

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

**WAC 246-247-020 Exemptions.** (1) The following types of facilities or sources of radiation are exempt from the requirements of this chapter because they release no airborne radioactivity, or they prima facie comply with the standards in WAC 246-247-040, or they are already adequately regulated under other requirements:

(a) Users of only sealed sources;

(b) Sealed sources;

(c) Accelerators less than 200 MeV;

(d) Nuclear-powered vessels underway or moored dockside unless under a maintenance condition with a potential-to-emit;

(e) Uranium mill tailings piles disposed of under 40 C.F.R. Part 192 (effective July 1, 2017).

(2) Exemption determinations.

(a) Any exemptions shall be consistent with 40 C.F.R. 61. No exemptions from the standards in WAC 246-247-040 will be granted.

(b) A nonfederal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in compliance at level I of the COMPLY computer code or level I of the NCRP's Commentary No. 3, or equivalent as approved by the department.

(c) A federal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in a TEDE to the MEI from all pathways less than 0.1 mrem/yr.

(d) The facility shall submit all the data necessary to make the exemption determinations of (b) and (c) of this subsection. The department shall determine if any exemptions apply.

(e) Commercial nuclear power plants may request exemption from some of the requirements of this chapter in order to minimize dual regulation with the NRC.

(3) The department may require a facility with exempt emission units to submit a radioactive air emissions report to confirm compliance with applicable standards. The department reserves the right to conduct inspections and audits of the facility to confirm the status of its exempt emission units.

(4) Naturally occurring airborne radionuclides are exempt from the requirements of this chapter unless the concentrations or rates of emissions have been enhanced by industrial processes.

AMENDATORY SECTION (Amending WSR 14-11-012, filed 5/8/14, effective 6/8/14)

**WAC 246-247-030 Definitions, abbreviations, and acronyms.** ((~~Terms used in this chapter have the definitions set forth below with reference to radioactive air emissions.~~)) The definitions, abbreviations, and acronyms in this section and WAC 246-220-010, apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Abatement technology" means any mechanism, process or method that has the potential to reduce public exposure to radioactive air emissions. Abatement control features include automatic mechanisms and administrative controls used in the operation and control of abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment.

(2) "Administrative control" means any policy or procedure that limits the emission of radionuclides.

(3) "ALARA" means as low as reasonably achievable making every reasonable effort to maintain exposures to radiation as far below the dose standards in this chapter as is prac-

tical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other socioeconomic considerations, and in relation to the utilization of nuclear energy, ionizing radiation, and radioactive materials in the public interest. See WAC 246-220-007.

(4) "As low as reasonably achievable control technology" (ALARACT) means the use of radionuclide emission control technology that achieves emission levels that are consistent with the philosophy of ALARA. ALARACT compliance is demonstrated by evaluating the existing control system and proposed nonsignificant modifications in relation to applicable technology standards and other control technologies operated successfully in similar applications. In no event shall application of ALARACT result in emissions of radionuclides that could cause exceedance of the applicable standards of WAC 246-247-040. See the definition of ALARA in this section. Note that ALARACT is equivalent to, but replaces, RACT in the May 7, 1986, version of chapter 173-480 WAC.

(5) "Annual possession quantity" means the sum of the quantity of a radionuclide on hand at the beginning of the calendar year and the quantity of that radionuclide received or produced during the calendar year.

(6) "Best available radionuclide control technology" (BARCT) means technology that will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides from any proposed newly constructed or significantly modified emission units that the licensing authority determines is achievable on a case-by-case basis. A BARCT compliance demonstration must consider energy, environmental, and economic impacts, and other costs through examination of production processes, and available methods, systems, and techniques for the control of radionuclide emissions. A BARCT compliance demonstration is the conclusion of an evaluative process that results in the selection of the most effective control technology from all known feasible alternatives. In no event shall application of BARCT result in emissions of radionuclides that could exceed the applicable standards of WAC 246-247-040. Control technology that meets BARCT requirements also meets ALARACT requirements. See WAC 173-480-030 and 246-247-120.

(7) "Committed effective dose equivalent" (CEDE) means the sum of the products of absorbed dose from internally deposited radionuclides and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man over a fifty-year period.

(8) "Construction" means fabrication, erection, or installation of a new building, structure, plant, process, or operation within a facility that has the potential to emit airborne radionuclides. Construction includes activities of a permanent nature aimed at completion of the emission unit, such as pouring concrete, putting in a foundation, or installing utilities directly related to the emission unit. It does not include preliminary activities such as tests to determine site suitability, equipment procurement and storage, site clearing and grading, and the construction of ancillary buildings.

(9) "Decommissioning" means actions taken to reduce or eliminate the potential public health and safety impacts of a building, structure, or plant that has permanently ceased operations, including, but not limited to, actions such as decontamination, demolition, and disposition.

(10) "Emission unit" means any single location that emits or has the potential to emit airborne radioactive material. This may be a point source, nonpoint source, or source of fugitive emissions.

(11) "Facility" means all buildings, structures, plants, processes, and operations on one contiguous site under control of the same owner or operator.

(12) "Fugitive emissions" are radioactive air emissions which do not and could not reasonably pass through a stack, vent, or other functionally equivalent structure, and which are not feasible to directly measure and quantify.

(13) "Indication device" means any method or apparatus used to monitor, or to enable monitoring, the operation of abatement controls or the potential or actual radioactive air emissions.

(14) "License" means a radioactive air emissions license issued by the department with requirements and limitations listed therein. Compliance with the license requirements are determined and enforced by the department. The license will be incorporated as an applicable requirement in the air operating permit issued by the department of ecology or a local air pollution control authority when the department of ecology or a local air pollution control authority issues an air operating permit.

(15) "Maximally exposed individual" (MEI) means any member of the public (real or hypothetical) who abides or resides in an unrestricted area, and may receive the highest TEDE from the emission unit(s) under consideration, taking into account all exposure pathways affected by the radioactive air emissions.

(16) "Modification" means any physical change in, or change in the method of operation of, an emission unit that could increase the amount of radioactive materials emitted or may result in the emission of any radionuclide not previously emitted. This definition includes the cleanup of land contaminated with radioactive material, the decommissioning of buildings, structures, or plants where radioactive contamination exists, and changes that will cause an increase in the emission unit's operating design capacity. This definition excludes routine maintenance, routine repair, replacement-in-kind, any increases in the production rate or hours of operation, provided the emission unit does not exceed the release quantities specified in the license application or the operating design capacity approved by the department, addition of abatement technology as long as it is not less environmentally beneficial than existing, approved controls, and changes that result in an increase in the quantity of emissions of an existing radionuclide that will be offset by an equal or greater decrease in the quantity of emissions of another radionuclide that is deemed at least as hazardous with regard to its TEDE to the MEI.

(17) "Monitoring" means the measurement of radioactive material released to the ambient air by means of an in-line radiation detector, ((~~and/or~~)) or by the withdrawal of representative samples from the effluent stream. Ambient air

measurements may be acceptable for nonpoint sources and fugitive emissions.

(18) "Nonpoint source" is a location at which radioactive air emissions originate from an area, such as contaminated ground above a near-surface waste disposal unit, whose extent may or may not be well-defined.

(19) "Notice of construction" (NOC) is an application submitted to the department by an applicant that contains information required by WAC 246-247-060 for proposed construction or modification of a registered emission unit(s), or for modification of an existing, unregistered emission unit(s).

(20) "Point source" is a discrete, well-defined location from which radioactive air emissions originate, such as a stack, vent, or other functionally equivalent structure.

(21) "Potential-to-emit" means the rate of release of radionuclides from an emission unit based on the actual or potential discharge of the effluent stream that would result if all abatement control equipment did not exist, but operations are otherwise normal. Determine the potential-to-emit by one of the following methods:

(a) Multiply the annual possession quantity of each radionuclide by the release fraction for that radionuclide, depending on its physical state. Use the following release fractions:

(i) 1 for gases;

(ii) $10^{-3}$ for liquids or particulate solids; and

(iii) $10^{-6}$ for solids.

Determine the physical state for each radionuclide by considering its chemical form and the highest temperature to which it is subjected. Use a release fraction of one if the radionuclide is subjected to temperatures at or above its boiling point; use a release fraction of $10^{-3}$ if the radionuclide is subjected to temperatures at or above its melting point, but below its boiling point. If the chemical form is not known, use a release fraction of one for any radionuclide that is heated to a temperature of one hundred degrees Celsius or more, boils at a temperature of one hundred degrees Celsius or less, or is intentionally dispersed into the environment. Other release fractions may be used only with the department's approval; or

(b) Perform a back-calculation using measured emission rates and *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(c) Measure the quantities of radionuclides captured in each control device, coupled with *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(d) Sample the effluent upstream from all control devices, as approved by the department; or

(e) Use an alternative method approved by the department.

(22) "Replacement-in-kind" means the substitution of existing systems, equipment, components, or devices of an emission unit's control technology with systems, equipment, components, or devices with equivalent, or better, performance specifications that will perform the same function(s).

(23) "Routine" means:

(a) Maintenance, repair, or replacement-in-kind performed on systems, equipment, components, or devices of an emission unit's abatement technology as a planned part of an established inspection, maintenance, or quality assurance program that does not increase the emission unit's operating design capacity; or

(b) Normal, day-to-day operations of a facility.

(24) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix, or radioactive material in airtight containers, designed to prevent release and dispersal of the radioactive material under the most severe conditions encountered in normal use and handling.

(25) "Significant" means the potential-to-emit airborne radioactivity at a rate that could increase the TEDE to the MEI by at least 1.0 mrem/yr as a result of a proposed modification.

(26) "Total effective dose equivalent" (TEDE) means the sum of the dose equivalent due to external exposures and the CEDE due to internal exposures.

(27) "Uranium fuel cycle" means the operations of milling uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity in a nuclear power plant that uses uranium fuel, and reprocessing of spent uranium fuel, to the extent that these operations solely support the production of electrical power for public use. Excluded are mining operations, waste disposal sites, transportation of any radioactive material, and the reuse of recovered nonuranium special nuclear and by-product materials from the cycle.

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-040 General standards.** (1) Standards for radioactive air emissions in the state of Washington are contained in WAC 173-480-040, 173-480-050, and 173-480-060. Additional standards for emissions of radionuclides other than radon from United States Department of Energy facilities and for radionuclide emissions from federal facilities other than United States Nuclear Regulatory Commission (NRC) licensees are contained in 40 C.F.R. Part 61, subparts H and I (((~~(as effective on October 9, 2002)~~))). Additional standards for NRC licensees are contained in 10 C.F.R. 20.1101 (((~~as~~)) effective ((~~on January 9, 1997~~)) August 24, 1998). In accordance with WAC 173-480-050(((~~(3)~~))) (2), the department shall enforce the most stringent standard in effect, notwithstanding any agreement between EPA and any other agency, including those agreements made pursuant to 42 U.S.C. 7412 (d)(9).

(2) In addition to the radioactive air emission standards of subsection (1) of this section, the department's radioactive materials licensees shall comply with the limitations on radioactive air emissions contained in WAC 246-221-070.

(3) All new construction and significant modifications of emission units commenced after August 10, 1988 (the date this chapter originally became effective) shall utilize BARCT (see Appendix B).

(4) All existing emission units and nonsignificant modifications shall utilize ALARACT (see Appendix C).

(5) In order to implement these standards, the department may set limits on emission rates for specific radionuclides from specific emission units ((~~and/or~~)) and set require-

ments and limitations on the operation of the emission unit(s) as specified in a license.

(6) All emissions of radionuclides, including those due to emergency conditions resulting from startup, shutdown, maintenance activities, or process upsets are subject to the standards of this section and, therefore, subject to the enforcement actions of WAC 246-247-100.

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

**WAC 246-247-060 Applications, registration and licensing.** This section describes the information requirements for approval to construct, modify, and operate an emission unit. Any notice of construction (NOC) requires the submittal of the information listed in Appendix A. Complex projects may require additional information. The applicant should contact the department early in the conceptual design phase for guidance on applicable control technologies to consider.

Appendices B and C outline the procedures to demonstrate compliance with the BARCT and ALARACT standards. Based on the Appendix A information provided, the department may advise the applicant which subset of technologies to consider as candidates for meeting BARCT or ALARACT requirements.

For those facilities subject to the operating permit regulations in chapter 173-401 WAC, the radioactive air emissions license will be incorporated as an applicable portion of the air operating permit issued by the department of ecology or a local air pollution control authority. The department will be responsible for determining the facility's compliance with and enforcing the requirements of the radioactive air emissions license.

(1) Requirements for new construction or modification of emission units.

(a) Early in the design phase, the applicant shall submit a NOC containing the information required in Appendix A.

(b) Within thirty days of receipt of the NOC, the department shall inform the applicant if additional information is required. The department may determine, on the basis of the information submitted, that the requirements of BARCT or ALARACT have been met, or may require the applicant to submit a BARCT or ALARACT demonstration compatible with Appendix B or C, respectively.

(c) Within sixty days of receipt of all required information, the department shall issue an approval or denial to construct. The department may require changes to the final proposed control technology.

(d) The applicant may request a phased approval process by so stating and submitting a limited application. The department may grant a conditional approval to construct for such activities as would not preclude the construction or installation of any control or monitoring equipment required after review of the completed application.

(e) The department shall issue a license, or amend an existing license, authorizing operation of the emission unit(s) when the proposed new construction or modification is complete. For facilities subject to the air operating permit requirements of chapter 173-401 WAC, the license shall become part of the air operating permit issued by the department of ecology or a local air pollution control authority. For new construction, this action shall constitute registration of the emission unit(s).

(2) Requirements for modification of unregistered emission units that are not exempt from these regulations.

(a) The applicant shall submit an application containing the information required in Appendix A.

(b) Within thirty days of receipt of the application, the department shall inform the applicant if additional information is required. The department may determine, on the basis of the information submitted, that the requirements of BARCT or ALARACT have been met, or may require the applicant to submit a BARCT or ALARACT demonstration compatible with Appendix B or C, respectively.

(c) Within sixty days of receipt of all required information, the department shall issue or amend the license. For facilities subject to the air operating permit requirements of chapter 173-401 WAC, the license shall become part of the air operating permit issued by the department of ecology or a local air pollution control authority. This action shall constitute registration of the emission unit(s). A determination of noncompliance may result in the issuance of a notice of violation.

(d) The department reserves the right to require the owner of an existing, unregistered emission unit to make modifications necessary to comply with the applicable standards of WAC 246-247-040.

(3) If an emission unit is in violation of any standards contained in WAC 246-247-040, the facility shall either submit a compliance plan which describes how it intends to achieve compliance with the standards, ((~~and/or~~)) or cease operation of the emission unit(s). The facility shall submit the compliance plan within forty-five days of the notice of violation. The cessation of operation of the emission unit(s) shall not necessarily exempt the facility from the requirements of this chapter if active or passive ventilation and radioactive air emission controls will still be required. The department reserves the right to take further enforcement action, if necessary, in accordance with WAC 246-247-100.

(4) The facility shall notify the department at least seven calendar days prior to any planned preoperational tests of new or modified emission units that involve emissions control, monitoring, or containment systems of the emission unit(s). The department reserves the right to witness or require preoperational tests involving the emissions control, monitoring, or containment systems of the emission unit(s).

(5) The license shall specify the requirements and limitations of operation to assure compliance with this chapter. The facility shall comply with the requirements and limitations of the license.

(6) All radioactive air emissions licenses issued by the department, except those issued to radioactive materials licensees, shall have an expiration date of five years from date of issuance or as specified in the air operating permit. For radioactive material licensees, the requirements and limitations for the operation of emission units shall be incorporated into their radioactive materials license, and shall expire when the radioactive materials license expires.

(7) Each federal facility that comes under the authority of this chapter shall hold one license for each site, base, or installation. When applicable, the license shall be part of the facility's air operating permit.

(8) Facilities may request a single categorical license which identifies limits and conditions of operation for similar multipurpose temporary ((~~and/or~~)) or portable emission units. When applicable, the license shall be part of the facility's air operating permit.

(9) All facilities with licensed emission units, except for radioactive materials licensees, shall submit a request to the department for renewal of their radioactive air emissions license at least sixty days prior to expiration of the license or as required by the air operating permit. All renewal requests shall include a summary of the operational status of all emission units, the status of facility compliance with the standards of WAC 246-247-040, and the status of any corrective actions necessary to achieve compliance with the requirements of this chapter. Facilities with licensed emission units that also hold a radioactive materials license issued by the department shall submit this information along with their radioactive material license renewal submittal. If the department is unable to renew a radioactive air emissions license before its expiration date, the existing license, with all of its requirements and limitations, remains in force until the department either renews or revokes the license.

(10) For commercial nuclear power plants or any other thermal energy facility subject to chapter 80.50 RCW and to the requirements of this chapter, the radioactive air emissions license and amendments thereto shall be issued pursuant to a memorandum of agreement between the energy facility site evaluation council (EFSEC) and the department.

AMENDATORY SECTION (Amending WSR 12-01-071, filed 12/19/11, effective 1/19/12)

**WAC 246-247-080 Inspections, reporting, and recordkeeping.** (1) The department reserves the right to inspect and audit all construction activities, equipment, operations, documents, data, and other records related to compliance with the requirements of this chapter. The department may require a demonstration of ALARACT at any time.

(2) All reporting and recordkeeping requirements of 40 C.F.R. 61, subparts H and I, are adopted by reference, as applicable as specified by the referenced subparts. The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-080 for nonfederal emission unit inspections, reporting, or recordkeeping, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(3) The facility shall annually submit to the department the information requirements adopted in subsection (2) of this section, as applicable, along with the following additional information, as applicable:

(a) The results of emission measurements for those emission units subject only to periodic confirmatory measurements;

(b) Wind rose or joint frequency table;

(c) Annual average ambient temperature;

(d) Annual average emission unit gas temperature, if available;

(e) Annual total rainfall;

(f) Annual average emission unit flow rate and total volume of air released during the calendar year.

If this additional information is available in another annual report, the facility may instead provide a copy of that report along with the information requirements in this subsection. Annual reports are due by June 30th for the previous calendar year's operations.

(4) Any report or application that contains proprietary or procurement-sensitive information shall be submitted to the department with those portions so designated. The department shall hold this information confidential, unless required to release the information pursuant to laws, regulations, or court order.

(5) The facility shall notify the department within twenty-four hours of any shutdown, or of any transient abnormal condition lasting more than four hours or other change in facility operations which, if allowed to persist, would result in emissions of radioactive material in excess of applicable standards or license requirements. If requested by the department, the facility shall submit a written report within ten days including known causes, corrective actions taken, and any preventive measures taken or planned to minimize or eliminate the chance of recurrence.

(6) The facility shall file a report of closure with the department whenever operations producing emissions of radioactive material are permanently ceased at any emission unit (except temporary emission units) regulated under this chapter. The closure report shall indicate whether, despite cessation of operations, there is still a potential for radioactive air emissions and a need for an active or passive ventilation system with either an emission control ((~~and/or~~)) or monitoring devices. If decommissioning is planned and will constitute a modification, a NOC is required, as applicable, in accordance with WAC 246-247-060.

(7) The facility shall maintain a log for each emission unit that has received categorical approval under WAC 246-247-060(8). The log shall contain records of important operations parameters including the date, location, and duration of the release, measured or calculated radionuclide concentrations, the type of emissions (liquid, gaseous, solid), and the type of emission control and monitoring equipment.

(8) The facility shall maintain readily retrievable storage areas for all records and documents related to, and which may help establish compliance with, the requirements of this chapter. The facility shall keep these records available for department inspection for at least five years.

(9) The facility shall ensure all emission units are fully accessible to department inspectors. In the event the hazards associated with accessibility to a unit require training ((~~and/or~~)), restrictions, or other requirements for entry, the facility owner or operator shall inform the department, prior to arrival, of those restrictions or requirements. The owner or operator shall be responsible for providing the necessary training, escorts, and support services to allow the department to inspect the facility.

(10) The facility shall make available, in a timely manner, all documents requested by the department for review. The facility shall allow the department to review documents in advance of an inspection. The facility shall allow access to classified documents by representatives of the department with the appropriate security clearance and a demonstrable need-to-know.

(11) The facility shall respond in writing in a timely manner, or within a time limit set by the department, to inspection results which require the facility to implement corrective actions or any other actions so directed by the department.

(12) A facility owner or operator, or any other person may not make any false material statement, representation, or certification in any form, notice, or report required under chapter 70.98 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-085 Compliance determination for existing emission units and facilities.** (1) All procedures for determining compliance with the dose equivalent standards of 40 C.F.R. 61, subparts H and I (((~~as effective on October 9, 2002~~))), are adopted by reference, as applicable as specified by the referenced subparts. The department may, upon request of a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-085 for determining compliance with appropriate dose equivalent standards by nonfederal emission units, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(2) Facilities subject to 40 C.F.R. 61 shall use computer codes or procedures approved by the EPA to determine the TEDE to the MEI; all other facilities shall use computer codes or procedures approved by the department.

(3) The determination of compliance with the dose equivalent standard of WAC 246-247-040 shall include all radioactive air emissions resulting from routine and nonroutine operations for the past calendar year.

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

**WAC 246-247-100 Enforcement actions.** (1) In accordance with RCW 70.94.422, the department may take any of the following actions to enforce compliance with the provisions of this chapter:

(a) Notice of violation and compliance order (RCW 70.94.332).

(b) Restraining order or temporary or permanent injunction (RCW 70.94.425; also RCW 70.98.140).

(c) Penalty: ((~~Fine and/or~~)) Either fine or imprisonment, or both, for each separate violation (RCW 70.94.430).

(d) Civil penalty: Up to ten thousand dollars for each day of continued noncompliance (RCW 70.94.431 (1) through (7)).

(e) Assurance of discontinuance (RCW 70.94.435).

(2) The department, in accordance with RCW 70.98.050 (4)(l), may issue subpoenas in order to compel either the attendance of witnesses ((~~and/or~~)) or production of records, or ((~~documents~~)) both, in connection with any adjudicative or other administrative proceeding.

(3) The department, in accordance with RCW 70.98.160, may impound sources of ionizing radiation.

(4) The secretary of the department, in accordance with RCW 43.70.190, is authorized to bring an action to prohibit a violation or a threatened violation of any department rules or regulation, or to bring any legal proceeding authorized by law to a county superior court.

(5) Any party, against which an enforcement action is brought by the department, has the right to submit an application for the adjudicative process in accordance with chapter 246-10 WAC and chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-120 Appendix B—BARCT compliance demonstration. Purpose.** A BARCT demonstration is used to choose control technologies for the mitigation of emissions of radioactive material from new emission units or significant modifications to emission units. The bases for the BARCT demonstration requirements are the BARCT standard given in WAC 246-247-040, and the definition of BARCT given in WAC 246-247-030. This procedure incorporates certain implementing criteria that enable the department to evaluate a facility's compliance with the BARCT standard. It is the applicant's responsibility to demonstrate the effectiveness of their BARCT determination to the department. The facility should contact the department at the conceptual design phase for guidance on the BARCT demonstration requirements. The department may adjust this demonstration procedure on a case-by-case basis, as needed, to ensure compliance with the substantive standard.

**Scope.** The BARCT demonstration includes the abatement technology and indication devices that demonstrate the effectiveness of the abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment. The applicant shall evaluate all available control technologies that can reduce the level of radionuclide emissions.

**Technology Standards.** The BARCT demonstration and the emission unit design and construction must meet, as applicable, the technology standards shown below if the unit's potential-to-emit exceeds 0.1 mrem/yr TEDE to the MEI. If the potential-to-emit is below this value, the standards must be met only to the extent justified by a cost/benefit evaluation.

**ASME/ANSI AG-1,** Code on Nuclear Air and Gas Treatment (where there are conflicts in standards with the other listed references, this standard shall take precedence)

**ASME/ANSI N509,** Nuclear Power Plant Air-Cleaning Units and Components

**ASME/ANSI N510,** Testing of Nuclear Air Treatment Systems

**ANSI/ASME NQA-1,** Quality Assurance Program Requirements for Nuclear Facilities

**40 C.F.R. 60, Appendix A,** Methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17

**ANSI/HPS N13.1-1999,** Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities

The following standards and references are recommended as guidance only:

**ANSI/ASME NQA-2,** Quality Assurance Requirements for Nuclear Facilities

**ANSI N42.18,** Specification and Performance of On-Site Instrumentation for Continuously Monitoring Radioactivity in Effluents

**ERDA 76-21,** Nuclear Air Cleaning Handbook

**ACGIH 1988,** Industrial Ventilation, A Manual of Recommended Practice, 20th ed., American Conference of Governmental Industrial Hygienists

**BARCT Demonstration Procedure.**

Step 1. **Define facility process variables.** Describe the physical and chemical process. Include the potential radionuclide release rates (by isotope, in units of curies/year), process variables (such as flow rate, temperature, humidity, chemical composition), and other technical considerations. Base the radionuclide release rate on the potential-to-emit.

Radionuclides selected for consideration in the BARCT demonstration shall include those which contribute more than ten percent of the potential TEDE to the MEI or more than 0.1 mrem/yr, and any others which the department determines are necessary.

Step 2. **Gather information on all available control technologies.** Search for all available technologies that can reduce the emissions levels for the radionuclides selected in Step 1. Sources of information shall include previous BARCT demonstrations, regulatory authorities, industry or regulatory agency databases, literature searches, information from technology vendors, research and development reports, and any other means necessary to identify all available technologies. "Available technology" includes any technology that is commercially available. Recently completed searches may be used with department approval.

Step 3. **Determine technical feasibility.** Determine technical feasibility by evaluating vendor specifications for available control technologies identified in Step 2 with respect to the process variables identified in Step 1. Evaluate combinations of abatement technology and control devices by component, and the system as a whole.

If a control technology has poor safety, reliability, or control effectiveness as achieved in practice under the proposed process conditions, or the technology is not applicable to the emission unit under consideration, the technology may be eliminated with supporting documentation of the technical infeasibility.

Step 4. **List all feasible control technologies in order of effectiveness.** Evaluate feasible control technologies for efficiency (effectiveness) in reducing the TEDE to the MEI. List them in order, with the most effective first. If the most effective feasible technology is proposed as BARCT, the demonstration is complete at this step.

Step 5. **Evaluate the environmental, energy, and economic impacts.** Evaluate each control technology in succession, beginning with the most effective. Present an objective evaluation considering both beneficial and adverse impacts. Quantify the data where possible. Impact cost and effectiveness evaluations are incremental and include only that portion of the facility which comes under the authority of this chapter. Evaluate at least the following impacts:

**Environmental impact** - Determine the incremental environmental impact, both beneficial and adverse. Evaluate the beneficial impact of reduction in the TEDE to the surrounding population or, at a minimum, to the MEI due to the abatement of radioactive air emissions. Consider the adverse impacts from waste generation (radioactive and nonradioactive, air and nonair), disposal and stabilization, construction of control equipment, and the health and safety to both radiation workers and the general public.

**Energy impact** - Determine the incremental energy impact. Include the impact of any resulting need for new services such as energy distribution systems.

**Economic impact** - Determine the incremental economic impact. Determine capital and expense costs including design, development, procurement, construction, operation, maintenance, taxes, waste disposal, and any other applicable financial components. Base all costs on the expected lifetime of the emission unit and reduce to an annualized cost for evaluation and comparison.

The adverse economic impact compared to the beneficial impact, including reduction in TEDE to the surrounding population or the MEI, is a measure of the cost versus benefit for the control technology evaluated.

The most effective technology may be eliminated from consideration if the applicant can demonstrate to the department's satisfaction that the technology has unacceptable impacts. State clearly the basis for this conclusion and proceed to the next most effective control technology. If the next most effective technology is proposed as BARCT, the demonstration is complete; otherwise, evaluate the control technology for impacts in accordance with this step.

If the control technology cannot be eliminated on the basis of its impacts, it is proposed as BARCT.

**Reporting.** Prepare a BARCT compliance demonstration report for department review. Provide sufficient information such that the department can validate essential results. If no control technology is feasible, ((~~and/or~~)) or emissions are unacceptable, the department reserves the right to prohibit the construction and operation of the emission unit(s).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-247-045 Where to find technical references.

## WSR 18-01-096
### PERMANENT RULES
### DEPARTMENT OF ECOLOGY

[Order 16-10—Filed December 18, 2017, 2:20 p.m., effective January 18, 2018]

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

Purpose: The department of ecology is adopting new chapter 173-323 WAC, Grants and loans. This rule will apply to grants and loans issued by ecology that are funded under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act. If an ecology grant or loan program has a rule specific to that program, this chapter will not apply.

Citation of Rules Affected by this Order: New chapter 173-323 WAC.

Statutory Authority for Adoption: RCW 70.105D.070(8) Toxics control accounts.

Other Authority: RCW 70.105D.070(8) Toxics control accounts.

Adopted under notice filed as WSR 17-20-079 on October 3, 2017.

Changes Other than Editing from Proposed to Adopted Version: Our intent in this rule making was to be consistent with existing practice. As a result, we are revising the language in WAC 173-323-110(3) to match current ecology policy language. The additions to the language are underlined and the deletions have strikethrough text.

(3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the ~~agreement~~ effective date and prior to completion or ~~agreement~~ expiration date of the agreement, ecology, at its sole discretion, may elect to ~~suspend or~~ terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions. Ecology may also elect to suspend performance of the agreement until ecology determines the funding insufficiency is resolved.

A final cost-benefit analysis is available by contacting Department of Ecology, Attn: Bari Schreiner, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-6998, TTY 877-833-6341, email rulemaking@ecy.wa.gov, web site https://www.ecology.wa.gov/Regulations-Permits/Laws-rules/Rulemaking/WAC-173-323-Jul17.

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 12, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 12, 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: December 18, 2017.

Maia Bellon
Director
by Polly Zehm

## Chapter 173-323 WAC

## GRANTS AND LOANS

NEW SECTION

**WAC 173-323-010 Applicability.** (1) This chapter only applies to grants and loans issued by ecology that are funded under chapter 70.105D RCW, Hazardous waste cleanup—Model Toxics Control Act (MTCA), and that are not regulated by another chapter of the WAC that provides requirements for a specific grant or loan program. Ecology will maintain a list of these other chapters on the agency web site.

(2) This chapter contains general rules for grant and loan issuance and performance, and applies to the following types of grants and loans issued by the department of ecology:

(a) Competitive.

(b) Formula.

(c) One-time.

NEW SECTION

**WAC 173-323-020 Definitions. Agreement effective date** means the date on which the grant or loan agreement becomes effective, as specified in the grant or loan agreement. This is the earliest date eligible costs can be incurred.

**Agreement expiration date** means the latest date eligible costs can be incurred, as specified in the grant or loan agreement.

**Competitive grants and loans** mean grants or loans that are evaluated and awarded based on prioritization, scoring, or ranking.

**Ecology** means the Washington state department of ecology.

**Eligible costs** mean costs that meet all criteria established in the agreement and grant or loan program funding guidelines.

**Formula grants and loans** mean grants or loans awarded based on distribution factors, such as population.

**Grant** means an award of financial assistance given to a recipient to carry out work for a public purpose or public good authorized by law.

**Grant or loan agreement or agreement** means the formal, written, contractual document that details the terms and conditions, scope of work, budget, and schedule of the grant or loan, and that is signed by the authorized signatories of the recipient and ecology.

**Grant or loan program** means a financial assistance program with a distinct set of requirements that provides grant or loan funding to eligible applicants.

**Loan** means an agreement involving lending money to a recipient.

**One-time grant or loan** means a grant or loan that **is not formula or competitive and** involves one or more of the following:

(a) Designation by the legislature or governor; such as a recipient, project, or type of work.

(b) Identification of recipient(s) based on input from an advisory or stakeholder group(s).

(c) An environmental or human health emergency, priority, or concern.

**Signature date** means the date the ecology authorized signatory signs the agreement.

NEW SECTION

**WAC 173-323-030 Grant and loan announcements.**

**Competitive and formula grants and loans**

(1) Ecology must announce the availability of funding opportunities for competitive and formula grants and loans. The announcement must include, at a minimum, a description of:

(a) Purpose of the grant or loan.

(b) Funding cycle for the grant or loan.

(c) Amount of funding available, if known.

(d) Eligibility criteria for the grant or loan.

(e) Information about how to apply.

(f) Application deadlines.

(g) Ecology contact information.

**One-time grants and loans**

(2) Ecology is not required to announce the availability of funding opportunities for one-time grants or loans.

**Unused funds**

(3) Ecology is not required to announce the availability of unused funds. Ecology awards unused funds based on the requirements in WAC 173-323-060. Unused funds are one or all of the following:

(a) Funds awarded by ecology, but not used by the recipient.

(b) Funds offered by ecology, but not accepted by the recipient.

(c) Funds not awarded by ecology in the initial distribution cycle.

NEW SECTION

**WAC 173-323-040 Application.** (1) All applicants must use the electronic system identified by ecology to apply for grants and loans. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

(a) Applicant information.

(b) Project location and description.

(c) Scope of work and tasks for the project.

(d) Requested funding amount for the project.

(e) Any other information required by ecology for the specific type of grant or loan.

(3) For formula or competitive grants and loans, the applicant must submit the application by the due date, if a due date is included in the announcement. Ecology may approve a later due date.

(4) Ecology may request additional information to assist in the application evaluation process.

NEW SECTION

**WAC 173-323-050 Evaluation process.** (1) Ecology reviews and evaluates applications to determine eligibility and funding.

(2) Ecology determines project funding based on a grant or loan program evaluation process.

(3) Ecology evaluates all applications submitted within all required deadlines.

**Competitive and formula grants and loans**

(4) When evaluating competitive and formula grant and loan applications, ecology considers:

(a) Eligibility of the applicant and whether the project meets the eligibility criteria.

(b) Whether the application demonstrates all of the following:

(i) Readiness to proceed.

(ii) Feasibility of the project.

(iii) Availability of matching funds, if applicable.

(c) The applicant's past grant or loan performance.

**One-time grants and loans**

(5) When evaluating a one-time grant or loan application, ecology considers:

(a) Whether the project is eligible for the funding based on the authority for the funding or, when appropriate, the specific direction of the legislature or governor.

(b) Whether the project is an effective use of available funds.

(c) The applicant's past grant or loan performance.

NEW SECTION

**WAC 173-323-060 Awarding funds.** (1) Ecology must award grants and loans:

(a) Consistent with all federal and state laws and rules authorizing the funding and any specific direction by the legislature.

(b) Subject to available funds.

(c) Based on evaluations of grant or loan applications submitted.

(2) Ecology has discretion to determine what the final award amount will be.

NEW SECTION

**WAC 173-323-070 Grant or loan agreement.** (1) Ecology works with the recipient to prepare the grant or loan agreement.

(2) A grant or loan agreement issued and managed in ecology's electronic system must include, at a minimum:

(a) Project description.

(b) Expected outcomes.

(c) Project budget and funding distribution.

(d) Agreement effective date and expiration date.

(e) Description of tasks and deliverables.

(f) Contact information for ecology and the recipient.

(g) Signatures of authorized signatories.

(h) General terms and conditions that specify requirements related, but not limited to:

(i) Amendments and modifications.

(ii) Assignment limits on transfer of rights or claims.

(iii) Inadvertent discovery of human remains and/or cultural resources.

(iv) Compliance with all laws.

(v) Conflict of interest.

(vi) Disputes.

(vii) Environmental data standards.

(viii) Governing law.

(ix) Indemnification.

(x) Independent status of the parties to the agreement.

(xi) Order of precedence for laws, rules, and the agreement.

(xii) Property rights, copyrights, and patents.

(xiii) Records, audits, and inspections.

(xiv) Recovery of funds.

(xv) Severability.

(xvi) Suspension.

(xvii) Sustainable practices.

(xviii) Termination.

(xix) Third-party beneficiary.

(xx) Waiver of agreement provisions.

(i) Special terms and conditions, if any.

(j) Agreement-specific terms and conditions, if any.

(k) General federal conditions, if any.

(l) Other items, if any, necessary to meet the goals of the grant or loan program.

NEW SECTION

**WAC 173-323-080 Amendments to the grant or loan agreement.** (1) A change to any of the following items requires an amendment to the agreement:

(a) Scope of work or the objectives of the project.

(b) Budget, whether for an increase or decrease.

(c) Funding, whether for an increase or decrease.

(d) Redistributing costs among budget tasks that exceed ten percent deviation of the total eligible costs of the funding distribution.

(e) Funding distributions, including share percentages.

(f) Agreement effective or expiration date, whether to shorten or extend.

(g) Special terms and conditions or agreement-specific terms and conditions.

(2) Administrative changes do not require an amendment. Examples of administrative changes include updates to contact names, addresses, and phone numbers.

(3) An amendment must be signed by all parties before it is effective.

NEW SECTION

**WAC 173-323-090 Performance standards.**

**General provisions**

(1) Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant or loan.

(2) Ecology and the recipient must fulfill their obligations under the terms of a grant or loan agreement.

(3) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant or loan agreements and records.

(4) New ecology grant and loan agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(5) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

**Recipient standards**

(6) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants and loans.

(b) Use funds according to the agreement.

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules.

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement.

(e) Obtain preapproval for equipment purchases over the amount specified in the agreement.

(7) As specified in the grant or loan agreement, the recipient must submit the following to ecology:

(a) Progress reports.

(b) Payment requests.

(c) Equipment purchase reports.

(d) Documentation.

(e) A final closeout report.

(f) Any other required information.

**Ecology standards**

(8) Ecology must:

(a) Follow all applicable accounting and auditing laws and rules related to grants and loans.

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement.

(c) Confirm that ecology has received required documentation and the project is satisfactorily completed before approving final payment.

NEW SECTION

**WAC 173-323-100 Reimbursement.** (1) Ecology will only reimburse eligible costs incurred between the effective date and the expiration date of an agreement.

(a) Ecology will not reimburse costs until on or after the signature date of an agreement.

(b) Any costs incurred before the signature date are at the recipient's risk.

(2) The recipient must submit a progress report with a payment request and other documentation as required in the grant or loan agreement to be reimbursed.

(3) Ecology will not issue final payment until the closeout requirements in WAC 173-323-110 have been met.

NEW SECTION

**WAC 173-323-110 Closing out the agreement.** (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant or loan agreement when it determines the recipient has met the closeout requirements or when the agreement has been terminated (see WAC 173-323-120).

NEW SECTION

**WAC 173-323-120 Termination of agreement.** (1) Failure by the recipient to comply with a grant or loan agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of the agreement, ecology, at its sole discretion, may elect to terminate the agreement, in whole or part, or renegotiate the agreement, subject to new funding limitations or conditions. Ecology may also elect to suspend performance of the agreement until ecology determines the funding insufficiency is resolved.

(4) Ecology will document the termination of an agreement.

## WSR 18-01-098
### PERMANENT RULES
## DEPARTMENT OF HEALTH

[Filed December 18, 2017, 4:10 p.m., effective April 1, 2018]

Effective Date of Rule: April 1, 2018.

Purpose: WAC 246-809-990 Licensed counselor and associate—Fees and renewal cycle and 246-810-990 Counselors fees and renewal cycle, the amended rules increase application and renewal fees for licensed marriage and family therapists and associates, certified counselors and advisers, and registered agency affiliated counselors to generate additional revenue to more closely align with current and projected expenses and significantly reduce each program's ending fund balance deficit over time. The amended rules also adjust late renewal penalties and fees for duplicate credentials and verification of credentials to meet department fee standards for all health professions, and make minor formatting changes for clarification.

Citation of Rules Affected by this Order: Amending WAC 246-809-990 and 246-810-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 17-15-070 on July 14, 2017.

Changes Other than Editing from Proposed to Adopted Version: The department is withdrawing proposed amendments to WAC 246-811-990 Chemical dependency professional (CDP) and CDP trainee, fees and renewal cycle, and will evaluate whether there are less-burdensome alternatives to address stakeholder concerns. The department will try to balance our statutory requirement (RCW 43.70.250) to set the fees at a level that will keep the program self-supporting with the need to increase the number of CDPs to address the opioid crisis.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: December 18, 2017.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

**WAC 246-809-990 Licensed counselor, and associate—Fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

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

(3) The following nonrefundable fees will be charged:

| Title | Fee |
|---|---|
| **Licensed marriage and family therapist** | |
| **Original application** | |
| Application and initial license | $((~~150.00~~)) 290.00 |
| ((~~License~~ | ~~75.00~~)) |
| UW online access fee (HEAL-WA) | 16.00 |
| **Active license renewal** | |
| Renewal | ((~~140.00~~)) 180.00 |
| Late renewal penalty | ((~~70.00~~)) 90.00 |
| Expired license reissuance | 85.00 |
| UW online access fee (HEAL-WA) | 16.00 |

| Title | Fee |
|---|---|
| **Retired active license renewal** | |
| Renewal | 70.00 |
| Late renewal penalty | 35.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Duplicate license** | 10.00 |
| **Verification of license** | ((~~10.00~~)) 25.00 |
| **Licensed marriage and family therapy associate** | |
| **Original application** | |
| Application | ((~~50.00~~)) 65.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Renewal** | |
| Renewal | ((~~40.00~~)) 50.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| Late renewal penalty | ((~~40.00~~)) 50.00 |
| Expired license reissuance | 40.00 |
| **Duplicate license** | ((~~15.00~~)) 10.00 |
| **Verification of license** | ((~~15.00~~)) 25.00 |
| **Licensed mental health counselor** | |
| **Original application** | |
| Application | 95.00 |
| Initial license | 80.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Active license renewal** | |
| Renewal | 90.00 |
| Late renewal penalty | 50.00 |
| Expired license reissuance | 65.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Retired active license renewal** | |
| Renewal retired active | 70.00 |
| Late renewal penalty | 35.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Duplicate license** | 10.00 |
| **Verification of license** | ((~~10.00~~)) 25.00 |
| **Licensed mental health counselor associate** | |
| **Original application** | |
| Application | 35.00 |
| **Renewal** | |
| Renewal | 25.00 |
| Late renewal penalty | 25.00 |
| Expired license reissuance | 40.00 |
| **Duplicate license** | ((~~15.00~~)) 10.00 |
| **Verification of license** | ((~~15.00~~)) 25.00 |
| **Licensed advanced social worker and licensed independent clinical social worker** | |
| **Original application** | |
| Application | 100.00 |
| Initial license | 100.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Active license renewal** | |
| Renewal | 100.00 |
| Late renewal penalty | 50.00 |
| Expired license reissuance | 72.50 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Retired active license renewal** | |
| Renewal retired active | 65.00 |
| Late renewal penalty | 30.00 |
| UW online access fee (HEAL-WA) | 16.00 |
| **Duplicate license** | 10.00 |
| **Verification of license** | ((~~10.00~~)) 25.00 |
| **Licensed advanced social worker associate and licensed independent clinical social worker associate** | |
| **Original application** | |
| Application | 35.00 |
| UW online access fee (HEAL-WA)* | 16.00 |
| **Renewal** | |
| Renewal | 25.00 |
| Late renewal penalty | 25.00 |
| UW online access fee (HEAL-WA)* | 16.00 |
| Expired license reissuance | 40.00 |
| **Duplicate license** | ((~~15.00~~)) 10.00 |
| **Verification of license** | ((~~15.00~~)) 25.00 |

* Surcharge applies to independent clinical social worker associate only.

AMENDATORY SECTION (Amending WSR 14-07-095, filed 3/18/14, effective 7/1/14)

**WAC 246-810-990 Counselors fees and renewal cycle.** (1) Under chapter 246-12 WAC, Part 2, a counselor must renew his or her credential every year on the practitioner's birthday.

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

(3) The following nonrefundable fees will be charged:

| Title | Fee |
|---|---|
| (((~~(3) The following nonrefundable fees will be charged for~~)) Registered hypnotherapist: | |
| Application and registration | $155.00 |
| Renewal | $80.00 |
| Late renewal penalty | $75.00 |
| Expired registration reissuance | $75.00 |
| Duplicate registration | $((~~30.00~~)) 10.00 |
| ((~~Certification~~)) Verification of registration | $((~~30.00~~)) 25.00 |
| (((~~(4) The following nonrefundable fees will be charged for~~)) Certified counselor: | |
| Application and certification | $((~~160.00~~)) 255.00 |
| Examination or reexamination | $85.00 |
| Renewal | $((~~140.00~~)) 225.00 |
| Late renewal penalty | $((~~50.00~~)) 115.00 |
| Expired credential reissuance | $100.00 |
| Duplicate credential | $((~~15.00~~)) 10.00 |
| ((~~Certification~~)) Verification of credential | $((~~15.00~~)) 25.00 |
| (((~~(5) The following nonrefundable fees will be charged for~~)) Certified adviser: | |
| Application and certification | $((~~130.00~~)) 210.00 |
| Examination or reexamination | $85.00 |
| Renewal | $((~~115.00~~)) 185.00 |
| Late renewal penalty | $((~~50.00~~)) 95.00 |
| Expired credential reissuance | $100.00 |
| Duplicate credential | $((~~15.00~~)) 10.00 |
| ((~~Certification~~)) Verification of credential | $((~~15.00~~)) 25.00 |
| (((~~(6) The following nonrefundable fees will be charged for~~)) Registered agency affiliated counselor: | |
| Application and registration | $((~~60.00~~)) 90.00 |
| Renewal | $((~~50.00~~)) 75.00 |
| Late renewal penalty | $((~~40.00~~)) 50.00 |
| Expired registration reissuance | $50.00 |
| Duplicate registration | $((~~15.00~~)) 10.00 |
| ((~~Certification~~)) Verification of registration | $((~~15.00~~)) 25.00 |

## WSR 18-01-103
### PERMANENT RULES
## DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Behavioral Health Administration)

[Filed December 19, 2017, 9:44 a.m., effective January 19, 2018]

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

Purpose: The division of behavioral health and recovery is proposing new rules in chapter 388-877B WAC to enable behavioral health agencies to become certified to deliver secure withdrawal management and stabilization services. RCW 71.05.760(2) directs the department to ensure that at least one sixteen-bed secure detoxification facility is operational by April 1, 2018, and that at least two sixteen-bed secure detoxification facilities are operational by April 1, 2019.

Citation of Rules Affected by this Order: New WAC 388-877B-0140, 388-877B-0145, 388-877B-0150, 388-877B-0155, 388-877B-0160, 388-877B-0165, 388-877B-0170, 388-877B-0175, and 388-877B-0180.

Statutory Authority for Adoption: RCW 71.05.215, 71.05.560, 71.24.035, 71.24.037, 71.34.380.

Other Authority: Chapters 71.05, 71.24, 71.34 RCW, RCW 71.05.760.

Adopted under notice filed as WSR 17-21-014 on October 9, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877B-0165 was amended to include RCW 71.05.360 as follows:

"The individual rights assured by RCW 71.05.217 and 71.05.360, and, if serving minors, RCW 71.34.355 must be prominently posted within the department or ward of the secure withdrawal management and stabilization facility and provided in writing to the individual in a language or format that the individual can understand. ~~As follows:~~"

Subsections (1) through (12) were struck.

A final cost-benefit analysis is available by contacting Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-

5330, phone 360-725-1342, email stephanie.vaughn@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 9, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 0, Repealed 0.

Date Adopted: December 19, 2017.

Cheryl Strange
Secretary

NEW SECTION

**WAC 388-877B-0140 Secure withdrawal management and stabilization facilities—General.** The rules in WAC 388-877B-0140 through 388-877B-0180 apply to behavioral health agencies that provide secure withdrawal management and stabilization services.

(1) Secure withdrawal management and stabilization services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with patient placement criteria and chapters 71.05 and 71.34 RCW.

(2) An agency providing secure withdrawal management and stabilization services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

(i) Hospital licensing regulations in chapter 246-320 WAC;

(ii) Private psychiatric and alcoholism hospitals in chapter 246-322 WAC;

(iii) Private alcohol and substance use disorder hospitals in chapter 246-324 WAC; or

(iv) Residential treatment facility in chapter 246-337 WAC, under the service category chemical dependency acute detoxification in WAC 246-337-015(1);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC and WAC 388-877B-0110; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0140 through 388-877B-0180.

(3) An agency must:

(a) Use patient placement criteria for continuing care needs and discharge planning and decisions;

(b) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis; and

(c) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

NEW SECTION

**WAC 388-877B-0145 Secure withdrawal management and stabilization facilities—Standards for administration.** A secure withdrawal management and stabilization facility must develop policies and procedures to implement all of the following administrative requirements:

(1) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(a) All doors and windows leading to the outside locked at all times;

(b) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(c) Adequate space to segregate violent or potentially violent persons from others;

(d) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(e) Adequate numbers of staff present at all times that are trained in facility security measures.

(2) Designation of a professional person as defined in RCW 71.05.020 in charge of clinical services at that facility.

(3) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(4) A policy management structure that establishes:

(a) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;

(b) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;

(c) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(d) Procedures to assure the protection of individual and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(e) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;

(f) Procedures to assure that a chemical dependency professional and licensed physician are available for consultation and communication with both the individual and the direct patient care staff twenty-four hours a day, seven days a week;

(g) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2; and

(h) Procedures to ensure that individuals detained for up to fourteen or ninety additional days of treatment are evalu-

ated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

NEW SECTION

**WAC 388-877B-0150 Secure withdrawal management and stabilization facilities—Admission and intake evaluation.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, a secure withdrawal management and stabilization facility must ensure all of the following requirements:

(1) The facility must obtain a copy of the petition for initial detention stating the evidence under which the individual was detained.

(2) The facility must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening by a nurse, as defined in chapter 18.79 RCW, prior to admission that includes current level of intoxication, available medical history, and known medical risks;

(b) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(c) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(d) An evaluation by a chemical dependency professional within seventy-two hours of admission to the facility;

(e) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs - short screener (GAIN-SS) or its successor;

(f) Development of an initial plan for treatment while in the facility;

(g) Consideration of less restrictive alternative treatment at the time of admission; and

(h) The admission diagnosis and what information the determination was based upon.

(3) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the person was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a designated crisis responder to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a designated crisis responder within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition;

(f) Review of the client's current crisis plan, if applicable and available; and

(g) Review of the admission diagnosis and what information the determination was based upon.

(4) An individual who has been delivered to the facility by a peace officer for evaluation must be evaluated by a mental health professional within the following time frames:

(a) Three hours of an adult individual's arrival;

(b) Twelve hours of arrival for a child in an inpatient evaluation and treatment facility; or

(c) At any time for a child who has eloped from a child long-term inpatient treatment facility and is being returned to the facility.

(5) If a mental health professional or chemical dependency professional and physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the needs of an individual would be better served by placement in an evaluation and treatment facility then the individual must be referred to a more appropriate placement in accordance with RCW 71.05.210.

NEW SECTION

**WAC 388-877B-0155 Secure withdrawal management and stabilization facilities—Treatment plan.** In addition to meeting the agency clinical requirements in WAC 388-877-0620, a secure withdrawal management and stabilization facility must ensure the treatment plan includes all of the following:

(1) A protocol for safe and effective withdrawal management, including medications as appropriate.

(2) Services to each individual that addresses the individual's:

(a) Substance use disorder and motivation;

(b) Use of patient placement criteria for continuing care needs and discharge planning and decisions; and

(c) Resources and referral options to refer an individual to appropriate services.

(3) At least daily contact between each involuntary individual and a chemical dependency professional or a trained professional person for the purpose of:

(a) Observation;

(b) Evaluation;

(c) Release from involuntary commitment to accept treatment on a voluntary basis; and

(d) Discharge from the facility to accept voluntary treatment upon referral.

(4) Discharge assistance provided by chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

NEW SECTION

**WAC 388-877B-0160 Secure withdrawal management and stabilization facilities—Agency staff requirements.** In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, a secure withdrawal management and stabilization facility must ensure all of the following:

(1) All of the agency staff requirements found in WAC 388-877B-0110 for substance use disorder detoxification services are met.

(2) Development of an individualized annual training plan, to include at least:

(a) The skills the staff member needs for the staff member's job description and the population served;

(b) Least restrictive alternative options available in the community and how to access them;

(c) Methods of individual care;

(d) De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and

(e) The requirements of chapters 71.05 and 71.34 RCW, this chapter, and protocols developed by the division of behavioral health and recovery.

(3) Compliance with the training requirements outlined in subsection (2) of this section if contract staff provide direct services.

NEW SECTION

**WAC 388-877B-0165 Secure withdrawal management and stabilization facilities—Posting of individual rights.** The individual rights assured by RCW 71.05.217 and 71.05.360, and, if serving minors, RCW 71.34.355 must be prominently posted within the department or ward of the secure withdrawal management and stabilization facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

**WAC 388-877B-0170 Secure withdrawal management and stabilization facilities—Rights related to antipsychotic medication.** All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

(1) The clinical record must document all of the following:

(a) An attempt to obtain informed consent.

(b) The individual was asked if they wish to decline treatment during the twenty-four hour period prior to any court proceeding that is related to their continued treatment and the individual has the right to attend. The individual's answer must be in writing and signed when possible. In the case of a child under the age of eighteen, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within twenty-four hours of the decision. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to thirty days.

(c) For continued treatment beyond thirty days through the hearing on any one hundred eighty-day petition filed under RCW 71.05.217, provided the facility's medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every sixty days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all one hundred eighty-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for one hundred eighty days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a

psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

NEW SECTION

**WAC 388-877B-0175 Secure withdrawal management and stabilization facilities—Special considerations for serving minor children.** Secure withdrawal management and stabilization facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving children. These special considerations must include all of the following:

(1) Procedures to ensure that adults are separated from minors who are not yet thirteen years of age.

(2) Procedures to ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in a secure withdrawal management and stabilization facility that serves adults will not harm the minor or adults.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that provides secure withdrawal management and stabilization services for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of withdrawal management treatment or evaluation. The facility must:

(a) Provide a written and oral notice to the minor's parent(s) or legal representative(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options; and

(b) Obtain and place in the clinical file a signed acknowledgment from the minor's parent(s) that they received the notice required under (a) of this subsection.

(5) Procedures that address provisions for evaluating a minor brought to the facility for evaluation by a parent(s).

(6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation, or abandonment of a minor has occurred.

(7) Procedures to ensure a minor thirteen years of age or older who is brought to a secure withdrawal management and stabilization facility or hospital for immediate withdrawal management services is evaluated by the professional person in charge of the facility. The professional person must evaluate the minor's condition and determine the need for secure withdrawal management treatment and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the minor for up to twelve hours for evaluation by a designated crisis responder to commence detention proceedings.

(8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to secure withdrawal management treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510 and within the confidentiality requirements of 42 C.F.R. Sec. 2.14.

(10) Procedures to ensure a minor who has been admitted on the basis of a designated crisis responder petition for detention for secure withdrawal management and stabilization services is evaluated by the facility providing seventy-two hour secure withdrawal management and stabilization services to determine the minor's condition and either admit or release the minor. If the minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(11) Procedures for the examination and evaluation of a minor approved for inpatient admission to include:

(a) The needs to be served by placement in an evaluation and treatment facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the minor of their rights in accordance with chapter 71.34 RCW.

(12) Procedures to petition for fourteen-day commitment that are in accordance with RCW 71.34.730.

(13) Procedures for commitment hearing requirements and release from further secure withdrawal management and stabilization services that may be subject to reasonable conditions, if appropriate, and are in accordance with RCW 71.34.740.

(14) Procedures for discharge and conditional release of a minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release.

(15) Procedures to ensure rights of a minor undergoing treatment and posting of such rights are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(16) Procedures for the release of a minor who is not accepted for admission or who is released by a secure withdrawal management and stabilization facility that are in accordance with RCW 71.34.365.

(17) Procedures to ensure treatment of a minor and all information obtained through treatment under this chapter are disclosed only in accordance with RCW 71.34.340.

(18) Procedures to make court records and files available in accordance with RCW 71.34.335.

(19) Procedures to release secure withdrawal management and stabilization services information only in accordance with applicable state and federal statutes.

NEW SECTION

**WAC 388-877B-0180 Secure withdrawal management and stabilization facilities—Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent.** (1) A secure withdrawal management and stabilization facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s) brings the minor to the facility.

(2) The secure withdrawal management and stabilization facility must follow all of the requirements outlined for evaluation and treatment facilities in WAC 388-865-0578 and RCW 71.34.600 through 71.34.630.

## WSR 18-01-104
### PERMANENT RULES
### BUILDING CODE COUNCIL

[Filed December 19, 2017, 9:47 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amending chapter 51-50 WAC, the Washington state adoption of the 2015 International Building Code, and chapter 51-54A WAC, the Washington state adoption of the 2015 International Fire Code, to amend Section 907 in both codes related to alarm systems in schools and the effective date of a certification requirement for fire alarm designers and inspectors.

Citation of Rules Affected by this Order: Amending WAC 51-50-0907 and 51-54A-0907.

Statutory Authority for Adoption: RCW 19.27.074.

Other Authority: RCW 19.27.550.

Adopted under notice filed as WSR 17-16-101 on July 27, 2017.

Changes Other than Editing from Proposed to Adopted Version: The numbering was corrected to locate items in the numbered list under the exceptions rather than additional list items.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, 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: November 17, 2017.

Steve K. Simpson
Council Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

**WAC 51-50-0907 Section 907—Fire alarm and detection systems.**

**[F] 907.2.3 Group E.** ((~~A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

((~~EXCEPTIONS:~~ ~~1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.~~

~~2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.~~

~~3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:~~

~~3.1 Interior corridors are protected by smoke detectors.~~

~~3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.~~

~~3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.~~

~~4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.~~ ))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS:
1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
4.1 Interior *corridors* are protected by smoke detectors.
4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by *heat detectors* or other *approved* detection devices.

**[F] 907.2.3.1 Sprinkler systems or detection.** When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

**[F] 907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS:
1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**[F] 907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:
1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

**[F] 907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:
1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

**[F] 907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

**[F] 907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review.** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, ((~~2017~~)) 2018.)

**907.10.3 Testing/maintenance.** All inspection, testing, maintenance and programing not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, ((~~2017~~)) 2018.)

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 17-10-028, filed 4/25/17, effective 5/26/17)

**WAC 51-54A-0907 Fire alarm and detection systems.**

**907.2.3 Group E.** ((~~A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.~~

EXCEPTIONS: ~~1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.~~

~~2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.~~

~~3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:~~

~~3.1 Interior corridors are protected by smoke detectors.~~

~~3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.~~

~~3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.~~

~~4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.~~))

Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

Exceptions:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior corridors are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

**907.2.3.1 Sprinkler systems or detection.** When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

**907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS: 1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.

2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS: 1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.

2. Smoke detection is not required for exterior balconies.

**907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.

2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

**907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review:** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, ((~~2017~~)) 2018).

**907.10.3 Testing/maintenance:** All inspection, testing, maintenance and programing not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms (effective July 1, ((~~2017~~)) 2018).

## WSR 18-01-106
### PERMANENT RULES
## DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)

[Filed December 19, 2017, 9:57 a.m., effective January 19, 2018]

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

Purpose: Amending WAC 246-817-110, 246-817-160, and 246-817-220 and repealing WAC 246-817-155 dental licensure rules. The rules implement SHB 1411 (chapter 100, Laws of 2017). which amended RCW 18.32.040 (3)(c) by changing the dentist licensure eligibility requirements. The law allows dental residency in lieu of practical examination from approved community based residencies to all Commission on Dental Accreditation general practice residency, advanced education in general dentistry residency, and pediatric residency programs. The residency must be at least one year in length and must be in a setting that serves predominantly low-income patients in Washington state.

Citation of Rules Affected by this Order: Repealing WAC 246-817-155; and amending WAC 246-817-110, 246-817-160, and 246-817-220.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Other Authority: RCW 18.32.040.

Adopted under notice filed as WSR 17-16-143 on August 1, 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 3, Repealed 1.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 1.

Date Adopted: December 19, 2017.

John B. Carbery, D.M.D., Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 16-05-083, filed 2/16/16, effective 3/18/16)

**WAC 246-817-110 Dental licensure—Initial eligibility and application requirements.** To be eligible for Washington state dental licensure, the applicant must provide:

(1) A completed application and fee. The applicant must submit a signed application and required fee as defined in WAC 246-817-990;

(2) Proof of graduation from a dental school approved by the DQAC:

(a) DQAC recognizes only those applicants who are students or graduates of dental schools in the United States or

Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation of the American Dental Association. The applicant must have received, or will receive, a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree from that school;

(b) Other dental schools which apply for DQAC approval and which meet these adopted standards to the DQAC's satisfaction may be approved, but it is the responsibility of a school to apply for approval and of a student to ascertain whether or not a school has been approved;

(3) Proof of successful completion of the National Board Dental Examination Parts I and II, or the Canadian National Dental Examining Board Examination. An original scorecard or a certified copy of the scorecard shall be accepted. Exception: Dentists who obtained initial licensure in a state prior to that state's requirement for successful completion of the national boards, may be licensed in Washington, provided that the applicant provide proof that their original state of licensure did not require passage of the national boards at the time they were initially licensed. Applicants need to meet all other requirements for licensure;

(4) Proof of graduation from an approved dental school. The only acceptable proof is an official, posted transcript sent directly from such school, or in the case of recent graduates, a verified list of graduating students submitted directly from the dean of the dental school. Graduates of nonaccredited dental schools must also meet the requirements outlined in WAC 246-817-160;

(5) A complete listing of professional education and experience including college or university (predental), and a complete chronology of practice history from the date of dental school graduation to present, whether or not engaged in activities related to dentistry;

(6) Proof of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;

(7) Proof of malpractice insurance if available, including dates of coverage and any claims history;

(8) Written certification of any licenses held, submitted directly from another licensing entity, and including license number, issue date, expiration date and whether applicant has been the subject of final or pending disciplinary action;

(9) Proof of successful completion of ((~~an approved~~)):

(a) An approved practical/clinical examination under WAC 246-817-120; or

(b) A qualifying ((~~postgraduate~~)) residency program((~~, approved by or administered under the direction of the DQAC~~)) under RCW 18.32.040 (3)(c);

(10) Proof of successful completion of an approved written jurisprudence examination;

(11) A recent 2" x 2" photograph, signed, dated, and attached to the application;

(12) Authorization for background inquiries to other sources may be conducted as determined by the DQAC, including but not limited to the national practitioner data bank and drug enforcement agency. Applicants are responsible for any fees incurred in obtaining verification of requirements;

(13) Any other information for each license type as determined by the DQAC.

AMENDATORY SECTION (Amending WSR 16-17-104, filed 8/19/16, effective 9/19/16)

**WAC 246-817-160 Graduates of nonaccredited schools.** (1) An applicant for Washington state dental licensure, who is a graduate of a dental school or college not accredited by the Commission on Dental Accreditation shall provide to the Dental Quality Assurance Commission (commission):

(a) Materials listed in WAC 246-817-110 (1), (3), (5) through (8), and (10) through (13);

(b) Official school transcript or diploma with dental degree listed transcribed to English if necessary;

(c) Evidence of successful completion of at least two additional predoctoral or postdoctoral academic years of dental education.

(i) Additional predoctoral or postdoctoral dental education completed prior to July 1, 2018, must be obtained at a dental school in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation.

(ii) Additional predoctoral or postdoctoral dental education completed after July 1, 2018, must be obtained in a dental program in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation and include clinical training; and

(d) An applicant for Washington state dental licensure must provide proof of successful completion of ((~~an approved~~)):

(i) An approved practical/clinical examination under WAC 246-817-120; or

(ii) A qualifying ((~~postgraduate~~)) residency program((~~, approved by or administered under the direction of the commission authorized in~~)) under RCW 18.32.040 (3)(c).

(2) Upon completion of the requirements in subsection (1)(a) through (c) of this section, an applicant may be eligible to take the practical examination as approved in WAC 246-817-120 (2) through (4).

(a) The commission may issue examination approval up to six months before an applicant has completed the two additional predoctoral or postdoctoral academic years of dental education.

(b) An applicant must provide a letter from the school where the two additional predoctoral or postdoctoral academic years is being obtained indicating expected date of education completion.

AMENDATORY SECTION (Amending WSR 11-07-052, filed 3/17/11, effective 4/17/11)

**WAC 246-817-220 Inactive license.** (1) A dentist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.32.185.

(2) An inactive license must be renewed every year on or before the practitioner's birthday according to WAC 246-12-100 and 246-817-990.

(3) If a license is inactive for three years or less, to return to active status a dentist must meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(4) If a license is inactive for more than three years, and the dentist has been actively practicing in another United States jurisdiction, to return to active status the dentist must:

(a) Provide certification of an active dentist license, submitted directly from another licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(b) Provide verification of active practice in another United States jurisdiction within the last three years; and

(c) Meet the requirements of WAC 246-12-110, 246-817-440, and 246-817-990.

(5) If a license is inactive for more than three years, and the dentist has not been actively practicing in another United States jurisdiction, to return to active status the dentist must provide:

(a) A written request to change licensure status;

(b) The applicable fees according to WAC 246-817-990;

(c) Proof of successful completion of ((~~an approved~~)):

(i) An approved practical/practice examination ((~~according to~~)) under WAC 246-817-120; or

(ii) A qualifying ((~~postgraduate~~)) residency program((~~, approved by or administered under the direction of the DQAC~~)) under RCW 18.32.040 (3)(c);

(d) Written certification of all dental or health care licenses held, submitted directly from the licensing entity. The certification shall include the license number, issue date, expiration date and whether the applicant has been the subject of final or pending disciplinary action;

(e) Written declaration that continuing education and competency requirements for the two most recent years have been met according to WAC 246-817-440;

(f) Proof of successful completion of an approved written jurisprudence examination within the past year;

(g) Proof of malpractice insurance if available, including dates of coverage and any claims history; and

(h) Proof of AIDS education according to WAC 246-817-110, if not previously provided.

REPEALER

The following section of the Washington Administrative Code is repealed:

| | |
|---|---|
| WAC 246-817-155 | Dental resident license to full dental license—Conditions. |

## WSR 18-01-111
### PERMANENT RULES
### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 19, 2017, 11:08 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Purpose: The purpose of this rule making is to adopt rules pertaining to the enforcement directives related to the implementation of Initiative 1433, An Act Related to Fair Labor Standard. Initiative 1433 passed on November 8, 2016, and requires, in part, employers provide paid sick leave to employees beginning on January 1, 2018. Initiative 1433 directs the department to adopt and implement rules to carry out and enforce the act.

The effective date of January 1, 2018, is allowed under RCW 34.05.380(3), as this adoption is required by statute.

Citation of Rules Affected by this Order: New WAC 296-128-780 Enforcement—Retaliation, 296-128-790 Enforcement—Retaliation—Civil penalties, 296-128-800 Enforcement—Retaliation—Appeals, 296-128-810 Enforcement—Paid sick leave, 296-128-820 Enforcement—Tips and service charges, 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties, 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals, 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures, and 296-128-860 Severability clause.

Statutory Authority for Adoption: RCW 49.46.810.

Other Authority: RCW 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830.

Adopted under notice filed as WSR 17-20-080 on October 3, 2017.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 296-128-780 Enforcement—Retaliation:**

- Subsection (5), the department added "at its discretion" and "may" to reinforce that the department providing an employer with notice of its intent to issue a citation and notice of assessment, and potentially providing up to thirty days to take corrective action to remedy a retaliatory action, is discretionary.

**WAC 296-128-790 Enforcement—Retaliation—Civil penalties**:

- Subsection (4), the department added clarifying language which indicates that the collection of unpaid citations and notices of assessment will be for "amounts owed."

**WAC 296-128-800 Enforcement—Retaliation—Appeals:**

- Subsection (9), the department added "director's" to specify that the language in this subsection specifically addresses an order issued by the director of the department of labor and industries.

**WAC 296-128-810 Enforcement—Paid sick leave**:

- Subsection (2)(b), the department added "whichever is greater" to indicate that the department, under this subsection, has the authority to order payment from the employer to an employee at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued.
- Subsection (4), the department added clarifying language to reflect that in addition to requiring a noncompliant employer to provide an employee access to paid sick leave they would have accrued absent the

employer's noncompliance, the department can also require the employer to pay to the employee their normal hourly compensation for hours of paid sick leave that would have accrued during the period of noncompliance.

**WAC 296-128-820 Enforcement—Tips and service charges**:

- The department has updated the language to better align with enforcement of complaints pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087.

**WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals**:

- Subsection (6), the department omitted language to reflect that the language in this subsection applies to those circumstances specifically when penalties, not earnings, are assessed.

**WAC 296-128-860 Severability clause:**

- The department added language to reflect that the severability clause applies to all rules drafted in accordance with chapter 49.46 RCW, not just the language which addresses enforcement of RCW 49.46.200 and 49.46.210.

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 9, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 19, 2017.

Joel Sacks
Director

NEW SECTION

**WAC 296-128-780 Enforcement—Retaliation.** (1) An employee who believes that they were subject to retaliation by their employer, as defined in WAC 296-128-770, for the exercise of any employee right under chapter 49.46 RCW, may file a complaint with the department within one hundred eighty days of the alleged retaliatory action. The department may, at its discretion, extend the one hundred eighty-day period on recognized equitable principles or because extenuating circumstances exist. For example, the department may extend the one hundred eighty-day period when there is evidence that the employer has concealed or misled the employee regarding the alleged retaliatory action.

(2) If an employee files a timely complaint with the department alleging retaliation, the department will investigate the complaint and issue either a citation and notice of assessment or a determination of compliance within ninety days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(3) The department may consider a complaint to be otherwise resolved when the employee and the employer reach a mutual agreement to remedy any retaliatory action, or the employee voluntarily and on the employee's own initiative withdraws the complaint. Mutual agreements include, but are not limited to, rehiring, reinstatement, back pay, and reestablishment of benefits.

(4) If the department's investigation finds that the employee's allegation of retaliation cannot be substantiated, the department will issue a determination of compliance to the employee and the employer detailing such finding.

(5) If the department's investigation finds that the employer retaliated against the employee, and the complaint is not otherwise resolved, the department may, at its discretion, notify the employer that the department intends to issue a citation and notice of assessment, and may provide up to thirty days after the date of such notification for the employer to take corrective action to remedy the retaliatory action. If the complaint is not otherwise resolved, then the department shall issue a citation and notice of assessment. The department's citation and notice of assessment may:

(a) Order the employer to make payable to the employee earnings that the employee did not receive due to the employer's retaliatory action, including interest of one percent per month on all earnings owed. The earnings and interest owed will be calculated from the first date earnings were owed to the employee;

(b) Order the employer to restore the employee to the position of employment held by the employee when the retaliation occurred, or restore the employee to an equivalent position with equivalent employment hours, work schedule, benefits, pay, and other terms and conditions of employment;

(c) Order the employer to cease using any policy that counts the use of paid sick leave as an absence that may lead to or result in discipline against the employee;

(d) For the first violation, order the employer to pay the department a civil penalty as specified in WAC 296-128-790; and

(e) For a repeat violation, order the employer to pay the department up to double the civil penalty as specified in WAC 296-128-790.

(6) The department will send the citation and notice of assessment or determination of compliance to both the employer and employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(7) During an investigation of the employee's retaliation complaint, if the department discovers information suggesting alleged violations by the employer of the employee's other rights under chapter 49.46 RCW, and all applicable

rules, the department may investigate and take appropriate enforcement action without requiring the employee to file a new or separate complaint. If the department determines that the employer violated additional rights of the employee under chapter 49.46 RCW, and all applicable rules, the employer may be subject to additional enforcement actions for the violation of such rights. If the department discovers information alleging the employer retaliated against or otherwise violated rights of other employees under chapter 49.46 RCW, and all applicable rules, the department may launch further investigation under chapter 49.46 RCW, and all applicable rules, without requiring additional complaints to be filed.

(8) The department may prioritize retaliation investigations as needed to allow for timely resolution of complaints.

(9) Nothing in WAC 296-128-780 through 296-128-800 impedes the department's ability to investigate under the authority prescribed in RCW 49.48.040.

(10) Nothing in WAC 296-128-780 through 296-128-800 precludes an employee's right to pursue private legal action.

NEW SECTION

**WAC 296-128-790 Enforcement—Retaliation—Civil penalties.** (1) If the department's investigation finds that an employer retaliated against an employee, pursuant to the procedures outlined in WAC 296-128-780, the department may order the employer to pay the department a civil penalty. A civil penalty for an employer's retaliatory action will not be less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid earnings attributable to the retaliatory action, whichever is greater. The maximum civil penalty for an employer's retaliatory action shall be twenty thousand dollars for the first violation, and forty thousand dollars for each repeat violation.

(2) The department may, at any time, waive or reduce any civil penalty assessed against an employer under this section if the department determines that the employer has taken corrective action to remedy the retaliatory action.

(3) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) Collections of amounts owed for unpaid citations and notices of assessment, as detailed in WAC 296-128-780(5), will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

**WAC 296-128-800 Enforcement—Retaliation—Appeals.** (1) A person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may, within thirty days after the date of such decision, submit a request for reconsideration to the department setting forth the grounds for seeking such reconsideration, or submit an appeal to the director pursuant to the procedures outlined in subsection (4) of this section. If the department receives a timely request for reconsideration, the department will either accept the request or treat the request as a notice of appeal.

(2) If a request for reconsideration is accepted, the department will send notice of the request for reconsideration to the employer and the employee. The department will determine if there are any valid reasons to reverse or modify the department's original decision to issue a citation and notice of assessment or determination of compliance within thirty days of receipt of such request. The department may extend this period by providing advance written notice to the employee and employer setting forth good cause for an extension of the period, and specifying the duration of the extension. After reviewing the reconsideration, the department will either:

(a) Notify the employee and the employer that the citation and notice of assessment or determination of compliance is affirmed; or

(b) Notify the employee and the employer that the citation and notice of assessment or determination of compliance has been reversed or modified.

(3) A request for reconsideration submitted to the department shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending the reconsideration decision by the department.

(4) Within thirty days after the date the department issues a citation and notice of assessment or a determination of compliance, or within thirty days after the date the department issues its decision on the request for reconsideration, a person, firm, or corporation aggrieved by a citation and notice of assessment or a determination of compliance may file with the director a notice of appeal.

(5) A notice of appeal filed with the director under this section shall stay the effectiveness of the citation and notice of assessment or the determination of compliance pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(6) Upon receipt of a notice of appeal, the director shall assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation and notice of assessment or determination of compliance shall be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director shall conduct administrative review in accordance with chapter 34.05 RCW.

(7) If a request for reconsideration is not submitted to the department within thirty days after the date of the original citation and notice of assessment or determination of compliance, and a person, firm, or corporation aggrieved by a citation and notice of assessment or determination of compliance did not submit an appeal to the director, then the citation and notice of assessment or determination of compliance is final and binding, and not subject to further appeal.

(8) The director shall issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(9) Director's orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(10) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-780 through 296-128-800 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department.

NEW SECTION

**WAC 296-128-810 Enforcement—Paid sick leave.** (1) If an employee files a complaint with the department alleging that the employer failed to provide the employee with paid sick leave as provided in RCW 49.46.200 and 49.46.210, the department will investigate the complaint as an alleged violation of a wage payment requirement, as defined by RCW 49.48.082(12).

(2) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover during an ongoing employment relationship, the employee may elect to:

(a) Receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, based on a calculation of at least one hour of paid sick leave for every forty hours worked as an employee during the period of noncompliance; or

(b) Receive payment from the employer at their normal hourly compensation for each hour of paid sick leave that the employee would have used or been reasonably expected to use, whichever is greater, during the period of noncompliance, not to exceed an amount the employee would have otherwise accrued. The employee will receive full access to the balance of accrued paid sick leave hours unlawfully withheld by the employer, less the number of paid sick leave hours paid out to the employee pursuant to this subsection.

(3) When the department's investigation results in a finding that the employer failed to provide the employee with paid sick leave accrual, use, or carryover, and the employee is no longer employed by the same employer, the employee may elect to receive payment at their normal hourly compensation, receive reinstatement of the balance of paid sick leave hours, or receive a combination of payment and reinstatement from the employer for all hours of paid sick leave that would have accrued during the period of noncompliance. Such hours must be based on a calculation of at least one hour of paid sick leave for every forty hours worked as an employee.

(4) The department's notice of assessment, pursuant to RCW 49.48.083, may order the employer to provide the employee any combination of reinstatement and payment of accrued, unused paid sick leave hours assessed pursuant to subsection (2) or (3) of this section.

(5) For purposes of this section, an employer found to be in noncompliance cannot cap the employee's carryover of paid sick leave at forty hours to the following year for each year of noncompliance ("year" as defined in WAC 296-128-620(6)).

NEW SECTION

**WAC 296-128-820 Enforcement—Tips and service charges.** If an employee files a complaint with the department alleging that their employer failed to pay to the employee all tips and gratuities due to the employee under RCW 49.46.020, or all service charges due to the employee under RCW 49.46.020 and 49.46.160, the department will investigate the complaint. The department will investigate the complaint pursuant to the procedures outlined in the Wage Payment Act, RCW 49.48.082 through 49.48.087.

NEW SECTION

**WAC 296-128-830 Enforcement—Complaints alleging a violation of other rights under chapter 49.46 RCW—Duty of department to investigate—Citations—Civil penalties.** (1) If an employee files a complaint with the department alleging a violation of the employee's rights under chapter 49.46 RCW, and all applicable rules, that are not otherwise enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, the department will investigate the complaint under this section. Alleged violations include, but are not limited to, failure of an employer to comply with: The recordkeeping requirements set forth in WAC 296-128-010; the requirements to maintain written policies or collective bargaining agreements, as outlined in WAC 296-128-650(3), 296-128-660(2), 296-128-710(1), and 296-128-730(4); and notification and reporting requirements set forth in WAC 296-128-760.

(a) The department may not investigate any such alleged violation of rights that occurred more than three years before the date that the employee filed the complaint.

(b) If an employee files a timely complaint with the department, the department will investigate the complaint and issue either a citation assessing a civil penalty or a closure letter within sixty days after the date on which the department received the complaint, unless the complaint is otherwise resolved. The department may extend the period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the period, and specifying the duration of the extension.

(c) The department will send notice of a citation assessing a civil penalty or the closure letter to both the employer and the employee by service of process or using a method by which the mailing can be tracked or the delivery can be confirmed to their last known addresses.

(2) If the department's investigation finds that the employee's allegation cannot be substantiated, the department will issue a closure letter to the employee and the employer detailing such finding.

(3) If the department determines that the violation of rights under chapter 49.46 RCW, and all applicable rules, that are not enforced by the department pursuant to WAC 296-128-780 through 296-128-820, or the Wage Payment Act, RCW 49.48.082 through 49.48.087, was a willful violation, and the employer fails to take corrective action, the department may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A citation assessing a civil penalty for a willful violation of such rights will be one thousand dollars for each willful violation. For a repeat willful violator, the citation assessing a civil penalty will not be less than two thousand dollars

for each repeat willful violation, but no greater than twenty thousand dollars for each repeat willful violation.

(b) The department may not issue a citation assessing a civil penalty if the employer reasonably relied on:

(i) A written order, ruling, approval, opinion, advice, determination, or interpretation of the director; or

(ii) An interpretive or administrative policy issued by the department and filed with the office of the code reviser. In accordance with the department's retention schedule obligations under chapter 40.14 RCW, the department will maintain a complete and accurate record of all written orders, rulings, approvals, opinions, advice, determinations, and interpretations for purposes of determining whether an employer is immune from civil penalties under (b) of this subsection.

(c) The department may, at any time, waive or reduce a civil penalty assessed under this section if the director determines that the employer has taken corrective action to resolve the violation.

(d) The department will deposit civil penalties paid under this section in the supplemental pension fund established under RCW 51.44.033.

(4) For purposes of this section, the following definitions apply:

(a) "Repeat willful violator" means any employer that has been the subject of a final and binding citation for a willful violation of one or more rights under chapter 49.46 RCW, and all applicable rules, within three years of the date of issuance of the most recent citation for a willful violation of one or more such rights.

(b) "Willful" means a knowing and intentional action that is neither accidental nor the result of a bona fide dispute.

NEW SECTION

**WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW—Administrative appeals.** (1) A person, firm, or corporation aggrieved by a citation assessing a civil penalty issued by the department under WAC 296-128-830 may appeal the citation assessing a civil penalty to the director by filing a notice of appeal with the director within thirty days of the department's issuance of the citation assessing a civil penalty. A citation assessing a civil penalty not appealed within thirty days is final and binding, and not subject to further appeal.

(2) A notice of appeal filed with the director under this section will stay the effectiveness of the citation assessing a civil penalty pending final review of the appeal by the director as provided for in chapter 34.05 RCW.

(3) Upon receipt of a notice of appeal, the director will assign the hearing to an administrative law judge of the office of administrative hearings to conduct the hearing and issue an initial order. The hearing and review procedures will be conducted in accordance with chapter 34.05 RCW, and the standard of review by the administrative law judge of an appealed citation assessing a civil penalty will be de novo. Any party who seeks to challenge an initial order shall file a petition for administrative review with the director within thirty days after service of the initial order. The director will conduct administrative review in accordance with chapter 34.05 RCW.

(4) The director will issue all final orders after appeal of the initial order. The final order of the director is subject to judicial review in accordance with chapter 34.05 RCW.

(5) Orders that are not appealed within the period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal.

(6) An employer who fails to allow adequate inspection of records in an investigation by the department under WAC 296-128-830 through 296-128-850 within a reasonable time period may not use such records in any appeal under such rules to challenge the correctness of any determination by the department of penalties assessed.

NEW SECTION

**WAC 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW—Collection procedures.** Collections of unpaid citations assessing civil penalties will be handled pursuant to the procedures outlined in RCW 49.48.086.

NEW SECTION

**WAC 296-128-860 Severability clause.** If any provision of the rules in this chapter, or their application to any person or circumstance is held invalid, the remainder of these rules or their application of the provision to other persons or circumstances is not affected.

## WSR 18-01-113
### PERMANENT RULES
### DEPARTMENT OF LABOR AND INDUSTRIES

[Filed December 19, 2017, 11:25 a.m., effective January 31, 2018]

Effective Date of Rule: January 31, 2018.

Purpose: The purpose of this rule making is to adopt amendments to sections in chapter 296-104 WAC, Board of boiler rules—Substantive, to update and clarify the rules and for technical changes. The boiler rules are reviewed on a regular basis to ensure the rules are consistent with national boiler and unfired pressure vessel safety standards and industry practice, for rule clarity, housekeeping, etc. This rule making will:

- Adopt modifications to the installation/reinstallation permit requirements to improve the permit and inspection process and create consistency for all customers on permit requirements. For example:
  - o Make the "installer" of a boiler and pressure vessel responsible for permit requirements, permit fees, and civil penalties;
  - o Eliminate the permit exemption for owner/user inspection agencies and Washington state specials to require permit filing, permit fees and civil penalties;
  - o Create a new definition for "installer" to clarify the entity or individual responsible for permit requirements; and

- o Establish notification requirements for filing permits and emergency installations.
- Adopt procedures for removing condemned vessels permanently from service to ensure that unsafe vessels are not returned to service for use;
- Automatically adopt the current edition of the National Board Inspection Code (NBIC) for in-service inspection of historic steam boilers and nonnuclear repairs and alterations of boilers and unfired pressure vessels to bring the rules up-to-date and ensure the rules remain consistent with the latest national standards;
- Adopt new definitions to define the usage status of a vessel, such as active, inactive, out-of-service, and scrapped to clarify terms and eliminate confusion for inspectors and customers; and
- Adopt modifications to the board of boiler rules meeting schedule to hold regular meetings quarterly, as opposed to February, May, September, and November of each year to allow the board more flexibility in scheduling of meetings.

Citation of Rules Affected by this Order: Amending WAC 296-104-010, 296-104-015, 296-104-020, 296-104-102, 296-104-502, 296-104-700, and 296-104-701.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 17-20-078 on October 3, 2017.

A final cost-benefit analysis is available by contacting Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, web site www.lni.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: December 19, 2017.

Terry Chapin, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

**WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident"** shall mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which renders a boiler or unfired pressure vessel unsafe to return to operation.

**"Agriculture purposes"** shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

**"Attendant"** shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

**"Automatic operation of a boiler"** shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

**"Board of boiler rules"** or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

**"Boiler and unfired pressure vessel installation/reinstallation permit,"** shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

((~~Owner/user inspection agency's, and Washington specials are exempt from "boiler and unfired pressure vessel installation/reinstallation permit."~~))

**"Boilers and/or unfired pressure vessels"** - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Boiler/unfired pressure vessel status"** shall mean:

* Active - Boilers or pressure vessels that are currently in service.
* Inactive - Boilers or pressure vessels still located at the facility but are physically disconnected from the energy input and system.
* Out-of-service - Boilers or pressure vessels that are no longer at the facility.
* Scrapped - Boilers or pressure vessels that have been condemned as defined below.

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements ((~~and appropriately marked by an inspector~~)). The following procedure shall be utilized:

(a) The inspector will issue and follow the department's "red tag" procedure.
(b) The object will be immediately removed from service.
(c) The existing national board and state number shall be obliterated by the inspector.
(d) The ASME nameplate and/or stamping shall be physically removed by the owner/user and verified by the inspector.

(e) If required by the inspector, a portion of the pressure vessel shall be physically removed by the owner/user. This action will render the object incapable of holding pressure.

(f) The inspector shall document this procedure on the boiler/pressure vessel inspection report and change the object status to "scrapped."

- **"Corrosion"** shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Historical boilers and unfired pressure vessel"** shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW 70.79.070.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system. All vessels must be listed by a nationally recognized testing agency and shall be protected with an approved temperature and pressure safety relief valve and shall not exceed any of the following limits:

* Pressure of 160 psi (1100 kpa);
* Temperature of 210 degrees F (99°C).

Additional requirements:

* Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
* Hot water heaters exceeding 200,000 Btu/hr (58.58 kW) input must be ASME code stamped.

- **"Indirect water heater"** shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.
- **"Installer"** shall mean any entity or individual who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is defined as a registered contractor, owner, user or designee.
- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.

(a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.

(b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.

(c) Pool heaters open to the atmosphere are excluded.

- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:

* Fired process tubular heaters;
* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
* Piping whose primary function is to transport fluids from one location to another;

* Those vessels defined as low pressure heating boilers or power boilers.
- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

**"Certificate of competency"** shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

**"Certificate of inspection"** shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

**"Code, API-510"** shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Code, ASME"** shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Code, NBIC"** shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

**"Commission"** shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

**"Department"** as used herein shall mean the department of labor and industries of the state of Washington.

**"Director"** shall mean the director of the department of labor and industries.

**"Domestic and/or residential purposes"** shall mean serving a private residence or an apartment house of less than six families.

**"Existing installations"** shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

**"Inspection certificate"** see "certificate of inspection."

**"Inspection, external"** shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

**"Inspection, internal"** shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

**"Inspector"** shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

**"Jacketed steam kettle"** shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

**"Nationwide engineering standard"** shall mean a nationally accepted design method, formulae and practice acceptable to the board.

**"Operating permit"** see "certificate of inspection."

**"Owner"** or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

**"Owner/user inspection agency"** shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

**"Place of public assembly"** or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of 50 or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing homes and assisted living facilities.

**"Special design"** shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

**WAC 296-104-015 Administration—When and where are the board meetings held?** The board of boiler rules shall hold its regular meetings ((~~in February, May, Sep-~~

~~tember and November of each year~~)) quarterly. The time, place, and date of each regular meeting shall be set by the department, approved by the board chair and published annually. Special meetings may be called by the chair.

AMENDATORY SECTION (Amending WSR 09-12-033, filed 5/27/09, effective 6/30/09)

**WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?** ((~~A "boiler and pressure vessel installation/reinstallation permit," as defined in WAC 296-104-010 shall be submitted by the owner or designee on a form approved by the chief inspector.~~)) (1) "Boiler/pressure vessel, water heater installation or reinstallation permit" shall mean a permit approved by the chief inspector and submitted by the installer prior to starting installation or reinstallation of any boiler/pressure vessel or water heater within the jurisdiction of Washington.

(2) The "installer" is any entity or person who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is responsible for the installation/reinstallation permit fee per WAC 296-104-700.

(3) The following pressure retaining items, as defined in WAC 296-104-010, require a boiler/pressure vessel and water heater installation or reinstallation permit:

- Expansion tanks;
- Historical boilers and unfired pressure vessels;
- Hot water heaters;
- Indirect water heaters;
- Jacketed steam kettles;
- Low pressure boilers;
- Nonstandard boilers and unfired pressure vessels;
- Pool heaters;
- Power boilers;
- Reinstalled boilers and unfired pressure vessels;
- Secondhand boilers and unfired pressure vessels;
- Standard boilers and unfired pressure vessels;
- Unfired pressure vessels;
- Unfired steam boilers.

(4) The installer shall notify the chief inspector utilizing the permit form to request a permit inspection not less than ten working days prior to placing equipment in operation. Equipment shall not be operated other than for testing, prior to an inspection being conducted which finds the boiler or pressure vessel to be in compliance with this chapter.

(5) If an emergency installation (due to leakage, failure, etc.) situation occurs, the installer will notify the chief inspector within forty-eight hours after installation, utilizing the permit form to request an immediate inspection of the installation.

(6) The installer may be subject to civil penalties per WAC 296-104-701 for failure to comply with the filing requirements of the installation permit.

AMENDATORY SECTION (Amending WSR 15-14-100, filed 6/30/15, effective 9/1/15)

**WAC 296-104-102 Inspection—What are the standards for in-service inspection?** Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers, unfired pressure vessels, and safety devices in the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, ((~~2,~~)) 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be ((~~Appendix "C"~~)) Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) ((~~2004~~)) current edition ((~~with 2006 addenda~~)).

(3) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(4) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

(5) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 14-13-087, filed 6/17/14, effective 8/1/14)

**WAC 296-104-502 Repairs—What is the standard for nonnuclear repairs and alterations?** The standard for repairs/alterations is:

(1) National Board Inspection Code (NBIC), ((~~2013~~)) current edition Part 3, excluding Section 6, Supplements 1, ((~~2,~~)) 5, 6, and 10 which may be used as nonmandatory guidelines.

(2) The standard for repair of historical boilers or riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be ((~~Appendix C~~)) Part 3, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) ((~~2004~~)) current edition ((~~with 2006 addenda~~)).

AMENDATORY SECTION (Amending WSR 17-13-105, filed 6/20/17, effective 7/31/17)

**WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit ((~~(excludes inspection and certificate of inspection fee).~~)) fee of $54.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is $23.30.

Hot water heaters per RCW 70.79.090, inspection fee: $7.10.

| Heating boilers: | Internal | External |
|---|---|---|
| Cast iron—All sizes | $39.30 | $31.40 |
| All other boilers less than 500 sq. ft. | $39.30 | $31.40 |
| 500 sq. ft. to 2500 sq. ft. | $78.60 | $39.30 |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | $31.40 | $15.40 |

| Power boilers: | Internal | External |
|---|---|---|
| Less than 100 sq. ft. | $39.30 | $31.40 |
| 100 sq. ft. to less than 500 sq. ft. | $47.60 | $31.40 |
| 500 sq. ft. to 2500 sq. ft. | $78.60 | $39.30 |
| Each additional 2500 sq. ft. of total heating surface, or any portion thereof | $31.40 | $15.40 |

Pressure vessels:

Square feet shall be determined by multiplying the length of the shell by its diameter.

| | Internal | External |
|---|---|---|
| Less than 15 sq. ft. | $31.40 | $23.30 |
| 15 sq. ft. to less than 50 sq. ft. | $46.60 | $23.30 |
| 50 sq. ft. to 100 sq. ft. | $54.40 | $31.40 |
| For each additional 100 sq. ft. or any portion thereof | $54.30 | $15.40 |

Nonnuclear shop inspections, field construction inspections, and special inspection services:

| | |
|---|---|
| For each hour or part of an hour up to 8 hours | $47.60 |
| For each hour or part of an hour in excess of 8 hours | $71.10 |

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

| | |
|---|---|
| For each hour or part of an hour up to 8 hours | $71.10 |
| For each hour or part of an hour in excess of 8 hours | $111.20 |

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

| | |
|---|---|
| For each hour or part of an hour up to 8 hours | $47.60 |
| For each hour or part of an hour in excess of 8 hours | $71.10 |

When insurance company is authorized inspection agency:

| | |
|---|---|
| For each hour or part of an hour up to 8 hours | $71.10 |
| For each hour or part of an hour in excess of 8 hours | $111.20 |

Examination fee: A fee of $88.00 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of $47.50 for initial work card. A fee of $29.50 for annual renewal.

If a special inspector changes companies: A work card fee of $47.50.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of $442.60 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

AMENDATORY SECTION (Amending WSR 05-22-092, filed 11/1/05, effective 1/1/06)

**WAC 296-104-701 What are the civil penalties?** (1) An installer, owner, user, or operator of a boiler or pressure vessel that violates a provision of chapter 70.79 RCW, or of the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Operating under pressure a boiler or pressure vessel which the department has condemned, has issued a red tag or has suspended the inspection certificate:

| | |
|---|---|
| First offense | $150.00 |
| Second offense | $300.00 |
| Each additional offense | $500.00 |

Each day of such unlawful operation shall be deemed a separate offense.

Operating under pressure a boiler or pressure vessel without a valid inspection certificate:

| | |
|---|---|
| First offense | $50.00 |
| Second offense | $100.00 |
| Each additional offense | $200.00 |

Each day of such unlawful operation shall be deemed a separate offense.

Installation of a boiler or pressure vessel without meeting prior filing requirements of WAC 296-104-020:

| | |
|---|---|
| First offense | $100.00 |
| Second offense | $200.00 |
| Each additional offense | $500.00 |

Performing a repair to a boiler or pressure vessel, involving welding to a pressure retaining part, without meeting requirements of WAC 296-104-502:

| | |
|---|---|
| First offense | $150.00 |
| Second offense | $300.00 |
| Each additional offense | $500.00 |

Performing an alteration to a boiler or pressure vessel without meeting requirements of WAC 296-104-502:

| | |
|---|---|
| First offense | $150.00 |
| Second offense | $300.00 |
| Each additional offense | $500.00 |

Performing resetting, repair or restamping of safety valves, safety relief valves, or rupture discs, without meeting requirements of WAC 296-104-520:

| | |
|---|---|
| First offense | $150.00 |
| Second offense | $300.00 |
| Each additional offense | $500.00 |

Failure of owner to notify chief inspector in case of accident which serves to render a boiler or unfired pressure vessel inoperative, as required by WAC 296-104-025:

| | |
|---|---|
| Each offense | $100.00 |

Failure to comply with a noncompliance report requirement:

| | |
|---|---|
| Within 90 days | $100.00 |
| Within 91-180 days | $250.00 |
| Within 181-270 days | $400.00 |
| Within 271-360 days | $500.00 |

(2) The inspection agency responsible for the in-service inspector of a boiler or unfired pressure vessel that violates a provision of chapter 296-104 WAC, or the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Failure to file a report of inspection per WAC 296-104-040:

| | |
|---|---|
| Each offense | $50.00 |

Failure to apply a state serial number per WAC 296-104-140:

| | |
|---|---|
| Each offense | $50.00 |

Failure to attach a "Red TAG" per WAC 296-104-110:

| | |
|---|---|
| Each offense | $50.00 |

Each object (boiler or unfired pressure vessel) is considered a separate offense.

(3) The department shall by certified mail notify a person of its determination that the person has violated this section.

(4) Any person aggrieved by an order or act under the boiler and unfired pressure vessels law or under the rules and regulations may appeal to the board of boiler rules. This appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector per RCW 70.79.361.

(5) Each day that a violation occurs will be a separate offense. A violation will be a second or additional offense only if it occurs within one year from the first violation.

## WSR 18-01-119

### PERMANENT RULES

### EVERETT COMMUNITY COLLEGE

[Filed December 19, 2017, 12:53 p.m., effective January 19, 2018]

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

Purpose: Update student code of conduct rules, WAC 132E-120-110 through 132E-120-390 are repealed and replaced with the following proposed rules:

WAC 132E-122-010 Authority, clarifies the college's authority regarding the rights and responsibilities of students.

WAC 132E-122-020 Statement of jurisdiction, the academic affairs section is unchanged but moved to a different section number (180). The new section clarifies the jurisdiction of the conduct code.

WAC 132E-122-030 Preamble, the former section remains unchanged but is moved to a different section number (190). The new section adds a preamble to the conduct code identifying the college's purpose and governance.

WAC 132E-122-040 Civility statement, the student due process section has been adjusted as cited below. The new section adds a current campus wide policy to the conduct code.

WAC 132E-122-050 Nondiscrimination statement, the student affairs section remains unchanged but is moved to a different section number (200). The nondiscrimination statement moves this section of the conduct code forward and has been updated in accordance with changes in federal guidance documents.

WAC 132E-122-060 Definitions, the former policy section remains [unchanged] but has been moved to a different section (210). The new section provides definitions of terms used throughout the policy for the purpose of clarity.

WAC 132E-122-070 Statement of student rights, the former policy section remains [unchanged] but has been moved to a different section (220). The new section identifies the rights of students under the conduct code.

WAC 132E-122-080 Academic affairs, the statement of purpose section has been removed as the key components are now included in the above listed sections and offer more clarity. The new section is a new section number only, the policy language has not changed.

WAC 132E-122-090 Academic grievance procedures, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-100 Students as research subjects, the general policies concerning student conduct section has been updated in the below listed sections. The updates ensure the college's compliance with new state law requirements. The new section is a new section number only, the policy language has not changed.

WAC 132E-122-110 Student affairs, the former policy section remains [unchanged] but has been moved to a different section (230). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-120 Student affairs grievance procedures, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-130 Disclosure of student information, the former section has been clarified and broken into multiple sections (i.e. authority, jurisdiction, etc.). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-140 College distribution of literature procedures, a new violations section has been written as an update, retitled as "prohibited student conduct" and moved to a different section (240). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-150 Authority to request identification, a new sanctions section has been written as an update, retitled as "disciplinary sanctions,["] and moved to a different section (280). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-160 Prohibited student conduct, a new disciplinary procedures section (310) has been written to comply with new state law (see below). Prohibited student conduct was given a new section name and updated as indicated above.

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination, the former policy section remains [unchanged] but has been given a new section number (370). The new section clarifies how misconduct can be reported and requirements or [for] reporting.

WAC 132E-122-180 Confidentiality and right to privacy, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Notice," and section number (371). The new policy section informs students of the confidentiality provided to them and their right to privacy.

WAC 132E-122-190 Retaliation is prohibited, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Failure to appear," and section number (372). The new policy section updates retaliation as prohibited conduct, providing more clarity.

WAC 132E-122-200 Disciplinary sanctions, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Appeal," and section number (362). The new policy section updates policy language in accordance with legal advice.

WAC 132E-122-210 Terms and conditions, the former policy section has been moved to a new section number (360) and updated as noted below. The new policy section adds restitution, professional evaluation, and no contact/tress pass [trespass] order in compliance with Title IX guidance.

WAC 132E-122-220 Loss of eligibility—Student athletic participation, the former policy section has been updated and moved to a new title, "Appeals—All cases," and section number (330) as noted below. The new title is a section change only, no policy language has been changed.

WAC 132E-122-230 Standard of burden of proof, the former policy section has been updated and moved to a new section number (361) as noted below. The new policy section clarifies the burden of proof for all conduct cases; the burden of proof itself has not been changed.

WAC 132E-122-240 Initiation of disciplinary action—Non-Title IX, policy language regarding evidence admissible in hearings has been incorporated in the brief adjudication process sections in accordance with recently updated state law. The new title and policy language provides clarification on the brief adjudicative proceedings and ensures compliance with recently updated state law.

WAC 132E-122-250 Initiation of Title IX proceedings, the new section provides clarity on the proceedings for Title IX cases and how these proceedings differ from non-Title IX matters.

WAC 132E-122-260 Interim measures, the former policy information has been updated as noted below and moved to a different section number (353). The new section identifies interim measures as they pertain to matters involving sexual misconduct in compliance with Title IX regulations.

WAC 132E-122-270 Appeals—All cases, the former policy information has been updated to provide clarity and the policy language has been adjusted to comply with recently updated state law. The policy section has also moved (330). This policy section title has been updated to provide clarity and the policy language has been adjusted to comply with recently updated state law.

WAC 132E-122-280 Participation of advisors and attorneys, the former policy section remains [unchanged] but has been moved to a new section (390). The new policy section is new language providing information and clarity regarding student's right to an advocate and/or attorney and their participation throughout the conduct proceedings in this conduct code.

WAC 132E-122-290 Brief adjudicative proceedings—Initial hearing, the former section remains [unchanged] but has been moved to a new section (181). The new section has been updated to provide clarity on brief adjudicative proceedings and to ensure compliance with recently updated state law.

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision, this is a new policy section developed to ensure compliance with recently updated state law.

WAC 132E-122-310 Full adjudicative proceedings—Student conduct committee, the former section remains [unchanged] but has been moved to a new section (201). The new policy section updates the current student conduct committee proceedings to ensure compliance with recently updated state law.

WAC 132E-122-320 Full adjudicative process—Pre-hearing procedure, this is a new policy section added to pro-

vide clarity in process and to ensure compliance with recently updated state law.

WAC 132E-122-330 Full adjudicative process—Hearing procedure, this is a new policy section added to provide clarity in process and to ensure compliance with recently updated state law.

WAC 132E-122-340 Full adjudicative process—Decision, this is a new policy section added [to] clarify the former policy section titled decision by student conduct committee and to ensure compliance with recently updated state law.

WAC 132E-122-350 Full adjudicative proceedings—Student conduct committee appeal, this is a new policy section added [to] clarify the former policy section titled decision by student conduct committee and to ensure compliance with recently updated state law.

WAC 132E-122-360 Summary suspension—Purpose and proceeding, the former section has been updated to ensure compliance with updated federal guidance and recently changed state law. The policy language has been embedded within multiple above-listed sections. The new title is a new policy section number only, the policy language remains the same.

WAC 132E-122-370 Summary suspension—Notice, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-380 Summary suspension—For failure to appear, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-390 Summary suspension—Appeal, this reflects the new case law established in December 2016 with respect to students' appeal rights.

WAC 132E-122-400 Readmission after dismissal, this policy is renumbered to align with the revisions in chapter 132E-122 WAC and was formerly WAC 132E-120-350.

Citation of Rules Affected by this Order: New WAC 132E-122-010, 132E-122-020, 132E-122-030, 132E-122-040, 132E-122-050, 132E-122-060, 132E-122-070, 132E-122-080, 132E-122-090, 132E-122-110, 132E-122-120, 132E-122-130, 132E-122-140, 132E-122-150, 132E-122-160, 132E-122-170, 132E-122-180, 132E-122-190, 132E-122-200, 132E-122-210, 132E-122-220, 132E-122-230, 132E-122-240, 132E-122-250, 132E-122-260, 132E-122-270, 132E-122-280, 132E-122-290, 132E-122-300, 132E-122-310, 132E-122-320, 132E-122-330, 132E-122-340, 132E-122-350, 132E-122-360, 132E-122-370, 132E-122-380, 132E-122-390 and 132E-122-400; and repealing WAC 132E-120-130, 132E-120-150, 132E-120-160, 132E-120-170, 132E-120-190, 132E-120-210, 132E-120-220, 132E-120-230, 132E-120-240, 132E-120-250, 132E-120-260, 132E-120-270, 132E-120-290, 132E-120-300, 132E-120-310, 132E-120-330, 132E-120-350, 132E-120-360, 132E-120-370, 132E-120-380, 132E-120-385, and 132E-120-390.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 17-21-028 on October 10, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 40, Amended 0, Repealed 30.

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: December 19, 2017.

Jennifer L. Howard
Vice President of
Administrative Services

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|---|---|
| WAC 132E-120-110 | Everett Community College student rights and responsibilities. |
| WAC 132E-120-120 | Academic affairs. |
| WAC 132E-120-130 | Students as research subjects. |
| WAC 132E-120-140 | Right to due process. |
| WAC 132E-120-150 | Student affairs. |
| WAC 132E-120-160 | Disclosure of student information. |
| WAC 132E-120-170 | Everett Community College distribution of literature procedures. |
| WAC 132E-120-180 | Everett Community College—Student conduct code—Statement of purpose. |
| WAC 132E-120-190 | Everett Community College—General policies concerning student conduct. |
| WAC 132E-120-200 | Authority to request identification. |
| WAC 132E-120-210 | Everett Community College student conduct—Authority and responsibility. |
| WAC 132E-120-220 | Student conduct code—Violations. |
| WAC 132E-120-230 | Everett Community College—Student conduct code—Sanctions for violations. |
| WAC 132E-120-240 | Student conduct—Initial disciplinary procedures. |
| WAC 132E-120-250 | Summary suspension—Purpose and proceedings. |
| WAC 132E-120-260 | Notice of summary suspension. |
| WAC 132E-120-270 | Summary suspension for failure to appear. |
| WAC 132E-120-280 | Appeals from summary suspension hearing. |

## Chapter 132E-122 WAC

## STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

**WAC 132E-122-010 Authority.** (1) The Everett Community College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of instruction and student services or their designee(s). The conduct officer shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Title IX coordinator shall serve as the principal investigator and/or administrator for alleged violations of this code as it pertains to sexual misconduct and discrimination. The Title IX coordinator:

(a) Will accept all complaints of sexual misconduct and discrimination.

(b) May conduct investigations or assign investigators.

(c) May impose interim remedial measures to protect parties during investigation proceedings.

(d) Will make findings of fact on completed sexual misconduct or discrimination investigations.

(e) Will identify and address any patterns of systemic problems revealed by reports and/or complaints of sexual misconduct or discrimination.

(3) The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

NEW SECTION

**WAC 132E-122-020 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

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

(c) Off-campus or in noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

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

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

(4) Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.

(5) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.

(6) Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(7) Under this conduct code, the college shall not be required to stay disciplinary action pending any criminal or civil proceeding arising from the same conduct. The disposition of any such criminal or civil proceeding shall not control the outcome of any student disciplinary proceeding.

(8) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.

NEW SECTION

**WAC 132E-122-030 Preamble.** Everett Community College is a public institution responsible for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the college also has the obligation to maintain conditions conducive to the freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the college is governed by rules, regulations, policies, procedures, and standards of conduct, including this conduct code, that safeguard its functions and protect the rights and freedoms of all members of the college community.

NEW SECTION

**WAC 132E-122-040 Civility statement.** (1) **Background.**

(a) As members of the EvCC community, we acknowledge our collective intention to create and maintain an environment in which everyone can flourish. This statement on civility and community serves as a reflection on shared values that inform our daily interactions as a college. It provides a structure for responding to others with respect and without judgment and at the same time gives us all a context for teaching and learning. Students, faculty, administrators, and staff members may differ widely in their specific interests, in the degrees and kinds of experiences they bring to EvCC, and in the functions which they have agreed to perform. The statement is relevant to all EvCC community members, regardless of their professional functions or the setting in which they work, teach, or learn.

(b) The statement on civility and community is not a set of rules that prescribe how we should act in all situations. Conflict and differences of opinion exist within all communities, and values find expression in individual ways. The statement provides community members with a tool to address these differences with respect while informing and enhancing dialogue.

(c) This statement on civility and community is not intended to limit freedom of speech, intellectual or academic freedom.

(d) We honor the right of expression as a hallmark of learning, and we treasure intellectual freedom even when individual or group points of view are controversial or out of favor with prevailing perspectives. Individuals should not feel intimidated, nor be subject to reprisal for, voicing their concerns or for participating in governance or policy making.

(2) **Values.**

(a)(i) Respect, civility, integrity, honesty.

(ii) Respect, civility, integrity and honesty are not just words; they are intentions that must be present in our interactions with one another. Each member of the EvCC community must feel free and safe to exercise the rights accorded them to voice their opinions in a civil way, as well as to respectfully challenge the uncivil acts of others.

(b)(i) Accountability.

(ii) We value our accountability to one another within our civic, communal and environmental context. Each member of the community shall respect the fundamental rights of others, the rights and obligations of Everett Community College as an institution established by the state of Washington, and individual rights to fair and equitable procedures when the institution acts to protect the safety of its members.

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by the variety of experiences and influences that individuals and groups contribute to our institution.

(3) **Collaboration.** We value the struggle to find and create meaningful human connection in our communication by embracing collaboration, respectful disagreement, free and open exchange of diverse ideas, perspectives, opinions and attitudes, and the resolving of differences through due process and a shared commitment to collaboration.

NEW SECTION

**WAC 132E-122-050 Nondiscrimination statement.** (1) Discrimination based on identity in Everett Community College programs, activities, admissions, or hiring is strictly prohibited.

(2) Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of discrimination should report the incident(s) to the Title IX coordinator identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the vice president of administrative services.

Title IX coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall Room 207
2000 Tower Street
Everett, WA 98201

Vice President of Administrative Services
425-388-9232
vpadmin@everettcc.edu
Olympus Hall Room 116
2000 Tower Street
Everett, WA 98201

NEW SECTION

**WAC 132E-122-060 Definitions.** For the purposes of this conduct code, the following definitions apply.

(1) **"Advisor"** is a person selected by a complainant or a respondent to provide support and guidance in hearings under this conduct code.

(2) **"Allegation of misconduct"** is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) **"Attorney"** is a person permitted to practice law in the state of Washington.

(4) **"Business day"** means a weekday, including during the summer, and excludes weekends and college holidays, and/or college closures.

(5) **"College community"** includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) **"College official"** is an employee of the college performing their assigned administrative, professional, or paraprofessional duties.

(7) **"College premises"** includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the college.

(8) **"Complaint"** is a description of facts that allege violation of the conduct code.

(9) **"Complainant"** is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint.

(10) **"Conduct officer"** or **"student conduct officer"** is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(11) **"Disciplinary action"** means the decision of the designated college official regarding alleged violations of the student code of conduct and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension.

(12) **"FERPA"** refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(13) **"Filing and services."**

(a) **"Filing"** means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand delivering it or mailing it to the college official (or the official's assistant) at the official's office address. Filing is completed upon actual receipt during office hours at the office of the designated official.

(b) **"Service"** means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **"Electronic filing and services."** Unless otherwise provided, filing or services may be accomplished by electronic mail.

(14) **"Hostile environment"** may occur when another's unwelcome conduct of a sexual nature is sufficiently serious such that it substantially limits or denies one's ability to participate in or benefit from educational programs, activities, or employment.

(15) **"Investigation"** is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) **"Party"** to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(17) **"Policy violation"** means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

(18) **"Preponderance of evidence"** is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(19) **"Proceedings"** means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(20) **"Resolution"** is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have face-to-face interaction with the respondent in any resolution proceedings.

(21) **"Respondent"** is any student accused of misconduct under this conduct code.

(22) **"Service."** See **"Filing and service."**

(23) **"Student"** is all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

(24) **"Student organization"** is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations, and college service clubs.

(25) **"Title IX coordinator"** is the college official designated by the college to be responsible for initiating disciplinary action for allegations of sexual misconduct and discrimination.

NEW SECTION

**WAC 132E-122-070 Statement of student rights.** (1) As members of the Everett Community College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college.

(a) **Academic freedom.**

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

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and

services, subject to the limitations of RCW 28B.50.090 (3)(b).

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

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

(b) **Due process.**

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

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

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

NEW SECTION

**WAC 132E-122-080 Academic affairs.** Students' scholastic performance shall be evaluated on the basis of educational performance, not on opinions or conduct in matters unrelated to scholastic standards.

(1) **Protection of freedom of expression.** Students shall be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course for which they are enrolled.

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

(3) **Protection against improper academic evaluation.** Students shall have protection, through orderly procedures, against prejudice or capricious academic evaluation. At the same time, they are responsible for maintaining the standards of academic performance established for each course in which they are enrolled (see academic grievance procedure in student hand book, WAC 132E-122-090).

(4) **Rights and responsibilities regarding final examinations.** Students have the right to have course comprehensive final examinations scheduled per the college's final exam schedule and are expected to take these examinations as scheduled by the final exam schedule. A comprehensive final examination is that which includes materials covered throughout the entire course. The exception to this rule applies during summer quarter when there is not a scheduled final examination week.

(5) **Right to attend classes as regularly scheduled.** Students have the right to expect classes to be held as regularly scheduled and are expected to attend such classes per the class instructor's attendance expectations as stated in the syllabus for the course.

(6) **Rights and responsibilities regarding course syllabi.** Students have the right to expect the class instructor to follow their course syllabus and if any changes are made to the grading system and/or course requirements during the quarter, the students must be promptly notified. If a different instructor is assigned to the class during the quarter, the original course syllabus shall be followed; however, if the new instructor determines a need to modify the syllabus for the portion of the class they are teaching, the students must be promptly notified. The students are responsible for reading and understanding the information provided in the course syllabus and any changes made to it during the quarter.

(7) **Protection against improper disclosure.** Information about student views, beliefs, and political associations acquired by faculty members in the course of their work as instructors, advisors, and counselors will be considered as privileged and confidential.

NEW SECTION

**WAC 132E-122-090 Academic affairs grievance procedures.** (1) **Definition of an academic grievance.** If a student has evidence that they have been: Unfairly treated in matters related to grading, course policies or expectation; falsely accused of cheating; or inappropriately penalized for alleged cheating, they may be said to have an academic grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the office of the chief academic affairs officer or designee which will provide information (without judgment) regarding the procedure for filing an academic grievance. Students should also feel free to contact any member of the campus community who they trust who may assist the student and/or refer the student to the appropriate resource. In addition to the office of the chief academic affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief student affairs officer, the offices of the academic deans, the office of the chief human resources officer, the chief diversity and equity officer, counseling services, center for disability services, Bridges learning center, student LIFE office, and campus safety and security.

(2) **Informal procedure resolution.** Informal complaints should be made to the appropriate division dean or supervising administrator. Upon receipt of a student complaint by the division dean, the following steps may be taken:

(a) The student will be encouraged to discuss the alleged problem with the involved instructor; or if the complaint involves a program, the student will be encouraged to speak to the director/dean of the involved program.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the director/dean or supervising administrator.

(c) If the complaint is not resolved at this level, the student, the instructor and the director/dean should meet with the chief academic officer or designee to attempt resolution.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(e) During any meetings that occur in (a) through (c) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommoda-

tion of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean of supervising administrator facilitating the meeting.

(3) **Formal grievance procedure.** Formal grievance procedure - To assure an atmosphere free from unfair treatment in academic matters, the following procedures are established to respond to an unresolved academic complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels an academic grievance has not been resolved through the informal resolution process may file a formal grievance with the chief academic officer or designee prior to the last day of the quarter (not including summer) following the alleged grievance. Within ten business days of the receipt of the signed written grievance, the chief academic officer or designee will appoint a grievance committee for the purpose of reviewing that complaint and recommending a resolution.

(4) The grievance committee will be comprised of seven voting members including:

(a) An administrator who will serve as the chair but will only vote in the event of a tie vote.

(b) Three faculty members, including one from the division of the involved faculty member.

(c) Three students to be selected as provided for in the associated student constitution and bylaws.

(d) A quorum of the grievance shall be four members.

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) **Formal resolution.**

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(c) The instructor against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any members of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the faculty member have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach decision by a simple majority vote. The committee will provide the chief academic officer or designee its written recommendation within ten business days of its organizational meeting. The chief academic officer or designee will notify the parties in the grievance of their decision, and the resolution within forty-eight hours of having received the committee recommendation.

(e) If the grievance committee establishes that an aggrieved student has been treated unfairly, the committee will recommend corrective steps to the chief academic officer or designee.

(f) Either party shall have the right to present a written appeal of the decision to the chief academic officer or designee to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) An accommodation of a spokesperson (a person who would address the grievance committee, or assist the person in addressing the grievance committee) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the administrator chairing the committee.

NEW SECTION

**WAC 132E-122-100 Students as research subjects.** (1) Permission may be granted for conduct of research involving students for such purposes as the pursuit of advanced degrees, classroom research, independent student research, and research for off-campus individuals and agencies. Participation therein is the choice of the individual student. Persons planning research on human subjects must secure permission in advance of the project from the institutional review board (IRB). Minimally such approval will entail:

(a) Assurance that the project does not conflict with examinations or require a major loss of classroom time;

(b) Assurance that students know they have the alternative of choosing to participate or not;

(c) Explanation of the purpose of the research and disclosure of all possible risks to which students might be exposed in the research and a thorough explanation of effects that will be employed to reduce those risks;

(d) Provision for students to have the opportunity to see the results of the research;

(e) Evidence that the research method is appropriate for the subject to be studied;

(f) Guarantee of confidentiality of student records and responses.

(2) Prior to the initiation of such a project, the researcher shall complete the IRB application and submit it to the institutional review board. Written permission may be given with or without college endorsement of the project. In such instances where the institutional review board deems appropriate, assistance may be sought from others with related knowledge before permission to proceed is granted or denied.

NEW SECTION

**WAC 132E-122-110 Student affairs.** (1) **Freedom of association.** Students are free to organize and join associa-

tions to promote their common interests, provided such organizations or associations do not disrupt or interfere with the mission of the college.

(a) The membership, policies, and actions of a student organization will be determined by vote of only those persons who hold bona fide membership in the student body as determined by current enrollment in the college.

(b) Affiliation with an external organization shall not of itself disqualify a student organization from institutional recognition.

(c) An organization is free to nominate its own advisor from the campus faculty and staff. Campus advisors shall advise organizations in the exercise of the rights and responsibilities as an organization, but they will not have authority to control the policies of such organizations.

(d) Student organizations shall be required to submit a constitution to the office of student activities which includes a statement of purpose, criteria for membership, rules or procedures, and a current list of officers to the student government recognized by the college.

(e) Campus organizations, including those affiliated with an extramural organization shall be open to all students.

(2) **Right of assembly.**

(a) Students have the right to conduct or may participate in any assembly on facilities that are generally available to the public provided that such assemblies:

(i) Are conducted in an orderly manner;

(ii) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or regular functions of the college;

(iii) Do not unreasonably interfere with pedestrian or vehicular travel; or

(iv) Do not cause destruction or damage to college property.

(b) Any student group or student organization/club which wishes to schedule an assembly must reserve the college facilities per the appropriate procedures.

(c) Assemblies which violate these rules and other college policies and rules may be ordered to disperse by the college.

(d) A nonstudent who violates any provision of the rule will be referred to civilian authorities.

(3) **Student participation in institutional government.** Student participation in institutional government - As constituents of the educational community, students shall be free, individually and collectively, to express their views on issues of institutional policy and matters of general interest to the student body. The student body shall have a clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of student government will be made explicit. The actions of the student government within the areas of jurisdiction shall be reviewed by the director of student LIFE and by the chief student affairs officer through orderly procedures.

(4) **Right of ownership of works.**

(5) **Editorial independence of student publications policy.** The college recognizes and affirms the editorial independence and press freedom of all student-edited campus media. The *Clipper* student newspaper and other student-provided media are therefore designated as public forums.

(6) **Right to be interviewed.**

(a) Every student has the right to be interviewed on campus by any legal organization desired to recruit at the college.

(b) Any student, student group, or student organization/club may assemble in protest against any such organization provided that such protest does not interfere with any other student's right to have such an interview, and provided that such protests are in accordance with subsection (2) of this section.

NEW SECTION

**WAC 132E-122-120 Student affairs grievance procedures.** (1) **Definition of a student affairs grievance.** If a student has evidence that they have been unfairly treated in matters related to student services/student auxiliary services, policies, procedures, or expectations, they may be said to have a student affairs grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the associated student executive council which will provide information (without judgment) regarding the procedure for filing a grievance. Students should also feel free to contact any member of the campus community who they trust that may assist the student and/or refer the student to the appropriate resources. In addition to the chief student affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief academic affairs officer, the offices of the academic deans, and the office of the chief human resources officer, outreach, diversity and equity center, counseling and career center, center for disability services, Rainier learning center, student activities office, and campus safety and security.

(2) **Informal procedure for resolution.** Informal complaints should be made to the appropriate administrator. Upon receipt of a student complaint by the administrator, the following steps will be taken:

(a) The student will be encouraged to discuss the alleged problem with the party concerned; or if the complaint involves a program, the student will be encouraged to speak to the appropriate supervisor.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the immediate administrator to resolve the complaint.

(c) If the complaint is not resolved at this level, the student, the respondent and the administrator should meet with the chief student affairs officer or the vice president under which the program/service is administratively aligned.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(3) **Formal grievance procedure.** To assure an atmosphere free from unfair treatment, the following procedures are established to respond to an unresolved complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels a griev-

ance has not been resolved through the informal resolution process may file a formal grievance with the appropriate vice president or designee prior to the last instructional day of the quarter (not including summer) following the date of the alleged grievance. Within ten business days of receipt of the signed written grievance, the appropriate vice president or designee will appoint a grievance committee for the purpose of reviewing the complaint and recommending a resolution.

(4) **The grievance committee will be composed of seven voting members including:**

(a) An administrator (other than the appropriate vice president) who shall serve as the chair and vote only in the case of a tie;

(b) One faculty and two from classified staff;

(c) Three students to be selected randomly and not active members of student activities or the involved program;

(d) A quorum consists of four members of the grievance committee;

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) **Formal resolution.**

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved;

(iii) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(iv) In fact renders the college environment (including the environment for employee students, and patrons) hostile, intimidation, or demeaning for the victim.

(c) The party against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the respondent have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach a decision by a simple majority vote. The committee will provide the appropriate vice president or designee its written recommendation within ten business days of its meeting.

(e) The appropriate vice president or designee will notify the parties in the grievance of the resolution within two business days of having received the committee recommendation. If the grievance committee establishes that aggrieved student has been treated unfairly, the committee will recommend corrective steps to the appropriate vice president or designee.

(f) Either party shall have the right to present a written appeal of the decision to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) During any meetings that occur in (a) through (f) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean or supervising administrator facilitating the meeting.

NEW SECTION

**WAC 132E-122-130 Disclosure of student information.** (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials of the college may routinely respond to requests for the following directory information about a student:

(a) Student's name;

(b) Major field of study;

(c) Extracurricular activities;

(d) Height and weight of athletic team members;

(e) Quarters of attendance;

(f) Degrees and awards received;

(g) The most recent previous educational agency or institutions attended;

(h) Date of birth;

(i) Email address;

(j) Student enrollment status.

(2) Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor. Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has contractual agreements for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual agreements, and to other schools in which a student seeks or intends to enroll. The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following a receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The college registrar or their designee will be responsible for

reviewing unusual requests for information and assistance in the interpretation of the provisions of the Federal Family Educational Rights and Privacy Act (Buckley Amendment). See Family Educational Rights and Privacy Act of 1974 in the student handbook for more information on confidentiality of student information and records.

NEW SECTION

**WAC 132E-122-140 College distribution of literature procedures.** In order to ensure an atmosphere in which the discussion of diverse points of view and ideas may exist, the following policy with regard to the distribution of printed matter will be implemented.

(1) Printed matter by students and student organizations may be distributed in an orderly and nonforceful manner in only such areas as may be designated by the chief student affairs officer or designee except that:

(a) Noninstructional printed matter shall not be distributed in the classroom during regularly scheduled class time unless otherwise approved by the class instructor. Exceptions to this procedure may be made for special educational purposes and/or emergencies by the president, chief student affairs officer, or designee. If and when this occurs, the class instructor, appropriate academic dean, and students in the class shall be notified in a timely fashion;

(b) Printed matter shall not be distributed in college buildings other than in specifically designated areas or in any area where the distribution of printed matter would restrict the physical passage of students or interfere with the instructional program and administrative and student support functions unless otherwise approved on a temporary basis for a specific informational purpose by the chief student affairs officer or designee;

(c) Printed matter shall not be placed on any vehicle parked on the campus;

(d) Posters and advertising bulletins must be approved before they may be posted on campus, and they shall be posted only informational display boards/areas designated for this purpose. In general, students have the right to display posters and advertising bulletins and are expected to do so per the campus posting procedures. Class projects by students to be displayed outside of the classroom must be on designated boards or areas designated for this purpose and approved by the class instructor. Posters and advertising generated for student activity related events and programs must be approved for posting by the office of student activities. Posting rules and guidelines may change periodically and in some cases be specific to a building and/or area of the campus. In general, material concerning off-campus activities will not be approved unless it is determined to be special services to EvCC students;

(e) In addition, designated points of distribution will be made available on campus.

(2) As to content of printed matter, the college will be guided by state and federal laws and principles regarding free speech.

(3) A system of prior censorship is to be avoided if at all possible. Therefore, maximum cooperation of students, faculty and administration will be necessary. Matters of interpretation regarding these procedures and questions as to content of any displayed material will be handled by the chief of student affairs officers.

(4) Printed matter originating with an off-campus individual(s) or organization must be registered with the director of student activities before distribution will be permitted.

NEW SECTION

**WAC 132E-122-150 Authority to request identification.** In situations of suspected misconduct or suspected unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from a properly identified college personnel is a violation of this chapter and may result in disciplinary action if the person is found to be a student. In emergency situations or in cases of serious misconduct where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by the college personnel that the person questioned is not a student and may result in direct civil or criminal action.

NEW SECTION

**WAC 132E-122-160 Prohibited student conduct.** Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation."

(1) **Abuse of others.** Assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health and safety of another person or another person's property.

(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 campus official or party of a campus disciplinary proceeding; or

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

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to:

(a) **Cheating** including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(b) **Plagiarism** including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(c) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(d) **Academic dishonesty** including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(4) **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.

(5) **Alcohol, other drug, and tobacco violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. The 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.

(6) **Alcohol, other drugs, and tobacco violations.**

(a) **Alcohol.** An alcohol violation includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits any possession or use of marijuana on college premises or in connection with college activities.

(c) **Other drugs.** A drug violation includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A tobacco violation means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

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

(a) Unauthorized use of college computer resources;

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

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

(d) Use of college 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 college's computing systems;

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

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

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

(a) A student or a student organization may be subject to disciplinary proceedings if the college 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 college 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) **Discrimination.** Discrimination is unfavorable treatment of a person based on that person's identity as described in the nondiscrimination policy (WAC 132E-122-050). **Sex discrimination** is conduct which harms or adversely affects any member of the college community because of their sex, actual or perceived sexual orientation, gender identity or expression, parental, family or marital status, or pregnancy.

(10) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's identity 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 college's programs, services, opportunities, or activities.

(11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(12) **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 under sexual misconduct below, of one family or household member by another family or household member.

(13) **Ethics violations.** An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(14) **Failure to comply.** Failure to comply means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(15) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(16) **Gender-based harassment.** Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or nonconformity with sex stereotypes, and not necessarily involving conduct of a sexual nature.

(17) **Harassment.**

(a) Harassment means unwelcome and offensive conduct including verbal, nonverbal, or physical conduct that is directed at a person because of their membership of a protected identity under this student code of conduct. Unwelcome and offensive conduct is considered harassment when:

(i) It is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program; or

(ii) That creates an intimidating, hostile, or offensive environment for any campus community members.

(b) Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of harassment include, but are not limited to, the following:

(i) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership of a protected identity.

(ii) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership of a protected identity.

(iii) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to the person's membership of a protected identity.

(c) Protected identities under this student code of conduct (as cited in the nondiscrimination policy, WAC 132E-122-050) include, but are not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(18) **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.

(b) Consent of a victim or victims is not a defense to an allegation of hazing.

(c) 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.

(19) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

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

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

(22) **Safety violations.** The term "safety violation" includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(23) **Sexual misconduct.** Sexual misconduct includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual harassment, sexual intimidation, sexual violence and quid pro quo.

(24) **Sexual harassment.** Sexual harassment includes, but is not limited to, unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, based on sex:

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

(b) That creates an intimidating, hostile, or offensive environment for any campus community member(s).

Examples of behaviors that may rise to the level of sexual harassment include, but are not limited to:

(i) Physical assault.

(ii) A pattern of behaviors that is unwelcome and severe, persistent, or pervasive, resulting in unreasonable interference with the work or educational environment, and may include, but is not limited to, the following:

(A) Comments of a sexual nature;

(B) Sexually explicit statements, questions, jokes, or anecdotes;

(C) Unnecessary or undesirable touching, patting, hugging, kissing, or brushing against an individual's body;

(D) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;

(E) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;

(F) Subtle propositions for sexual activity or direct propositions of a sexual nature;

(G) Uninvited letters, emails, telephone calls, or other correspondence referring to or depicting sexual activities.

(25) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's safety or the safety of others, or to suffer substantial emotional distress.

(26) **Sexual violence.** Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including dating violence, domestic violence, nonconsensual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, unconsciousness, or other cause.

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

(b) **"Dating violence"** means violence by a person who has been in a romantic or intimate relationship with that person. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

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

(e) **"Nonconsensual sexual contact (sexual assault)"** is any intentional sexual contact, however slight, with any object, by a person upon another person that is without consent and/or by force. "Sexual contact" includes any touching of another person for the purposes of sexual gratification, or 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.

(f) **"Stalking"** means intentional and repeated harassment, following of, or otherwise surveiling another person, which places that person in **reasonable fear** that the perpe-

trator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(i) The person being harassed or followed is placed in **reasonable fear** that the stalker intends to injure the person, another person, or property of the person or of another person.

(ii) **"Reasonable fear"** is a fear that a reasonable person in the same situation would experience under most circumstances.

(27) **Quid pro quo.** Quid pro quo occurs when an individual in a position of real or perceived authority conditions the recipient of a benefit upon granting sexual favors. Examples of conduct that may qualify include:

(a) Persistent comments or questions of a sexual nature.

(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.

(c) Sexually explicit statements, questions, jokes, or anecdotes.

(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.

(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.

(g) Direct or indirect propositions for sexual activity.

(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(28) **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.

(29) **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.

(30) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(31) **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.

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

(33) **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.

(34) **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.

(35) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the director of campus safety and security, or any other college official designated by the president.

(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 or 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.

NEW SECTION

**WAC 132E-122-170 Reporting—Sexual misconduct and discrimination.** (1) Persons who believe that a sexual misconduct or discrimination violation has been committed may contact and make a report to the Title IX coordinator directly or by filing a report online at everettcc.edu/TitleIX.

Becky Lamboley
Title IX coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall 207
2000 Tower Street
Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information the Title IX coordinator. The employee may contact the Title IX coordinator directly (TitleIXcoordinator @everettcc.edu or 425-388-9271) or may file a Title IX report through the college online reporting system.

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of administrative services.

Vice President of Administrative Services
vpadmin@everettcc.edu
425-388-9232
2000 Tower Street
Everett, WA 98201

NEW SECTION

**WAC 132E-122-180 Confidentiality and right to privacy.** (1) Everett Community College will seek to protect the privacy of the involved parties to the full extent possible, consistent with the legal obligation to investigate, take appropriate remediate action, and comply with the federal and state law, as well as other college policies and procedures.

(2) Confidentiality request and sexual violence complaints.

(a) The Title IX coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(i) The seriousness of the alleged sexual violence.

(ii) The age of the complainant.

(iii) Whether the sexual violence was perpetrated with a weapon.

(iv) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints.

(v) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others.

(vi) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

(b) Although the college will attempt to honor any complainants' request for confidentiality (i.e., for their name not to be revealed to the respondent or that the college not investigate the allegation), the college cannot guarantee complete confidentiality.

(c) Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(d) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision prior to proceeding and will ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

(e) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence, and implement such measures if reasonably feasible.

NEW SECTION

**WAC 132E-122-190 Retaliation is prohibited.** (1) Retaliation by, for, or against any participant (i.e., complainant, respondent, witness, Title IX coordinator, investigator) is expressly prohibited and is conduct subject to discipline. Retaliatory action of any kind taken against individuals as a result of participation in proceedings under this conduct code including, but not limited to, serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline.

(2) If you are retaliated against, contact the conduct officer awilliams@everettcc.edu or 425-388-9282 or Title IX coordinator at TitleIXcoordinator@everettcc.edu or 425-388-9271. If you believe the conduct officer or Title IX coordinator has retaliated against you, contact the vice president of administrative services at vpadmin@everettcc.edu or 425-388-9232.

NEW SECTION

**WAC 132E-122-200 Disciplinary sanctions.** Disciplinary actions include, but are not limited to, the following

sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(1) **Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student is subject to a deferred disciplinary sanction and is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance and/or enrollment at the college.

(4) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the sanction is taken.

(6) **Other sanctions.** The following additional sanctions for conduct code violations may be imposed as required or permitted by law or college policy.

(a) **Athletic eligibility.** A student athlete found in violation of WAC 132E-122-160, relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.

(b) **Parental notification.** The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

NEW SECTION

**WAC 132E-122-210 Terms and conditions.** Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

(1) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(2) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A student may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(3) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

NEW SECTION

**WAC 132E-122-220 Loss of eligibility—Student athletic participation. Grounds for ineligibility.** Any student found by the college to have violated chapter 69.41 RCW by virtue of a criminal conviction or otherwise insofar as it prohibits the possession, use or sale of legend drugs, including anabolic steroids, will be disqualified from participation in any school-sponsored athletic event or activity.

NEW SECTION

**WAC 132E-122-230 Standard of burden of proof.** The applicable standard of proof in all disciplinary hearings (including those involving sexual misconduct and appeals) is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, Title IX coordinator, conduct review officer, student conduct committee, or vice president of instruction and student services must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct.

NEW SECTION

**WAC 132E-122-240 Initiation of disciplinary action—Non-Title IX.** (1) **Written notice.** The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.

(2) **Disciplinary meeting.** At the disciplinary meeting, the conduct officer will review the allegations with the respondent and, consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, will afford the respondent an opportunity to respond and provide any other information or evidence. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or arguments presented by the respon-

dent, the conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific code of conduct provisions found to have been violated, the discipline imposed (if any), and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) Following written notice and a disciplinary or investigation meeting, the conduct officer will take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132E-122-200. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the respondent. The decision to refer shall not be subject to appeal or further review.

NEW SECTION

**WAC 132E-122-250 Initiation of Title IX proceedings.** Title IX includes, but is not limited to, the following prohibited student conduct: Domestic violence, gender-based harassment, sex discrimination, sexual harassment, sexual intimidation, sexual violence including dating violence, nonconsensual sexual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking, quid pro quo, and sexual exploitation.

(1) **Written notice.** In matters involving alleged sexual misconduct, the Title IX coordinator will initiate investigation proceedings by serving the respondent with a written notice of the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violation(s). The Title IX coordinator will include notification that an investigation is taking place and, if applicable, identify the designated Title IX investigator(s) assigned to the case.

(2) **Investigation meeting.** For matters involving sexual misconduct, the complainant, respondent, and, as applicable, witnesses will be asked to attend an investigation meeting. At the investigation meeting, the Title IX coordinator or designated Title IX investigator(s), will review the investigation proceedings, ask each party questions regarding the allegations, and consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, afford each party the opportunity to provide any other information or evidence.

If the respondent fails to attend or participate in the meeting, the Title IX coordinator or designated Title IX investigator(s), may proceed with the investigation, including making findings regarding the alleged policy violations, based on the available information.

(3) Following written notice and an investigation meeting, the Title IX coordinator may take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the complainant and respondent. The decision to refer shall not be subject to appeal or further review.

(c) If the allegations are found to be substantiated, the Title IX coordinator may provide the complainant and respondent with a copy of the investigation report with the option to review the report and provide a response.

(4) **Findings.** If the allegations are found to be substantiated, the Title IX coordinator will review all of the information gathered throughout the investigation proceedings and make findings of fact for each alleged policy violation. The Title IX coordinator will notify the complainant and the respondent of these findings in writing and that the matter is being referred to the conduct officer, for matters involving only students, or the vice president of administrative services, for matters involving one or more employees, for initiation of disciplinary action.

(5) On the same date that a disciplinary decision is served on the respondent, the conduct officer or vice president of administrative services will serve a written notice informing the complainant describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the conduct officer or vice president shall make a reasonable effort to contact the complainant to ensure the prompt notice of the protective disciplinary sanctions and/or conditions.

(6) Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding as outlined in WAC 132E-122-260.

NEW SECTION

**WAC 132E-122-260 Interim measures.** (1) After receiving a report of alleged sexual misconduct or other serious misconduct, the college may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting student, or other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing; or

(c) Changes to class schedules, assignments, or test schedules.

(2) Interim measures will remain in place until lifted or modified by the campus official who implemented the interim measures.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this conduct code.

NEW SECTION

**WAC 132E-122-270 Appeals—All cases.** The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

(1) **Parties.** The parties to an appeal shall be the respondent, and complainant in a proceeding involving sexual misconduct allegations, and the designated appeal authority.

(2) **Filing appeals.**

(a) **Appeal periods.** The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college official within ten business days of services of the conduct officer's decision.

(b) **Contents of appeal.** A party's written notice of appeal must clearly state the reason(s) for the appeal or request for review and provide any relevant information to support the appeal.

(c) **Issues that may be raised on an appeal.** The issues that may be raised on an appeal include: New information, contradictory information, and information indicating that the party was not afforded due process.

(d) **Failure to appeal.** The failure of a party to file a timely appeal at any stage of the proceeding waives that party's right to appeal.

(e) **Cases involving allegations of sexual misconduct.** The complainant and respondent have equal appeal rights in cases involving allegations of sexual misconduct, including filing an appeal, notice of appeal, participation in any appeal proceedings, and notification of appeal outcome.

(3) **Notification of appeal.** In proceedings involving allegations of sexual misconduct, if any party appeals, the designated appeal authority will notify the other party(ies) of such. Each party shall be afforded the opportunity to participate in the appeal proceedings.

(4) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a suspension of any length or imposing expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(5)(a) **Appeal authorities.** Appeals of disciplinary action taken by the conduct officer shall be submitted to and heard by the student conduct committee (EMAIL, 2000 Tower Street, Everett, WA 98201).

(b) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the vice president of instruction and student services (gmiulli@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

(6) **Ex parte communications.** Appeal authorities may not communicate with any of the parties regarding an appeal without first providing notice of the filed appeal and an equal opportunity for all parties to participate.

(7) **Disqualification.** Appeal authorities may not participate in a proceeding in which they:

(a) Are a respondent, complainant, or witness.

(b) Have a direct or personal interest, prejudice, or bias; or

(c) Have acted previously in another capacity.

(8) The student conduct committee shall conduct full adjudicative hearings arising from appeals from:

(a) The imposition of disciplinary suspension in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the conduct officer, the conduct review officer, or vice president.

(9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspension of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimand; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including disciplinary warning.

NEW SECTION

**WAC 132E-122-280 Participation of advisors and attorneys.** (1) Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350).

(3) An advisor may not delay, disrupt, or otherwise interfere with proceedings.

(4) An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.

(5) **Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.

(6) When scheduling procedural meetings and/or interviews, the college will make reasonable efforts to accommodate an advisor. However, the availability of individuals directly involved in the proceedings, including the personnel assigned to the matter, as well as the expectation to promptly complete the proceedings may, in the campus' constituent discretion, take priority when determining the date and time for the proceedings.

NEW SECTION

**WAC 132E-122-290 Brief adjudicative proceeding—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the conduct officer within ten business days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

NEW SECTION

**WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision.** (1) An initial decision is subject to review by the vice president of instruction and student services, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The vice president of instruction and student services shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice president of instruction and student services shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice president of instruction and student services does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the vice president of instruction and student services upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of their appeal rights.

NEW SECTION

**WAC 132E-122-310 Full adjudicative process—Student conduct committee.** (1) The student conduct committee shall consist of three members appointed by the president in consultation with student and faculty leadership:

(a) A full-time student;

(b) A full-time faculty member; and

(c) A full-time exempt administrative staff member who shall serve as chair of the committee.

(2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal.

(3) The committee will hear such other matters as may be referred to the committee by the conduct officer, Title IX coordinator, conduct review officer, or vice president of instruction and student services. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132E-122-200.

(4) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

NEW SECTION

**WAC 132E-122-320 Full adjudicative process—Prehearing procedure.** (1) The student conduct committee chair shall serve all parties with written notice of the hearing date, time, and location not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 132E-122-270.

The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The student conduct committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The student conduct committee chair may direct the parties prior to the hearing to submit to the chair a list of witnesses and copies of exhibits that the parties reasonably expect to present to the committee.

(a) The student conduct committee chair shall then provide copies of the submitted list of witnesses and of exhibits to the other party(ies), concurrently.

(b) Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The student conduct committee chair in advance of the hearing may provide committee members with copies of:

(a) Any notice of disciplinary action or referral to the committee; and

(b) Any notice of appeal filed by the respondent or any complainant.

However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Consistent with WAC 132E-122-260, any party may be accompanied at the hearing by an advisor or attorney of the party's choice.

(6) A respondent or any complainant may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, the attorney files and serves a notice of appearance to the student conduct committee chair (EMAIL, 2000 Tower Street, Everett, WA 98201).

(7) If the respondent or complainant is represented by an attorney, the conduct officer may be represented by the college's assistant attorney general.

(8) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

NEW SECTION

**WAC 132E-122-330 Full adjudicative process—Hearing procedure.** (1) Should a party fail to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing; or

(b) Serve an order of default in accordance with RCW 34.05.440.

(2) The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.

(3) The student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476.

Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The student conduct committee chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.

(5) The student conduct officer shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation.

(7) All evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(8) In proceedings involving allegations of sexual misconduct, the respondent and complainant, or their advisor or attorney representatives, shall not directly question or cross-examine one another.

All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of the parties.

(9) In proceedings involving allegations of sexual misconduct, the respondent and complainant shall not be required to be in the same room at the same time (i.e., through use of closed circuit TV or use of other similar technology).

(10) In proceedings involving allegations of sexual misconduct, college officials shall make arrangements to reasonably assure that respondents and complainants will not be in the same room at the same time when arriving to, departing from, and during any breaks of the student conduct committee proceedings.

NEW SECTION

**WAC 132E-122-340 Full adjudicative process—Decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form the committee wishes to receive them.

The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200.

(a) The decision shall contain findings on:

(i) All material issues of fact, except for cases involving sexual misconduct;

(ii) Conclusions concerning which, if any, provisions of the conduct code were found to be violated; and

(iii) Any sanction(s).

(b) Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The student conduct committee chair shall, within twenty days of the conclusion of the hearing, serve the decision to the respondent, the student conduct officer, and any complainant in a proceeding involving allegations of sexual misconduct, concurrently.

The recommended decision letter shall include notification that the review will be limited to reviewing the specific issues raised by the parties during the full adjudication proceedings.

(4) In a proceeding involving allegations of sexual misconduct, the review decision letter will explain the reasons for modifying any recommended disciplinary action with respect to such allegations.

(5) The decision will state whether the alleged misconduct was substantiated and will describe any sanctions or conditions imposed.

The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.

NEW SECTION

**WAC 132E-122-350 Full adjudicative proceedings—Student conduct committee appeal.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the vice president may ask for additional briefing from the parties on issues raised on appeal. The vice president of instruction and student services' review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The vice president of instruction and student services shall provide a written decision to the respondent and the student conduct officer within twenty days after receipt of the notice of appeal. The vice president of instruction and student services' decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) In cases involving allegations of sexual misconduct, the complainant will have the same appeal rights as the respondent.

NEW SECTION

**WAC 132E-122-360 Summary suspension—Purpose and proceeding.** (1) Summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the chief student affairs officer or designee has cause to believe that the student:

(a) Has violated any provision of this chapter; and/or

(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.

(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in conjunction with subsection (1)(a) of this section. The chief student affairs officer or designee shall enter an order served by certified and regular mail at the student's last known address, or shall be personally served on the student.

(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to schedule the hearing. The chief student affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee. The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.

(4) The chief student affairs officer or designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the chief student affairs officer or designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:

(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and

(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.

NEW SECTION

**WAC 132E-122-370 Summary suspension—Notice.** (1) If, after the summary suspension hearing a student's summary suspension is upheld or if the student is disciplined in another way, the chief student affairs officer or designee will provide to the student written findings of fact and conclusions which lead the chief student affairs officer or designee to conclude that the summary suspension of the student should be affirmed.

(2) The student shall be served a copy, if applicable, of the findings and conclusions by certified and regular mail to the student's last known address or by personal services within ten business days following the summary suspension hearing. The notice shall state the terms for which the student is suspended and any conditions imposed on the student's return.

NEW SECTION

**WAC 132E-122-380 Summary suspension—For failure to appear.** The chief student affairs officer or designee has the authority to enforce the suspension of a student if the student fails to appear at the time designated for the summary suspension hearing.

NEW SECTION

**WAC 132E-122-390 Summary suspension—Appeal.** (1) A student has the right to appeal a summary suspension to the student conduct committee and may do so if:

(a) The student has been officially notified in writing of the outcome of the summary suspension hearing;

(b) Summary suspension or other disciplinary action has been upheld; and

(c) The student's appeal conforms to the procedures prescribed in this chapter.

(2) The student conduct committee shall conduct a formal hearing as expeditiously as possible and appropriate.

NEW SECTION

**WAC 132E-122-400 Readmission after dismissal.** (1) Any student expelled from the college may submit a written petition to the chief student affairs officer or designee requesting readmission. Such petition must include how any conditions imposed by the chief student affairs officer or designee or student conduct committee have been met. Decisions by the chief student affairs officer or designee regarding a petition for readmission shall be reviewed by the president.

(2) If the chief student affairs officer or designee suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the chief student affairs officer's or designee's recommendation/conditions of readmission concerning the student's readmission to the program.

## WSR 18-01-142

### PERMANENT RULES

### ATTORNEY GENERAL'S OFFICE

[Filed December 20, 2017, 9:20 a.m., effective January 20, 2018]

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

Purpose: These rules will update, streamline, and enhance the efficiency of communications, recordkeeping, and procedures regarding vehicle arbitrations under this act. The revisions will also remove redundant provisions and enhance equity and fairness between the participants.

Statutory Authority for Adoption: RCW 19.118.080 (2), (6).

Adopted under notice filed as WSR 17-21-037 on October 12, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, 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: December 20, 2017.

Bob Ferguson
Attorney General

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-010 Definitions.** Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

"Arbitration special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board.

"Attorney general" or "attorney general's office" means the person duly elected to serve as attorney general of the state of Washington and delegates authorized to act on his or her behalf.

"Board" or "arbitration board" means the new motor vehicle arbitration board established by the attorney general pursuant to RCW 19.118.080.

"Intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease subsequent to being repurchased or replaced by the manufacturer.

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

(a) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

(((~~(c) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the Lemon Law administration which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: Resale, transfer or destruction.~~))

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substantially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

"Person" includes every natural person, firm, partnership, corporation, association, or organization.

"Settlement" means an agreement between a consumer and a manufacturer to resolve a claim under chapter 19.118 RCW after a request for arbitration has been assigned to the arbitration board and where the agreement results in the manufacturer reacquiring a new motor vehicle directly or indirectly, through an agent or a motor vehicle dealer.

"Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-050 Assignment to board.** (1) Review by the attorney general, a request for arbitration appearing to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW will be assigned to the board.

(2) A notice that the request has been assigned to the board to be scheduled for an arbitration hearing will be sent to the consumer and manufacturer by email, standard U.S. mail or certified mail ((~~or email if requested by a party~~)). The designated manufacturer contact will be sent a copy of the consumer's request for arbitration and a manufacturer's statement form with the notice of assignment.

(3) Upon receipt of a request for arbitration from the attorney general, the board will record the date it receives the assignment in the request for arbitration record and immediately notify the Lemon Law administration.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-100 Subpoenas.** (1) A party's request for a subpoena to be issued must be received by the Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute.

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

(3) Service of the subpoena may be made ((~~be~~)) by email or certified mail((~~, return receipt requested, email if requested by a party or by overnight express delivery~~)).

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-110 Scheduling of arbitration hearings.** The board has the authority to schedule the arbitration hearing at its discretion. The Lemon Law administration shall notify the parties of the date, time and place by ((~~certified letter mailed~~)) letter sent by standard U.S. mail and email at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the Lemon Law administration shall promptly notify the parties by mail, email if requested by a party or telephone.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-180 The arbitration hearing.** (1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that ((~~a tape~~)) an electronic recording record of the hearing is maintained.

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only if the board and other parties are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

**WAC 44-10-200 The arbitration decision.** (1) The arbitration board shall issue the decision in each case to the Lemon Law administration within sixty calendar days of receipt of the request for arbitration:

(a) All decisions shall be written, in a form to be provided by the Lemon Law administration, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date on which the board provides the arbitration decision to the Lemon Law administration shall determine compliance with the sixty day requirement to issue an arbitration decision;

(c) The written decision shall contain findings of fact and conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

(iii) If the consumer prevails and the manufacturer and the consumer have been represented by counsel, the decision shall include a description of the awarded reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

Reasonable costs and attorneys' fees shall be determined by the arbitrator based on an affidavit of costs and fees prepared by the consumer's attorney and submitted no later than the conclusion of the arbitration hearing. The affidavit may be amended for post-hearing costs and fees. The amended affidavit of costs and fees must be delivered to the manufacturer's designated representative by certified mail or personal service and a copy submitted to the Lemon Law administration by the consumer's attorney within thirty days of the consumer's acceptance of the decision but in no case after a manufacturer's compliance with a decision;

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by ((~~certified mail or email if requested by a party~~)) email or standard U.S. mail.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle. An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwelling, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1)(a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3)(a) A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a)(i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.-041 (3)(c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a), (b), or (c) and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.090(6), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An arbitration decision must specify that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) A motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision and general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(6) If the consumer accepts a decision which awards repurchase or replacement, the Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail or email ((~~if requested by the manufacturer and shall include a manufacturer's intent form.~~

~~A verification of compliance form shall be sent to the consumer by the Lemon Law administration. The verification of compliance form shall be completed and returned to the Lemon Law administration by the consumer upon the manufacturer's compliance with the decision~~)).

## WSR 18-01-144
### PERMANENT RULES
### OFFICE OF ADMINISTRATIVE HEARINGS

[Filed December 20, 2017, 9:58 a.m., effective January 20, 2018]

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

Purpose: Chapter 10-04 WAC was updated in response to recent legislation on public records, in order to provide guidance and clarity to public records requesters.

Citation of Rules Affected by this Order: Amending chapter 10-04 WAC.

Statutory Authority for Adoption: RCW 34.12.030(6).

Adopted under notice filed as WSR 17-22-116 on October 31, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 10-04-060 Installments, the office removed subsection (2), regarding fees for installments of public records, to reduce confusion with or duplication of similar provisions in WAC 10-04-075 (5)(b).

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 9, Amended 9, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 9, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 9, Amended 9, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 2017.

Lorraine Lee
Chief Administrative Law Judge

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-010 Purpose.** The purpose of this chapter is to provide rules ((~~implementing RCW 42.17.250 [42.56.040] et seq. for the office of administrative hearings~~)) for the office of administrative hearings to implement the provisions of chapter 42.56 RCW relating to public records.

NEW SECTION

**WAC 10-04-015 Definitions.** The definitions set forth in RCW 42.56.010 apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Case" means an adjudicative proceeding as defined in RCW 34.05.010(1).

(2) "Case file" means the same thing as "official record" while a case is pending with the office. Once a case is no longer pending with the office, "case file" means any records possessed by the office which are copies of all or part of the official record.

(3) "Days" means calendar days unless otherwise stated.

(4) "Office" means the office of administrative hearings. Where appropriate, office also refers to the staff and employees of the office of administrative hearings.

(5) "Official record" means the complete record of a case, as defined in RCW 34.05.476. The official record may be either paper or electronic. The official record does not include any additional copies or drafts of documents, or notes.

(6) "Page" means one impression on a single side of a sheet of paper, or the electronic equivalent.

(7) "Public records officer" means the public records officer or designee for the office appointed by the chief administrative law judge.

(8) "Referring agency" means an agency that refers cases to the office under RCW 34.05.425 (1)(c).

AMENDATORY SECTION (Amending WSR 15-02-087, filed 1/7/15, effective 1/12/15)

**WAC 10-04-020 ((~~Function—Organization—Offices.~~)) Description of the office of administrative hearings.** (1) The office ((~~of administrative hearings~~)) conducts impartial administrative hearings for ((~~state agencies and local governments pursuant to~~)) referring agencies under chapter 34.12 RCW. ((~~The office is under the direction of the chief administrative law judge.~~

~~Administrative law judges preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law.~~))

(2) The ((~~administrative~~)) office headquarters is located at 2420 Bristol Ct. SW, P.O. Box 42488, Olympia, Washington, 98504-2488. The ((~~office~~)) headquarters hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays. ((~~Administrative law judges are assigned to field offices located in Olympia, Seattle, Spokane, Tacoma, and Yakima. Each office is headed by an assistant chief administrative law judge.~~

~~All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the chief administrative law judge or designee at the administrative office.~~))

NEW SECTION

**WAC 10-04-025 Organization, operations, and procedures.** The office is under the direction of the chief administrative law judge. Administrative law judges preside over hearings in cases and issue initial or final orders, including findings of fact and conclusions of law. Administrative law judges are assigned to locations in Olympia, Seattle, Spokane Valley, and Tacoma.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-030 Public records((~~—Availability~~)) officer.** ((~~Public records are available for public inspection and copying except as otherwise provided under chapter 42.17 RCW and these rules.~~)) (1) The public records officer is appointed by the chief administrative law judge and is located in the headquarters office.

(2) The public records officer is responsible for implementing these rules and ensuring the fullest assistance to requestors.

(3) The public records officer is responsible for overseeing compliance with the Public Records Act, but staff members may process requests.

NEW SECTION

**WAC 10-04-035 Availability of records.** Public records are available for inspection during normal business hours. For the purposes of this chapter, normal business hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m. Monday through Friday, except legal holidays. Records must be inspected at the headquarters office or other location as authorized by the public records officer.

NEW SECTION

**WAC 10-04-037 Location of case records.** (1) The office is the custodian of the official record only while a case is pending with the office. The referring agency is the custodian of the official record at all other times.

(2) Requestors seeking to inspect or receive copies of the official record for cases pending with the office should direct their requests to the office. Requestors seeking to inspect or receive copies of the official record for cases that are no longer pending with the office should direct their requests to the referring agency.

(3) Requestors seeking to inspect or receive copies of the case file should direct their requests to the office.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-040 ((~~Public records—Officer.~~)) Requests for public records.** ((~~The public records officer for the administrative office shall be the executive assistant. For those records maintained at field office locations, the public records officer shall be the senior administrative law judge.~~)) (1) Prior to submitting a records request, requestors are encouraged to view documents available on the office web site at www.oah.wa.gov.

(2) Requestors seeking to inspect or receive copies of public records must give reasonable notice to the office that the request is for public records. The request should be addressed to the public records officer.

(3) Requestors may use the public records request form available at www.oah.wa.gov.

(4) Requestors are encouraged to include the following information in the request:

• Name of requestor;

• Contact information of requestor, such as telephone number, mailing address, and email address;

• The date of the request;

• Enough information about the public records being requested to allow the office to reasonably identify and locate any responsive records; and

• Preferred method of receiving the responsive records.

NEW SECTION

**WAC 10-04-045 Responses to public records requests.** (1) Within five business days of receipt of the request, the public records officer will acknowledge receipt and do one or more of the following:

(a) Make the records available for inspection or copying;

(b) Send copies of the records to the requestor, if copies are requested and the requestor has paid any fees that are due;

(c) Provide a reasonable estimate of when the records will be available;

(d) Request clarification from the requestor, if the request is unclear or does not sufficiently identify the requested records; or

(e) Deny the request.

(2) Before providing public records, the public records officer may notify others potentially affected by the disclosure of those records, so that they can seek a court order to prevent or limit the disclosure under RCW 42.56.540. The notice to the affected persons will include a copy of the public records request.

(3) Some records are exempt from disclosure, in whole or in part, and may be withheld or redacted.

(4) The office is not required to create a record that does not otherwise exist.

(5) The public records officer will close a request and inform the requestor that the office has closed the request if the requestor:

(a) Withdraws the request;

(b) Fails to inspect the records;

(c) Fails to pay a fee for records within thirty days after the office sends notification of the fee to the requestor; or

(d) Fails to claim copies of records within thirty days after the office sends notification that the copies are available.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-050 ((~~Requests for~~)) Inspection of public records.** (((~~(1) Members of the public may inspect or obtain copies of public records in accordance with chapter 42.17 RCW by submitting a written request to the public records officer (or designee) during office hours. The office shall provide a form for submitting a request for public records. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) An appropriate description of the record requested; and~~

~~(e) Where and how to deliver the record requested.~~

~~(2) The public records officer shall assist the member of the public in appropriately identifying the public record requested.~~)) (1) The office will provide space to inspect public records.

(2) The office will notify the requestor in writing that the records are available to inspect. Within thirty days after the office sends notification, the requestor must make arrangements with the office to inspect the records.

(3) After inspection is complete, the requestor must identify which records he or she wishes the office to copy. Depending on staff availability and the volume of records requested, the office may copy the records at that time or provide the records to the requestor at a later date.

(4) When the inspection of the requested records is complete and all requested copies are provided, the public records officer will send notification to the requestor that the request is closed.

NEW SECTION

**WAC 10-04-055 Protection of public records.** (1) The office will maintain its records in a reasonably organized manner and will take reasonable actions to protect records from damage and disorganization.

(2) Records will be made available to the requestor for inspection subject to the following restrictions:

(a) The records must not be removed from the designated area;

(b) The public records officer may limit the number of pages provided for inspection at one time;

(c) All possible care must be taken to prevent damage to the records;

(d) Records may not be marked, altered, cut or mutilated in any way;

(e) Use of liquids, eating, drinking, and smoking while inspecting the records is prohibited;

(f) Records must not be defaced in any way, including by writing on, folding, tracing or fastening them with fasteners other than those already existing in file;

(g) Records must be kept in the order in which they are received; and

(h) All copying of records will be done by office staff.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-060 ((~~Copying fees.~~)) Installments.** ((~~No fee shall be charged for the inspection of public records. The office shall charge a fee of fifteen cents per page of copy for providing copies of public records and for the use of the office's copy equipment, including electronic telefaesimile transmission, plus the actual postage or delivery charge. Fees may be waived for minimal copies.~~)) The public records officer may provide access to records in installments under RCW 42.56.080.

NEW SECTION

**WAC 10-04-065 Electronic records.** (1) When providing electronic records, the public records officer will provide records in a file format that is generally commercially available.

(2) If a record exists on a web page, the public records officer may respond by providing the link to the record.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-070 Exemptions.** (1) The office ((~~reserves the right to~~)) must determine ((~~that~~)) if a public record requested ((~~in accordance with the procedures outlined in WAC 10-04-050~~)) is exempt from disclosure, in whole or in part, under ((~~the provisions of~~)) chapter ((~~42.17~~)) 42.56 RCW or other applicable law.

(2) ((~~In addition, pursuant to RCW 42.17.260(1), the office reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.~~

~~(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.~~)) If an entire record is exempt from disclosure it will be withheld. For each record withheld, the public records officer will identify the record, note the applicable exemption and give a brief explanation for each exemption. If only parts of a record are exempt from disclosure, the public records officer will redact the exempt parts, note the applicable exemptions, and give a brief explanation for each exemption.

(3) The office is prohibited by statute from disclosing lists of individuals for commercial purposes under RCW 42.56.070(8).

NEW SECTION

**WAC 10-04-075 Fees for providing public records.** (1) There is no fee for inspecting public records.

(2) The office will charge for providing copies of public records and will maintain a fee schedule on its web site.

(3) The office is not calculating actual costs for copying its records because doing so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine actual copying costs;

(b) Conducting such a study would interfere with other essential agency functions; and

(c) Through the legislative process, the public and requestors have commented on and been informed of authorized fees and costs provided in the Public Records Act and other laws.

(4) The office uses the standard fees and costs authorized in RCW 42.56.120.

(5) The public records officer may require payment of fees before providing the records.

(a) Before beginning to copy public records, a deposit of up to ten percent of the estimated costs of copying may be required.

(b) Payment of the costs of copying an installment may be required before the installment is provided.

(c) If payment of fees is required, the office will send notification to the requestor. Within thirty days after the office sends notification, the requestor must pay the fee or make other arrangements with the office.

(6) The office will not charge sales tax for copies of public records.

(7) The office will accept payment by check, money order, or cash. For cash payments, it is within the office's discretion to determine the denomination of bills and coins that will be accepted.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-080 Agency review of denials ((~~of public records request~~)) or time estimates.** (1) A ((~~person~~)) requestor whose request for a public record has been denied or who believes that the office has not made a reasonable estimate of the time to respond to the request may petition the chief administrative law judge for ((~~prompt~~)) review of the denial ((~~by submitting a written request for review~~)) or estimate.

(a) The ((~~written request shall specifically refer to~~)) petition must be in writing and include a copy of, or reasonably identify, the written statement by the public records officer ((~~or other staff member which constituted or accompanied the denial.~~

~~(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chief administrative law judge or designee.~~)) denying the request or providing the estimate.

(b) The petition must be sent to the public records officer who will promptly provide the petition and any other relevant information to the chief administrative law judge to conduct the review.

(2) The chief administrative law judge ((~~or designee shall immediately~~)) will consider the ((~~matter~~)) petition and either affirm, modify, or reverse the denial or the estimate. This review will be completed within two business days following the ((~~original denial~~)) office's receipt of the petition, or within such times as mutually agreed by the office and the requestor.

(3) ((~~A person whose request for a public record has been denied~~)) If the office denies access to a public record because it claims the record is exempt from disclosure in whole or in part, the requestor may request the attorney ((~~general~~)) general's office to review the ((~~matter pursuant to RCW 42.17.325~~)) denial under RCW 42.56.530.

(4) A requestor may obtain judicial review of a denial of a public records request under RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any administrative appeal.

NEW SECTION

**WAC 10-04-085 Records index.** (1) The office's index of public records is available at www.oah.wa.gov.

(2) The state general records retention schedule and the office's records retention schedule supplement the office's index.

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

**WAC 10-04-090 ((~~Protection of public records.~~)) Communications with the office of administrative hearings.** (((~~(1) No person shall knowingly alter, deface, or destroy public records of the office.~~

~~(2) Original copies of public records of the office shall not be removed from the premises where maintained by the office.~~

~~(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.~~

~~(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.~~

~~(5) Persons requesting, inspecting, or copying public records shall not disrupt the office.~~)) Information about requesting public records from the office is at www.oah.wa.gov. Requests for public records and related questions should be directed to the public records officer, who may be contacted as follows:

Public Records Officer
Office of Administrative Hearings
P.O. Box 42488
Olympia, WA 98504-2488
360-407-2700
publicrecords@oah.wa.gov

## WSR 18-01-147
### PERMANENT RULES
### DEPARTMENT OF REVENUE

[Filed December 20, 2017, 11:08 a.m., effective January 1, 2018]

Effective Date of Rule: January 1, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because these rules provide rates used for refunds and property valuations during 2018.

Purpose:

- WAC 458-18-220 Refunds—Rate of interest, provides the rate of interest that applies to tax refunds made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100, and to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. This rule has been amended to provide the rate of interest to be used when refunding property taxes paid in 2018.
- WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component, provides the interest rate and the property tax component used to value farm and agricultural lands classified under chapter 84.34 RCW (open space program). This rule has been amended to provide the interest rate and property tax component to be used when valuing classified farm and agricultural land during the 2018 assessment year.
- WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation, provides the rate of inflation used to calculate interest on deferred special benefit assessments when farm and agricultural land or timber land is removed or withdrawn from classification under chapter 84.34 RCW (open space program). This rule has been amended to provide the rate of inflation used in calculating interest for deferred special benefit assessments of land removed or withdrawn during 2018.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.360, 84.34.141, and 84.69.100.

Adopted under notice filed as WSR 17-21-050 on October 13, 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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: December 20, 2017.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-01-162, filed 12/21/16, effective 1/1/17)

**WAC 458-18-220 Refunds—Rate of interest.** The following rates of interest apply to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate is applied to the amount of the judgment or the amount of the refund, until paid:

| Year tax paid | Auction Year | Rate |
|---|---|---|
| 1984 | 1983 | 9.29% |
| 1985 | 1984 | 11.27% |
| 1986 | 1985 | 7.36% |
| 1987 | 1986 | 6.11% |
| 1988 | 1987 | 5.95% |

| Year tax paid | Auction Year | Rate |
|---|---|---|
| 1989 | 1988 | 7.04% |
| 1990 | 1989 | 8.05% |
| 1991 | 1990 | 8.01% |
| 1992 | 1991 | 5.98% |
| 1993 | 1992 | 3.42% |
| 1994 | 1993 | 3.19% |
| 1995 | 1994 | 4.92% |
| 1996 | 1995 | 5.71% |
| 1997 | 1996 | 5.22% |
| 1998 | 1997 | 5.14% |
| 1999 | 1998 | 5.06% |
| 2000 | 1999 | 4.96% |
| 2001 | 2000 | 5.98% |
| 2002 | 2001 | 3.50% |
| 2003 | 2002 | 1.73% |
| 2004 | 2003 | 0.95% |
| 2005 | 2004 | 1.73% |
| 2006 | 2005 | 3.33% |
| 2007 | 2006 | 5.09% |
| 2008 | 2007 | 4.81% |
| 2009 | 2008 | 2.14% |
| 2010 | 2009 | 0.29% |
| 2011 | 2010 | 0.21% |
| 2012 | 2011 | 0.08% |
| 2013 | 2012 | 0.15% |
| 2014 | 2013 | 0.085% |
| 2015 | 2014 | 0.060% |
| 2016 | 2015 | 0.085% |
| 2017 | 2016 | 0.340% |
| 2018 | 2017 | 1.130% |

AMENDATORY SECTION (Amending WSR 17-01-162, filed 12/21/16, effective 1/1/17)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year ((~~2017~~)) 2018, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

(1) The interest rate is ((~~4.53~~)) 4.69 percent; and

(2) The property tax component for each county is:

| COUNTY | PERCENT | COUNTY | PERCENT |
|---|---|---|---|
| Adams | ((~~1.25~~)) 1.20 | Lewis | ((~~1.13~~)) 1.11 |
| Asotin | 1.14 | Lincoln | 1.17 |
| Benton | 1.16 | Mason | ((~~1.16~~)) 1.17 |
| Chelan | ((~~1.08~~)) 1.04 | Okanogan | ((~~1.08~~)) 1.10 |
| Clallam | ((~~1.02~~)) 1.00 | Pacific | 1.36 |
| Clark | ((~~1.23~~)) 1.16 | Pend Oreille | ((~~0.90~~)) 0.97 |
| Columbia | ((~~1.06~~)) 1.13 | Pierce | ((~~1.47~~)) 1.41 |
| Cowlitz | ((~~1.16~~)) 1.18 | San Juan | ((~~0.68~~)) 0.71 |
| Douglas | ((~~1.09~~)) 1.05 | Skagit | ((~~1.19~~)) 1.18 |
| Ferry | ((~~0.97~~)) 0.96 | Skamania | ((~~1.00~~)) 0.98 |
| Franklin | ((~~1.24~~)) 1.18 | Snohomish | ((~~1.13~~)) 1.12 |
| Garfield | ((~~0.95~~)) 1.08 | Spokane | ((~~1.36~~)) 1.33 |
| Grant | ((~~1.23~~)) 1.25 | Stevens | ((~~0.96~~)) 0.97 |
| Grays Harbor | ((~~1.36~~)) 1.34 | Thurston | 1.28 |
| Island | ((~~0.93~~)) 0.89 | Wahkiakum | ((~~0.89~~)) 0.86 |
| Jefferson | ((~~1.01~~)) 1.03 | Walla Walla | ((~~1.32~~)) 1.26 |
| King | ((~~1.06~~)) 1.03 | Whatcom | ((~~1.13~~)) 1.14 |
| Kitsap | ((~~1.23~~)) 1.14 | Whitman | ((~~1.44~~)) 1.32 |
| Kittitas | ((~~1.00~~)) 1.02 | Yakima | ((~~1.22~~)) 1.20 |
| Klickitat | ((~~0.96~~)) 0.95 | | |

AMENDATORY SECTION (Amending WSR 17-01-162, filed 12/21/16, effective 1/1/17)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.** (1) **Introduction.** This rule ((~~sets forth~~)) provides the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from

special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

| YEAR | PERCENT | YEAR | PERCENT |
|---|---|---|---|
| 1976 | 5.6 | 1977 | 6.5 |
| 1978 | 7.6 | 1979 | 11.3 |
| 1980 | 13.5 | 1981 | 10.3 |
| 1982 | 6.2 | 1983 | 3.2 |
| 1984 | 4.3 | 1985 | 3.5 |
| 1986 | 1.9 | 1987 | 3.7 |
| 1988 | 4.1 | 1989 | 4.8 |
| 1990 | 5.4 | 1991 | 4.2 |
| 1992 | 3.3 | 1993 | 2.7 |
| 1994 | 2.2 | 1995 | 2.3 |
| 1996 | 2.2 | 1997 | 2.1 |
| 1998 | 0.85 | 1999 | 1.42 |
| 2000 | 2.61 | 2001 | 1.89 |
| 2002 | 1.16 | 2003 | 1.84 |
| 2004 | 2.39 | 2005 | 2.54 |
| 2006 | 3.42 | 2007 | 2.08 |
| 2008 | 4.527 | 2009 | -0.85 (negative) |
| 2010 | 1.539 | 2011 | 2.755 |
| 2012 | 1.295 | 2013 | 1.314 |
| 2014 | 1.591 | 2015 | 0.251 |
| 2016 | 0.953 | 2017 | 1.553 |