

WSR 18-16-004**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed July 19, 2018, 1:47 p.m., effective August 19, 2018]

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

Purpose: The department is amending WAC 388-106-0010 in order to clarify the definition of "informal support" to indicate that paid caregivers may not be the source of informal support unless they are household or family members of a client, to provide further detail on the determination of self-performance of instrumental activities of daily living, and to clarify how cognitive performance is determine[d] using the comprehensive assessment reporting evaluation tool.

Citation of Rules Affected by this Order: Amending WAC 388-106-0010.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 18-11-035 on May 8, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.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: July 18, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you ~~((make))~~ made yourself understood to those closest to you in the last seven days before the assessment; ~~((express))~~ expressed or ~~((communicate))~~ communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of ~~((a))~~ an alternative communication ~~((board or keyboard))~~ method:

(a) Understood: You ~~((express))~~ expressed ideas clearly;

(b) Usually understood: You ~~((have))~~ had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

(c) Sometimes understood: You ~~((have))~~ had limited ability, but ~~((are))~~ were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood: At best, understanding ~~((is))~~ was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you ~~((take))~~ took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

(b) Bed mobility: How you moved to and from a lying position ~~((turn))~~ turned side to side, and ~~((position))~~ positioned your body while in bed, in a recliner, or other type of furniture you slept in.

~~((c))~~ ~~((Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:~~

~~((i))~~ ~~Foot care if you are diabetic or have poor circulation;~~
~~or~~

~~((ii))~~ ~~Changing bandages or dressings when sterile procedures are required.~~

~~((d))~~ ~~Dressing: How you put on, ~~((fasten))~~ fastened, and ~~((take))~~ took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.~~

~~((e))~~ ~~(d) Eating: How you ~~((eat))~~ ate and ~~((drink))~~ drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you ~~((receive))~~ received, e.g. bringing food to you or cutting it up in smaller pieces.~~

~~((f))~~ ~~(e) Locomotion in room and immediate living environment: How you ~~((move))~~ moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you ~~((are))~~ were once in your wheelchair.~~

~~((g))~~ ~~(f) Locomotion outside ~~((of immediate living environment including outdoors))~~ room: How you ~~((move))~~ moved to and ~~((return))~~ returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate~~

living environment including outdoors, includes how you ~~((move))~~ moved to and ~~((return))~~ returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, ~~((ete))~~ or when accessing your community.

~~((h))~~ (g) Walk in room, hallway and rest of immediate living environment: How you ~~((walk))~~ walked between locations in your room and immediate living environment.

~~((i))~~ (h) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter ~~((preparations))~~ medications, or herbal supplements.

~~((j))~~ (i) Toilet use: How you ~~((use the toilet room))~~ eliminated or toileted, used a commode, bedpan, or urinal, ((transfer)) transferred on/off toilet, ((cleanse)) cleansed, ((change pad)) changed pads, ((manage)) managed ostomy or catheter, and ((adjust)) adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

~~((k))~~ (j) Transfer: How you moved between surfaces, ~~((e))~~ e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you ((move)) moved to/from the bath, toilet, or ((get)) got in/out of a vehicle.

~~((l))~~ (k) Personal hygiene: How you maintain personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum ~~((f))~~ including menses care((h)). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a ~~((summary))~~ printed record of information that the department entered into the CARE assessment describing ~~((your needs))~~ the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of ~~((abilities))~~ strengths and ~~((needs))~~ limitations based on an in-person interview in your own home or ~~((your place of residence))~~ another location that is convenient to

you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

(a) Partially met due to availability of other informal support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

(i) Less than one-fourth of the time;

(ii) One-fourth to one-half of the time;

(iii) Over one-half of the time to three-fourths of the time; or

(iv) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

~~("Assistance with medication management" means you need assistance managing your medications. You are~~ sees as:

~~(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.~~

~~(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.~~

~~(c) Self-directed medication assistance/administration if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.~~

~~(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.)~~

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or

lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (a) Foot care if you are diabetic or have poor circulation;
- or
- (b) Changing bandages or dressings when sterile procedures are required.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan, which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

"Decision making" means your ability (~~verbally or nonverbally~~) to make, and actual performance in making, everyday decisions about tasks ~~((or))~~ of activities of daily living in the last seven days before the assessment. The department ~~((determines whether you were))~~ codes your ability to make decisions as one of the following:

(a) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) ~~((Modified independence/))~~ Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.

(c) ~~((Moderately impaired/))~~ Poor decisions; unaware of consequences: Your decisions were poor and you ~~((require))~~ required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.

(d) ~~((Severely impaired/))~~ No or few decisions: Decision making was severely impaired; you never/rarely made decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and ~~((disability))~~ long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

- (a) No difficulty in performing the ~~((activity))~~ IADL;
- (b) Some difficulty in performing the ~~((activity))~~ IADL (e.g., you need some help, are very slow, or fatigue easily); or
- (c) Great difficulty in performing the ~~((activity))~~ IADL (e.g., little or no involvement in the ~~((activity))~~ IADL is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

- (i) Private duty nursing; or
- (ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" under RCW 74.39A.240 means a person ~~((employed by you))~~ contracted with the department to provide personal care or respite services ((in your own home. See WAC 388-71-0500 through 388-71-05909)).

"Informal support" means:

(a) Assistance that will be provided without home and community ~~((program))~~ based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs. ~~((Except for a situation in which the age of a child or shared benefit determines status, if a person is available and willing to provide unpaid assistance to a client,))~~ The department ((may)) will not consider ((the person to be a source of informal support, even if the person is also)) an individual provider ((for)) to be a source of informal support unless the individual provider is also a family member or a household member who had a relationship with the client((-)) that existed before the individual provider entered into a contract with the department;

(b) Adult day health is ~~((considered))~~ coded in the assessment as a source of informal support, regardless of funding source;

(c) Informal support does not include shared benefit or age appropriate functioning.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

(a) Meal preparation: How meals (~~(are)~~) were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(b) Ordinary housework: How ordinary work around the house (~~(is)~~) was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

(c) Essential shopping: How shopping (~~(is)~~) was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood (~~(is)~~) or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the (~~(sole)~~) only source of fuel for heating and/or cooking.

(e) Travel to medical services: How you (~~(travel)~~) traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment(~~(-)~~). This travel includes driving vehicle yourself(~~(-)~~) or traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills (~~(are)~~) were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls (~~(are)~~) were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the (~~(aging and disability services))~~ department and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet

needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, and making their own decisions about health and well-being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced ser-

vices facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before ~~((the))~~ your assessment, not what you might be capable of doing. Self-performance for ADLs is based on ~~((the))~~ your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred ~~((fewer))~~ less than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance, if you were highly involved in the ~~((activity))~~ ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs on three or more occasions.

(d) Extensive assistance, if you performed part of the ~~((activity))~~ ADL, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the ~~((activity))~~ ADL, but not all, of the ~~((activity))~~ ADL.

(e) Total dependence, if you received full caregiver performance ~~((of))~~ every time the ~~((activity))~~ ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) ~~((Activity))~~ ADL did not occur, if you or others did not perform an ADL over the last seven days before your assessment. The ~~((activity))~~ ADL may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

(a) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assis-

stance/administration as prescribed by your medical professional.

(d) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent, if you received no help or oversight to complete the ADL of bathing.

(b) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

(c) Physical help transfer only, if in order to bathe you had help to transfer only.

(d) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

(e) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

(f) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

(i) You were not able (e.g., you may be paralyzed);

(ii) No provider was available to assist; or

(iii) You declined because you chose not to perform the ADL.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

(a) Independent, if you received no help, set-up help, or supervision;

(b) ~~((Set up help/arrangements only))~~ Assistance, if ~~((on some occasions you did your own set-up/arrangement and at other times))~~ you received any help ~~((from another person))~~ with the task, including cueing or monitoring in the last thirty days;

(c) ~~((Limited))~~ Total assistance, if ~~((on some occasions))~~ you ~~((did not need any assistance but at other times in the last thirty days you required some assistance))~~ are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

(d) ~~((Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;~~

(e) ~~Total dependence if you needed the activity fully performed by others; or~~

(f) ~~Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment)) ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.~~

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care ~~((needs))~~ tasks, the list of formal and informal providers and what tasks they will provide, a provider schedule, ~~((referral needs))~~ identified referrals/information, and dates and agreement to the outlined services.

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi((-)client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

(a) That will be provided by informal supports; or

(b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi((-)client household; or

(c) That will be provided to a child primarily due to his or her age.

The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Shared benefit, which means:

(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi((-)client household will benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ~~((activity))~~ ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) ~~((Activity))~~ ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"You/your" means the client.

WSR 18-16-024
PERMANENT RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Division of Consumer Services)

[Filed July 24, 2018, 10:09 a.m., effective September 1, 2018]

Effective Date of Rule: September 1, 2018.

Purpose: The rules must be amended to clarify the roles of parties investing in, owning, and servicing residential mortgage loans. The rules will provide additional detail to industry to help them comply with the law. Technical changes are also being made.

Citation of Rules Affected by this Order: New WAC 208-620-441, 208-620-553, 208-620-585, 208-620-905, 208-620-920, 208-620-930 and 208-620-935; and amending WAC 208-620-010, 208-620-011, 208-620-104, 208-620-231, 208-620-251, 208-620-260, 208-620-440, 208-620-490, 208-620-499, 208-620-520, 208-620-530, 208-620-550, 208-620-551, 208-620-567, and 208-620-900.

Statutory Authority for Adoption: RCW 43.320.040, 31.04.165. Proposed in compliance with OFM Guidance 3.a. dated October 12, 2011.

Adopted under notice filed as WSR 18-11-104 on May 21, 2018.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-620-440, this section was reorganized by type of activity conducted under the act and as set forth in WAC 208-620-441 below.

2. WAC 208-620-441, this new section contains the residential mortgage loan servicing language as moved from WAC 208-620-440. It includes the millage amount for servicing and divides the assessment activities assessed for reverse mortgages under origination and servicing, as applicable.

3. WAC 208-620-490 (2)(k), the requirement to notify the department of termination from the government sponsored entity (GSE) within ten days was moved to WAC 208-620-490 (3)(e) to extend the time frame to twenty days. In addition, the other portion relating to notification of breach of contract, waiver, or nonperformance from GSE was moved to

WAC 208-620-490 (4)(a) to only require notice if the issue remains unresolved for more than ninety days.

4. WAC 208-620-520(5), the requirement for a compliance management system was moved to new WAC 208-620-585.

5. WAC 208-620-585, WAC 208-620-940 was relocated to this section.

6. WAC 208-620-920, the requirement to respond to the borrower within fifteen business days was extended to thirty business days.

7. WAC 208-620-940, the section was moved to WAC 208-620-585.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 16, 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 7, Amended 16, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 24, 2018.

Charles Clark, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Advertise, advertising, and advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; internet pages, social media, instant messages, or electronic bulletin boards.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Part 1026, implementing the Truth in Lending Act.

"Application" means the submission of a borrower's financial information in anticipation of a credit decision relating to a residential mortgage loan, which includes the borrower's name, monthly income, Social Security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

An application may be submitted in writing or electronically and includes a written record of an oral application. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a residential mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a residential mortgage loan.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Part 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower." See WAC 208-620-011.

"Business day" means Monday through Friday excluding federally recognized bank holidays.

"Commercial context" or "commercial purpose" means actions taken for the purpose of obtaining anything of value for oneself, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable, or family purposes.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Creditor" has the same meaning as in the Truth in Lending Act, 15 U.S.C. 1602(f) and Regulation Z, 12 C.F.R. Part 1026.

"Department" means the department of financial institutions.

"Depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act on the effective date of this section, and includes credit unions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. Sec. 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Dwelling" means the same as in Regulation Z implementing the Truth in Lending Act which is a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile or manufactured home, and trailer, if it is used as a residence. See 12 C.F.R. Sec. 1026.2.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 and Regulation B, 12 C.F.R. Part 1002.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692, 12 C.F.R. Part 1006.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, Comptroller of the Currency, National Credit Union Administration, Federal Deposit Insurance Corporation, and Consumer Financial Protection Bureau.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. Secs. 2801 through 2810 and 12 C.F.R. Part 1003 (formerly Part 203).

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes step-parents, stepchildren, stepsiblings, and adoptive relationships.

~~"Individual servicing a mortgage loan," ((means a person who on behalf of a lender or servicer licensed by this state, or a lender or servicer exempt from licensing, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed or exempt lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.~~

~~For purposes of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from the borrower for performing the described activities.) See WAC 208-620-011(2).~~

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"License number" means your NMLS unique identifier displayed as prescribed by the director. Some examples of the way you may display your license number are: NMLS ID 12345, NMLS 12345, NMLS #12345, MB-12345, or MLO-12345.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as mortgage loan originator.

"Loan processor." See WAC 208-620-011.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or

other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Making a loan" means advancing, offering to advance, or making a commitment to advance funds for a loan.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146-010. A licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Mortgage loan originator" or "loan originator" means an individual who for direct or indirect compensation or gain or in the expectation of direct or indirect compensation or gain (1) takes a residential mortgage loan application; or (2) offers or negotiates terms of a residential mortgage loan, including short sale transactions. An individual "offers or negotiates terms of a residential mortgage loan" if the individual:

(a) Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms; or

(b) Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms.

Mortgage loan originator also includes an individual who for compensation or gain performs residential mortgage loan modification services or holds himself or herself out as being able to perform residential mortgage loan modification services.

Mortgage loan originator also includes an individual who holds himself or herself out as being able to perform any of the activities described in this definition. For purposes of this definition, a person "holds themselves out" by advertising or otherwise informing the public that the person engages in any of the activities of a loan originator, including the use of business cards, stationery, brochures, rate lists or other promotional items.

Mortgage loan originator does not include any individual who performs purely administrative or clerical tasks and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan. An individual who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

Mortgage loan originator does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law to conduct those activities, unless the person or entity is compensated by a lender, a mortgage broker, or other mort-

gage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. See the definition of real estate brokerage activity in this subsection.

This definition does not apply to employees of a housing counseling agency approved by the United States department of Housing and Urban Development unless the employees of a housing counseling agency are required under federal law to be individually licensed as mortgage loan originators.

"NMLS" means the Nationwide Multistate Licensing System and Registry, Nationwide Mortgage Licensing System, NMLSR, or such other name or acronym as may be assigned to the multistate system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the mortgage and other financial services industries.

"Out-of-state licensee" means a licensee that does not maintain a physical presence within the state, or a licensee that maintains headquarters or books and records outside Washington.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington*.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including (1) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (2) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction; (4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and (5) offering to engage in any activity, or act in any capacity, described in (1) through (4) of this definition.

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Secs. 2601 et seq., and Regulation X, 12 C.F.R. Part 1024.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"Referring a delinquent loan to foreclosure" means taking any step in furtherance of foreclosure. Examples include, but are not limited to: Sending a referral to a foreclosure trustee or attorney inside or outside of the servicing entity requesting they begin the foreclosure process; making a

record in written or electronic form that flags, comments, blocks, suspends or in any way indicates in the electronic record of a mortgage loan that foreclosure has begun; any such marking of an electronic record that impairs the record in a way that payments will not be applied or will be routed into a suspense account.

"Registered mortgage loan originator" means any individual who (1) meets the definition of mortgage loan originator and is an employee of: A depository institution, a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the farm credit administration; and (2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system.

"Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

"Residential mortgage loan modification" means a change in one or more of a residential mortgage loan's terms or conditions. Changes to a residential mortgage loan's terms or conditions include, but are not limited to, forbearances; repayment plans; changes in interest rates, loan terms (length), or loan types; capitalizations of arrearages; or principal reductions.

"Residential mortgage loan modification services." See WAC 208-620-011.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008; and Regulation G, 12 C.F.R. Part 1007; and Regulation H, 12 C.F.R. Part 1008.

"Senior officer" means an officer of a consumer loan company at the vice president level or above.

"Service or servicing a loan." See WAC 208-620-011.

"Simple interest method." See WAC 208-620-011.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Table funding" means a settlement at which a mortgage loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. Sec. 6101 to 6108.

"Telemarketing Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party residential mortgage loan modification services" means residential mortgage loan modification services offered or performed by any person other than the owner or servicer of the loan.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Secs. 1601 et seq., and Regulation Z, 12 C.F.R. Part 1026.

"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS.

"Underwriter." See WAC 208-620-011.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-011 How does the department interpret certain definitions in RCW 31.04.015? (1) "Borrower" means an individual who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan or a residential mortgage loan modification, regardless of whether the individual actually obtains a loan or residential mortgage loan modification.

(2) "Individual servicing a residential mortgage loan" means a person who on behalf of a lender or servicer licensed or exempt from licensing in this state: Collects or attempts to collect payments on existing obligations due and owing to the licensed or exempt lender or servicer, including payments of principal, interest, escrow amounts, and other amounts due; works with borrowers to collect data and make decisions necessary to modify either temporarily or permanently terms of the obligations; or otherwise finalizes collection through the foreclosure process. For the purpose of this definition "on behalf of a lender or servicer" means that the individual person is employed by the lender or servicer and does not receive any compensation or gain directly or indirectly from borrowers for performing the described activities.

(3) "Loan processor" or "underwriter" means an individual who performs clerical or support duties as an employee (not as an independent contractor) of a person licensed or exempt from licensing and at the direction of and subject to the supervision and instruction of an individual licensed, or exempt from licensing, under this chapter. A residential mortgage loan processor or underwriter engaged as an independent contractor by a licensee must hold a mortgage loan originator license.

(4) "Residential mortgage loan modification services" means activities conducted for compensation or gain by persons not engaged in servicing the borrower's existing residential mortgage loan. The activities may include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform residential mortgage loan modification services. The activities may also include the collection of data for submission to another person performing mortgage loan modification services or to a residential mortgage loan servicer.

(5) "Service" or "servicing a loan" means, with respect to residential mortgage loans, the following:

(a) Regulated activities.

(i) Collecting or attempting to collect payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;

~~((b))~~ (ii) Collecting fees due to the servicer for the servicing activities;

~~((c))~~ (iii) Working with the borrower to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently; or

~~((d))~~ (iv) Otherwise finalizing collection through the foreclosure process.

(b) Regulated persons.

(i) "Servicer." Persons directly engaged in servicing.

(ii) "Master servicer." Persons responsible for ongoing servicing administration either by directly servicing or through servicing agreements with licensed or exempt subservicers. Except that the director may issue a license waiver to a master servicer servicing or administering the servicing of fewer than twenty-five loans.

(iii) "Subservicer." Persons directly servicing pursuant to a servicing agreement with a master servicer.

(c) Persons not regulated.

(i) "Investor." Persons holding securities or other types of instruments backed by pools of residential mortgage loans. Investors are not servicers, master servicers, or subservicers.

(ii) "Note buyers." Persons who purchase mortgage loans without servicing rights and who are not servicers, master servicers, or subservicers.

(6) "Simple interest method" means the method of computing interest payable on a loan by applying the rate of interest specified in the note or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Interest may not be compounded or payable in advance.

(a) Each payment must be applied as directed in the loan documents. No more than forty-five days of prepaid interest may be collected at the time of the loan closing.

(b) The prohibition on compounding interest does not apply to reverse mortgage loans made in compliance with the Washington State Reverse Mortgage Act within this chapter.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-104 Who is exempt from licensing as a consumer loan company? (1) See RCW 31.04.025 (2)(a), (b), (d), (g) through (i), and (k) through (m).

(2) Under RCW 31.04.025 (2)(c), entities conducting transactions under chapter 63.14 RCW (Retail installment sales of goods and services); however, the entity is not exempt if the transactions are an extension of credit to purchase merchandise certificates, coupons, open or closed loop stored value, or any other item issued and redeemable by a retail seller other than the entity extending the credit.

(3) Under RCW 31.04.025 (2)(e), any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary dwelling.

(4) Under RCW 31.04.025 (2)(f), a person selling property they own, that does not contain a dwelling, when the property serves as security for the financing. The exemption is not available to individuals subject to the federal S.A.F.E. Act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings. See also WAC 208-620-232.

(5) Under RCW 31.04.025 (2)(j), a nonprofit housing organization seeking exemption must meet the following standards:

(a) Has the status of a tax-exempt organization under Section 501 (c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides home ownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(f) Provides or identifies for the borrower residential mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and

(g) Meets other standards as prescribed by the director.

(6) Under RCW 31.04.025(3), individuals who make loans or extend credit, secured or unsecured, to immediate family members.

(7) Under RCW 31.04.025(3), individuals who extend credit on the sale of their primary dwelling.

(8) Investors. See WAC 208-620-011(5).

(9) Note buyers. See WAC 208-620-011(5).

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-231 Who must have a consumer loan license to service residential mortgage loans secured by Washington residential real estate or obligating Washington residents? (1) Persons servicing loans they originated.

(2) Persons servicing loans purchased post closing.

(3) Persons servicing loans owned by other persons.

(4) ~~((You must comply with the annual assessment requirements for your residential mortgage loan servicing activity. See WAC 208-620-440.~~

~~(5)) See also WAC 208-620-011(5) and 208-620-104.~~

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-251 Are there any additional requirements for out-of-state licensees? (1) **All locations must be licensed.** Any person that conducts business under the act with Washington residents or Washington residential real estate must obtain a license for all locations from which such business is conducted, including out-of-state locations, with the exception of those office locations providing only underwriting and back office services under WAC 208-620-310. The main office (headquarters), wherever located, must be licensed.

(2) **Keeping records out-of-state.** ~~((The director may approve the maintenance of a licensee's records at an out-of-state location. The licensee must request approval in writing and must agree to provide the director access to the records and pay the hourly rate plus travel costs pursuant to WAC 208-620-590.))~~ You must keep your books and records loca-

tion information updated in the NMLS and provide the director with access to the books and records.

(3) **Service on out-of-state licensee.** An out-of-state licensee's registered agent in Washington is the licensee's agent for service of process, notice, or demand.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-260 If I am licensed under the Consumer Loan Act, can I broker residential mortgage loans in the state of Washington? Yes. You may broker residential mortgage loans under the Consumer Loan Act. Brokered loans are subject to the annual assessment. See WAC ~~((208-620-440))~~ 208-620-441.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-440 How do I calculate ~~((my))~~ the annual assessment for my nonmortgage activity in Washington? (1)~~((a))~~ **Calculation of the annual assessment for loans made, brokered or purchased. The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total loan value of the loans in the year being assessed by .000180271.**

~~((b))~~ **Calculation of the annual assessment for residential mortgage loans serviced.** The industry will be assessed the cost to DFI of regulating the industry. Costs include, but are not limited to, the cost of employee compensation, travel expenses not paid through the examination or investigation process, and goods and services expended in regulating the industry. Each licensee will pay a percentage of the regulatory cost based on the total annual volume of Washington residential mortgage loans serviced on January 1st. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any licensee will not exceed one hundred thousand dollars.)

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31 of the prior year; plus

(b) The total principal loan amount of all Washington loans you made~~((, brokered, or purchased))~~ during the assessment year.

~~((3))~~ **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a) The dollar amount of advances made; and

(b) The dollar amount of accrued interest.)

NEW SECTION

WAC 208-620-441 How do I calculate the annual assessment for my residential mortgage activity in Washington? (1)(a) **Calculation of the annual assessment for loans made, brokered or purchased.** The annual assessment is based on the "adjusted total loan value" as defined in subsection (2) of this section. The amount of the annual assessment is determined by multiplying the adjusted total

loan value of the loans in the year being assessed by .000180271.

(b) **Calculation of the annual assessment for residential mortgage loans serviced.** Master servicers must report their MSR volume but will not be assessed for residential mortgage loan servicing conducted by a subservicer licensed under this chapter pursuant to a servicing agreement. Each licensee will pay an amount based on the total annual volume of Washington residential mortgage loans serviced during the reporting year minus the adjusted total loan value of the loans in the year being assessed, multiplied by .00000746624. The minimum amount assessed will be five hundred dollars and the maximum amount assessed to any licensee will not exceed one hundred thousand dollars.

(2) **All loans counted in assessment calculation.** The "adjusted total loan value" is the sum of:

(a) The principal loan balance on Washington loans in your loan portfolio on December 31st of the prior year; plus

(b) The total principal loan amount of all Washington loans you made, brokered, or purchased during the assessment year.

(3) **Reverse mortgages.** Each reporting year, you will report and be assessed on:

(a)(i) The dollar amount of advances made at origination: You will be assessed pursuant to the formula in subsection (1)(a) of this section.

(ii) The dollar amount of advances made during servicing: You will be assessed at the millage identified in subsection (1)(b) of this section; and

(b) The dollar amount of accrued interest: You will be assessed at the millage identified in subsection (1)(b) of this section.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-490 What are my reporting responsibilities when something of significance happens to my business? (1) Prior notification required. You must amend your NMLS record at least ten days prior to a change of your:

- (a) Principal place of business or any of branch offices;
- (b) Name or legal status (e.g., from sole proprietor to corporation, etc.);
- (c) Name and mailing address of your registered agent if you are located outside the state;
- (d) Legal or trade name; or
- (e) Ownership control of ten percent or more; or
- (f) A closure or surrender of the license. See WAC 208-620-499.

(2) **Post notification within ten days.** You must amend your NMLS record within ten days after an occurrence of any of the following:

- (a) A change in mailing address, telephone number, fax number, or email address;
- (b) A cancellation or expiration of your Washington state business license;
- (c) A change in standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(d) Failure to maintain the appropriate unimpaired capital under WAC 208-620-340. See WAC 208-620-360;

(e) Receipt of notification of cancellation of your surety bond;

(f) Termination of sponsorship of loan originator;

(g) Receipt of notification of a claim against your bond;

(h) A change in primary company contact (~~(or)~~), primary consumer complaint contact, location of your books and records; (~~(or)~~)

(i) A change in your response to a disclosure question within NMLS. You must upload the document that is the basis for your changed response; or

(j) Your capital falling below the required government sponsored entity (GSE) minimum capital requirements, if applicable.

(3) **Post notification within twenty days.** You must amend your NMLS record within twenty days after the occurrence of any of the following developments:

(a) Receipt of notification of license revocation procedures against your license in any state;

(b) The filing of a felony indictment or information related to lending or brokering activities against you or any officer, board director, or principal or an indictment or information involving dishonesty against you or any officer, board director, or principal;

(c) Conviction of you or any officer, director, or principal for a felony, or a gross misdemeanor involving lending, brokering or financial misconduct; or

(d) The filing of any material litigation against the company.

(e) Notification of termination from the GSE, if applicable.

(4) Other.

(a) You must amend your NMLS record after receiving notification from the GSE of a breach of contract, waiver, or nonperformance if the reason for the notification remains unresolved for more than ninety days.

(b) See WAC 208-620-499 for the requirements when you close your business.

~~((5))~~ (c) Within forty-five days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-620-573.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-499 What are my reporting requirements if I want to close my company or surrender my license? If you cease doing business in Washington you must do the following:

(1) Submit a surrender request through the NMLS within ten days of closing the company or surrendering the license; and

(2) File the final closure form, annual reports, worksheet, and submit any fees owed as required in WAC 208-620-430. Failure to file these reports within thirty days of closure will trigger the bond claim process as described in WAC 208-620-430(3), or other action.

(3) If your license has expired or you are otherwise locked out of the NMLS database, you must provide the documents described in subsection (2) of this section directly to the department.

(4) If you are a residential mortgage loan servicer, you must provide the department with a description of the disposition of your servicing volume, including the name of the purchaser and the specific notice to consumers about the sale of their servicing.

Any Washington loans in your portfolio and activity under the act remain subject to the director's authority including investigation and examination, and the fees associated with those activities.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-520 ~~((How long must I maintain my records under the Consumer Loan Act?)) What are the records I must maintain and for how long must I maintain them? ((What are the records I must maintain? Licensees must maintain the following records for a minimum of three years, or the period of time required by federal law whichever is longer, after making the final entry on a loan at a licensed location.)) Unless otherwise indicated in this section, you must maintain the following records for a minimum of three years after making the final entry, or the period of time required by federal law, whichever is longer:~~

(1) **General records.** Each licensee must maintain electronic or hard copy books, accounts, records, papers, documents, files, and other information relevant to making loans or servicing residential mortgage loans.

(2) **Advertising records.** These records include newspaper and print advertising, scripts of radio and television advertising, telemarketing scripts, all direct mail advertising, and any electronic advertising distributed by facsimile computer, or other electronic or wireless network.

(3) **Other specific records.** The records required under subsection (1) of this section include, but are not limited to:

(a) All loan agreements or notes and all addendums, riders, or other documents that supplement the final loan agreements;

(b) All forms of loan applications, written or electronic (the Fannie Mae 1003 is an example);

(c) The initial rate sheet or other supporting rate information;

(d) The last rate sheet, or other supporting rate information, if there was a change in rates, terms, or conditions prior to settlement;

(e) Rate lock agreements and the supporting rate sheets or other rate supporting document;

(f) All written disclosures required by the act and federal laws and regulations. Some examples of federal law disclosures include, but are not limited to: The good faith estimate or loan estimate or other Truth in Lending Act disclosures, Equal Credit Opportunity Act disclosures, and affiliated business arrangement and other disclosures under RESPA;

(g) Documents and records of compensation paid to employees and independent contractors;

(h) An accounting of all funds received in connection with loans with supporting data;

(i) Settlement statements (the final HUD-1, HUD-1A or federal closing disclosure);

(j) Broker loan document requests (may also be known as loan document request or demand statements) that include any prepayment penalties, terms, fees, rates, yield spread premium, loan type and terms;

(k) Records of any fees refunded to applicants for loans that did not close;

(l) All file correspondence and logs;

(m) All mortgage broker contracts with lenders and all other correspondence with the lenders;

(n) All documents used to support the underwriting approval; and

(o) All documents that evidence a financial commitment made to protect a rate of interest during a rate lock period.

(4) Loan servicing documents. ~~((See subsection (1) of this section.))~~

(a) You must maintain servicing agreements as part of your records.

(b) You must maintain all notices from GSEs, if applicable.

(c) You must maintain recorded telephone conversations with consumers for three years after the date of the call or longer if required by another law.

(5) Abandoned records. If you do not maintain your records as required, you are responsible for the costs of collection, storage, conversion to electronic format((;)) or proper destruction of the records.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-530 Can I maintain my records electronically? Yes. (1) You may maintain records electronically if you also maintain the electronic display equipment and make it available upon request to the director or his or her representatives for purposes of examination or investigation.

(2) The hardware or software needed to display the record must also be maintained during the required retention period under WAC 208-620-520(1).

(3) You must provide records in hard copy upon request of the director.

(4) If you use a cloud service for records maintenance, the servers underlying that service must be located in the United States or its territories.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-550 What business practices are prohibited? In addition to RCW 31.04.027, the following constitute an "unfair or deceptive" act or practice:

(1) Failure to provide the exact pay-off amount as of a certain date within seven business days after being requested in writing to do so by a borrower of record or their authorized representative;

(2) Failure to record a borrower's payment as received on the day it is delivered to any of the licensee's locations during its regular working hours;

(3) Collecting more than forty-five days of prepaid interest at the time of loan closing;

(4) Soliciting or entering into a contract with a borrower that provides in substance that the licensee may earn a fee or commission through its "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) **Engaging in unfair or deceptive advertising practices.** Unfair advertising may include advertising that offends public policy, or causes substantial injury to consumers or to competition in the marketplace. See also WAC 208-620-630;

(6) Negligently making any false statement or willfully making any omission of material fact in connection with any application or any information filed by a licensee in connection with any application, examination or investigation conducted by the department;

(7) Making any payment, directly or indirectly, or withholding or threatening to withhold any payment, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(8) Leaving blanks on a document that is signed by the borrower or providing the borrower with documents with blanks;

(9) Failing to clearly disclose to a borrower whether the payment advertised or offered for a real estate loan includes amounts for taxes, insurance or other products sold to the borrower;

(10) Purchasing insurance on an asset secured by a loan without first attempting to contact the borrower by mailing one or more notices to the last known address of the borrower, unless mail has been previously returned as undeliverable from the address, in order to verify that the asset is not otherwise insured;

(11) Willfully filing a lien on property without a legal basis to do so;

(12) Coercing, intimidating, or threatening borrowers in any way with the intent of forcing them to complete a loan transaction;

(13) Failing to reconvey title to collateral, if any, within ~~(thirty)~~ sixty business days when the loan is paid in full ~~((unless conditions exist that make compliance unreasonable))~~;

(14) Intentionally delaying the closing of a residential mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower;

(15) Steering a borrower to a residential mortgage loan with less favorable terms than they qualify for in order to increase the compensation paid to the company or mortgage loan originator. An example is counseling, or directing a borrower to accept a residential mortgage loan product with a risk grade less favorable than the risk grade the borrower would qualify for based on the licensee or other regulated person's then current underwriting guidelines, prudently applied, considering the information available to the licensee or other regulated person, including the information provided by the borrower;

(16) Failing to indicate on all residential mortgage loan applications, initial and revised, the company's unique identifier, the loan originator's unique identifier, and the date the application was taken or revised;

(17) Receiving compensation or anything of value from any party for assisting in real estate "flopping." Flopping occurs during some short sales where the value of the property is misrepresented to the lender who then authorizes the sale of the property for less than market value. The property is then resold at market value or near market value for a profit. The failure to disclose the true value of the property to the lender constitutes fraud and is a violation of this chapter;

(18) Receiving compensation for making the loan and for brokering the loan in the same transaction((-);

(19) Charging a fee in a residential mortgage loan transaction that is more than the fees allowed by the state or federal agency overseeing the specific type of loan transaction. Examples include, but are not limited to, loans insured or guaranteed by the Veterans Administration, Home Equity Conversion Mortgages insured by HUD, and loans offered through the United States Department of Agriculture Rural Development((-);

(20) Making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan. An example is advertising a discounted rate without clearly and conspicuously disclosing in the advertisement the cost of the discount to the borrower and that the rate is discounted((-);

(21) Servicing a usurious loan.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-551 Residential mortgage loan servicers—What business practices are prohibited? (1) In addition to being subject to RCW 31.04.027, you are prohibited from requiring or encouraging a borrower to:

(a) Waive his or her legal defenses, counterclaims, and other legal rights against the servicer for future acts;

(b) Waive his or her right to contest a future foreclosure;

(c) Waive his or her right to receive notice before the owner or servicer of the loan initiates foreclosure proceedings;

(d) Agree to pay charges not enumerated in any agreement between the borrower and the lender, servicer, or owner of the loan; or

(e) Cease communication with the lender or investor.

(2) As to force placed insurance you are prohibited from:

(a) Purchasing insurance on a property secured by a loan you service without providing two prior written notices to the homeowner's last known address seeking verification of existing insurance coverage. The notices must state:

(i) How the homeowner provides proof there is insurance coverage in place;

(ii) That without proof of insurance the servicer may obtain coverage at the homeowner's expense, that such coverage may only protect the mortgage holder, and that the cost of the coverage may be higher than that the homeowner may be able to obtain privately;

(iii) That the homeowner may request the servicer to set up an escrow account to advance insurance payments and that upon establishment of an escrow account the servicer may charge the borrower the amount of the insurance payments

advanced on the borrower's behalf respecting the mortgaged property including a cushion amount (see WAC 208-620-900 (4)(b));

(iv) The second written notice must be sent thirty days after the first written notice.

(b) Failing to advance payments to a property insurer regardless of the homeowner making a payment to the servicer when the homeowner has an escrow account for the payment of insurance.

(c) Purchasing force placed insurance at a price that is not commercially reasonable. You must terminate force placed insurance within thirty days of receiving evidence from the homeowner of the existence of coverage. You must refund to the homeowner all premiums for force placed insurance collected during any period of time for which the homeowner's private insurance was in place.

(3) You are additionally prohibited from:

(a) Knowingly misapplying or recklessly applying loan payments to the outstanding balance of a loan.

(b) Knowingly misapplying or recklessly applying payments to escrow accounts.

(c) Charging excessive or unreasonable fees to provide loan payoff information.

(d) Knowingly or recklessly providing inaccurate information to a credit bureau, thereby harming a borrower's creditworthiness.

(e) Knowingly or recklessly facilitating the illegal foreclosure of real property collateral.

(4) You are prohibited from referring a delinquent mortgage to foreclosure if you have received the homeowner's loan modification application and you have not evaluated the homeowner for all available loan modifications.

(5) You are prohibited from using any funds in a suspense account to pay your own fees for servicing.

(6) You are prohibited from pursuing any collection activities while a complete loan modification application is being reviewed or while the borrower is making payments pursuant to a trial or permanent modification. This prohibition includes activities conducted by others on your behalf.

(7) You are prohibited from collecting private mortgage insurance beyond the date for which private mortgage insurance is no longer required.

(8) You are prohibited from failing to service the loan pursuant to the loan terms and conditions unless agreed to in writing by the borrower.

(9) You are prohibited from knowingly or recklessly improperly onboarding a residential mortgage loan into your loan servicing system.

NEW SECTION

WAC 208-620-553 Conducting residential mortgage loan servicing activities in the United States or outside the United States. (1) You are prohibited from conducting the following activities from any location outside the United States or its territories:

(a) Receiving payments and maintaining the payment records;

(b) Collection activities;

(c) Any communications with consumers; or

(d) Receipt of data from or disbursement of data to borrowers.

(2) The following activities may be conducted from a location outside the United States or its territories:

(a) Data entry;

(b) Document review;

(c) Recommendation for action;

(d) Records searches;

(e) Credit dispute analysis; or

(f) Escrow account analysis.

AMENDATORY SECTION (Amending WSR 13-24-024, filed 11/22/13, effective 1/1/14)

WAC 208-620-567 What fees can I charge when servicing residential mortgage loans under the act? (1) You may charge servicing fees authorized by the loan documents, by the act, or by the borrower. Examples include, but are not limited to, late fees as authorized by the loan documents, insufficient check fees as authorized by the loan documents or as allowed under WAC 208-620-560(2), and wire transfer fees for wire transfers requested by the borrower.

(2) You may only charge a fee for a default related service that is usual and customary or reasonable in light of the service provided.

(3) You may not charge a consumer for fees you paid to third parties in excess of the fee ((charged by)) you paid to the third party.

NEW SECTION

WAC 208-620-585 Compliance management system (CMS). Your CMS must contain, at a minimum, the following functionalities:

(1) Board and management oversight; and

(2) Compliance program, which includes:

(a) Policies and procedures;

(b) Training;

(c) Monitoring and/or audit; and

(d) Consumer complaint response.

For the details of each component, see the *Supervision and Examination Manual* from the Consumer Financial Protection Bureau (CFPB) at the following link: <https://www.consumerfinance.gov/policy-compliance/guidance/supervision-examinations/>. The CMS-specific procedures can be used by an entity to self-assess the effectiveness of its CMS.

Your CMS must be maintained as part of your books and records.

AMENDATORY SECTION (Amending WSR 12-18-047, filed 8/29/12, effective 11/1/12)

WAC 208-620-825 What reverse mortgage program information must I submit to the director for approval before offering or making proprietary reverse mortgages? (1) A description of all proprietary reverse mortgage products available to borrowers.

(2) A copy of each proprietary loan product contract.

(3) A copy of all disclosures provided to borrowers for all proprietary reverse mortgage products.

(4) A copy of the projected total cost of credit disclosure provided to borrowers. The projected total cost of credit disclosure must reflect at a minimum the following factors, as applicable:

- (a) All costs and charges to the consumer;
- (b) All advances to and for the benefit of the consumer;
- (c) Any shared appreciation or equity in the dwelling that you are entitled to receive under the contract to receive;
- (d) Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements);
- (e) Each of the assumed annual appreciation rates for the dwelling:

- (i) Zero percent;
- (ii) Four percent;
- (iii) Eight percent((?)).

(f) Each of the following assumed loan periods:

- (i) Two years;

(ii) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of the consumer's most recent birthday). If there is more than one consumer, the period must be the actuarial life expectancy of the youngest consumer as of that consumer's most recent birthday((?)).

(g) Reserved.

(5) Your complaint processing policies and procedures.

(6) A copy of all notes and mortgages used in proprietary reverse mortgage loan transactions.

(7) If third party originators are used, copies of all due diligence policies and procedures for their use and copies of all compensation and incentive policies and procedures.

(8) A copy of your underwriting policies.

(9) A description of your title search methods.

(10) A copy of your policy for paying subsequent liens.

(11) A copy of your appraisal practices.

(12) A copy of audited financial statements and unaudited balance sheet and income statement for the most recent end quarter for the last two years of audited financial statements. If you are relying on your parent company's capital to satisfy WAC 208-620-810(2), you must also include the parent company's last two years of audited financial statements and the most recent end quarter unaudited balance sheet and income statement.

(13) Copies of your residential mortgage loan servicing policies and procedures.

AMENDATORY SECTION (Amending WSR 16-08-026, filed 3/30/16, effective 4/30/16)

WAC 208-620-900 (~~What requirements must I comply with when~~) **Servicing residential mortgage loans** ((?)) ~~—General requirement.~~ ((In addition to complying with all other provisions of this act you must:)) (1) Other applicable laws, regulations, and programs. A violation of an applicable state or federal law, regulation, or program is a violation of this act. In addition to complying with all other provisions of this act, you must comply with the following:

(a) Chapter 61.24 RCW and any other applicable state or federal law, regulation, and program.

(b) ((Comply with)) The federal Servicemembers Civil Relief Act.

~~((e) A violation of an applicable state or federal law, regulation, or program is a violation of this act.))~~

(2) Servicing and ownership transfers or sales.

(a) When acquiring servicing rights from another servicer you must:

(i) Continue processing loan modification requests and honoring trial and permanent modifications;

(ii) Designate the homeowner as a third-party intended beneficiary in any subsequent contract for transfer or sale, unless doing so would violate another state law or ~~((federal HAMP or))~~ GSE modification program((s)) requirements; and

(b) When transferring or selling the servicing of loans with pending modification requests or trial or permanent modifications you must:

(i) Inform the successor servicer if a loan modification is pending;

(ii) Obligate the successor servicer to accept and continue processing loan modification requests and to honor trial and permanent loan modification agreements; and

(iii) Designate the homeowner as a third-party intended beneficiary in any contract for transfer or sale, unless doing so would violate state law or ~~((federal HAMP or))~~ GSE modification program((s)) requirements.

(3) Payment processing and fees.

(a) You must accept and credit all amounts received within one business day of receipt when the borrower has made the payment to the address where instructed, provided, that the borrower has provided sufficient information to credit the account. If you use the scheduled method of accounting, any regularly scheduled payment made prior to the scheduled due date must be credited no later than the due date. You must apply the payment as specified in the loan documents.

(b) You may enter into a written contract with the borrower whereby you hold funds of a certain type or sent by a certain method for a period of time until the funds are available before crediting them to the borrower's account.

(c) You must notify the borrower if a payment is received but not credited and instead placed in a suspense account. You must mail the notification to the borrower within ten business days by mail at the borrower's last known address. The notification must identify the reason the payment was not credited or treated as credited to the account, as well as any actions the borrower must take to make the residential mortgage loan current. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement. In the event of a conflict between this subsection (3)(c) or (d) of this section immediately following or both, and the requirements of an applicable bankruptcy court order, compliance with the bankruptcy court requirements are considered compliance with the subsections.

(d) When the suspense account contains enough money to make a full payment, you must apply that payment to the mortgage as of the date the full amount became available in the suspense account.

(e) You must assess any incurred fees to a borrower's account within forty-five days of the date on which the fee

was incurred. You must clearly and conspicuously explain the fee in a statement mailed to the borrower at the borrower's last known address no more than thirty days after assessing the fee. If you provide monthly or more frequent statements that include this information you are not required to provide the information in a notice in addition to the monthly or more frequent statement.

~~((f) If you provide monthly or more frequent statements that include the information required under this subsection, you have until January 1, 2013, to program these changes. On and after January 1, 2013, you must be in compliance with this subsection.~~

~~(4) Maintenance of the escrow account.~~

~~(a)(i) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.~~

~~(ii) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower. You must comply with (a)(ii) of this subsection beginning on January 1, 2013.~~

~~(b) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.~~

~~(c) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.~~

~~(5) Borrower requests for information.~~

~~(a) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:~~

~~(i) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;~~

~~(ii) Providing a written statement to the borrower within fifteen business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient~~

~~detail regarding the information sought by the borrower to permit the servicer to comply.~~

~~(b) You must provide at a minimum the following information to a borrower's request described in subsection (5) of this section:~~

~~(i) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;~~

~~(ii) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;~~

~~(iii) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and~~

~~(iv) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes.~~

~~(e) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.~~

~~(d) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with (e) of this subsection.~~

~~(e) In addition to the statement described in (a) of this subsection, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:~~

~~(i) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and~~

~~(ii) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and conspicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.~~

~~(iii) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any out-~~

standing sums are owed on the residential mortgage loan up to the date of the request for the information.

(iv) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

(6) Loss mitigation.

(a) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

(i) Explain loss mitigation options and requirements;

(ii) Track documents submitted by the homeowner and documents provided to the homeowner;

(iii) Inform the homeowner of the status of their loss mitigation process;

(iv) Ensure the homeowner is considered for all loss mitigation options; and

(v) Access individuals with the authority to delay or stop foreclosure proceedings.

(b) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. If not using a HAMP or GSE loan modification program, you must:

(i) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days. You have until April 1, 2013, to develop the system described in (a)(i) of this subsection. On and after April 1, 2013, you must be in compliance with (a)(i) of this subsection.

(ii) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(iii) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See (b) of this subsection for additional requirements on borrower appeals.

(iv) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(v) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(vi) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (a)(viii) and (ix) of this subsection.

(vii) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(viii) Review and consider a complete loan modification application if received prior to thirty seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(ix) Perform an expedited review of any complete loan modification application submitted between thirty seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(e) As to borrower appeals of loan modification denials you must:

(i) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

(A) An ineligible mortgage;

(B) An ineligible property;

(C) The borrower did not accept the offer; or

(D) The loan was previously modified.

(ii) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(iii) Respond to the borrower's appeal within thirty days of receipt.

(iv) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(d) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

(e) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(f) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

~~(g) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.~~

~~(h) You must make public all necessary information to inform homeowners about your short sale requirements.~~

~~(i) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.~~

~~(7) Foreclosure.~~

~~(a) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.~~

~~(b) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.~~

~~(8)) (4) Contracting with other parties. You must adopt written policies and procedures for the oversight of third-party providers including, but not limited to, foreclosure trustees, foreclosure firms, subservicers, agents, subsidiaries, and affiliates. You must maintain the policies and procedures as part of your books and records and must provide them to the department when directed to do so.~~

~~((9)) (5) See also WAC 208-620-551.~~

NEW SECTION

WAC 208-620-905 Servicing residential mortgage loans—Maintenance of the escrow account. (1)(a) If you collect escrow amounts held for the borrower for payment of insurance, taxes, or other charges with respect to the property, you must collect and make all payments from the escrow account and, to the extent you have control, ensure that no late penalties are assessed or other negative consequences result for the borrower.

(b) At least annually, or upon the borrower's request, you must inform the borrower in writing of the amount of reserve required in an escrow account. The notice must also advise the borrower of any fees the borrower will incur for not maintaining the reserve amount or fees the borrower will incur if you advance escrow amounts on the borrower's behalf and then collect the amounts from the borrower.

(2) You may enter into a written agreement with the borrower whereby you are not required to make escrow payments unless funds are available in the escrow account. The agreement must include language that puts the borrower on notice that the borrower is responsible for the payment of the escrow amounts if a sufficient amount is not maintained in the escrow account.

(3) You must notify the borrower within ten business days of any change to the escrow account, other than the changes brought about by the borrower's regularly scheduled payment, that will change the borrower's escrow payment amount. Examples of changes requiring notification include, but are not limited to, hazard insurance premiums, a reduction in the required reserve amount for the account, or a change in the property's tax assessment.

NEW SECTION

WAC 208-620-920 Servicing residential mortgage loans—Borrower requests for information. (1) You must make a reasonable attempt to comply with a borrower's request for information about the residential mortgage loan account, including a request for information about loss mitigation, and to respond to any dispute initiated by the borrower about the loan account. A reasonable attempt includes, but is not limited to:

(a) Maintaining written or electronic records of each written request for information involving the borrower's account until the residential mortgage loan is paid in full, sold, or otherwise satisfied;

(b) Providing a written statement to the borrower within thirty business days of receipt of a written request from the borrower, or by following the response timelines for any loss mitigation program. The borrower's request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and sufficient detail regarding the information sought by the borrower to permit the servicer to comply.

(2) You must provide at a minimum the following information:

(a) Whether the account is current or, if the account is not current, an explanation of the default and the date the account went into default;

(b) The current balance due on the residential mortgage loan, including the principal due, the amount of funds, if any, held in a suspense account, the amount of the escrow balance known to the servicer, if any, and whether there are any escrow deficiencies or shortages known to the servicer;

(c) The identity, address, and other relevant information about the current holder, owner, or assignee of the residential mortgage loan; and

(d) The telephone number and mailing address of an individual servicer representative with the information and authority to answer questions and resolve disputes.

(3) You must promptly correct any errors and refund any fees assessed to the borrower resulting from an error you made.

(4) If the content of your response meets the requirements under RESPA for a response to a qualified written request, you will be deemed in compliance with the content requirements of this subsection. You must still comply with subsection (3) of this section.

(5) In addition to the statement described in subsection (1)(b) of this section, a borrower may request more detailed information from a servicer, and the servicer must provide the information within fifteen business days of receipt of a written request from the borrower. The request must include the name and account number, if any, of the borrower, a statement that the account is or may be in error, and provide sufficient detail to the servicer regarding information sought by the borrower. If requested by the borrower, this statement must also include:

(a) A copy of the original note, or if unavailable, an affidavit of lost note, with all endorsements; and

(b) A statement that identifies and itemizes all fees and charges assessed under the loan servicing transaction and provides a full payment history identifying in a clear and con-

spicuous manner all of the debits, credits, application of and disbursement of all payments received from or for the benefit of the borrower, and other activity on the residential mortgage loan including escrow account activity and suspense account activity, if any.

(c) The period of the account history shall cover at a minimum the two-year period prior to the date of the receipt of the request for information. If the servicer has not serviced the residential mortgage loan for the entire two-year time period, the servicer must provide the information going back to the date on which the servicer began servicing the home loan and identify the previous servicer, if known. If the servicer claims that any delinquent or outstanding sums are owed on the home loan prior to the two-year period or the period during which the servicer has serviced the residential mortgage loan, the servicer must provide an account history beginning with the month that the servicer claims any outstanding sums are owed on the residential mortgage loan up to the date of the request for the information.

(d) If the borrower requests this statement, you must provide it free of charge; but the borrower is only entitled to one free statement annually. If the borrower requests more than one statement annually, you may charge thirty dollars for the second and subsequent statements.

NEW SECTION

WAC 208-620-930 Servicing residential mortgage loans—Loss mitigation. (1) The obligation to assign an individual servicer representative with the information and authority to answer questions and resolve disputes and to act as a single point of contact for the homeowner during loss mitigation attaches when the borrower requests loss mitigation. This individual servicer representative must have the authority and ability to perform the following duties:

- (a) Explain loss mitigation options and requirements;
- (b) Track documents submitted by the homeowner and documents provided to the homeowner;
- (c) Inform the homeowner of the status of their loss mitigation process;
- (d) Ensure the homeowner is considered for all loss mitigation options; and
- (e) Access individuals with the authority to delay or stop foreclosure proceedings.

(2) You must comply with all timelines and requirements for the federal HAMP or GSE modification programs if applicable, including denials and dual tracking prohibitions. For any modification program, you must:

(a) Develop an electronic system, or add to an existing system, the ability for borrowers to check the status of their loan modification, at no cost. The system must also allow communication from housing counselors. The system must be updated every ten business days.

(b) Review and make a determination on a borrower's completed loan modification application within thirty days of receipt.

(c) Provide in the loan modification denial notice the reasons for denial and an opportunity for the homeowner to rebut the denial within thirty days. If the denial is due to the terms of an agreement between you and an investor, you must

provide the name of the investor and a summary of the reason for the denial. If the denial is based on a net present value (NPV) model, you must provide the data inputs used to determine the NPV. Any loan modification denials must be reviewed internally by an independent evaluation process within thirty days of the denial determination or the mailing of the notice of denial to the borrower, whichever occurs earlier. See subsection (3) of this section for additional requirements on borrower appeals.

(d) Review and consider any complete loan modification application before referring a delinquent loan to foreclosure.

(e) Give a homeowner ten business days from your notice to them to correct any deficiencies in their loan modification application.

(f) Stop the foreclosure from proceeding further if you receive a complete loan modification application. See (h) and (i) of this subsection.

(g) If the borrower accepts a loan modification verbally, in writing, or by making the first trial payment, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(h) Review and consider a complete loan modification application if received prior to thirty-seven days before a scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(i) Perform an expedited review of any complete loan modification application submitted between thirty-seven and fifteen days before the scheduled foreclosure sale. If you offer the borrower a loan modification, you must delay a pending foreclosure sale to provide the borrower with fourteen days in which to accept or deny the loan modification offer. If the borrower accepts a loan modification, you must suspend the foreclosure proceeding until such time as the borrower may fail to perform the terms of the loan modification.

(3) As to borrower appeals of loan modification denials you must:

(a) Give the borrower thirty days from your written notice of denial to request an appeal unless the denial is due to:

- (i) An ineligible mortgage;
- (ii) An ineligible property;
- (iii) The borrower did not accept the offer; or
- (iv) The loan was previously modified.

(b) Give the borrower the opportunity to obtain a full appraisal for purposes of contesting appraisal data used in a denial based on NPV.

(c) Respond to the borrower's appeal within thirty days of receipt.

(d) Provide the borrower with a description of any other loss mitigation option available if you uphold the denial.

(4) When a loan modification is granted, you must provide the borrower with a copy of the fully executed loan modification agreement within thirty days of receipt of the signed agreement from the borrower. A loan modification granted

orally must be reduced to a written document with a summary of all of the terms and must be provided to the borrower within thirty days of approval of the loan modification.

(5) If a loan payment forbearance is granted, you must provide the borrower with, at a minimum, a confirming letter of approval. The letter must contain the essential terms of the forbearance and must contain the name and contact information of specialist who is the borrower's primary or contact with the company.

(6) You must maintain adequate staffing levels and systems to comply with this section, including staffing and systems to track and maintain loan modification documents submitted by homeowners.

(7) You must make public all necessary information to inform homeowners about and allow homeowners to apply for your proprietary first and second lien modifications.

(8) You must make public all necessary information to inform homeowners about your short sale requirements.

(9) You must allow a homeowner to apply for and receive a short sale determination before the homeowner puts a house on the market.

NEW SECTION

WAC 208-620-935 Servicing residential mortgage loans—Foreclosure. (1) Before you refer a loan to foreclosure, you must document in the loan file evidence to substantiate the borrower's default and your right to foreclose. The file must also contain loan ownership information.

(2) If a borrower's property goes into foreclosure and the foreclosure sale occurs, you must notify the borrower within three business days of sale of the completion of the sale. You must mail the notification to the borrower's last known address provided to you.

WSR 18-16-035

PERMANENT RULES

WINE COMMISSION

[Filed July 25, 2018, 7:51 a.m., effective August 25, 2018]

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

Purpose: The purpose of this rule making is to add public records disclosure procedures to the Washington wine commission rules, as required by RCW 42.56.040.

Citation of Rules Affected by this Order: New WAC 16-575-005, 16-575-050, 16-575-055, 16-575-060, 16-575-065, 16-575-070, 16-575-075, 16-575-080, and 16-575-085.

Statutory Authority for Adoption: RCW 15.88.070 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-11-015 on May 3, 2018.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 9, 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: July 25, 2018.

Steve Warner
President

NEW SECTION

WAC 16-575-005 Definitions. "Commission" means the Washington wine commission.

"Public records" 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 the commission regardless of physical form or characteristics.

NEW SECTION

WAC 16-575-050 Description of commission, address and telephone number of the Washington wine commission. Headquartered at:

Washington Wine Commission
1201 Western Avenue, Suite 450
Seattle, WA 98101-3402
Phone: 206-326-5759

The Washington wine commission serves Washington wine producers and wine grape growers by engaging directly or indirectly in the promotion of Washington wine.

NEW SECTION

WAC 16-575-055 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally insuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser and in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

NEW SECTION

WAC 16-575-060 Request for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to:

Washington Wine Commission
1201 Western Avenue, Suite 450
Seattle, WA 98101-3402

The request may also be submitted by email to: Cchonette@washingtongwine.org. The written request must include:

- (a) The name, address, and telephone number or other contact information of the person requesting the records;
- (b) The calendar date on which the request is made; and
- (c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

- (a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;
- (b) Inspection of any public record will be conducted in the presence of the public records officer or designee;
- (c) Public records may not be marked or altered in any manner during the inspection; and
- (d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 16-575-065 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

- (a) Making the records available for inspection or copying;
- (b) Providing a link or address for a record available on the internet under RCW 42.56.520;
- (c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;
- (d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or
- (e) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify persons or agencies affected by the request; or
- (d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

NEW SECTION

WAC 16-575-070 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) Pursuant to RCW 42.56.120(2), the commission declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records: Funds were not allocated for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of the invoice and is payable to the Washington wine commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

NEW SECTION

WAC 16-575-075 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.88 RCW (reference RCW 42.56.380(3));

(2) Financial and commercial information and records supplied by persons to the commission under chapter 15.88 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5));

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070);

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records

involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290);

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230(5)).

NEW SECTION

WAC 16-575-080 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 16-575-085 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 18-16-042
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-162—Filed July 25, 2018, 12:23 p.m., effective August 25, 2018]

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

Purpose: This is to add a section to existing chapter 220-640 WAC based on changes from ESSB 6040 passed during the 2014 legislative session.

Citation of Rules Affected by this Order: Repealing WAC 220-640-090 Regulated Type C aquatic animal species; and amending WAC 220-640-010 Aquatic invasive species—Provisions, 220-640-020 Deleterious exotic wildlife, 220-640-030 Prohibited level 1 aquatic animal species, 220-640-040 Prohibited level 2 aquatic animal species, 220-640-050 Prohibited level 3 aquatic animal species, 220-640-060 Prohibited level 3 aquatic animal species, 220-640-070 Regulated Type A aquatic animal species, 220-640-080 Regulated Type B aquatic animal species, 220-640-100 Scientific research/display permits and monitoring and control programs—Requirements for possession of prohibited aquatic

animal species, 220-640-110 Importation of live aquatic organisms—Required certification of "zebra/quagga mussel free," 220-640-120 Capture of prohibited aquatic animals in Washington waters—Requirements, and 220-640-130 Allowable possession of prohibited aquatic animals if acquired prior to classification—Requirement of documentation.

Statutory Authority for Adoption: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, 77.65.520.

Adopted under notice filed as WSR 18-11-131 on May 23, 2018.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 13 [11], Repealed 1.

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: July 25, 2018.

Joe Stohr
Director

Reviser's note: WAC 220-640-110 is referred to in the agency's notice; however, the proposed text of the section was not included with the filing by the agency. cf. RCW 34.08.020 (1)(a).

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-010 Aquatic invasive species—Provisions. The following provisions apply to all nonnative aquatic animal species except nonnative species in ballast water, which are provided for in chapter 220-650 WAC. The definitions of invasive species, prohibited (~~((aquatic animal))~~) species and regulated (~~((aquatic animal))~~) species as used in this section are the same as in RCW 77.135.010.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-020 (~~(Reserved—Deleterious exotic wildlife-)~~) Aquatic invasive species classification. (~~(Reserved-~~

~~(1) The following animals are hereby designated as deleterious exotic wildlife:~~

~~(a) Birds: In the family Anatidae, the mute swan (*Cygnus olor*);~~

~~(b) Mammals:~~

~~(i) In the family Viverridae, the mongoose (all members of the genus *Herpestes*);~~

(ii) In the family Suidae, the wild boar (*Sus scrofa* and all wild hybrids);

(iii) In the family Tayassuidae, the collared peccary (javelina) (*Tayassu tajacu*);

(iv) In the family Bovidae, all members and hybrids of the following genera: *Rupicapra* (Chamois); *Hemitragus* (Fahr); *Capra* (goats, ibexes except domestic goat *Capra hircus*); *Ammotragus* (Barbary sheep or Aoudad); *Ovis* (sheep), except domestic sheep *Ovis aries*; *Damaliscus* (Sassabies); *Alelaphus buselaphus* (Hartebeest); and *Connochaetes* (Wildebeests);

(v) In the family Cervidae, the European red deer (*Cervus elaphus elaphus*), all nonnative subspecies of *Cervus elaphus*, and all hybrids with North American elk; Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*), Sika deer (*Cervus Nippon*), Reindeer (all members of the genus *Rangifer* except *Rangifer tarandus caribou*), and Roedeer (all members of the genus *Capreolus*);

(2) It is unlawful to import into the state, hold, possess, propagate, offer for sale, sell, transfer, or release live specimens of deleterious exotic wildlife, their gametes and/or embryo, except as provided under subsection (3), (4), (5), (6), or (7) of this section, and as provided in WAC 220-640-020.

(3) Scientific research or display: The director may authorize, by written approval, a person to import into the state, hold, possess, and propagate live specimens of deleterious exotic wildlife for scientific research or for display by zoos or aquariums who are accredited institutional members of the association of zoos and aquariums (AZA), provided:

(a) The specimens are confined to a secure facility;

(b) The specimens will not be transferred to any other location within the state, except to other AZA accredited facilities with written director approval or as otherwise authorized in writing by the director;

(c) The specimens will be euthanized and all parts incinerated at the end of the project, except for federally listed endangered or threatened species, which may be retained or transferred where in compliance with federal law;

(d) The person will keep such records on the specimens and make such reports as the director may require; and

(e) The person complies with other requirements of this section.

(4) Retention or disposal of existing specimens lawfully in captivity:

(a) Specimens lawfully in captivity prior to January 18, 1991: A person holding exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife on or before January 18, 1991, may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to January 18, 1991, provided such person complies with subsection (4)(e) through (h) hereunder and the other requirements of this section;

(b) Specimens lawfully in captivity prior to June 20, 1992: A person holding the following deleterious exotic wildlife specimens in captivity that were classified by the fish and wildlife commission as deleterious exotic wildlife by operation of emergency rule filed June 19, 1992, (in the family Bovidae, Sassabies (all members of the genus *Damaliscus*), Hartebeest (*Alelaphus buselaphus*), Wildebeests (all members of the genus *Connochaetes*), Markhor (*Capra falconeri*), and Mareopolo sheep (*Ovis ammon*); and in the family Cervidae, Fallow deer (*Dama dama*), Axis deer (*Axis axis*), Sika deer (*Cervus Nippon*), and Rusa deer or Sambar deer (*Cervus unicolor*, *Cervus timorensis*, *Cervus mariannus* and *Cervus alfredi*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to June 20, 1992, and the lawful progeny thereof, provided such person complies with (c) through (h) of this subsection and the other requirements of this section and except as provided under subsection (7) of this section;

(e) The person reported to the director, in writing, the species, number, and location of the specimens, as required;

(d) The specimens are confined to a secure facility at the location reported;

(e) Live specimens are not propagated, except at AZA accredited facilities with the written permission of the director or as otherwise authorized in writing by the director;

(f) Live specimens shall be neutered, physically separated by sex, and/or rendered infertile by means of contraception, except at AZA accredited facilities with the written permission of the director;

(g) Live specimens are not released; and

(h) Live specimens are not sold or transferred, except:

(i) Live specimens in lawful possession may be permanently removed from the state of Washington or transported directly to slaughter where in accordance with other applicable law;

(ii) Federally listed endangered or threatened species may be transferred to AZA accredited facilities where in compliance with federal law;

(iii) Live specimens may be moved to the new primary residence of the possessor with the written approval of the director, provided that all other requirements are satisfied and the total number of locations where animals are held is not increased; and

(iv) AZA facilities may sell and/or transfer live specimens within the state with the written permission of the director.

(5) Retention or disposal of existing specimens lawfully in captivity prior to February 13, 1993: A person holding exotic wildlife specimens in captivity that are newly classified by the fish and wildlife commission as deleterious exotic wildlife by operation of this rule (Reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*), and Roedeer (all members of the genus *Capreolus*)), may retain the specimens of such deleterious exotic wildlife such person lawfully possessed prior to February 13, 1993, provided:

(a) The person reports to the director in writing by March 31, 1993, and reports annually thereafter, or as otherwise required by the director, the species, number, and location of such specimens; and

(b) The person complies with subsection (4)(d) through (h) of this section and the other requirements of this section.

(6) The provisions of this section shall not prohibit the importation, possession, propagation, sale, transfer, or release of live specimens of federally listed threatened or endangered species, their gametes and/or embryo, where in compliance with federal law.

(7) Notwithstanding the provisions of subsection (2) of this section, Fallow deer (*Dama dama*) and reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*) may be imported into the state, held, possessed, propagated, offered for sale, sold, and/or transferred, provided:

(a) The person complies with subsection (4)(c) through (g) of this section and the other requirements of this section, except for subsection (4)(e), (f), and (h) of this section; and

(b) The person complies with the department of agriculture per WAC 16-54-180 as now or hereafter amended, except:

Animals that have resided at any time east of a line drawn through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and the 100th Meridian where it passes through Texas, or that have had contact with or shared common ground with animals which have resided at any time east of such line, shall not be imported into the state of Washington unless specifically authorized in writing by the director of the department of agriculture and the department of fish and wildlife;

(c) No specimens affected with any infectious or communicable disease shall be imported into the state unless in compliance with all applicable laws and regulations and unless written permission is obtained from the directors of the department of agriculture and the department of fish and wildlife;

(d) The specimens are confined to a secure facility; and

(e) Reindeer may not be imported into, held, or possessed in Ferry, Stevens, or Pend Oreille counties or that portion of Spokane County north of Spokane River.

(8) Escaped animals:

(a) Escaped deleterious exotic wildlife, including Fallow deer (*Dama dama*) and reindeer (all members of the genus *Rangifer*, except *Rangifer tarandus caribou*) will be considered a public nuisance. The department or any peace officer may seize, capture, or destroy deleterious exotic wildlife that have escaped the possessor's control. The former possessor shall be responsible for costs incurred by the department in recovering, maintaining, or disposing of such animals, as well as any damage to the state's wildlife or habitat.

(b) Escapes of deleterious exotic wildlife must be reported immediately to the department.

(c) The recapture or death of escaped deleterious exotic wildlife must be reported immediately to the department.

(9) Secure facility:

(a) All deleterious exotic wildlife will be held in a secure facility. For the purpose of this rule, a secure facility is an enclosure so constructed as to prevent danger to the environment or wildlife of the state, including escape of deleterious exotic wildlife specimens or ingress of resident wildlife ungulates (hoofed animals). The adequacy of the facility shall be determined by the director or agents of the director.

(b) For deleterious exotic wildlife listed in subsection (1)(b)(iv) and (v) of this section, the "secure facility" must comply with the fencing requirements in subsection (10) of this section, unless otherwise authorized by the director in writing.

(10) Fencing requirements:

(a) Perimeter fences must be, at a minimum, eight feet above ground level for their entire length. The bottom six feet must be mesh of sufficient size to prevent resident wildlife ungulates (hoofed animals) from entering and deleterious exotic wildlife from escaping. Supplemental wire required to attain a height of eight feet may be smooth, barbed, or woven wire (at least 12-1/2 gauge) with strands spaced not more than six inches apart.

(b) Perimeter fences constructed of high tensile wire must be supported by a post or stay at minimum intervals of eight feet.

(c) Perimeter fences must be at least 12-1/2 gauge woven wire, 14-1/2 gauge high tensile woven wire, chain link, non-climbable woven fence, or other fence approved by the director.

If the wire used is not a full eight feet in height, it must be overlapped one row and securely fastened at every other vertical row or woven together with cable.

(d) Electric fencing materials may be used on perimeter fences only as a supplement to conventional fencing materials.

(e) All gates in the perimeter fences must be self-closing, equipped with two locking devices, and installed only in locations that have been approved by the director. Double gates may be required at points in the perimeter fences subject to frequent vehicle traffic that is not related to activities involving the holding of deleterious exotic wildlife.

(f) Posts used in the perimeter fences must be:

(i) Wood (pressure treated), five-inch minimum diameter or an equivalent as approved by the director;

(ii) Spaced no more than twenty-four feet apart with stays or supports at eight foot intervals between the posts;

(iii) Extended at least eight feet above ground level; and

(iv) Have corners braced with wood or with an equivalent material as approved by the director.

(g) Fences must be maintained at all times to prevent deleterious exotic wildlife from escaping or resident wildlife ungulates (hoofed animals) from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the person possessing deleterious exotic wildlife must immediately supplement the fence to prevent continued passage.

(h) For any fence existing prior to February 13, 1993, a person may petition the director in writing for a variance from the above fencing requirements. Any such petition must be filed no later than May 31, 1993, and must identify all aspects in which the existing fence does not meet the fencing requirements contained herein. On approval of the director, such person may maintain such existing fence with normal repair. However, any extension or relocation of existing fence must meet the fencing requirements contained herein.

(11) Marking requirements:

(a) All live specimens of deleterious exotic wildlife, except those listed in subsection (1)(a) and (b) of this section, shall be permanently and individually identified by methods approved by the director.

(b) Identification assigned to an individual animal may not be transferred to any other animal.

(e) All specimens of deleterious exotic wildlife identified in subsection (1)(b)(iv) and (v) of this section must be individually identified by the methods specified below:

(i) All live specimens of such deleterious exotic wildlife shall be marked with USDA official ear tags or with ear tags supplied or approved by the department. Tags shall be applied in sequential order; and

(ii) All live specimens of such deleterious exotic wildlife shall be marked with a tattoo with an identifying number that has been recorded with the director. The tattoo must be placed on the left ear of the animal.

(d) All lawful progeny of deleterious exotic wildlife must be tagged and tattooed by December 31st of the year of birth or upon leaving the holding facility, whichever is earlier.

(e) Where allowed, if an animal is sold or transferred within the state, the tag and tattoo must accompany the animal. The new owner or possessor shall not renumber the animal.

(f) Where allowed, live specimens of deleterious exotic wildlife shall be marked prior to importation.

(g) No unmarked deleterious exotic wildlife may be sold or otherwise transferred from the holding facility.

(12) Testing of specimens:

(a) Where allowed, prior to entry into the state of Washington, a person importing any member of the genus *Cervus*, which is identified in subsection (1)(b)(v) of this section, must submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer wapiti complex *Cervus elaphus* not indigenous to the state of Washington). Such testing shall be at the possessor's expense. Animals that are deemed by department of wildlife biologists upon examination to exhibit either: Behavioral (vocalization), morphological (size, rump patch, color), or biochemical indications of such influence (hemoglobin, superoxide dismutase, transferrin and post-transferrin, or others to be developed) may not be imported.

(b) The director may require a person currently possessing any member of the genus *Cervus* that are identified in subsection (1)(b)(v) of this section to submit records of genetic tests conducted by a professionally recognized laboratory to identify red deer genetic influence (genetic material from any member of any subspecies, race, or species of the elk-red deer wapiti complex *Cervus elaphus* not indigenous to the state of Washington) for each individual cervid to the department. Such testing shall be at the possessor's expense. The director may require that any animal identified as a red deer or having nonindigenous genetic influence be destroyed, removed from the state, or neutered.

(c) The director may require that all specimens of deleterious exotic wildlife lawfully in captivity be tested for brucellosis (*brucella abortus*), tuberculosis (*mycobacterium bovis* and *mycobacterium tuberculosis*), meningeal worm (*Paralaphostrongylus tenuis*), and muscule worm (*Elaphostrongylus cervis*) in accordance with the procedures specified in department of agriculture per WAC 16-54-180 as now or hereafter amended and/or for other disease or parasites determined to

pose a risk to wildlife. The results of such tests shall be filed with the director as required.

(13) Reporting:

(a) A person holding deleterious exotic wildlife in captivity shall submit a completed report no later than March 30, 1993, and then no later than January 31st of each year, or as otherwise required by the director, on a form provided by the department.

(b) Persons possessing deleterious exotic wildlife must notify the director within ten days of any change of such persons' address and/or location of the holding facility.

(14) Inspection:

(a) All holding facilities for deleterious exotic wildlife located in the state are subject to inspection for compliance with the provisions of this section.

(b) Such inspections shall be conducted at reasonable times.

(15) Notification and disposition of diseased animals:

(a) Any person who has reason to believe that deleterious exotic wildlife being held pursuant to this rule have or have been exposed to a dangerous or communicable disease or parasite shall notify the department immediately.

(b) Upon having reason to believe that deleterious exotic wildlife held pursuant to this rule have been exposed to or contracted a dangerous or contagious disease or parasite, the director may order inspection of such animals by a licensed, accredited veterinarian or inspection agent. Inspection shall be at the expense of the possessor.

(c) The director shall determine when destruction of animals, quarantine, or disinfection is required at any facility holding deleterious exotic wildlife, pursuant to this rule. If the director determines that destruction, quarantine, or disinfection is required, a written order shall be issued to the possessor describing the procedure to be followed and the time period for carrying out such actions. Such activities shall be at the expense of the possessor.

(16) Quarantine area:

(a) Any facility holding deleterious exotic wildlife must have an approved quarantine facility within its exterior boundary or submit an action plan to the director that guarantees access to an approved quarantine facility within the state of Washington:

(i) An approved quarantine facility is one that meets criteria set by the Washington state department of agriculture;

(ii) The quarantine area must meet the tests of isolation, separate feed and water, escape security, and allowances for the humane holding and care of its occupants for extended periods of time.

(b) Should the imposition of a quarantine become necessary, the possessor must provide an on-site quarantine facility or make arrangements at such possessor's expense to transport the animals to the approved quarantine facility named in the quarantine action plan.

(17) Seizure:

(a) The department of wildlife may seize any unlawfully possessed deleterious exotic wildlife.

(b) The cost of any seizure and/or holding of deleterious exotic wildlife may be charged to the possessor of such animals.)) Prior to or at the time of classifying species by rule as prohibited or regulated, the department, in consultation with

the invasive species council, must adopt rules establishing standards for determining invasive risk levels and criteria for determining beneficial use that take into consideration environmental impacts, and especially effects on the preservation of native species, salmon recovery, and threatened or endangered species.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-030 Prohibited level 1 (~~(aquatic animal)~~) species. The following species are classified as prohibited level 1 (~~(aquatic animal)~~) species:

(1) Molluscs: Family Dreissenidae: Zebra and quagga mussels: (~~(All members of the genus Dreissena and all species known as quagga-)~~) Dreissena polymorpha and Dreissena rostriformis bugensis.

(2) Crustaceans:

(a) Family Grapsidae: Mitten crabs: All members of the genus *Erochier*.

(b) Family Portunidae: European green crab, *Carcinus maenas*.

(3) Fish:

(a) Family Channidae: China fish, snakeheads: All members of the genus *Channa*.

(b) Family Clariidae: All members of the walking catfish family.

(c) Family Cyprinidae:

(i) Carp, Bighead, *Hypophthalmichthys nobilis*.

(ii) Carp, Black, *Mylopharyngodon piceus*.

(iii) Carp, Silver, *Hypophthalmichthys molitrix*.

(iv) Carp, Largescale Silver, *Hypophthalmichthys harmandi*.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-040 Prohibited level 2 (~~(aquatic animal)~~) species. The following are classified as prohibited level 2 (~~(aquatic animal)~~) species: None.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-050 Prohibited level 3 (~~(aquatic animal)~~) species. The following species are classified as prohibited level 3 (~~(aquatic animal)~~) species:

(1) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group *Arborea* including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla simplex*, *Hyla suweonensis*, *Hyla tsinlingensis*, and *Hyla zhaopingensis*.

(b) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. bombifrons*, *S. hammondi*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(d) In the family Ranidae:

(i) American Bull frog, *Rana (Lithobates) catesbeiana*.

(ii) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaisensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honnorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. macrocnemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. cerigensis*, *R. chosonica*, *R. cretensis*, *R. demarchii*, *R. epeirotica*, *R. fukiensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. plancyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqiperica*, *R. shuchinae*, *R. terentievii*, *R. tenggerensis*); and the *Rana ridibunda-Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(e) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opacum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(f) In the family Amphiumidae one, two, and three toed salamanders or congo eels: All members of the genus *Amphiuma*.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodactylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four-toed salamanders); *Hydromantes* and *Pseudotriton* (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(m) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichinotriton* (mountain newts); *Euproctus* (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salaman-*

drina (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skin newt, and *Ichthyosaura* and *Triturus* (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera *Pseudobranchius* and *Siren*.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus *Chinemys*.

(ii) Pond turtles, all members of the genus *Clemmys*.

(iii) European pond turtle, *Emys orbicularis*.

(iv) Asian pond turtle, all members of the genus *Mauremys*.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(3) Crustaceans:

(a) Family Cercopagidae:

(i) Fish hook water flea, *Cercopagis pengoi*.

(ii) Spiny water flea, *Bythotrephes cederstroemi*.

(b) Family Cambaridae: Crayfish: All genera (~~except a person may possess and transport dead prohibited crayfish species obtained under the department's recreational crayfishing rules (WAC 220-56-336 (repealed) and 220-56-315 (repealed)). There is no daily limit, size limit, or sex restriction for prohibited crayfish species. All nonnative crayfish must be kept in a separate container from native crayfish. Release of any live crayfish species into waters other than the water being fished is prohibited~~)).

(c) Family Parastacidae: Crayfish: All genera except *Engaeos*, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.

(d) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.

(4) Fish:

(a) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.

(b) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Rooseveltiella*, and *Serrasalmus*.

(c) (~~Family Clariidae: Walking catfish: All members of the family.~~)

(~~d~~) Family Cyprinidae:

(i) Fathead minnow, *Pimephales promelas*.

(ii) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.

(iii) Ide, silver orfe or golden orfe, *Leuciscus idus*.

(iv) Rudd, *Scardinius erythrophthalmus*.

(~~e~~) (~~d~~) Family Gobiidae: Round goby, *Neogobius melanostomus*.

(~~f~~) (~~e~~) Family Esocidae: Northern pike, *Esox lucius* (~~except a person may possess and transport dead prohibited Northern pike obtained under the department's recreational sport fishing rules (WAC 220-56-100 (repealed) and 220-56-115 (repealed)). There is no minimum size, no daily limit, and no possession limit. Release of any live Northern pike into water other than the water being fished is prohibited~~)).

(~~g~~) (~~f~~) Family Lepisosteidae: Gar-pikes: All members of the family.

(5) Mammals: Family Myocastoridae: Nutria, *Myocastor coypu*.

(6) Molluscs:

(a) Family Dreissenidae: All members of the genus *Dreissena* except the species zebra mussel, *Dreissena polymorpha*, and the quagga mussel, *Dreissena rostriformis bugensis*.

(b) Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-060 ((Prohibited level 3 aquatic animal) Regulated Type A species. The following species are classified ((as prohibited level 3 aquatic animal)) regulated Type A species:

((~~1~~)) Amphibians:

(a) In the family Hylidae: Cricket frog, in the genus *Hyla* species in the group Arborea including: *Hyla annectans*, *Hyla arborea*, *Hyla chinensis*, *Hyla hallowellii*, *Hyla immaculata*, *Hyla japonica*, *Hyla meridionalis*, *Hyla sanchiangensis*, *Hyla simplex*, *Hyla suweonensis*, *Hyla tsinlingensis*, and *Hyla zhaopingensis*.

(b) In the family Pelobatidae, spadefoots, all species of the genus *Pelobates* including *P. cultripes*, *P. fuscus*, *P. syriacus*, and *P. varaldii*. All species of the genus *Scaphiopus* including: *S. couchii*, *S. holbrookii*, and *S. hurterii*. All species of the genus *Spea* including: *S. bombifrons*, *S. hammondi*, and *S. multiplicata* with the exception of the native species: *Spea intermontana* the great basin spadefoot.

(c) In the family Pipidae: African clawed frog, all members of the genera *Silurana*, and *Xenopus*.

(~~d~~) In the family Ranidae:

(i) American Bull frog, *Rana (Lithobates) catesbeiana*.

(ii) Holarctic brown frogs and Palearctic green frogs of the genus *Rana*, including the following: *Rana arvalis* group (*R. arvalis*, *R. chaochiaoensis*, *R. chevronta*); *Rana chensinensis* group (*R. altaica*, *R. chensinensis*, *R. dybowskii*, *R. kukunoris*, *R. kunyuensis*, *R. ornativentris*, *R. pirica*); *Rana graeca* group (*R. graeca*, *R. italica*); *Rana japonica* group (*R. amurensis*, *R. aragonensis*, *R. japonica*, *R. omeimontis*, *R. zhenhaiensis*); the subgenus *Rugosa* (*Rana rugosa*, *Rana emeljanovi*, *Rana tientaiensis*); *Rana tagoi* group (*R. sakuraii*, *R. tagoi*); *Rana temporaria* group (*R. asiatica*, *R. dalmatina*, *R. honorate*, *R. huanrenensis*, *R. iberica*, *R. latastei*, *R. mae-roenemis*, *R. okinavana*, *R. pyrenaica*, *R. tsushimensis*, *R. zhengi*); and in the *Rana Pelophylax* section, the subgenus *Pelophylax* (*R. bedriagae*, *R. bergeri*, *R. eerigensis*, *R. ehosenica*, *R. eretensis*, *R. demarehii*, *R. epeirotica*, *R. fukiensis*, *R. grafti*, *R. hubeiensis*, *R. lateralis*, *R. lessonae*, *R. nigrolineata*, *R. nigromaculata*, *R. perezi*, *R. planeyi*, *R. porosa*, *R. ridibunda*, *R. saharica*, *R. shqiperic*, *R. shuchinae*, *R. terentievi*, *R. tenggerensis*); and the *Rana ridibunda* *Rana lessonae* hybridogenetic complex species *R. esculenta* and *R. hispanica*.

(c) In the family Ambystomatidae: Mole salamanders. In the genus *Ambystomata*: *A. californiense*, *A. laterale*, *A. opaeum*, *A. rosaceum*, *A. tigrinum*, except for the native species *A. tigrinum mavortium* Western tiger salamander, and *A. tigrinum melanostictum* Tiger salamander.

(f) In the family Amphiumidae one-, two-, and three-toed salamanders or congo eels: All members of the genus *Amphiuma*.

(g) In the family Cryptobranchidae: Giant salamanders and hellbenders, all members of the genera *Andrias* and *Cryptobranchus*.

(h) In the family Dicamptodontidae, American giant salamanders, all members of the genus *Dicamptodon*, except for the native species: *Dicamptodon tenebrosus*, Pacific giant salamander, and *Dicamptodon copei*, Cope's giant salamander.

(i) In the family Hynobiidae: Mountain salamanders, all members of the genera *Batrachuperus*, *Hynobius*, *Liua*, *Onychodaetylus*, *Pachyhynobius*, *Pseudohynobius*, *Ranodon*, and *Salamandrella*.

(j) In the family Plethodontidae, subfamily Desmognathinae: All members of the genus *Desmognathus*, dusky salamander.

(k) In the family Plethodontidae, subfamily Plethodontinae: All members of the genera *Eurycea* (American brook salamanders); *Gyrinophilus* (cave salamanders); *Hemidactylium* (four-toed salamanders); *Hydromantes* and *Pseudotriton* (mud or red salamanders).

(l) In the family Proteidae, mudpuppies, all members of the genus *Necturus* and *Proteus*.

(m) In the family Salamandridae: Newts, all members of the genera *Chioglossa*; *Eichinotriton* (mountain newts); *Euproctus* (European mt. salamander); *Neurergus* (Kurdistan newts); *Notophthalmus* (red-spotted newts); *Pachytriton* (Chinese newts); *Paramesotriton* (warty newts); *Salamandrina* (speckled salamander); *Taricha* except for the native species *Taricha granulosa granulosa* the Northern rough-skin newt, and *Ichthyosaura* and *Triturus* (alpine newts).

(n) In the family Sirenidae, sirens, all species of the genera *Pseudobranchius* and *Siren*.

(2) Reptiles:

(a) In the family Chelydridae, snapping turtles, all species.

(b) In the family Emydidae:

(i) Chinese pond turtles, all members of the genus *Chinemys*.

(ii) Pond turtles, all members of the genus *Clemmys*.

(iii) European pond turtle, *Emys orbicularis*.

(iv) Asian pond turtle, all members of the genus *Mauremys*.

(c) In the family Trionychidae, American soft shell turtles, all members of the genus *Apalone*.

(3) Crustaceans:

(a) Family Cereopagidae:

(i) Fish hook water flea, *Cereopagis pengoi*.

(ii) Spiny water flea, *Bythotrephes cederstroemi*.

(b) Family Cambaridae: Crayfish: All genera, except a person may possess and transport dead prohibited crayfish species obtained under the department's recreational crayfishing rules (WAC 220-56-336 (repealed) and 220-56-315 (repealed)). There is no daily limit, size limit, or sex restriction for prohibited crayfish species. All nonnative crayfish must be kept in a separate container from native crayfish. Release of any live crayfish species into waters other than the water being fished is prohibited.

(c) Family Parastacidae: Crayfish: All genera except *Engaeos*, and except the species *Cherax quadricarinatus*, *Cherax papuanus*, and *Cherax tenuimanus*.

(d) Family Spheromatidae: Burrowing isopod, *Sphaeroma quoyanum*.

(4) Fish:

(a) Family Amiidae: Bowfin, grinnel, or mudfish, *Amia calva*.

(b) Family Characidae: Piranha or caribe: All members of the genera *Pygocentrus*, *Rooseveltiella*, and *Serrasalmus*.

(c) Family Clariidae: Walking catfish: All members of the family.

(d) Family Cyprinidae:

(i) Fathead minnow, *Pimephales promelas*.

(ii) Carp, Grass (in the diploid form), *Ctenopharyngodon idella*.

(iii) Ide, silver orfe or golden orfe, *Leuciscus idus*.

(iv) Rudd, *Scardinius erythrophthalmus*.

(e) Family Gobiidae: Round goby, *Neogobius melanostomus*.

(f) Family Esocidae: Northern pike, *Esox lucius*: A person may possess and transport dead prohibited Northern pike obtained under the department's recreational sport fishing rules (WAC 220-56-100 (repealed) and 220-56-115 (repealed)). There is no minimum size, no daily limit, and no possession limit. Release of any live Northern pike into water other than the water being fished is prohibited.

(g) Family Lepisosteidae: Gar pikes: All members of the family.

(5) Mammals: Family Myocastoridae: Nutria, *Myocastor coypu*.

(6) Molluscs: Family Gastropoda: New Zealand mud snail, *Potamopyrgus antipodarum*.)) (1) Fish:

(a) All nonnative fish classified as food fish under WAC 220-300-370 and game fish under WAC 220-300-380.

(b) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oreochromis*, and *Sartheradon*.

(c) Family Clupeidae: Alewife, *Alosa pseudoharengus*.

(d) Family Cyprinidae:

(i) Common carp, koi, *Cyprinus carpio*.

(ii) Goldfish, *Carassius auratus*.

(iii) Tench, *Tinca tinca*.

(iv) Grass carp (in the triploid form), *Ctenopharyngodon idella*.

(e) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.

(2) Shellfish: All nonnative shellfish classified under WAC 220-320-010.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-070 Regulated Type ((~~A~~-aquatic animal)) **B species.** The following species are automatically classified as regulated Type ((~~A~~-aquatic animal)) **B** species and do not require listing by rule:

(1) ((Fish:

(a) All fish classified as food fish under WAC 220-300-370 and game fish WAC 220-300-380.

(b) Family Cichlidae: Tilapia: All members of the genera *Tilapia*, *Oreochromis*, and *Sartheradon*.

(e) Family Clupeidae: Alewife, *Alosa pseudoharengus*.

(d) Family Cyprinidae:

(i) Common carp, koi, *Cyprinus carpio*.

(ii) Goldfish, *Carassius auratus*.

(iii) Tench, *Tinea tinea*.

(iv) Grass carp (in the triploid form), *Ctenopharyngodon idella*.

(e) Family Poeciliidae: Mosquito fish, *Gambusia affinis*.

(2) Shellfish: All shellfish classified under WAC 220-320-010.) A nonnative aquatic animal species not listed under WAC 220-640-030 Prohibited level 1 species, WAC 220-640-040 Prohibited level 2 species, WAC 220-640-050 Prohibited level 3 species, or WAC 220-640-060 Regulated Type A species; and

(2) A nonnative aquatic animal species possessed for personal or commercial purposes, such as for aquariums, live food markets, or as nondomesticated pets.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-080 Regulated Type ((B-aquatic animal)) C species. The following species are classified as regulated Type ((B-aquatic animal species: None.)) C species and do not require listing by rule:

(1) A nonnative aquatic animal species not listed under WAC 220-640-030 Prohibited level 1 species, WAC 220-640-040 Prohibited level 2 species, WAC 220-640-050 Prohibited level 3 species, or WAC 220-640-060 Regulated Type A species; and

(2) All other nonnative aquatic animal species that do not meet the criteria for automatic classification as a regulated Type B species.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-100 Scientific research/display permits and monitoring and control programs—Requirements for possession of prohibited ((aquatic animal)) species. It is unlawful to introduce into the state or possess a prohibited level 1, level 2, or level 3 species except as provided in this section.

(1) Scientific research or display permit: The director may authorize, by prior written permit, a person to possess prohibited level 1, prohibited level 2, or prohibited level 3 species specimens for scientific research or display, provided that:

(a) Specimens are confined to a secure facility, defined as an enclosure that will prevent the escape or release of the prohibited species to include all stages of species development and body parts;

(b) Facility is not a natural watercourse, and is also inaccessible to wildlife or other animals that could transport prohibited species to include all stages of species development and body parts;

(c) Specimens are not transferred to any other facility without written approval by the director or designee;

(d) All zebra and quagga mussels are incinerated or chemically preserved at the conclusion of the project, and the enclosure, holding waters and all equipment are decontami-

nated. All other prohibited species must be killed at the conclusion of the project and either chemically preserved or disposed of in a landfill; and

(e) The permittee must provide an annual report to the department, no later than January 31st of the following year, on a form provided by the department, describing the number, size, and location of prohibited species enclosures and general nature of the research.

(2) Monitoring and control programs: The director may authorize persons working within the scope and supervision of a department-sponsored monitoring and control program to capture, possess and destroy prohibited level 1, prohibited level 2, or prohibited level 3 species specimens provided that:

(a) The persons have completed a mandatory training program and are certified by the department;

(b) The persons have a permit authorized by the director or designee in possession;

(c) All prohibited species are disposed of in accordance with the monitoring and control program; and

(d) Participants must submit a report to the department within thirty days of any monitoring or control activity in accordance with the specifications outlined in the monitoring and control program.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-120 Capture of prohibited ((aquatic animals)) in Washington waters—Requirements. (1) Capture of prohibited species in state waters: Any Prohibited level 1, level 2, or ((prohibited)) level 3 species that are captured in state waters must be:

(a) Immediately killed and removed from within the riparian perimeter of the body of water; or

(b) Immediately returned to the water from which the species was captured.

(2) The riparian perimeter includes all boat launch, park, private residences, or commercial businesses within a quarter-mile from the edge of the state water.

(3) ((Any prohibited species captured (killed or released) must be reported to WDFW within forty-eight hours of the capture.

(4)) It is lawful to possess ((the)) dead prohibited species taken from state waters ((as long as it has been reported to WDFW. No permit is required for possession under this section)) and it is lawful to possess chemically preserved nonvertebrate prohibited species from any source.

(4) It is unlawful to use live or dead prohibited species as bait.

AMENDATORY SECTION (Amending WSR 18-06-006, filed 2/22/18, effective 3/25/18)

WAC 220-640-130 Allowable possession of prohibited ((aquatic animals)) species if acquired prior to classification—Requirement of documentation. A person who possessed a prohibited ((aquatic animal)) level 1, level 2, or level 3 species prior to the time the species was classified as prohibited may continue to hold the animal or animals for the life of the animals, provided that:

- (1) The person must maintain proof of possession prior to the classification.
- (2) The animals may not be transferred to another owner within the state.
- (3) The person must comply with all provisions of this section.
- (4) The animals must be prevented from reproducing, or if prevention is impracticable, the progeny must be destroyed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-640-090 Regulated Type C aquatic animal species.

WSR 18-16-046
PERMANENT RULES
PARKS AND RECREATION
COMMISSION

[Filed July 25, 2018, 2:36 p.m., effective August 25, 2018]

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

Purpose: At the request of the United States Forest Service, state parks staff reviewed WAC 352-44-060 about the effective date [for] the American National Standards for Passenger Ropeways. WAC 352-44-060 is not clear on the effective date, the update is to clarify the effective date.

Citation of Rules Affected by this Order: Amending 1 [WAC 352-44-060].

Statutory Authority for Adoption: Chapter 79A.40 RCW, Conveyances for persons in recreational activities.

Adopted under notice filed as WSR 18-11-027 on May 7, 2018.

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 Non-governmental 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 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: July 25, 2018.

Valeria Evans
 Management Analyst

AMENDATORY SECTION (Amending WSR 91-19-068, filed 9/16/91, effective 10/17/91)

WAC 352-44-060 Recreational conveyances—Standards. The current American National Standard(~~s Safety Requirements for Aerial Passenger Tramways~~) for Passenger Ropeways (ANSI B77.1) shall apply to the design, inspection, signing, and operation of all conveyances as interpreted by the director unless a request for waiver is submitted by the operator and a waiver is granted by the director. The current American National Standard for Passenger Ropeways (ANSI B77.1) will have an effective date one year after the standard is approved by the American National Standards Institute.

WSR 18-16-058
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed July 26, 2018, 3:44 p.m., effective August 26, 2018]

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

Purpose: The agency is modifying WAC 182-513-1330 to add WAC references for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

Citation of Rules Affected by this Order: Amending WAC 182-513-1330.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-13-021 on June 8, 2018.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: July 26, 2018.

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the agency or its designee determines available when evaluating a legally married person's eligibility for long-term care (LTC) services.

(1) The agency or ~~(its)~~ the agency's designee applies the following rules when determining income eligibility for LTC services:

(a) WAC 182-512-0600 SSI-related medical—Definition of income;

(b) WAC 182-512-0650 SSI-related medical—Available income;

(c) WAC 182-512-0700 SSI-related medical—Income eligibility;

(d) WAC 182-512-0750 SSI-related medical—Countable unearned income;

(e) WAC 182-512-0840(3), self-employment income-allowance expenses;

(f) WAC 182-512-0960 SSI-related medical—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS);

(g) WAC 182-512-0785, 182-512-0790, and 182-512-0795 for sponsored immigrants and how to determine if the sponsors' income counts in determining benefits.

(2) In initial categorically needy income eligibility for LTC, the agency does not allow any deductions listed in 1612(b) of the Social Security Act, for example:

(a) Twenty dollars per month income exclusion under WAC 182-512-0800;

(b) The first \$65 and the remaining one-half earned income work incentive under WAC 182-512-0840; and

(c) Impairment related work expense or blind work expense under WAC 182-512-0840.

(3) The following income is available to an institutionalized spouse, unless subsections (5) and (6) apply:

(a) Income received in the institutionalized spouse's name;

(b) Income paid to a representative on the institutionalized spouse's behalf; and

(c) One-half of the income received in the names of both spouses.

(4) The following income is unavailable to an institutionalized spouse:

(a) Separate income received in the name of the community spouse; and

(b) Income established as unavailable through a court order.

(5) For the determination of eligibility only, if available income under subsection (3)(a) through (c) of this section, minus income exclusions under WAC 182-513-1340, exceeds the special income level (SIL), defined under WAC 182-513-1100, the agency or its designee:

(a) Follows Washington state community property law when determining ownership of income;

(b) Presumes all income received after the marriage by either spouse to be community income;

(c) Considers one-half of all community income available to the institutionalized spouse.

(6) If the total of subsection (5)(c) of this section plus the institutionalized spouse's separate income is over the SIL, determine available income using subsection (3) of this section.

(7) A stream of income, not generated by a transferred resource, is available to the institutionalized spouse, even if

the institutionalized spouse transfers or assigns the rights to the stream of income to one of the following:

(a) The community spouse; or

(b) A trust for the benefit of the community spouse.

WSR 18-16-059

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed July 26, 2018, 3:44 p.m., effective August 26, 2018]

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

Purpose: The agency is amending WAC 182-550-7500 to comply with ESSB 6032, section 213 (1)(fff) that provides funding for a fifty percent rate increase of outpatient services for sole community hospitals for state fiscal year 2019. The operating budget became effective on July 1, 2018.

Citation of Rules Affected by this Order: Amending WAC 182-550-7500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032, section 213 (1)(fff).

Adopted under notice filed as WSR 18-13-114 on June 20, 2018.

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 Non-governmental 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: July 26, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-22-003, filed 10/22/14, effective 11/22/14)

WAC 182-550-7500 OPPS rate. (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

(a) A base conversion factor established by the agency;

(b) An adjustment for direct graduate medical education (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion

factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})$$

~~(6) ((Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor by 1.25 if the hospital meets the agency's sole community hospital criteria listed in (a) of this subsection.~~

~~(a))~~ The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

~~((i))~~ (a) Be certified by CMS as a sole community hospital as of January 1, 2013.

~~((ii))~~ (b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

~~((iii))~~ (c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

~~((iv))~~ (d) Be owned and operated by the state or a political subdivision.

~~((b))~~ (7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:

(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;

(b) July 1, 2018, through June 30, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;

(c) July 1, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.

(8) The formula for calculating a sole community hospital's final conversion factor is:

$$[\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})] \times ((+25)) \text{ SCH Factor}$$

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.

WSR 18-16-060
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2017-06—Filed July 26, 2018, 4:40 p.m., effective August 26, 2018]

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

Purpose: The adopted rules: (1) Establish the fee for a license as a title rating organization; (2) the licensing requirements that an applicant for a license as a title rating organization must comply with; (3) require a title rating organization to periodically update its title insurance rate filings; and (4) enable the commissioner to recover the costs of the commissioner's examination of a title rating organization from the title rating organization.

Citation of Rules Affected by this Order: New 5 [WAC 284-29B-010, 284-29B-020, 284-29B-030, 284-29B-040, and 284-29B-190].

Statutory Authority for Adoption: RCW 48.02.060, 48.29.005, and 48.29.450.

Other Authority: Chapter 103, Laws of 2017.

Adopted under notice filed as WSR 18-12-085 on June 5, 2018.

A final cost-benefit analysis is available by contacting Micah Sanders, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7040, fax 360-586-3109, email micahs@oic.wa.gov, web site www.insurance.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 0.

Date Adopted: July 26, 2018.

Mike Kreidler
Insurance Commissioner

Chapter 284-29B WAC

RATING ORGANIZATIONS FOR TITLE INSURANCE

NEW SECTION

WAC 284-29B-010 Licensing requirement for rating organizations for title insurance. In addition to the information required by RCW 48.29.410, an application for a license as a rating organization for title insurance must include:

- (1) An agreement that it is subject to the jurisdiction of the state of Washington and governed by Title 48 RCW.
- (2) An agreement to maintain the records of the rating organization in a form that is accessible to the commissioner for examination and statutory and rule compliance purposes.
- (3) The designation of a records custodian who can provide access to the records of the rating organization, including the custodian's address, phone number, and email address.
- (4) A designation of an individual officer of the rating organization for title insurance to be the primary contact on behalf of the organization and be in charge of the organization's compliance with the insurance laws and rules of this state. The designation must include this individual's address, phone number, and email address.

NEW SECTION

WAC 284-29B-020 Licensing fee for rating organizations for title insurance. The licensing fee for a rating organization for title insurance is two hundred fifty dollars.

NEW SECTION

WAC 284-29B-030 Examination of rating organizations for title insurance. (1) As often as the commissioner deems advisable and at least once in five years, the commissioner shall fully examine each rating organization for title insurance.

(2) A licensed rating organization for title insurance must reimburse the state upon presentation of an itemized statement for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination.

(3) Every rating organization for title insurance being examined, its officers, employees, and representatives must produce and make freely accessible to the commissioner the accounts, records, documents, and files in his or her possession or control relating to the subject of the examination, and must otherwise facilitate the examination.

NEW SECTION

WAC 284-29B-040 Requirements for a licensed rating organization for title insurance to update its rate filings. (1) A licensed rating organization for title insurance must periodically update and file with the commissioner its title insurance base rates, or their equivalent. Each base rate or equivalent filing must be submitted to the commissioner no later than two and one-half years after the effective date of the last approved base rate filing, with a proposed effective date no later than three years after the effective date of its last approved base rate filing.

(2) This section does not prohibit a rating organization for title insurance from updating and filing with the commissioner changes to its title insurance rates, manual of rules and rates, rating plans, rate schedules, minimum rates, class of rates, or rating rules at any time.

(3) After the commissioner has approved a rating organization for title insurance's filing of rates, manuals of rules and rates, rating plans, rate schedules, minimum rates, classes of rates, and rating rules and the filing has become effective, the new rates in the filing supersede all earlier corresponding rates filed by that rating organization for title insurance. Insurers must not use rating organization for title insurance rates that have been superseded.

(4) Rates, manuals of rules and rates, rating plans, rate schedules, minimum rates, classes of rates, and rating rules filed by a rating organization for title insurance and approved by the commissioner are considered no longer effective three years after the effective date of the rating organization for title insurance's most recent approved base rates, or their equivalent, filing.

(5) In the event that a rating organization for title insurance fails to timely file to update its base rates, or their equivalent, under subsection (1) of this section or fails to receive approval for an update to its base rates, or their equivalent, before its rates become no longer effective, title insurers that are members of the rating organization for title insurance would not have any rates in effect. In this event, each title insurer:

(a) May continue using the rating organization for title insurance's rates for up to one year after the date specified in subsection (4) of this section; and

(b) Must submit to the commissioner a new filing of title insurance rates under RCW 48.29.147 with a proposed effective date at most one year after the rating organization for title insurance's rates become no longer effective. The title insurer must submit this filing to the commissioner at least one hundred twenty days before the proposed effective date of the filing. This filing will not be required if the title insurer is using new rates filed by the rating organization for title insurance and approved by the commissioner.

NEW SECTION

WAC 284-29B-190 Effect of new rates on outstanding commitments for title insurance. (1) Prior to issuing their title insurance policies, either directly or through a duly appointed title insurance agent, title insurers generally issue title insurance commitments as defined in RCW 48.29.010

(3)(f) which are effective for a period no longer than ninety days (RCW 48.18.230).

(2) When the commitment states a specified policy amount and premium and the transaction closes within ninety days from the date of the issuance of the commitment:

(a) The title insurer may use the rate that was in effect on the date the commitment was issued and stated in the commitment even if new rates have become effective in the interim; or

(b) If the proposed policy amount and premium change from that specified in the original commitment, then the title insurer may use the rate that was in effect on the date the commitment was issued even if new rates have become effective in the interim.

(3) If the commitment does not state a specified policy amount and premium, then the rates in effect upon the issuance of any supplement or amendment to the commitment or amended commitment setting forth the policy amount and premium must be used.

WSR 18-16-071
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed July 30, 2018, 9:34 a.m., effective August 30, 2018]

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

Purpose: The agency is amending WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements, to correct typographical errors in two form numbers. In WAC 182-531A-0800(4), the correct form number is HCA 13-0009, not 13-009. In WAC 182-531A-0800 (8)(b), the correct form number is HCA 13-0008, not 13-008. This correction is necessary so that providers can find the correct form on health care authority's forms web page.

Citation of Rules Affected by this Order: Amending WAC 182-531A-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-11-092 on May 18, 2018.

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 Non-governmental 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 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: July 30, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-09-036, filed 4/12/18, effective 5/13/18)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.
Center of excellence.

(1) A center of excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team.

(2) The COE must employ:

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) A developmental pediatrician;

(ii) A neurologist;

(iii) A pediatric neurologist;

(iv) A pediatric psychiatrist;

(v) A psychiatrist; or

(vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (3) of this section and who has been designated by the agency as a COE.

(3) The COE must be prequalified by the agency as meeting or employing people who meet the following criteria:

(a) ARNPs, physicians, and psychologists must have demonstrated expertise in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, and psychologists must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(4) To be recognized as a COE by the agency, the provider must submit a signed COE Attestation form, HCA (~~(13-009)~~) 13-0009, to the agency.

(5) The COE must be enrolled with the agency or the client's managed care organization to be reimbursed for services.

(6) Examples of providers who can qualify as a designated COE include:

(a) Multidisciplinary clinics;

(b) Individual qualified provider offices; and

(c) Neurodevelopmental centers.

(7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

(8) The lead behavior analysis therapist (LBAT) must:

(a) Be licensed by the department of health (DOH) to practice independently as a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior

analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA ((~~13-008~~) 13-0008), regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

(9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

(10) If the LBAT's role is filled by a LABA, the responsibilities below must be fulfilled by both the LABA and the supervising LBA or licensed psychologist, as required by DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the certified behavior technician per week.

Certified behavior technician.

(11) The certified behavior technician (CBT) must:

(a) Be certified by DOH as a CBT under chapter 18.380 RCW in good standing with no license restrictions; or

(b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency.

(12) The CBT must enroll as a servicing provider under chapter 182-502 WAC.

(13) The CBT must:

(a) Deliver services according to the ABA therapy treatment plan;

(b) Be supervised by a DOH-licensed professional who meets the requirements under WAC 246-805-330; and

(c) Review the client's progress with the supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the supervisor.

Facility-based day program.

(14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

(b) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable;

(c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.

WSR 18-16-074

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-162—Filed July 30, 2018, 10:05 a.m., effective August 30, 2018]

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

Purpose: The department is amending its rules based on the long-standing practice of allowing crew members of the licensed vessel to retain a limited amount of salmon for personal use during a commercial salmon fishery. This rule will allow commercial fishers to take home a trip limit of three salmon for personal use during commercial salmon fishing activity. Clarifying this will make the rule more enforceable and also easier to follow for commercial fishers.

Citation of Rules Affected by this Order: New WAC 220-200-180 Suspension of a special use permit—Appeal hearing, 220-200-190 Disability designation and 220-413-210 Trapping of furbearing animals by persons with a disability; and amending WAC 220-200-160 Definition of a person with a disability, 220-200-170 Special use permits, 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability, and 220-413-140 Hunting of game birds and animals by persons with a disability.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.32.237, 77.32.238, and 77.32.400.

Adopted under notice filed as WSR 18-06-084 on March 6, 2018.

Changes Other than Editing from Proposed to Adopted Version: There were corrections and clarifications made to language in WAC 220-305-120, 220-413-210, and 220-200-160.

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 4, 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: July 30, 2018.

Brad Smith, Chairman
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-200-160 Definition of a person with a disability. (1) "Person with a disability" for purposes of eligibility under disability designation means a person who has a permanent physical disability or permanent developmental disability which substantially impairs ~~((their))~~ the person's ability to participate in recreational activities or to access department lands~~((; and))~~ including, but not limited to:

(a) "Lower extremity disability," which means ~~((a))~~ the person ~~((who))~~ has a permanent lower extremity impairment and is not ambulatory over natural terrain without a lower extremity prosthesis or must permanently use a medically prescribed assistive device every time for mobility including, but not limited to, a wheelchair, crutch, walker, or oxygen bottle; or

(b) "Upper extremity disability," which means ~~((a))~~ the person ~~((who))~~ has a permanent upper extremity impairment and is physically limited in their ability to hold and safely operate a legal hunting or harvesting device~~((; or))~~.

(c) These definitions include, but are not limited to, persons with a permanent upper or lower extremity impairment who have lost the use of one or both upper or lower extremities, or who have a severe physical limitation in the use of one or both upper or lower extremities, or who have a diagnosed permanent disease or disorder which substantially impairs or severely interferes with mobility or the use of one or both upper or lower extremities.

(2) "Blind" or "visually impaired," which means:

(a) ~~((Blindness is))~~ Having a central visual acuity that does not exceed 20/200 in the better eye with corrective lenses, or the widest diameter of the visual field does not exceed twenty degrees; or

(b) ~~((Low vision is))~~ Having a severe loss of visual acuity ranging from 20/70 to 20/200 while retaining some visual function; or

(c) Having inoperable visual impairments ~~((may include))~~ including, but are not limited to: Albinism, aniridia, aphakia, cataracts, glaucoma, macular degeneration, or other similar diagnosed disease or disorder.

(3) "Developmental disability," which means a cognitive intellectual disability such as: Cerebral palsy, down syndrome, epilepsy, autism, or another neurological condition of an individual found to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-200-170 Special use permits. (1) ~~((The director may develop conditions and criteria for administering and issuing special use permits to allow for reasonable accommodations for persons with disabilities.~~

~~((2) The hunters and fishers with disabilities advisory committee established in RCW 77.04.150 may assist the department in evaluating requests and criteria for issuing special use permits.~~

~~((3) Special use permits must be carried on the person acting under or using devices authorized by the special use permit.~~

~~((4) The terms for use granted by a special use permit, when provided as a reasonable modification, supersede department rules that conflict with the terms of the special use permit.~~

~~((5) Failure to abide by the conditions of a special use permit is punishable under RCW 77.15.400, 77.15.430, or 77.15.750.))~~ A special use permit issued by the department sets forth terms and conditions to allow for reasonable accommodations for persons granted disability designation.

(2) A special use permit must be carried on the person acting under or using devices authorized by the special use permit.

(3) The terms for use granted by a special use permit, when provided as a reasonable modification, supersede department rules that conflict with the terms of the special use permit.

(4) It is unlawful to fail to abide by the conditions of a special use permit. Violation of this subsection is punishable under RCW 77.15.160 (6)(b), 77.15.230, or 77.15.750, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

NEW SECTION

WAC 220-200-180 Suspension of a special use permit—Appeal hearing. (1) The department may suspend a person's special use permit for the following reasons and corresponding lengths of time:

(a) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is found to have committed an infraction under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for two years;

(b) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a misdemeanor or gross misdemeanor under Title 77 RCW or the department's rules for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for five years;

(c) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful

completion of specific terms or conditions or is convicted of trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department, the department shall suspend the person's special use permit for life;

(d) Upon conviction or any outcome in criminal court whereby a person voluntarily enters into a disposition that continues or defers the case for dismissal upon the successful completion of specific terms or conditions or is convicted of a felony violation under Title 77 RCW for an act committed while the person is using the special use permit, the department shall suspend the person's special use permit for life;

(e) If the person has a hunting or fishing license revoked or has hunting or fishing license privileges suspended in another state, the department shall suspend the person's special use permit for the duration of the underlying suspension or revocation;

(f) If the person is cited, or charged by complaint, for an offense under Titles 76, 77, 79, 79A, 9, and 9A RCW; or for unlawful use of a department permit, trespass, reckless endangerment, criminal conspiracy, or making a false statement to law enforcement while hunting, fishing, or engaging in any activity regulated by the department for an act committed while the person is using the special use permit, the department shall immediately suspend the person's special use permit until the offense has been adjudicated; or

(g) If the person submits fraudulent information to the department related to the person's special use permit, the department shall suspend the person's special use permit for five years.

(2) The department may suspend a person's special use permit for two years if the person fails to abide by the terms or conditions of the special use permit issued to that person.

(3) Any person with a disability issued a special use permit, who is notified of an intended suspension may request an appeal hearing under chapter 34.05 RCW. A written request for hearing must be received within twenty days of the notice of suspension.

NEW SECTION

WAC 220-200-190 Disability designation. (1) A person meeting the definition of "person with a disability" under WAC 220-200-160, and who submits the required application and accompanying documentation shall be granted a disability designation by the department.

(2) A person whose application for a disability designation is denied by the department may request a hearing to contest the denial. A written request for a hearing must be received within twenty days of the notice of suspension.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-305-120 Harvesting of shellfish, food fish or game fish by persons with a disability. (1) Definitions:

(a) "Harvester with a disability" means a person ~~((with a permanent))~~ who has been granted a disability designation and who possesses a valid disabled harvester ~~((permit))~~ endorsement issued by the department;

(b) "Disabled harvester ~~((permit))~~ endorsement" means ~~((a permit, card, or))~~ an endorsement to a license issued by the department to ~~((any))~~ a person ~~((with a permanent disability who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability))~~ who has been granted a disability designation;

~~((i))~~ A designated harvester companion card will be issued to the holder of a disabled harvester permit along with the issuance of a harvesting license.)

(c) "Designated harvester companion" means a designated person who only assists with that physical function the harvester with a disability is unable to perform during his or her recreational activity in the taking of shellfish, food fish, or game fish;

(d) "Designated harvester companion card" means an identification card issued by the department to a harvester with a disability for use by another person in assisting or acting on the behalf of the harvester with a disability while engaging in fishing or harvesting activities.

(2) A designated harvester companion card will be issued to the holder of a disabled harvester endorsement along with the issuance of a harvesting license.

(3) It is unlawful for a harvester with a disability to fail to obtain all licenses, permits and catch record cards prior to fishing.

~~((3))~~ (4) The designated harvester companion, when accompanied by the harvester with a disability, may assist the harvester with a disability in taking shellfish, game fish and food fish or engage in the taking of shellfish, game fish, and food fish on behalf of the harvester with a disability.

~~((4))~~ (5) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the harvester with a disability is present and participating in the fishing activity, except:

(a) The harvester with a disability is not required to be present at the location where the designated harvester companion is harvesting shellfish for the harvester with a disability. The harvester with a disability is required to be in the direct line of sight of the designated harvester companion who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the harvester with a disability is required to be within one-quarter mile of the designated harvester companion who is harvesting shellfish for him or her and must have a form of reliable and direct communication.

~~((5))~~ (6) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion ((is licensed and has the designated harvester companion card on his or her person)) has a valid equivalent harvesting license issued by Washington state or another state.

(7) It is unlawful for a designated harvester companion to assist a harvester with a disability unless the designated harvester companion is licensed and has the designated harvester companion card on his or her person.

~~((6))~~ (8) Shellfish, game fish or food fish harvested by a designated harvester companion on behalf of a harvester with a disability becomes part of the harvester with a disability

ity's (~~bag~~) daily or possession limit, and must be kept separate from the designated harvester companion's (~~bag~~) daily or possession limit.

~~((7) A violation of this section is punishable under RCW 77.15.380.)~~ (9) It is unlawful for a harvester with a disability to utilize spin casting gear during fly fishing only season, unless the harvester with a disability has been issued a special use permit from the department.

(a) Such person may use spin casting gear with a casting bubble and monofilament line with no limit on breaking strength; and

(b) Hook size and barb restrictions, fishing fly requirements, and bait and weight prohibitions as provided for in WAC 220-310-150, apply to both conventional fly fishing and spin casting fly fishing.

(10) A violation of this section is punishable under RCW 77.15.380, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 17-17-109, filed 8/21/17, effective 9/21/17)

WAC 220-413-140 Hunting of game birds and animals by persons with a disability. (1) Definitions:

(a) "Hunter with a disability" means a person (~~with a permanent~~) who has been granted a disability designation and who possesses a valid disabled hunter (~~permit~~) endorsement issued by the department.

(b) "Disabled hunter (~~permit~~) endorsement" means (~~a permit, card, or~~) an endorsement to a license issued by the department to (~~any~~) a person (~~with a permanent~~) granted a disability (~~who applies to the department and presents such evidence as the director may require showing that the applicant is a person with a qualifying disability.~~

(i) Upon approval of the application, the department will issue a vehicle identification placard.

(ii) A designated hunter companion card will be issued to the holder of a disabled hunter permit along with the issuance of a hunting license) designation.

(c) "Designated hunter companion" means a designated person who only assists with that physical function the hunter with a disability is unable to perform, such as stalking, shooting, tracking, retrieving, or the tagging of game birds and game animals.

(d) "Designated hunter companion card" means an identification card issued by the department to a hunter with a disability for use by another person in assisting or acting on the behalf of the hunter with a disability while engaging in hunting activities.

(e) "Accompany" means the hunter with a disability and the designated hunter companion are in the physical presence of each other, not to exceed a 1/4-mile separation. While stalking or shooting an animal, the hunter with a disability and the designated hunter companion must have a form of reliable and direct communication.

(2) A designated hunter companion card will be issued to the holder of a disabled hunter endorsement upon purchase of a hunting license.

(3) It is unlawful for a hunter with a disability to fail to obtain all required licenses, tags, or stamps before hunting.

~~((3))~~ (4) It is unlawful for a designated hunter companion to assist a hunter with a disability unless the designated hunter companion has the designated hunter companion card on his or her person. A designated hunter companion must have a valid hunting license issued by Washington state or another state.

(a) The designated hunter companion must accompany the hunter with a disability when stalking or shooting game on behalf of the hunter with a disability.

(b) The designated hunter companion does not need to accompany the hunter with a disability while tracking an animal wounded by either hunter, or while tagging or retrieving a downed animal on behalf of the hunter with a disability.

~~((4))~~ (5) It is unlawful for the hunter with a disability or the designated hunter companion to fail to:

(a) Immediately cut, notch, or date any required tag upon harvesting a game bird or animal; and

(b) Affix the tag to the carcass of the game bird or animal as soon as reasonably possible after killing the game.

~~((5) A violation of subsection (2), (3), or (4) of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.)~~

(6) Game birds or game animals killed, tagged or retrieved by a designated hunter companion on behalf of a hunter with a disability do not count against the designated hunter companion's bag or possession limit.

(7) It is unlawful for a hunter with a disability to possess a loaded firearm in a motor vehicle, or shoot from a motor vehicle, unless the (~~vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off. A disabled hunter vehicle identification placard must be displayed and visible~~) hunter with a disability has been issued a special use permit from the department, and:

(a) The vehicle is stopped, the vehicle is removed from the maintained portion of the roadway, and the motor is turned off; and

(b) A valid blue disabled hunter "shooting from a vehicle" identification placard must be displayed and visible.

(8) It is unlawful for a hunter with a disability to utilize a crossbow in archery or muzzleloader season, unless the hunter with a disability has been issued a special use permit from the department.

(9) A violation of this section is punishable under RCW 77.15.400, 77.15.410, 77.15.430, or 77.15.750 or other statutes under chapter 77.15 RCW, depending on the circumstances of the violation.

NEW SECTION

WAC 220-413-210 Trapping of furbearing animals by persons with a disability. (1) Definitions:

(a) "Trapper with a disability" means a person who has been granted a disability designation and who possesses a valid disabled trappers endorsement issued by the department.

(b) "Disabled trapper endorsement" means an endorsement to a license issued by the department to a person granted a disability designation.

(c) "Designated trapper companion" means a designated person who only assists with that physical function the trapper with a disability is unable to perform, such as trap placement, baiting, checking the trap(s), retrieving, or the tagging of furbearing animals during trapping season.

(d) "Designated trapper companion card" means an identification card issued by the department to a trapper with a disability for use by another person in assisting or acting on the behalf of the trapper with a disability while engaging in trapping activities.

(e) "Accompany" means the trapper with a disability and the designated trapper companion are in the physical presence of each other, not to exceed a 100-foot separation. The trapper with a disability and the designated trapper companion must have a form of reliable and direct communication.

(2) A designated trapper companion card will be issued to the holder of a disabled trapper endorsement upon purchase of a trapping license.

(3) It is unlawful for a trapper with a disability to not follow all agency rules and to fail to possess all required licenses and permits before trapping.

(4) It is unlawful for a designated trapper companion to assist a trapper with a disability unless the designated trapper companion has the designated trapper companion card on his or her person. A designated trapper companion must have a valid trapper license issued by Washington state or another state.

The designated trapper companion must accompany the trapper with a disability during trap placement, baiting, and checking the trap(s).

(5) Furbearing animals killed or retrieved by a designated trapper companion on behalf of a trapper with a disability do not count against the designated trapper companion's bag, daily, or possession limit.

(6) A violation of this section is punishable under WAC 220-417-010, 220-417-020, 220-417-030, or other statutes under chapter 77.15 RCW depending on the circumstances of the violation.

WSR 18-16-081
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 30, 2018, 1:50 p.m., effective see below]

Effective Date of Rule: Thirty-one days after filing, except for WAC 392-400-025, 392-400-110, 392-400-430, 392-400-435, 392-400-440, 392-400-445, 392-400-450, 392-400-455, 392-400-460, 392-400-465, 392-400-470, 392-400-475, 392-400-480, 392-400-510, 392-400-515, 392-400-520, 392-400-525 and 392-400-530, which are effective on July 1, 2019.

Purpose: These permanent rules amend chapter 392-400 WAC, which governs how a public school district may administer student discipline, including notice requirements to students and parents and due process protections for students who are suspended or expelled.

The permanent rules are intended to:

- Simplify and clarify due process procedures for school districts, students, and families;
- Improve clarity and readability of the entire chapter, thereby eliminating problems of interpretation and problems of practice that are a result of confusing or vague terminology;
- Encourage fewer adversarial resolutions to discipline-related issues and the use of best practices to minimize the use of exclusionary discipline practices;
- Increase opportunities for students, family, and community engagement in discipline, including in the development of discipline policies and in resolving discipline-related issues; and
- Provide further guidance on the requirements passed by the legislature in 2016 in HB [4SHB] 1541, including specific guidance on the provision of educational services while a student is suspended or expelled.

The permanent rules incorporate substantial stakeholder feedback, including formal comments the office of superintendent of public instruction received in writing and during eight public hearings.

Citation of Rules Affected by this Order: New WAC 392-400-010, 392-400-015, 392-400-020, 392-400-023, 392-400-025, 392-400-110, 392-400-330, 392-400-335, 392-400-430, 392-400-435, 392-400-440, 392-400-445, 392-400-450, 392-400-455, 392-400-460, 392-400-465, 392-400-470, 392-400-475, 392-400-480, 392-400-510, 392-400-515, 392-400-520, 392-400-525, 392-400-530, 392-400-610, 392-400-710, 392-400-805, 392-400-810, 392-400-815, 392-400-820, 392-400-825 and 392-400-830; repealing WAC 392-400-200, 392-400-205, 392-400-210, 392-400-215, 392-400-220, 392-400-227, 392-400-290 and 392-400-420; and amending WAC 392-400-230, 392-400-233, and 392-400-235.

Statutory Authority for Adoption: RCW 28A.600.015, 28A.600.020.

Other Authority: RCW 28A.600.010 through 28A.600-022, 28A.320.211.

Adopted under notice filed as WSR 18-12-122 on June 6, 2018.

Changes Other than Editing from Proposed to Adopted Version:

- WAC 392-400-335(4) was deleted.
- WAC 392-400-440(2) was revised to state: "A school district may only administer an expulsion: (a) For behavioral violations under RCW 28A.600.015 (6)(a) through (6)(d); ..."
- WAC 392-400-445(2) was revised to state: "A school district may only administer an expulsion: (a) For behavioral violations under RCW 28A.600.015 (6)(a) through (6)(d); ..."
- WAC 392-400-510 (1)(b) was revised to state: "An immediate and continuing threat of material and substantial disruption of the educational process, ~~subject.~~"
- WAC 392-400-610 was revised to add: "A school district may not suspend the provision of educational services to a student in response to behavioral violations."

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 Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 32, Amended 3, Repealed 8.

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: July 30, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

Chapter 392-400 WAC

((PUPHS)) STUDENT DISCIPLINE

NEW SECTION

WAC 392-400-010 Purpose. The purpose of this chapter is to ensure that school districts in Washington:

- (1) Provide due process to students;
- (2) Implement culturally responsive discipline policies and procedures that provide opportunity for all students to achieve personal and academic success;
- (3) Engage school personnel, students, parents, families, and the community in decisions related to the development and implementation of discipline policies and procedures;
- (4) Ensure fairness and equity in the administration of discipline;
- (5) Administer discipline in ways that respond to the needs and strengths of students, support students in meeting behavioral expectations, and keep students in the classroom to the maximum extent possible;
- (6) Provide educational services that students need to complete their education without disruption;
- (7) Facilitate collaboration between school personnel, students, and families to ensure successful reentry into the classroom following a suspension or expulsion; and
- (8) Provide a safe and supportive learning environment for all students.

NEW SECTION

WAC 392-400-015 Authority. The authority for this chapter is RCW 28A.600.015 and 28A.600.020, which require the office of superintendent of public instruction to establish rules that prescribe the substantive and procedural due process rights of students served by any program or activity conducted by, or on behalf of, school districts.

NEW SECTION

WAC 392-400-020 Application. (1) This chapter establishes the minimum procedural and substantive due process rights of students when they may be subject to discipline in Washington school districts. A school district may establish additional due process protections for students consistent with federal statutes and regulations, state statutes, common law, and rules prescribed by the office of superintendent of public instruction.

(2) This chapter must be construed in a manner consistent with the following laws and rules:

(a) RCW 28A.600.010 through 28A.600.022 and 28A.320.211, regarding the administration of student discipline;

(b) RCW 28A.300.042, regarding the collection, reporting, and disaggregation of student-level discipline data;

(c) Chapter 392-190 WAC, prohibiting unlawful discrimination in Washington public schools, including the requirement under WAC 392-190-048 that school districts annually review disaggregated discipline data to identify and address disproportionality in the administration of discipline on the basis of sex, race, limited-English proficiency (i.e., English learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and Part B of the Individuals with Disabilities Education Act;

(d) WAC 392-172A-05140 through 392-172A-05175, and 34 C.F.R. Part 300.530 through 300.536, regarding the discipline of students with disabilities under the Individuals with Disabilities Education Act;

(e) RCW 28A.165.035, regarding the state menu of best practices and strategies for behavior; and

(f) RCW 28A.415.410 and 28A.415.420, regarding training to support school personnel in implementing discipline policies and procedures and gaining knowledge and skills in cultural competence.

NEW SECTION

WAC 392-400-023 Definitions. As used in this chapter the terms:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-225.

(2) "Classroom exclusion" means the exclusion of a student from a classroom or instructional or activity area for behavioral violations, subject to the requirements in WAC 392-400-330 and 392-400-335. Classroom exclusion does not include actions that result in missed instruction for a brief duration when:

(a) A teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations; and

(b) The student remains under the supervision of the teacher or other school personnel during such brief duration.

(3) "Corrective action" means discipline, classroom exclusion, suspension, emergency expulsion, or expulsion.

(4) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(5) "Discipline" and "other forms of discipline" mean all forms of corrective action used in response to behavioral vio-

lations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(6) "Discretionary discipline" means a disciplinary action taken by a school district for student behavior that violates rules of student conduct adopted by a school district board of directors under RCW 28A.600.010 and 28A.600.-015, but does not constitute action taken in response to any of the following:

- (a) A violation of RCW 28A.600.420;
- (b) An offense in RCW 13.04.155;
- (c) Two or more violations of RCW 9A.46.120, 9.41.-280, 28A.600.455, 28A.635.020, or 28A.635.060 within a three-year period; or
- (d) Behavior that adversely impacts the health or safety of other students or educational staff.

(7) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

(8) "Emergency expulsion" means an emergency removal from school for up to, and not exceeding, ten consecutive school days from the student's current school placement by a school district superintendent or a designee of the superintendent. The superintendent or designee must have good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to other students or school staff or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion must end or be converted to another form of corrective action within ten school days from the date of the emergency removal from school.

(9) "Expulsion" means a denial of attendance for a period of time up to, but not longer than, the length of an academic term, as defined by the school board, from the time a student is removed from his or her current school placement by a school district superintendent or a designee of the superintendent. An expulsion also may include a denial of admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the school district.

(10) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

(11) "Long-term suspension" means a suspension that:

- (a) Exceeds ten school days and has an end date of not more than the length of an academic term, as defined by the school board, from the time of corrective action;
- (b) Cannot be imposed in such a manner that causes the student to lose academic grades or credit in excess of one semester or trimester during the same school year; and
- (c) Cannot be imposed beyond the school year in which the alleged misbehavior occurs.

(12) "Parent" has the same meaning as in WAC 392-172A-01125.

(13) "School business day" means any calendar day, exclusive of Saturdays, Sundays, and any federal and school holidays, upon which the office of the superintendent of the school district is open to the public for the conduct of business. A school business day shall be concluded or terminated upon the closure of said office for the calendar day.

(14) "School day" means a calendar day except school holidays on which students enrolled in the school district are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

(15) "Short-term suspension" means a suspension for any portion of a calendar day up to and not exceeding ten consecutive school days.

(16) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions.

NEW SECTION

WAC 392-400-025 Definitions. As used in this chapter the terms:

(1) "Behavioral violation" means a student's behavior that violates a school district's discipline policy adopted under WAC 392-400-110.

(2) "Classroom exclusion" means the exclusion of a student from a classroom or instructional or activity area for behavioral violations, subject to the requirements in WAC 392-400-330 and 392-400-335. Classroom exclusion does not include actions that result in missed instruction for a brief duration when:

(a) A teacher or other school personnel attempts other forms of discipline to support the student in meeting behavioral expectations; and

(b) The student remains under the supervision of the teacher or other school personnel during such brief duration.

(3) "Culturally responsive" has the same meaning as "cultural competency" in RCW 28A.410.270.

(4) "Discipline" means any action taken by a school district in response to behavioral violations.

(5) "Disruption of the educational process" means the interruption of classwork, the creation of disorder, or the invasion of the rights of a student or group of students.

(6) "Emergency expulsion" means the removal of a student from school because the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process, subject to the requirements in WAC 392-400-510 through 392-400-530.

(7) "Expulsion" means a denial of admission to the student's current school placement in response to a behavioral violation, subject to the requirements in WAC 392-400-430 through 392-400-480.

(8) "Length of an academic term" means the total number of school days in a single trimester or semester, as defined by the school board.

(9) "Other forms of discipline" means actions used in response to behavioral violations, other than classroom exclusion, suspension, expulsion, or emergency expulsion, which may involve the use of best practices and strategies

included in the state menu for behavior developed under RCW 28A.165.035.

(10) "Parent" has the same meaning as in WAC 392-172A-01125.

(11) "School business day" means any calendar day, except Saturdays, Sundays, or any federal, state, or school holiday, when the office of the superintendent of a school district is open to the public for business.

(12) "School board" means the governing board of directors of a local school district.

(13) "School day" means any day or partial day that students are in attendance at school for instructional purposes.

(14) "Suspension" means a denial of attendance in response to a behavioral violation from any subject or class, or from any full schedule of subjects or classes, but not including classroom exclusions, expulsions, or emergency expulsions.

(a) "In-school suspension" means a suspension in which a student is excluded from the student's regular educational setting but remains in the student's current school placement for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(b) "Long-term suspension" means a suspension in which a student is excluded from school for more than ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

(c) "Short-term suspension" means a suspension in which a student is excluded from school for up to ten consecutive school days, subject to the requirements in WAC 392-400-430 through 392-400-475.

DISCIPLINE POLICIES AND PROCEDURES

NEW SECTION

WAC 392-400-110 Discipline policies and procedures—Development, review, and distribution. (1) **School district policies and procedures beginning in the 2019-20 school year.** Before the commencement of the 2019-20 school year, a school district must adopt written policies and procedures for supporting students in meeting behavioral expectations and administering discipline in accordance with this chapter. The policies and procedures must:

(a) Clearly state the types of behaviors for which discipline, including suspension and expulsion, may be administered;

(b) Have a real and substantial relationship to the lawful maintenance and operation of the school district including, but not limited to, the preservation of the health and safety of students and employees and the preservation of an educational process that is conducive to learning;

(c) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations;

(d) Provide that school personnel make every reasonable attempt to involve parents and students in the resolution of behavioral violations for which discipline may be administered;

(e) Identify other forms of discipline that school personnel should administer before or instead of administering classroom exclusion, suspension, or expulsion to support stu-

dents in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035;

(f) Identify school personnel with the authority to administer classroom exclusions, suspensions, expulsions, emergency expulsions, and other forms of discipline;

(g) Establish appeal and review procedures related to the administration of suspensions, expulsions, and emergency expulsions, consistent with WAC 392-400-430 through 392-400-530;

(h) Establish grievance procedures to address parents' or students' grievances related to the administration of classroom exclusions and other forms of discipline, including discipline that excludes a student from transportation or extracurricular activity. The procedures must, at a minimum, include an opportunity for the student to share the student's perspective and explanation regarding the behavioral violation;

(i) Describe the types of educational services the school district offers to students during a suspension or expulsion and the procedures to be followed for the provision of educational services under WAC 392-400-610;

(j) Provide for reengagement meetings and plans, consistent with WAC 392-400-710;

(k) Provide a process for students who have been suspended or expelled to petition for readmission; and

(l) Be consistent with the model policy developed under RCW 28A.345.090.

(2) **Development and review.** A school district must develop and periodically review discipline policies and procedures with the participation of school personnel, students, parents, families, and the community. During the development and review of discipline policies and procedures, the school district must use disaggregated data collected under RCW 28A.300.042 to:

(a) Monitor the impact of the school district's discipline policies, procedures, and practices; and

(b) Update the school district's discipline policies and procedures to improve fairness and equity in the administration of discipline.

(3) **Distribution of policies and procedures.** A school district must make discipline policies and procedures available to families and the community. The school district must annually provide the district's discipline policies and procedures to all district personnel, students, and parents, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964. The school district must ensure district employees and contractors are knowledgeable of the discipline policies and procedures.

DISCIPLINE, SUSPENSION, AND EXPULSION RULES

AMENDATORY SECTION (Amending WSR 07-04-048, filed 1/31/07, effective 3/3/07)

WAC 392-400-230 Persons authorized to impose discipline, suspension, or expulsion(~~(, or emergency~~

removal)) upon students. (1) Each certificated teacher, each school administrator, each school bus driver, and any other school employee designated by the board of directors of a school district shall possess the authority to impose discipline upon a student for misconduct which violates rules of the school district established pursuant to WAC 392-400-225 ~~((and to impose an emergency removal from a class, subject, or activity upon a student pursuant to WAC 392-400-290)).~~

(2) The board of directors of any school district may delegate to the superintendent and/or his or her designee(s) the authority to impose suspensions and expulsions upon students for misconduct which violates rules of the school district established pursuant to WAC 392-400-225. Each certificated teacher and each administrator shall possess the authority to recommend suspensions and expulsions for such misconduct.

(3) Any board of directors which chooses not to delegate the authority to impose suspensions and/or expulsions, nevertheless, shall be subject to the requirements set forth in this chapter when it imposes a suspension or expulsion.

(4) Notwithstanding any provision of this section to the contrary, each teacher is empowered to exclude any student who creates a disruption of the educational process in violation of the building disciplinary standards while under the teacher's immediate supervision from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day or until the principal or designee and teacher have conferred, whichever occurs first: Provided, That except in emergency circumstances as provided for in WAC 392-400-290, the teacher shall have first attempted one or more alternative forms of corrective action: Provided further, That in no event without the consent of the teacher shall an excluded student be returned during the balance of the particular class or activity period from which the student was initially excluded.

AMENDATORY SECTION (Amending WSR 14-15-153, filed 7/23/14, effective 8/23/14)

WAC 392-400-233 ((Unexcused)) Absences ((and)), tardiness, and school meals. ~~((1) Students with one or more unexcused absences and subject to compulsory attendance pursuant to chapter 28A.225 RCW may be subject to corrective action reasonably calculated to modify the student's conduct. If a school district imposes corrective action on a student for one or more unexcused absences, the school district must:~~

~~(a) Provide notice to the student's parent(s) or guardian(s) in writing in English or, if different, the primary language of the parent(s) or guardian(s), that the student has failed to attend school without valid justification, and by other means reasonably necessary to achieve notice of such fact;~~

~~(b) Schedule a conference or conferences with the parent(s) or guardian(s) and the student at a time and place reasonably convenient to all persons included to analyze the causes for the student's absence, and to determine, by appropriate means, whether the student should be made a focus of concern for placement in special programs designed for his or her educational success; and~~

~~(c) Take steps to reduce the student's absence which include, where appropriate in the judgment of local school officials and where possible, discussed with the student, parent(s) or guardian(s), adjustments of the student's school program or school or course assignment or assisting the student or parent to obtain supplementary services that might ameliorate the cause(s) for the student's absence from school.~~

~~(2) A student's academic grade or credit in a particular subject or course may be adversely affected by reason of tardiness or absences only to the extent and upon the basis that:~~

~~(a) The student's attendance or participation is related to the instructional objectives or goals of the particular subject or course;~~

~~(b) The student's attendance or participation has been identified by the teacher pursuant to policy of the school district as a basis for grading, in whole or in part, in the particular subject or course; and~~

~~(c) The circumstances pertaining to the student's inability to attend school have been taken into consideration, including whether the tardiness or absences are directly related to the student's disability under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, or the Individuals with Disabilities Education Act.)~~ **(1) Absences and tardiness.** A school district may not suspend or expel a student from school for absences or tardiness.

(2) School meals. A school district may not administer a corrective action in a manner that would result in the denial or delay of a nutritionally adequate meal to a student.

AMENDATORY SECTION (Amending WSR 16-18-028, filed 8/26/16, effective 9/1/16)

WAC 392-400-235 Discipline—Conditions and limitations. Discipline may be imposed upon any student for violation of the rules of the school district that have been established pursuant to this section, subject to the following limitations and conditions and the grievance procedure set forth in WAC 392-400-240:

(1) No form of discipline shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirements.

(2) School districts may not suspend the provision of educational services to a student as a disciplinary action.

~~((3) Corporal punishment which is defined as any act which willfully inflicts or willfully causes the infliction of physical pain on a student is prohibited.~~

~~Corporal punishment does not include:~~

~~(a) The use of reasonable physical force by a school administrator, teacher, school employee or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students and school staff or property;~~

~~(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or~~

~~(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.)~~

CLASSROOM EXCLUSIONS

NEW SECTION

WAC 392-400-330 Classroom exclusions—Conditions and limitations. (1) **Authority to administer classroom exclusions.**

(a) **Teacher authority.** A teacher may exclude a student from the teacher's classroom or instructional or activity area for behavioral violations that disrupt the educational process while the student is under the teacher's immediate supervision, subject to the requirements in this section and WAC 392-400-335.

(b) **Other school personnel authority.** A school district may authorize other school personnel to exclude a student from a classroom or instructional or activity area for behavioral violations of the district's discipline policy adopted under WAC 392-400-110 or 392-400-225, subject to the requirements in this section and WAC 392-400-335.

(2) **Other forms of discipline.** The teacher or other school personnel must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations, unless the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process. In administering other forms of discipline, the teacher or other school personnel may consider using best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(3) **Limitations on classroom exclusion.**

(a) **Duration of classroom exclusion.** A classroom exclusion may be administered for all or any portion of the balance of the school day in which the student was excluded from the student's classroom or instructional or activity area. When a student is excluded from the student's classroom or instructional or activity area for longer than the balance of the school day, the school district must provide notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(b) **Removal from school.** A student may not be removed from school during a classroom exclusion unless the school district provides notice and due process for a suspension, expulsion, or emergency expulsion under this chapter.

(4) **Assignments and tests.** The school district must provide the student an opportunity to make up any assignments and tests missed during the classroom exclusion.

NEW SECTION

WAC 392-400-335 Classroom exclusion—Notice and procedure. Following a classroom exclusion under WAC 392-400-330:

(1) **Notice to principal.** The teacher or other school personnel must report the classroom exclusion, including the behavioral violation that led to the classroom exclusion, to the principal or designee as soon as reasonably possible.

(2) **Notice to parents.** The teacher, principal, or designee must notify the student's parents regarding the classroom exclusion as soon as reasonably possible. The school district

must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(3) **Emergency circumstances.** When a teacher or school personnel administers a classroom exclusion on the grounds that the student's presence poses an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process:

(a) The teacher or other school personnel must immediately notify the principal or designee; and

(b) The principal or designee must meet with the student as soon as reasonably possible and administer appropriate discipline.

SUSPENSIONS AND EXPULSIONS

NEW SECTION

WAC 392-400-430 Suspensions and expulsions—General conditions and limitations. A school district may administer suspensions and expulsions for behavioral violations, subject to the following requirements:

(1) **Parent involvement.** A school district must:

(a) Provide for early involvement of parents in efforts to support students in meeting behavioral expectations; and

(b) Must make every reasonable attempt to involve the student and parents in the resolution of behavioral violations.

(2) **Considerations.** Before administering any suspension or expulsion, a school district must consider the student's individual circumstances and the nature and circumstances of the behavioral violation to determine whether the suspension or expulsion, and the length of the exclusion, is warranted.

(3) **Completing academic requirements.** A school district may not:

(a) Suspend the provision of educational services to a student in response to behavioral violations; or

(b) Administer discipline in a manner that would prevent a student from completing subject, grade-level, or graduation requirements.

(4) **Opportunity to receive educational services.** A school district must provide an opportunity for students to receive educational services during a suspension or expulsion under WAC 392-400-610.

(5) **Reporting.** The principal or designee must report all suspensions and expulsions, and the behavioral violation that led to each suspension or expulsion, to the school district superintendent or designee within twenty-four hours after the administration of the suspension or expulsion.

(6) **Reentry.** After suspending or expelling a student, a school district must:

(a) Make reasonable efforts to return the student to the student's regular educational setting as soon as possible.

(b) Allow the student to petition for readmission at any time.

(7) **Absences and tardiness.** A school district may not suspend or expel a student from school for absences or tardiness.

(8) **Access to school district property.** When administering a suspension or expulsion, a school district may deny a student admission to, or entry upon, real and personal property that is owned, leased, rented, or controlled by the district.

(9) **End date.**

(a) An expulsion or suspension of a student may not be for an indefinite period of time and must have an end date.

(b) If a school district enrolls a student in another program or course of study during a suspension or expulsion, the district may not preclude the student from returning to the student's regular educational setting following the end date of the suspension or expulsion, unless:

(i) The school district superintendent or designee grants a petition to extend a student's expulsion under WAC 392-400-480;

(ii) The student is excluded from the student's regular educational setting in accordance with WAC 392-400-810; or

(iii) The student is otherwise precluded under law from returning to the student's regular educational setting.

NEW SECTION

WAC 392-400-435 Short-term and in-school suspensions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering a short-term or in-school suspension, a school district must first attempt one or more other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Length of exclusion.** A school district may not administer a short-term or in-school suspension beyond the school year in which the behavioral violation occurred.

(3) **Grade-level limitations.**

(a) A school district may not administer a short-term or in-school suspension for a student in kindergarten through fourth grade for more than ten cumulative school days during any academic term; and

(b) A school district may not administer a short-term or in-school suspension for a student in grades five through twelve:

(i) For more than fifteen cumulative school days during any single semester; or

(ii) For more than ten cumulative school days during any single trimester.

(4) **School personnel.** When administering an in-school suspension, a school district must ensure school personnel:

(a) Are physically in the same location as the student to provide direct supervision during the duration of the in-school suspension; and

(b) Are accessible to offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes as required under WAC 392-400-610.

NEW SECTION

WAC 392-400-440 Long-term suspensions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering a long-term suspension, a school

district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on long-term suspensions.** A school district may only administer a long-term suspension:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that, if the student returned to school before completing a long-term suspension:

(i) The student would pose an imminent danger to students or school personnel; or

(ii) The student would pose an imminent threat of material and substantial disruption of the educational process.

(3) **Length of exclusion.**

(a) A long-term suspension may not exceed the length of an academic term.

(b) A school district may not administer a long-term suspension beyond the school year in which the behavioral violation occurred.

(4) **Grade-level limitations.** Except for a violation of WAC 392-400-820, a school district may not administer a long-term suspension for any student in kindergarten through fourth grade.

NEW SECTION

WAC 392-400-445 Expulsions—Additional conditions and limitations. (1) **Other forms of discipline.** Before administering an expulsion, a school district must consider other forms of discipline to support the student in meeting behavioral expectations. Administering other forms of discipline may involve the use of best practices and strategies included in the state menu for behavior developed under RCW 28A.165.035.

(2) **Limitations on expulsions.** A school district may only administer an expulsion:

(a) For behavioral violations under RCW 28A.600.015 (6)(a) through (d); and

(b) After the school district has determined that if the student returned to school before completing an expulsion, the student would pose an imminent danger to students or school personnel.

(3) **Length of exclusion.** An expulsion may not exceed the length of an academic term, unless the principal or designee petitions the school district superintendent for extension of an expulsion under WAC 392-400-480, and the petition is granted.

(4) **Grade-level limitations.** Except for violations of WAC 392-400-820, a school district may not administer an expulsion for any student in kindergarten through fourth grade.

NEW SECTION

WAC 392-400-450 Suspensions and expulsions—Initial hearing with student. (1) **Initial hearing.** Before administering any suspension or expulsion, the principal or designee must conduct an informal initial hearing with the

student for the purpose of hearing the student's perspective. At the initial hearing, the principal or designee must provide the student:

- (a) Notice of the student's violation of the school district's discipline policy adopted under WAC 392-400-110;
- (b) An explanation of the evidence regarding the behavioral violation;
- (c) An explanation of the discipline that may be administered; and
- (d) An opportunity for the student to share the student's perspective and provide explanation regarding the behavioral violation.

(2) Parent participation.

(a) **Short-term and in-school suspensions.** At an initial hearing in which the principal or designee is considering administering a short-term or in-school suspension, the principal or designee must provide the student an opportunity for the student to contact the student's parents.

(b) **Long-term suspensions and expulsions.** At an initial hearing in which the principal or designee is considering administering a long-term suspension or expulsion, the principal or designee must make a reasonable attempt to contact the student's parents to provide an opportunity for the parents to participate in the initial hearing in person or by telephone.

(3) **Administrative decision.** Following the initial hearing, the principal or designee must inform the student of the decision regarding the behavioral violation, including the date on which any suspension or expulsion will begin and end.

(4) **Language assistance.** The school district must ensure that the initial hearing is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-455 Suspensions and expulsions—Notice to student and parents. (1) **Initial notice.** Before administering any suspension or expulsion, a school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the behavioral violation.

(2) **Written notice.** No later than one school business day following the initial hearing with the student in WAC 392-400-450, a school district must provide written notice of the suspension or expulsion to the student and parents in person, by mail, or by email. The written notice must include:

- (a) A description of the student's behavior and how the behavior violated the school district's policy adopted under WAC 392-400-110;
- (b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;
- (c) The other forms of discipline that the school district considered or attempted, and an explanation of the district's decision to administer the suspension or expulsion;
- (d) The opportunity to receive educational services during the suspension or expulsion under WAC 392-400-610;

(e) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-460;

(f) The student's and parents' right to appeal the suspension or expulsion under WAC 392-400-465, including where and to whom the appeal must be requested; and

(g) For a long-term suspension or expulsion, the opportunity for the student and parents to participate in a reengagement meeting under WAC 392-400-710.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-460 Suspensions and expulsions—Optional conference with principal. (1) **Requesting a conference.** If the student or parents disagree with the school district's decision to suspend or expel the student, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide the student and parents the opportunity to:

- (a) Share the student's perspective and explanation regarding the behavioral violation;
- (b) Confer with the principal or designee and school personnel involved in the incident that led to the suspension or expulsion; and
- (c) Discuss other forms of discipline that may be administered.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the suspension or expulsion under WAC 392-400-465, participate in a reengagement meeting under WAC 392-400-710, or petition for readmission.

NEW SECTION

WAC 392-400-465 Suspensions and expulsions—Appeal. (1) **Requesting an appeal.** A student or the parents may appeal a suspension or expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal a suspension or expulsion. Appeal time limits must be no less than five school business days from the date the school district provides the written notice under WAC 392-400-455.

(3) Short-term and in-school suspensions.

(a) **Appeal.** The superintendent or designee must provide the student and parents the opportunity to share the student's perspective and explanation regarding the behavioral violation orally or in writing.

(b) **Appeal decision.** The superintendent or designee must deliver a written appeal decision to the student and parents in person, by mail, or by email within two school business days after receiving the appeal. The written decision must include:

(i) The decision to affirm, reverse, or modify the suspension;

(ii) The duration and conditions of the suspension, including the dates on which the suspension will begin and end;

(iii) The educational services the school district will offer to the student during the suspension under WAC 392-400-610; and

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request.

(4) Long-term suspensions and expulsions.

(a) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

(i) The time, date, and location of the appeal hearing;

(ii) The name(s) of the official(s) presiding over the appeal;

(iii) The student's and parents' rights to inspect the student's education records under (e) of this subsection;

(iv) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under (e) of this subsection;

(v) The student's and parents' rights under (f) of this subsection; and

(vi) Whether the school district will offer to hold a reengagement meeting under WAC 392-400-710 before the appeal hearing.

(b) **Reengagement.** Before the appeal hearing, the student, parents, and school district may agree to hold a reengagement meeting and develop a reengagement plan under WAC 392-400-710. The student, parents, and school district may mutually agree to postpone the appeal hearing while participating in the reengagement process.

(c) **Appeal hearing.** The school district must hold an appeal hearing within three school business days from the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student or parents.

(d) **Presiding officials.** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to suspend or expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(e) Evidence and witnesses.

(i) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(ii) Upon request, the student and parents may review the student's education records. The district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(iii) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(A) The district made a reasonable effort to produce the witness; and

(B) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(f) **Student and parent rights.** During the appeal hearing, the student and parents have the right to:

(i) Be represented by legal counsel;

(ii) Question witnesses;

(iii) Share the student's perspective and provide explanation regarding the behavioral violation; and

(iv) Introduce relevant documentary, physical, or testimonial evidence.

(g) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(h) **Appeal decision.** The presiding official(s) must base the decision solely on the evidence presented at the hearing. The presiding official(s) must provide a written decision to the student and parents in person, by mail, or by email within three school business days after the appeal hearing. The written decision must include:

(i) The findings of fact;

(ii) A determination whether:

(A) The student's behavior violated the school district's discipline policy adopted under WAC 392-400-110;

(B) The behavioral violation reasonably warrants the suspension or expulsion and the length of the suspension or expulsion; and

(C) The suspension or expulsion is affirmed, reversed, or modified;

(iii) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end;

(iv) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-470, including where and to whom to make the request; and

(v) Notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710 and the contact information for the person who will coordinate scheduling of the reengagement meeting.

(5) **Language assistance.** The school district must ensure that the notice, appeal proceedings, and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(6) **Pending appeal.** If the student or parents request an appeal under this section, the school district may temporarily continue to administer the suspension or expulsion during the appeal period subject to the following requirements:

(a) The school district may temporarily continue to administer the suspension or expulsion for no more than ten consecutive school days from the initial hearing under WAC 392-400-450 or until the appeal is decided, whichever is earlier;

(b) Any days that the student is temporarily suspended or expelled before the appeal is decided must be applied to the term of the student's suspension or expulsion and may not extend the term of the student's suspension or expulsion;

(c) If the student who is temporarily suspended or expelled returns to school before the appeal is decided under this section, the school district must provide the student an opportunity to make up assignments and tests missed during the suspension or expulsion upon the student's return.

NEW SECTION

WAC 392-400-470 Suspensions and expulsions—Review and reconsideration. (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-465. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than ten school business days from the date the school district provides the written appeal decision to the student and parents under WAC 392-400-465.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the behavioral violation, any records from the appeal under WAC 392-400-465, relevant state law, and the school district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the behavioral violation, the decision to suspend or expel the student, or the appeal decision under WAC 392-400-465. If the discipline appeal council presided over the appeal under WAC 392-400-465, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and

parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms, reverses, or modifies the suspension or expulsion;

(b) The duration and conditions of the suspension or expulsion, including the dates on which the suspension or expulsion will begin and end; and

(c) For long-term suspensions or expulsions, notice of the opportunity to participate in a reengagement meeting under WAC 392-400-710.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-475 Discipline appeal council. A school board may designate a discipline appeal council to hear and decide appeals under WAC 392-400-465 or to review and reconsider the district's appeal decisions under WAC 392-400-470. A discipline appeal council must consist of at least three persons appointed by the school board for fixed terms. All members of the discipline appeal council must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

NEW SECTION

WAC 392-400-480 Petition to extend expulsion. (1) **Petition.** When risk to public health or safety warrants extending a student's expulsion, the principal or designee may petition the school district superintendent or designee for authorization to exceed the academic term limitation on an expulsion. The petition must inform the superintendent or designee of:

(a) The behavioral violation that resulted in the expulsion and the public health or safety concerns;

(b) The student's academic, attendance, and discipline history;

(c) Any nonacademic supports and behavioral services the student was offered or received during the expulsion;

(d) The student's academic progress during the expulsion and the educational services available to the student during the expulsion;

(e) The proposed extended length of the expulsion; and

(f) The student's reengagement plan.

(2) **Time limit.** The principal or designee may petition to extend an expulsion only after the development of a reengagement plan under WAC 392-400-710 and before the end of the expulsion. For violations of WAC 392-400-820, the principal or designee may petition to extend an expulsion at any time.

(3) **Notice.** The school district must provide written notice of the petition to the student and parents in person, by mail, or by email within one school business day from the date the superintendent or designee received the petition. The written notice must include:

(a) A copy of the petition;

(b) The student's and parents' right to an informal conference with the school district superintendent or designee to be held within five school business days from the date the district provided written notice to the student and parents; and

(c) The student's and parents' right to respond to the petition orally or in writing to the school district superintendent or designee within five school business days from the date the district provided written notice.

(4) **Written decision.** The school district superintendent or designee may grant the petition only if there is substantial evidence that, if the student were to return to the student's previous school of placement after the length of an academic term, the student would pose a risk to public health or safety. The school district superintendent or designee must deliver a written decision to the principal, the student, and the student's parents in person, by mail, or by email within ten school business days after receiving the petition.

(a) If the petition is granted, the written decision must include:

(i) The date on which the extended expulsion will end;

(ii) The reason that, if the student were to return before the initial expulsion end date, the student would pose a risk to public health or safety; and

(iii) Notice of the student's or parents' right to request review and reconsideration of the appeal decision under subsection (5) of this section, including where and to whom to make the request.

(b) If the petition is not granted, the written decision must identify the date on which the expulsion will end.

(5) **Review and reconsideration.**

(a) **Requesting review.** The students or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the decision to extend the student's expulsion. The student or parents may request the review orally or in writing.

(b) **Time limit.** A school district may establish a time limit for parents and students to request a review under this subsection. The time limit must be no less than ten school business days from the date the school district superintendent or designee provides the written decision under subsection (4) of this section.

(c) **Review procedure.**

(i) The school board or discipline appeal council may request to meet with the student or parents or the principal to hear further arguments and gather additional information.

(ii) The decision of the school board or discipline appeal council may be made only by board or council members who were not involved in the behavioral violation, the decision to expel the student, or the appeal decision under WAC 392-400-465.

(d) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within ten school business days after receiving the request for review and reconsideration. The written decision must identify:

(i) Whether the school board or discipline appeal council affirms, reverses, or modifies the decision to extend the student's expulsion; and

(ii) The date on which the extended expulsion will end.

(6) **Duration.** Any extension of an expulsion may not exceed the length of an academic term.

(7) **Language assistance.** The school district must ensure that any petition proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(8) **Annual reporting.** The school district must annually report the number of petitions approved and denied to the office of superintendent of public instruction.

EMERGENCY EXPULSIONS

NEW SECTION

WAC 392-400-510 Emergency expulsions—Conditions and limitations. A school district may immediately remove a student from the student's current school placement, subject to the following requirements:

(1) **Sufficient cause.** The school district must have sufficient cause to believe that the student's presence poses:

(a) An immediate and continuing danger to other students or school personnel; or

(b) An immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Determination of immediate and continuing threat of disruption.** For purposes of this section, an immediate and continuing threat of material and substantial disruption of the educational process means:

(a) The student's behavior results in an extreme disruption of the educational process that creates a substantial barrier to learning for other students across the school day; and

(b) School personnel have exhausted reasonable attempts at administering other forms of discipline to support the student in meeting behavioral expectations.

(3) **Time limit.** An emergency expulsion may not exceed ten consecutive school days. An emergency expulsion must end or be converted to another form of discipline within ten school days from the start of the emergency expulsion.

(4) **Conversion.** If a school district converts an emergency expulsion to a suspension or expulsion, the district must:

(a) Apply any days that the student was emergency expelled before the conversion to the total length of the suspension or expulsion; and

(b) Provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(5) **Reporting.** All emergency expulsions, including the reason the student's presence poses an immediate and continuing danger to other students or school personnel, must be reported to the district superintendent or designee within twenty-four hours after the start of the emergency expulsion.

NEW SECTION

WAC 392-400-515 Emergency expulsions—Notice to student and parents. (1) **Initial notice.** After an emergency expulsion, the school district must attempt to notify the student's parents, as soon as reasonably possible, regarding the reason the district believes the student's presence poses an

immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process.

(2) **Written notice.** Within twenty-four hours after an emergency expulsion, a school district must provide written notice of the emergency expulsion to the student and parents in person, by mail, or by email. The written notice must include:

(a) The reason the student's presence poses an immediate and continuing danger to students or school personnel, or poses an immediate and continuing threat of material and substantial disruption of the educational process;

(b) The duration and conditions of the emergency expulsion, including the dates on which the emergency expulsion will begin and end;

(c) The opportunity to receive educational services during the emergency expulsion under WAC 392-400-610;

(d) The student's and parents' right to an informal conference with the principal or designee under WAC 392-400-520; and

(e) The student's and parents' right to appeal the emergency expulsion under WAC 392-400-525, including where and to whom the appeal must be requested.

(3) **Language assistance.** The school district must ensure the initial and written notices required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-520 Emergency expulsions—Optional conference with principal. (1) **Requesting a conference.** If a student or the parents disagree with the school district's decision to administer an emergency expulsion, the student or parents may request an informal conference with the principal or designee to resolve the disagreement. The request for an informal conference may be made orally or in writing.

(2) **Time limit.** The principal or designee must hold the conference within three school business days after receiving the request, unless otherwise agreed to by the student and parents.

(3) **Conference.** During the informal conference, the principal or designee must provide students and parents the opportunity to share the student's perspective and explanation regarding the events that led to the emergency expulsion.

(4) **Language assistance.** The school district must ensure the conference is held in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Right to appeal.** An informal conference must not limit a student's or parents' right to appeal the emergency expulsion under WAC 392-400-525.

NEW SECTION

WAC 392-400-525 Emergency expulsions—Appeal.

(1) **Requesting an appeal.** A student or the parents may

appeal an emergency expulsion to the school district superintendent or designee orally or in writing.

(2) **Time limit.** A school district may establish a time limit to appeal an emergency expulsion. Appeal time limits must be no less than three school business days from the date the school district provides the written notice of the emergency expulsion.

(3) **Notice.** Within one school business day after receiving the appeal request, unless otherwise agreed to by the student and parents, the superintendent or designee must provide the student and parents written notice in person, by mail, or by email of:

(a) The time, date, and location of the appeal hearing;

(b) The name(s) of the official(s) presiding over the appeal;

(c) The student's and parents' rights to inspect the student's education records under subsection (6) of this section;

(d) The student's and parents' rights to inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the hearing under subsection (6) of this section; and

(e) The student's and parents' rights under subsection (7) of this section.

(4) **Appeal hearing.** The school district must hold an appeal hearing as soon as reasonably possible, but no later than two school business days after the date the superintendent or designee received the appeal request, unless otherwise agreed to by the student and parents.

(5) **Presiding official(s).** The school board may designate the superintendent, a hearing officer, or a discipline appeal council, if established under WAC 392-400-475, to hear and decide appeals under this section. The presiding official(s) may not be involved in the student's behavioral violation or decision to emergency expel the student and must be knowledgeable about the rules in this chapter and of the school district's discipline policies and procedures.

(6) **Evidence and witnesses.**

(a) Upon request, the student, parents, and school district may inspect any documentary or physical evidence and a list of any witnesses that will be introduced at the appeal hearing. The school district, student, or parents must make the information available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(b) Upon request, the student and parents may review the student's education records. The school district must make the records available as soon as reasonably possible, but no later than the end of the school business day before the appeal hearing.

(c) If a witness for the school district cannot or does not appear at the appeal hearing, the presiding official(s) may excuse the witness's nonappearance if the district establishes that:

(i) The district made a reasonable effort to produce the witness; and

(ii) The witness's failure to appear is excused by fear of reprisal or another compelling reason.

(7) **Student and parent rights.** The student and parents have the right to:

(a) Be represented by legal counsel;

(b) Question witnesses;
 (c) Share the student's perspective and provide explanation regarding the events that led to the emergency expulsion; and

(d) Introduce relevant documentary, physical, or testimonial evidence.

(8) **Recording of hearing.** The appeal hearing must be recorded by manual, electronic, or other type of recording device. The school district must provide the recording to the student or parents upon request.

(9) **Appeal decision.** The school district must provide a written decision to the student and parents in person, by mail, or by email within one school business day after the appeal hearing. The written decision must include:

(a) The findings of fact;

(b) A determination whether the student's presence continues to pose:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(c) Whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480; and

(d) Notice of the student's and parents' right to request review and reconsideration of the appeal decision under WAC 392-400-530, including where and to whom to make the request.

(10) **Language assistance.** The school district must ensure that any appeal proceedings, notices, and decisions are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-530 Emergency expulsions—Review and reconsideration. (1) **Requesting review.** The student or parents may request that the school board or discipline appeal council, if established under WAC 392-400-475, review and reconsider the school district's appeal decision under WAC 392-400-525. The student or parents may request the review orally or in writing.

(2) **Time limit.** A school district may establish a time limit for parents and students to request a review under this section. The time limit must be no less than five school business days from the date the school district provided the written appeal decision to the student and parents under WAC 392-400-525.

(3) **Review procedure.**

(a) In reviewing the school district's decision, the school board or discipline appeal council must consider all documentary and physical evidence related to the events that led to the emergency expulsion, any records from the appeal under WAC 392-400-525, relevant state law, and the district's discipline policy adopted under WAC 392-400-110.

(b) The school board or discipline appeal council may request to meet with the student or parents, the principal, witnesses, or school personnel to hear further arguments and gather additional information.

(c) The decision of the school board or discipline appeal council must be made only by board or council members who were not involved in the events that led to the emergency expulsion, the decision to emergency expel the student, or the appeal decision under WAC 392-400-525. If the discipline appeal council presided over the appeal under WAC 392-400-525, the decision must be made by the school board.

(4) **Decision.** The school board or discipline appeal council must provide a written decision to the student and parents in person, by mail, or by email within five school business days after receiving the request for review and reconsideration. The written decision must identify:

(a) Whether the school board or discipline appeal council affirms or reverses the school district's decision that the student's presence posed:

(i) An immediate and continuing danger to students or school personnel; or

(ii) An immediate and continuing threat of material and substantial disruption of the educational process.

(b) If the emergency expulsion has not yet ended or been converted, whether the school district will end the emergency expulsion or convert the emergency expulsion to a suspension or expulsion. If the school district converts the emergency expulsion to a suspension or expulsion, the district must provide the student and parents notice and due process under WAC 392-400-455 through 392-400-480.

(5) **Language assistance.** The school district must ensure that any review proceedings and decision are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

EDUCATIONAL SERVICES

NEW SECTION

WAC 392-400-610 Educational services during suspension, expulsion, or emergency expulsion. (1) **Educational services.**

(a) A school district may not suspend the provision of educational services to a student in response to behavioral violations.

(b) During the suspension, expulsion, or emergency expulsion of a student, a school district must provide the student the opportunity to receive educational services. The educational services must enable the student to:

(i) Continue to participate in the general education curriculum;

(ii) Meet the educational standards established within the district; and

(iii) Complete subject, grade-level, and graduation requirements.

(c) When providing a student the opportunity to receive educational services under this section, the school district must consider:

(i) Meaningful input from the student, parents, and the student's teachers;

(ii) Whether the student's regular educational services include English language development services, special education, accommodations and related services under Section 504 of the Rehabilitation Act of 1973, or supplemental services designed to support the student's academic achievement; and

(iii) Access to any necessary technology, transportation, or resources the student needs to participate fully in the educational services.

(d) A school district may provide educational services to the student in an alternative setting or modify the suspension or expulsion on a case-by-case basis. An alternative setting should be comparable, equitable, and appropriate to the regular educational services a student would have received without the exclusionary discipline. Example alternative settings include alternative high schools, one-on-one tutoring, and online learning.

(2) **Notice.** As soon as reasonably possible after administering a suspension or expulsion, a school district must provide written notice to the student and parents about the educational services the district will provide. The school district must provide the written notice in person, by mail, or by email. The notice must include:

(a) A description of the educational services that will be provided; and

(b) The name and contact information for the school personnel who can offer support to keep the student current with assignments and course work as required under this section.

(3) **Exclusions for up to five days.** For students subject to suspension or emergency expulsion for up to five consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes; and

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(4) **Exclusions for six to ten days.** For students subject to suspension or emergency expulsion for six to ten consecutive school days, a school district must provide at least the following:

(a) Course work, including any assigned homework, from all of the student's regular subjects or classes;

(b) Access to school personnel who can offer support to keep the student current with assignments and course work for all of the student's regular subjects or classes. School personnel must make a reasonable attempt to contact the student or parents within three school business days following the start of the suspension or emergency expulsion and periodically thereafter until the suspension or emergency expulsion ends to:

(i) Coordinate the delivery and grading of course work between the student and the student's teacher(s) at a frequency that would allow the student to keep current with

assignments and course work for all of the student's regular subjects or classes; and

(ii) Communicate with the student, parents, and the student's teacher(s) about the student's academic progress.

(c) An opportunity for the student to make up any assignments and tests missed during the period of suspension or emergency expulsion.

(5) **Long-term suspensions and expulsions.** For students subject to expulsion or suspension for more than ten consecutive school days, a school district must provide educational services in accordance with WAC 392-121-107.

(6) **Language assistance.** The school district must ensure that notices and communications required under this section are provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REENGAGEMENT

NEW SECTION

WAC 392-400-710 Student reengagement after long-term suspension or expulsion. (1) Reengagement meeting.

When a school district administers a long-term suspension or expulsion, the district must convene a reengagement meeting with the student and parents to discuss a plan to reengage the student. Before convening a reengagement meeting, a school district must communicate with the student and parents to schedule the meeting time and location. The reengagement meeting must occur:

(a) Within twenty calendar days of the start of the student's long-term suspension or expulsion, but no later than five calendar days before the student returns to school; or

(b) As soon as reasonably possible, if the student or parents request a prompt reengagement meeting.

(2) **Reengagement plan.** The school district must collaborate with the student and parents to develop a culturally sensitive and culturally responsive reengagement plan tailored to the student's individual circumstances to support the student in successfully returning to school. In developing a reengagement plan, the school district must consider:

(a) The nature and circumstances of the incident that led to the student's suspension or expulsion;

(b) As appropriate, students' cultural histories and contexts, family cultural norms and values, community resources, and community and parent outreach;

(c) Shortening the length of time that the student is suspended or expelled;

(d) Providing academic and nonacademic supports that aid in the student's academic success and keep the student engaged and on track to graduate; and

(e) Supporting the student, parents, or school personnel in taking action to remedy the circumstances that resulted in the suspension or expulsion and preventing similar circumstances from recurring.

(3) **Documentation.** The school district must document the reengagement plan and provide a copy of the plan to the student and parents.

(4) **Language assistance.** The school district must ensure that the reengagement meeting and plan are in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(5) **Student and parent rights.** Reengagement meetings do not replace an appeal hearing under WAC 392-400-465 or a petition for readmission.

ADDITIONAL DUE PROCESS PROTECTIONS

NEW SECTION

WAC 392-400-805 Fundamental rights. When administering discipline under this chapter, the school district must not:

(1) Unlawfully discriminate against a student on the basis of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal;

(2) Deprive a student of the student's constitutional right to freedom of speech and press, the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances, the constitutional right to the free exercise of religion and to have the student's school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising the right;

(3) Deprive a student of the student's constitutional right to be secure in the student's person, papers, and effects against unreasonable searches and seizures;

(4) Unlawfully interfere in a student's pursuit of an education while in the custody of the school district; or

(5) Deprive a student of the student's right to an equal educational opportunity, in whole or in part, by a school district without due process of law.

NEW SECTION

WAC 392-400-810 Exceptions for the purpose of protecting victims. In accordance with RCW 28A.600.460, a school district may preclude a student from returning to the student's regular educational setting following the end date of a suspension or expulsion for the purpose of protecting victims of certain offenses, as follows:

(1) **Teacher victim.** A student committing an offense under RCW 28A.600.460(2), when the activity is directed toward the teacher, shall not be assigned to that teacher's classroom for the duration of the student's attendance at that school or any other school where the teacher is assigned;

(2) **Student victim.** A student who commits an offense under RCW 28A.600.460(3), when directed toward another student, may be removed from the classroom of the victim for the duration of the student's attendance at that school or any other school where the victim is enrolled.

NEW SECTION

WAC 392-400-815 Behavior agreements. (1) **General.** A school district may enter into behavior agreements with students and parents in response to behavioral violations, including agreements to reduce the length of a suspension conditioned on the participation in treatment services, agreements in lieu of suspension or expulsion, or agreements holding a suspension or expulsion in abeyance.

(2) **Policies and procedures.** A school district entering into behavior agreements under this section must adopt written policies and procedures authorizing the agreements.

(3) **Reengagement meetings and educational services.** A school district must ensure that a behavior agreement does not waive a student's opportunity to participate in a reengagement meeting under WAC 392-400-710, or receive educational services as provided under WAC 392-400-610.

(4) **Duration.** The duration of behavior agreements must not exceed the length of an academic term.

(5) **Subsequent behavioral violations.** Nothing in this section precludes a school district from administering discipline for behavioral violations that occur after the district enters into an agreement with the student and parents.

(6) **Language assistance.** The school district must ensure any behavior agreement under this section is provided in a language the student and parents understand, which may require language assistance for students and parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

NEW SECTION

WAC 392-400-820 Firearm exceptions. As provided under RCW 28A.600.420:

(1) A school district must expel a student for no less than one year if the district has determined that the student has carried or possessed a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools. The school district superintendent may modify the expulsion on a case-by-case basis.

(2) A school district may suspend or expel a student for up to one year if the student acts with malice, as defined under RCW 9A.04.110, and displays an instrument that appears to be a firearm on school premises, school-provided transportation, or areas of facilities while being used exclusively by public schools.

(3) This section does not apply to:

(a) Any student while engaged in military education authorized by the school district in which rifles are used;

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by the school district in which the rifles of collectors or instructors are handled or displayed; or

(c) Any student while participating in a rifle competition authorized by the school district.

NEW SECTION

WAC 392-400-825 Corporal punishment, restraint, and isolation. (1) **Corporal punishment.** A school district may not administer corporal punishment, including any act

that willfully inflicts or willfully causes the infliction of physical pain on a student. Corporal punishment does not include:

(a) The use of reasonable physical force by a school administrator, teacher, school personnel or volunteer as necessary to maintain order or to prevent a student from harming themselves, other students, school personnel, or property;

(b) Physical pain or discomfort resulting from or caused by training for or participation in athletic competition or recreational activity voluntarily engaged in by a student; or

(c) Physical exertion shared by all students in a teacher-directed class activity, which may include, but is not limited to, physical education exercises, field trips or vocational education projects.

(2) Restraint and isolation. A school district may not use isolation, restraint, or a restraint device on any student, except as provided for in RCW 28A.155.210, 28A.600.485, WAC 392-172A-02105, and 392-172A-02110.

NEW SECTION

WAC 392-400-830 School meals. A school district may not administer any discipline in a manner that would result in the denial or delay of a nutritionally adequate meal to the student.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-400-200 Purpose and application.
- WAC 392-400-205 Definitions.
- WAC 392-400-210 Student responsibilities and duties.
- WAC 392-400-215 Student rights.
- WAC 392-400-220 Student disciplinary boards—Establishment at option of school district—Functions.
- WAC 392-400-227 School district rules defining students religious rights.
- WAC 392-400-290 Emergency removal from a class, subject, or activity.
- WAC 392-400-420 Reengagement meetings and plans.

WSR 18-16-101

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed July 31, 2018, 2:43 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-01 WAC pertaining to authority and definitions.

Citation of Rules Affected by this Order: New chapter 179-01 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-054 on May 31, 2018.

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 2, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2 [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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-01 WAC

AUTHORITY

NEW SECTION

WAC 179-01-010 Authority for Title 179 WAC. The authority for this title is RCW 28A.413.020 and 28A.413.030 which creates and authorizes the paraeducator board with the powers and duties to effectively and efficiently implement chapter 28A.413 RCW.

NEW SECTION

WAC 179-01-020 Definitions. The definitions set forth in this section apply throughout this title.

(1)(a) "Paraeducator" means a classified public school or school district employee who works under the supervision of a certificated or licensed staff member, from grades kindergarten to grade 12, to support and assist in providing instructional and other services to students and their families, including library assistants, and excluding bus monitors, lunchroom aides, and community service aides.

(b) Paraeducators are not considered certificated instructional staff as that term and its meaning are used in this title.

(2) "College or university" means any accredited institution as defined in WAC 250-61-050.

(3) "Certificate," as used in this title:

(a) Means a credential earned by a paraeducator who has met the minimum completion requirements listed in the chapters of this title; and

(b) Does not hold the same meaning as used in Title 181 WAC.

(4) "Expire," as used in this title, means that the credential earned by the paraeducator is no longer valid.

(5) "Filing requirements," as used in this title, as defined in chapter 181-85 WAC.

WSR 18-16-102
PERMANENT RULES
PARAEDUCATOR BOARD

[Filed July 31, 2018, 2:50 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-03 WAC describing minimum employment standards for paraeducators.

Citation of Rules Affected by this Order: New chapter 179-03 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-014 on May 31, 2018.

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 3, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2 [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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-03 WAC

**PARAEDUCATOR MINIMUM EMPLOYMENT
REQUIREMENTS**

NEW SECTION

WAC 179-03-010 Authority. The authority for this chapter is RCW 28A.413.030 which authorizes the paraeducator board with the powers and duties to adopt rules for the effective and efficient implementation of RCW 28A.413.040.

NEW SECTION

WAC 179-03-020 Paraeducator minimum employment requirements. (1)(a) A person working as a paraedu-

ator for the employing school district before or during the 2017-18 school year must meet the requirements of subsection (2) of this section by the date of hire for the 2019-20 school year or any subsequent school year.

(b) A person who has not previously worked as a paraeducator for the employing school district must meet the requirements of subsection (2) of this section by the date of hire for the 2018-19 school year or any subsequent school year.

(2) The minimum employment requirements for paraeducators are as provided in this subsection. A paraeducator must:

(a) Be at least eighteen years of age and hold a high school diploma or its equivalent, as described in WAC 179-03-022; and

(b) In addition, a paraeducator must meet one or more of the following:

(i) Have received a qualifying score on the education testing service paraeducator assessment as published by the professional educator standards board; or

(ii) Hold an associate degree or higher from an accredited college or university; or

(iii) Have earned seventy-two quarter credits or forty-eight semester credits at the one hundred level or higher at an accredited college or university; or

(iv) Have completed an apprenticeship as a paraeducator, in a program registered with the Washington state apprenticeship and training council.

NEW SECTION

WAC 179-03-022 Requirement for a high school diploma or its equivalent. The requirement in WAC 179-03-020 for a paraeducator to hold a high school diploma or its equivalent may be met with any one or more of the following:

(1)(a) High school diploma, or copy of high school diploma; or

(b) High school transcript, or copy of transcript, which documents a high school diploma; or

(c) If the diploma or transcript has been lost or destroyed, or the institution holding the records no longer exists, a statement from an official of the school where the high school diploma was issued, or a statement from an official of the institution holding the records, indicating completion of the diploma by the individual; or

(2) Documentation of achievement of the minimum proficiency level on the general educational development (GED) test or award of certificate of educational competence as described in chapter 131-48 WAC; or

(3) College or university transcript, or copy of transcript, which documents:

(a) A high school diploma; or

(b) Achievement of the minimum proficiency level on the GED test or award of certificate of educational competence as described in chapter 131-48 WAC; or

(4) Associate degree or higher from an accredited college or university; or

(5) Equivalency for course work, diplomas, degrees, and programs completed in countries outside the United States: Individuals who have completed course work, diplomas,

degrees, and programs in a country other than the United States may provide one or more of the following:

(a) A transcript, or copy of a transcript, from an accredited United States college or university indicating that the college or university has accepted the course work, diplomas, degrees, or programs as equivalent to a high school diploma, associate degree, or higher; or

(b) A statement of degree equivalency for a high school diploma, associate degree, or higher from an international credentials' evaluation agency approved by the professional educator standards board; or

(c) A statement from an official of the school, college, or university where the high school diploma, associate degree, or higher was completed, indicating completion of the diploma, program, or degree, and approval of the program by an agency governing education in that country; or

(6) A transcript, or copy of a transcript, from an accredited college or university documenting seventy-two quarter or forty-eight semester credits at the one hundred level or higher will be accepted as an equivalent to a high school diploma; or

(7) Home-based instruction: On a case-by-case basis, a district may, at its own discretion, choose to accept a certification of completion of a program of home-based instruction as described in WAC 180-96-053.

WSR 18-16-104

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed July 31, 2018, 3:18 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-05 WAC describing methods to attain paraeducator certificate.

Citation of Rules Affected by this Order: New chapter 179-05 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-010 on May 24, 2018.

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 2, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 2, 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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-05 WAC

METHODS TO ATTAIN PARAEDUCATOR CERTIFICATES

NEW SECTION

WAC 179-05-010 Authority. The authority for this chapter is RCW 28A.413.030 which authorizes the paraeducator board with the powers and duties to adopt rules for the effective and efficient implementation of chapter 28A.413 RCW.

NEW SECTION

WAC 179-05-020 Definitions. "Continuing education credit hours" as used in this title is defined in WAC 181-85-030.

WSR 18-16-105

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed July 31, 2018, 3:26 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-07 WAC describing requirements for the standards of practice for paraeducators.

Citation of Rules Affected by this Order: New chapter 179-05 [179-07] WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-015 on May 24, 2018.

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 4, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 4, 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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-07 WAC

PARAEDUCATOR STANDARDS OF PRACTICE

NEW SECTION

WAC 179-07-010 Authority. The authority for this chapter is RCW 28A.413.030 which authorizes the paraeducator board with the powers and duties to adopt paraeducator standards of practice as described in RCW 28A.413.050.

NEW SECTION

WAC 179-07-020 Purpose. The purpose of this chapter is to establish the paraeducator statewide standards of practice which shall be the basis of the professional development created for the paraeducator certificate program described in this title.

NEW SECTION

WAC 179-07-030 Standards of practice. Washington state paraeducator standards of practice include the following:

- (1) Supporting instructional opportunities;
- (2) Demonstrating professionalism and ethical practices;
- (3) Supporting a positive and safe learning environment;
- (4) Communicating effectively and participating in the team process; and
- (5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270.

NEW SECTION

WAC 179-07-040 Knowledge and skill competencies for the standards of practice. The knowledge and skill competencies describe the standards of practice that paraeducators should exhibit when working with students. Competencies are associated with each standard.

- (1) Supporting instructional opportunities:
 - (a) Knowledge competencies:
 - (i) Proficiency in basic reading, writing, and math skills;
 - (ii) Knowledge of basic computer applications (e.g., word processing, presentation, and spreadsheet applications), data collection, assessments and software applications to support K-12 education; and
 - (iii) Knowledge of one's own cultural identity and how it influences perceptions, values, and practices.
 - (b) Skill competencies:
 - (i) Demonstrate ability to assist in reviewing, preparing, delivering, and reinforcing district/school/classroom instructional outcomes (e.g., tutoring, individual and small group instruction) as directed by certificated/licensed staff;
 - (ii) Demonstrate ability to assist in recording and maintaining data as directed by certificated/licensed staff;

(ii) Demonstrate ability to assist in administration of assessments and monitoring student progress as directed by certificated/licensed staff; and

(iv) Demonstrate ability to utilize technology to support educational and safety outcomes as directed by certificated/licensed staff.

(2) Demonstrating professionalism and ethical practices:

(a) Knowledge competencies:

(i) Knowledge of the code of professional conduct for education and applicable district policies and procedures;

(ii) Knowledge of the distinctions in the roles and responsibilities of teachers, paraeducators, administrators, families, and other team members;

(iii) Knowledge of the need to protect civil and human rights pertaining to all students, families, and staff; and

(iv) Knowledge of the importance and purpose of confidentiality of student information.

(b) Skill competencies:

(i) Adhere to code of professional conduct and applicable district policies and procedures;

(ii) Pursue and participate in staff professional development and learning opportunities;

(iii) Adhere to and follow district's mission, policies, procedures, and personnel practices; and

(iv) Adhere to confidentiality as consistent with all applicable laws, regulations, policies, and procedures.

(3) Supporting a positive and safe learning environment:

(a) Knowledge competencies:

(i) Knowledge of child and adolescent developmental milestones/stages and potential early warning indicators (e.g., attendance, behavior, and academic progress);

(ii) Knowledge of strategies to create an equitable learning environment which fosters unique strengths and abilities of students being served; and

(iii) Knowledge of behavioral support systems/strategies that create inclusive and safe learning environments.

(b) Skill competencies:

(i) Demonstrate ability to assist students at appropriate developmental stages and report student concerns or risk factors to certificated staff or supervisor;

(ii) Demonstrate ability to implement behavior support systems/strategies as directed by certificated staff or supervisor;

(iii) Adhere to district prescribed health, safety, and emergency policies and school guidelines; and

(iv) Demonstrate ability to follow and assist in monitoring career and technical education (CTE) program/class safety procedures as directed by district and/or instructor.

(4) Communicating effectively and participating in the team process:

(a) Knowledge competencies:

(i) Knowledge of how multiple communication methods contribute to collaborative team work;

(ii) Knowledge of collaborative team strategies and decision making;

(iii) Knowledge of the need to respect individual differences among all students, families, and staff; and

(iv) Knowledge of the importance of giving and receiving feedback regarding student learning and/or personal performance.

(b) Skill competencies:

(i) Demonstrate ability to utilize various communication methods, problem solving skills, and collaboration strategies with staff, students, families and community;

(ii) Demonstrate ability to initiate and provide relevant feedback regarding job duties, performance tasks, and student learning outcomes; and

(iii) Demonstrate ability to apply feedback regarding student learning outcomes and/or personal performance.

(5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

(a) Knowledge competencies:

(i) Knowledge of and respect for different ethnic, cultural, abilities, and linguistic backgrounds of students, families, staff, and community being served;

(ii) Knowledge of strategies to support and maintain a culturally inclusive learning environment; and

(iii) Knowledge of student cultural histories and contexts, as well as family norms and values in different cultures.

(b) Skill competencies:

(i) Demonstrate ability to assist in implementing educational material which represents and supports various cultures and abilities of students being served as directed by certificated/licensed staff; and

(ii) Demonstrate ability to foster a culturally inclusive environment as directed by certificated/licensed staff or supervisor.

WSR 18-16-106**PERMANENT RULES****PARAEDUCATOR BOARD**

[Filed July 31, 2018, 3:35 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-09 WAC describing requirements for the fundamental course of study for paraeducators.

Citation of Rules Affected by this Order: New chapter 179-09 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-016 on May 24, 2018.

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 5, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 5, 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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-09 WAC**FUNDAMENTAL COURSE OF STUDY**NEW SECTION

WAC 179-09-010 Authority. The authority for this chapter is RCW 28A.413.060 which authorizes the paraeducator board to define the fundamental course of study on the state standards of practice, as defined in chapter 179-07 WAC.

NEW SECTION

WAC 179-09-020 Purpose. The purpose of this chapter is to define the foundational training paraeducators must receive before the paraeducator begins to work with students and their families, or at minimum by the deadlines provided in RCW 28A.413.060.

NEW SECTION

WAC 179-09-030 Definitions. The four-day fundamental course of study will consist of twenty-eight continuing education credit hours of training.

NEW SECTION

WAC 179-09-040 Fundamental course of study. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a)(i) For paraeducators hired on or before September 1st, by September 30th of that year, regardless of the size of the district; and

- (ii) For paraeducators hired after September 1st:
- (A) For districts with ten thousand or more students, within four months of the date of hire; and
- (B) For districts with fewer than ten thousand students, no later than September 1st of the following year.
- (b)(i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and
- (ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.
- (4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.
- (5) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.
- (6) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

NEW SECTION

WAC 179-09-050 Course outline for the fundamental course of study. Providers and facilitators must follow the current course outline as published by the professional educator standards board when delivering the fundamental course of study.

**WSR 18-16-107
PERMANENT RULES
PARAEDUCATOR BOARD**

[Filed July 31, 2018, 3:39 p.m., effective August 31, 2018]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Creates new chapter 179-11 WAC describing requirements for the general paraeducator certificate.
Citation of Rules Affected by this Order: New chapter 179-11 WAC.
Statutory Authority for Adoption: Chapter 28A.413 RCW.
Adopted under notice filed as WSR 18-12-013 on May 24, 2018.
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 5, Amended 0, Repealed 0.
Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.
Number of Sections Adopted on the Agency's own Initiative: New 5, 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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-11 WAC

GENERAL PARAEDUCATOR CERTIFICATE

NEW SECTION

WAC 179-11-010 Purpose. (1) The purpose of this chapter is to define a paraeducator's minimum requirements and process to attain, and the validity period for, the general paraeducator certificate.

(2) The general paraeducator certificate is the minimum credential a paraeducator may earn to obtain the knowledge and skill needed to support and assist teachers with their programs and administrative duties.

NEW SECTION

WAC 179-11-020 Definitions. The additional ten days of training to attain the general paraeducator certificate will consist of seventy continuing education credit hours.

NEW SECTION

WAC 179-11-030 Minimum requirements. Prior to completing the general paraeducator certificate, the paraeducator must have completed the fundamental course of study.

NEW SECTION

WAC 179-11-040 Process. (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) The paraeducator must complete the general paraeducator certificate in three years after completing the fundamental course of study, as follows:

(a) If the fundamental course of study is completed prior to June 30th of a calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the same calendar year regardless of the date of completion; and

(b) If the fundamental course of study is completed July 1st or later in the calendar year, then it shall have a completion date calculated on the basis that it was completed on June 30th of the next calendar year regardless of the date of completion.

(3) To attain the paraeducator general certificate, the paraeducator must complete training that meets in-service education approval standards as written in chapter 181-85 WAC.

(4) A paraeducator who holds the English language learner subject matter certificate and/or special education subject matter certificate may deduct twenty continuing edu-

cation credit hours per subject matter certificate from the hours required to meet the general paraeducator certificate.

(5) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the general paraeducator certificate.

NEW SECTION

WAC 179-11-050 Validity period. Once issued to the paraeducator, the general paraeducator certificate does not expire.

WSR 18-16-109

PERMANENT RULES

PARAEDUCATOR BOARD

[Filed July 31, 2018, 3:47 p.m., effective August 31, 2018]

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

Purpose: Creates new chapter 179-13 WAC describing requirements for English language learner certificates.

Citation of Rules Affected by this Order: New chapter 179-13 WAC.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 18-12-011 on May 24, 2018.

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 6, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 6, 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: July 25, 2018.

David Brenna
Senior Policy Analyst

Chapter 179-13 WAC

ENGLISH LANGUAGE LEARNER SUBJECT MATTER CERTIFICATE

NEW SECTION

WAC 179-13-010 Purpose. (1) The purpose of this chapter is to define a paraeducator's minimum requirements and process to attain, and the validity period for, the English language learner subject matter certificate;

(2) The English language learner subject matter certificate provides increased training to paraeducators to meet the demands of English language learner instructional support; and

(3) Provided that the English language learner subject matter certificate is not a prerequisite for a paraeducator working in any program.

NEW SECTION

WAC 179-13-020 Minimum requirements. Prior to completing the English language learner subject matter certificate, the paraeducator must have completed the fundamental course of study.

NEW SECTION

WAC 179-13-030 Process. (1) To attain the paraeducator English language learner subject matter certificate, the paraeducator must complete twenty continuing education credit hours of training that meet the learning objectives of the course outline as described in WAC 179-13-060;

(2) Training for the certificate must include the training competencies that align with WAC 179-13-050; and

(3) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the English language learner subject matter certificate.

NEW SECTION

WAC 179-13-040 Validity period. The English language learner subject matter certificate expires after five years, and as follows:

(1) A certificate issued prior to June 30th of a calendar year shall have the expiration date of the certificate calculated on the basis such certificate was completed on June 30th of the same calendar year regardless of the date of issuance; and

(2) A certificate issued July 1st or later in the calendar year shall have the expiration date of the certificate calculated on the basis that such certificate was completed on June 30th of the next calendar year regardless of the date of issuance.

NEW SECTION

WAC 179-13-050 Knowledge and skill competencies for the English language learner standards of practice. The knowledge and skill competencies describe the learning objectives paraeducators should exhibit when working with students. Competencies are associated with each of the stan-

dards written in WAC 179-07-030 and are in addition to the knowledge and skill competencies written in WAC 179-07-040:

- (1) Supporting instructional opportunities:
 - Knowledge competencies:
 - (a) Awareness of the difference between social language and academic language;
 - (b) Awareness of the stages of second language acquisition;
 - (c) Awareness of Washington English language proficiency standards; and
 - (d) Awareness of Washington English language proficiency levels.
 - (2) Demonstrating professionalism and ethical practices:
 - Knowledge competencies:
 - (a) Awareness of the legal rights of English language learners;
 - (b) Awareness of how to build a culturally and linguistically inclusive learning environment; and
 - (c) Awareness of what constitutes effective communication with English language learner families and students and fosters respect among each other's cultural and linguistic diversity.
 - (3) Supporting a positive and safe learning environment:
 - (a) Knowledge competencies:
 - (i) Awareness of how to successfully support culturally and linguistically diverse students entering into the public school system; and
 - (ii) Awareness of students' unique strengths and what value they bring to the classroom.
 - (b) Skill competencies:
 - (i) Assist with strategies and techniques for facilitating the instruction of individuals with diverse language learning needs in a variety of settings as specified by certificated staff;
 - (ii) Assist in providing culturally and age appropriate feedback to students; and
 - (iii) Assist with supporting individual student needs by using appropriate strategies that are culturally responsive and address diverse student background.
 - (4) Communicating effectively and participating in the team process:
 - (a) Knowledge competencies:
 - Awareness of appropriate and culturally responsive communication strategies.
 - (b) Skill competencies:
 - (i) Ability to engage and communicate with certificated staff to build a culturally and linguistically inclusive learning environment;
 - (ii) Support effective communication with culturally and linguistically diverse students, families, communities, and team members in a professional and respectful manner; and
 - (iii) Ability to engage in appropriate culturally responsive strategies such as:
 - (A) Constructs of time;
 - (B) Verbal and nonverbal cues;
 - (C) Authority; and
 - (D) Relationship building.
 - (5) Demonstrating cultural competency aligned with standards developed by the professional educator standards board under RCW 28A.410.270:

- (a) Knowledge competencies:
 - Awareness of cultural and linguistic diversities and a commitment to build on students' strength.
- (b) Skill competencies:
 - Use culturally responsive communication skills (e.g., written, verbal, and nonverbal).

NEW SECTION

WAC 179-13-060 Course outline for the English language learner subject matter certificate. Providers and facilitators must follow the current course outline as published by the professional educator standards board when delivering training for the English language learner subject matter certificate.

WSR 18-16-121
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 1, 2018, 11:42 a.m., effective September 1, 2018]

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

Purpose: WAC 392-142-001 prescribes rules covering the operation of all school buses transporting public school students in Washington. The office of superintendent of public instruction made two technical revisions to this chapter for the purpose of clarifying certain procedures. The first revision is related to low visibility bus stops and removes the term "state patrol" because the local jurisdiction's road/traffic engineering department is responsible for placement of road signs. The Washington State Patrol does not review road signs and locations on local roads. The second revision is related to bus driver procedures and removes "parking" when describing applying brakes because other types of brakes need to be set, depending on bus manufacturer, in addition to the parking brake when loading/unloading passengers.

Citation of Rules Affected by this Order: Amending WAC 392-145-011 and 392-145-060.

Statutory Authority for Adoption: RCW 46.61.380.

Adopted under notice filed as WSR 18-12-068 on June 1, 2018.

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 Non-governmental 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 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 1, 2018.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

WAC 392-145-011 School district requirements. All school districts shall comply with the following requirements:

(1) The provisions of this chapter shall be incorporated by express reference into all school district contracts for the transportation of students in privately owned and operated school buses. Every school district, its officers and employees, and every person employed under contract or otherwise by a school district shall be subject to the provisions of this chapter.

(2) School district boards of directors shall adopt written policies or rules for passengers riding school buses not inconsistent with applicable state law and rules. A copy of these policies or rules shall be provided to each student who is scheduled to ride the school bus.

(3) Every school bus driver shall be provided a copy of and shall be thoroughly familiar with all state and local rules and regulations pertaining to the operation of a school bus.

(4) School bus drivers shall be provided a copy of and training in school district rules and regulations pertaining to bullying, harassment, and for reporting sexual misconduct allegations.

(5) On highways divided into separate roadways as provided in RCW 46.61.150 and highways with three or more marked traffic lanes, school districts shall design bus routes that serve each side of the highway so that students do not have to cross the highway, unless there is a traffic control signal as defined in RCW 46.04.600 or an adult crossing guard within three hundred feet of the bus stop to assist students while crossing such multiple-lane highways.

(6) No school bus stop shall be located on a curve or a hill where visibility is not at least five hundred feet. If it is impossible to secure a distance of at least five hundred feet of visibility for a school bus stop, the school authorities, ~~((the state patrol,))~~ and the traffic engineering department of the jurisdiction responsible for the roadway shall be advised and the stop shall be changed or proper signs installed.

AMENDATORY SECTION (Amending WSR 16-10-114, filed 5/4/16, effective 9/1/16)

WAC 392-145-060 Loading and unloading procedures. The following procedures are required to assure maximum student safety:

(1) A school bus driver shall not order or allow a student to depart the school bus other than at his or her regular stop unless permission is first obtained in accordance with district policy.

(2) School bus drivers shall pick up only the students and persons designated by an authorized school district administrator.

(3) School bus drivers shall have the primary responsibility for the safety of passengers while they are boarding the school bus, while they are on the school bus, and while they are disembarking the school bus and crossing the roadway. If passengers must cross the road, the driver shall make every reasonable effort to ensure that they cross safely and that they pass in front of the school bus and never behind the school bus. The driver shall likewise ensure that passengers boarding or disembarking from the school bus are within his/her view at all times.

(4) Prior to stopping the school bus on the roadway for the purpose of loading or unloading passengers, school bus drivers shall activate the alternating flashing amber lamps by means of a master sequencing switch. The driver shall activate the alternating flashing amber lamps:

(a) No less than one hundred feet and no more than three hundred feet from the school bus stop where the posted speed limit is thirty-five miles per hour or less; and

(b) No less than three hundred feet and no more than five hundred feet from the school bus stop where the posted speed limit is more than thirty-five miles per hour.

(5) No school bus shall pull over to the left-hand side of the road to load or unload passengers.

(6) The stop sign and alternately flashing red lamps shall be activated whenever a school bus is stopped on any portion of a traveled roadway to load or unload school children. Simultaneously flashing amber hazard lamps shall be activated whenever a school bus is stopped off the roadway to load or unload school children.

(7) Whenever school children have to cross the roadway, the school bus shall stop on the roadway and display the stop sign and alternately flashing red lamps. A school bus driver shall not allow school children to cross any roadway having three or more marked traffic lanes or any highway divided into separate roadways as provided in RCW 46.61.150.

(8) The stop sign and alternately flashing red lamps on a school bus shall not be used while the school bus is moving or to indicate that the school bus is going to stop.

(9) While loading and unloading passengers on a traveled portion of the roadway, the school bus driver shall activate the alternating flashing red lights by means of a sequencing switch prior to opening the passenger load door.

(10) The school bus driver shall set the ~~((parking))~~ brake and place the transmission in neutral or park prior to loading or unloading passengers. When it is possible, the school bus driver shall maintain light pressure on the service brake to activate the brake lamps when loading or unloading passengers.

(11) The school bus driver shall assure that all students are seated or secure prior to releasing the brake.

(12) In any case in which a school bus passes a stopped school bus which is loading and unloading students off the traveled portion of the roadway, the passing school bus shall reduce speed and proceed with caution.