

WSR 18-17-155
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed August 21, 2018, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-149.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-829C WAC, Companion homes.

Hearing Location(s): On October 9, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than October 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Substantive changes to the proposed companion home rules address the following subjects: The application and certification processes to become a companion home provider; the process for determining the provider's daily rate; provider responsibilities while using respite; the process for determining a companion home client's annual respite allocation; when a companion home provider may request additional respite hours; the effect of additional respite hours on the provider's daily rate; violations of the room and board agreement; requiring an individual financial plan; transferring client funds; protecting clients from water hazards; records the provider must maintain; and informal dispute resolution processes. Most of the chapter has been rewritten to clarify requirements, and some sections have been repealed with the content added to other sections.

Reasons Supporting Proposal: The developmental disabilities administration (DDA) is proposing to amend chapter 388-829C WAC to make several policy updates to how residential habilitation services are delivered in the companion home setting. These amendments are necessary because these rules have not been updated in seven or more years. See purpose statement above for a list of substantive changes.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.009(5), 71A.12.040, 71A.10.020.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310,

360-407-1589; Implementation and Enforcement: Kelly Hampton, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1514.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(5) because the department prepared an analysis under RCW 34.05.328.

Explanation of exemptions: The proposed amendments do not impose more-than-minor costs on small businesses so a small business economic impact statement is not required.

August 16, 2018
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-010 What definitions apply to this chapter? The following definitions apply to this chapter:

~~("ADSA" means the aging and disability services administration within DSHS and its employees and authorized agents.~~

~~"Adult protective services" or "APS" means the investigative body designated by ADSA to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in 74.34 RCW.~~

"Calendar year" means the twelve month period that runs from January 1 through December 31.)

"Case manager" means the ~~((DDD))~~ DDA case ~~((resource))~~ manager or DDA social worker assigned to a client.

"Certification" means a process used by DDA to determine if an applicant or service provider complies with the requirements of this chapter and the companion home contract.

"Client" means a person who has a developmental disability as defined in RCW ~~((71A.10.020(3)))~~ 71A.10.020(5) and who ~~((also))~~ has been determined eligible to receive services by ~~((the division))~~ DDA under chapter ~~((71A.16 RCW))~~ 388-823 WAC.

~~("Competence" means the capacity to do what one needs and wants to do. There are two ways to be competent. A person may be self-reliant and able to do things for themselves or may have the power to identify and obtain the help needed from others.)~~ "Companion home provider" means a provider of certified community residential support services under RCW 71A.10.020(2) who is contracted with DDA to deliver residential habilitation services. A companion home provider does not have an individual provider contract.

"Consent" means express written consent granted by the client, or the client's legal representative if the client has one,

after the client or the client's legal representative has been informed of the nature of a service being offered.

("DDD" or "the division") "DDA" means the ((division of)) developmental disabilities((, a division within the DSHS aging and disabilities services)) administration((, of the department of social and health services)).

("DDD specialty training" means department approved curriculum to provide information and instruction to meet the special needs of people with developmental disabilities.)

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

("Health and safety" means clients should live safely in environments common to other citizens with reasonable supports offered to simultaneously protect their health and safety while promoting community inclusion

"Individual support plan" or "ISP" is a document that authorizes and identifies the DDD paid services that meet a client's assessed needs.)

"Instruction" means goal-oriented teaching that is designed for acquiring and enhancing skills.

"Instruction techniques" means step-by-step instruction, mentoring, role modeling, and developing visual cues.

("Integration") "Integrated setting" means ((clients being present and actively participating in the)) typical community ((using the same resources and doing the same activities as other citizens)) settings not designed specifically for people with disabilities in which the majority of people employed and participating are people without disabilities.

("Mandatory reporter" means any person working with vulnerable adults required by law to report incidents of abandonment, abuse, neglect, financial exploitation, etc., per chapter 74.34 RCW.

"NA R" means nursing assistant registered under chapter 18.88A RCW.

"NA C" means nursing assistant certified under chapter 18.88A RCW.

"Positive recognition by self and others" means a client being offered assistance in ways which promote the client's status and credibility. Providers offer assistance in ways that are appropriate to the age of the client, typical to other members of the community and contribute to the client's feelings of self worth and positive regard by others.

"Positive relationships" means clients having friends and family that offer essential support and protection. Friends and family lend continuity and meaning through life and open the way to new opportunities and experiences.

"Power and choice" means clients experiencing power, control and ownership of personal affairs. Expression of personal power and choice are essential elements in the lives of people. Such expressions help people gain autonomy, become self governing and pursue their own interests and goals.

"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a registered or certified nursing assistant in selected situations. (For detailed information, please refer to chapter 18.79 RCW and WAC 388-840-910 through 388-840-970.)

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"Respite" means care that is intended to provide short-term intermittent relief for persons providing care for companion home clients.

"RCW" means the Revised Code of Washington, which contains all laws governing the state of Washington.

"Service episode record" or "SER" means documentation by DDD of all client related contacts including contacts during the assessment, service plan, coordination and monitoring of care and termination of services.

"Unusual incidents" means a change in circumstances or events that concern a client's safety or well-being. Examples include, an increased frequency, intensity, or duration of any medical conditions, adverse reactions to medication, hospitalization, death, severe behavioral incidents, severe injury, running away, physical or verbal abuse to themselves or others.

"WAC" means the Washington Administrative Code, which contains the rules for administering the state laws (RCW.)

"Legal representative" means a parent of a client if the client is under age eighteen, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, application, or other means, to a client by a person legally authorized to do so under chapter 246-840 WAC.

"Medication assistance" means assistance with self-administration of medication under chapter 69.41 RCW and chapter 246-888 WAC, rendered by a non-practitioner to a person receiving certified community residential support services.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a registered or certified nursing assistant under chapter 18.79 RCW and WACs 246-840-910 through 246-840-970.

"Person-centered service plan" means a document that identifies a client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

"Plan of correction" means a signed plan developed by the companion home provider and DDA resource manager.

"Representative payee" means a person or an organization appointed by the Social Security Administration to receive Social Security or SSI benefits for anyone who cannot manage or direct the management of their benefits.

"Residential habilitation services" has the same meaning as is under WAC 388-845-1500.

"Resource manager" means the DDA employee who establishes rates, monitors contract compliance, and acts as DDA's liaison with the service provider.

"Service provider" means a person or entity contracted by DSHS and authorized to deliver services and supports to meet a client's assessed needs.

"Support" means assistance a service provider gives a client based on needs identified in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-020 ~~((What are))~~ **How does a companion home provider provide residential habilitation services?** (1) A companion home ~~((is a DDD))~~ provider provides residential ~~((service offered in the provider's home))~~ habilitation services:

- (a) To no more than one client;
- (b) In a home the companion home provider owns or leases;
- (c) In an integrated setting; and
- (d) Based on the client's person-centered service plan.

(2) The companion home ~~((residential services provide))~~ provider must be available to the client twenty-four ~~((hour instruction))~~ hours a day to provide supervision and support ~~((services))~~.

~~((3))~~ Companion home residential services are based on the client's ISP.

~~((4))~~ Companion home residential services are provided by an independent contractor.)

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-030 Who may be eligible to receive residential habilitation services in a companion home ~~((residential services))~~? ~~((Clients who may))~~ To be eligible to receive ~~((companion home))~~ residential habilitation services in a companion home, a person must:

- (1) Be ~~((at least))~~ eighteen ~~((years old))~~ or older; and
- (2) Have an assessed need for ~~((companion home))~~ residential habilitation services ~~((;))~~ and

~~((3))~~ Meet one of the following conditions):

(a) Be authorized by ~~((DDD))~~ DDA to receive ~~((companion home))~~ residential habilitation services ~~((, as outlined in this chapter))~~ in a companion home; or

(b) Have a written agreement with the provider to purchase ~~((companion home))~~ residential habilitation services in a companion home using the client's own ~~((personal financial resources))~~ funds, including state supplemental payments.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-040 Who ~~((is eligible to contract with DDD to provide))~~ may become a companion home ~~((residential services))~~ provider? To ~~((be eligible to contract with DDD to provide))~~ become a companion home ~~((residential services))~~ provider, a person must:

- (1) Be twenty-one ~~((years of age))~~ or older;
- (2) Have a high school diploma or ~~((GED))~~ general equivalency diploma (GED);
- (3) ~~((Clear))~~ Have a nondisqualifying background check ~~((conducted by DSHS as required by RCW 43.20A.710))~~ result under chapter 388-825 WAC;

(4) ~~((Have an FBI fingerprint-based background check as required by RCW 43.20A.710, if the person has not lived in the state continuously for the previous three years; -~~

~~((5))~~ Have a Washington state business ~~((ID number;))~~ license as an independent contractor; ~~((and -~~

~~((6))~~ (5) Meet the ~~((minimum skills and abilities described in))~~ companion home provider qualifications and requirements under WAC 388-829C-080; and

(6) Be selected by the client or the client's legal representative if the client has one.

NEW SECTION

WAC 388-829C-042 What are the qualifications for a person to provide residential habilitation services in a companion home? To provide residential habilitation services in a companion home a person must:

- (1) Complete training required under chapter 388-829 WAC;
- (2) Be certified by DDA as a companion home provider; and
- (3) Be contracted with DDA as a companion home provider.

NEW SECTION

WAC 388-829C-044 What is the application process for a potential companion home provider? When a client identifies a person they want as their companion home provider, the prospective provider must:

- (1) Submit to DDA:
 - (a) A resume;
 - (b) A letter of interest;
 - (c) A signed application form;
 - (d) All attachments required by the application;
 - (e) Contact information for three references unrelated to the provider;
 - (f) A signed outside employment disclosure and review form;
 - (g) A copy of a current business license; and
 - (h) Department background check authorization forms for the applicant and all household members age sixteen or older.
- (2) Allow DDA staff to review the home for physical, safety, and accessibility requirements; and
- (3) Participate in a DDA panel interview.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-050 ~~((Who may not provide))~~ When does DDA reject a client's choice of companion home ~~((residential services))~~ provider? ~~((DDD may not contract with any of the following to provide companion home residential services;))~~

(1) ~~((The))~~ DDA may reject a client's ~~((spouse))~~ choice of companion home provider if DDA has a reasonable, good-faith belief that:

(a) The provider is unable to appropriately meet the client's needs;

(b) The provider's home does not meet the client's needs;
or

(c) The provider's other obligations prevent the provider from being available to the client twenty-four hours a day.

(2) ((The)) DDA must deny a client's choice of companion home provider if the provider is the client's:

(a) Spouse;

(b) Natural, step, or adoptive ((parents)) parent; or

(c) Legal representative, unless the person has been the client's legal representative and companion home provider since on or before January 31, 2005.

(3) ((The)) DDA must deny a client's ((court-appointed legal representative.

(4) Any person providing department)) choice of companion home provider if the provider:

(a) Provides paid services to ((any other)) another DSHS client or a client of the department of children, youth, and families; or

(b) Fails to maintain certification as a companion home provider.

NEW SECTION

WAC 388-829C-061 What is initial certification? (1)

Initial certification is a document issued by DDA that indicates a provider meets the requirements under this chapter to deliver residential habilitation services in a companion home.

(2) To obtain initial certification, the companion home provider must:

(a) Meet requirements under WAC 388-829C-040;

(b) Complete the application process under WAC 388-829C-044;

(c) Meet training requirements under WAC 388-829C-110; and

(d) Comply with the physical and safety requirements under WAC 388-829C-320.

(3) An initial certification is valid for no more than one hundred and twenty days.

NEW SECTION

WAC 388-829C-062 What is standard certification?

(1) Standard certification is a document issued by DDA that:

(a) Allows a provider to deliver residential habilitation services in a companion home; and

(b) Verifies the provider is qualified.

(2) During the initial certification period, a DDA-contracted evaluator conducts an on-site evaluation of the home.

(3) Based on the findings of the evaluation, DDA may:

(a) Issue standard certification;

(b) Issue provisional certification; or

(c) Decertify the provider.

(4) A standard certification is valid for no more than twelve months.

NEW SECTION

WAC 388-829C-063 What is provisional certification? (1) If a companion home provider is not in compliance with this chapter or the companion home contract, DDA may

impose a provisional certification for a maximum of ninety days.

(2) DDA may impose a provisional certification if the provider:

(a) Fails to comply with this chapter or the companion home contract;

(b) Fails or refuses to cooperate with the evaluation and certification process;

(c) Prevents or interferes with a certification or monitoring visit, or complaint investigation by DSHS;

(d) Fails to comply with chapter 74.34 RCW;

(e) Knowingly makes a false statement of material fact to DSHS;

(f) Fails to implement a plan of correction; or

(g) Fails to cooperate during monitoring activities.

(3) At the end of the provisional certification, if the provider has complied with certification requirements, DDA may approve the provider for standard certification.

(4) At the end of the provisional certification, if the provider has not complied with certification requirements, DDA must decertify the companion home provider, unless DDA extends the provisional certification to develop or implement a transition plan for the client.

NEW SECTION

WAC 388-829C-064 What must a companion home provider comply with to maintain certification? (1) To maintain certification a companion home provider must comply with:

(a) Requirements under this chapter;

(b) Laws governing this chapter, including chapter 71A.12 RCW;

(c) Requirements under chapter 74.34 RCW;

(d) The companion home contract; and

(e) Other relevant federal, state and local laws, requirements, and ordinances.

(2) If a requirement in the companion home contract conflicts with any requirement under this chapter, the requirement in this chapter prevails.

NEW SECTION

WAC 388-829C-065 How does DDA monitor companion homes?? (1) To ensure a client's needs are being met, a client's DDA case manager must:

(a) Review all written reports from the provider for compliance with the instruction and support goals specified in the client's person-centered service plan; and

(b) Conduct an in-home visit at least every twelve months.

(2) DDA monitors a companion home provider through certification evaluation to ensure that the client's needs are being met and the provider is in compliance with this chapter and the companion home contract. The DDA-contracted evaluator conducts the evaluation in the companion home.

Reviser's note: The typographical 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.

NEW SECTION

WAC 388-829C-066 How must the companion home provider participate in the certification evaluation process? The companion home provider must participate in the certification evaluation process with DDA staff and DDA-contracted evaluators by:

- (1) Allowing scheduled and unscheduled home visits;
- (2) Providing information and documentation as requested;
- (3) Cooperating in setting up appointments;
- (4) Responding to questions or issues identified; and
- (5) Participating in an exit conference.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-070 Who must have a background check (in the companion home)? (1) All ~~((individuals living in the household))~~ people, except the client, must have a ~~((current DSHS))~~ background check if they are sixteen or older and:

(a) ~~((Are at least sixteen years old; and))~~ Live in or routinely stay overnight in the companion home; or

(b) ~~((Reside))~~ May have unsupervised access to the client in the companion home.

(2) ~~((Household residents who have not lived in Washington continuously for the previous three years must also have an FBI fingerprint based background check as required by RCW 43.20A.710))~~ Any person required to have a background check under this section must have a nondisqualifying background check result every two years, or more frequently if requested by DSHS.

~~((3) Background checks must be completed every two years or more frequently when requested by the department.))~~

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-080 What minimum skills and abilities must companion home providers demonstrate? A companion home ((providers)) provider must:

(1) Be able to read, understand, and provide the services outlined in the ((ISP)) client's person-centered service plan;

(2) Participate in the development of the ~~((ISP))~~ person-centered service plan;

(3) Communicate with the client in the client's preferred language ((of the client served));

(4) Accommodate the client's ~~((individual))~~ preferences;

(5) Know the community resources, such as ~~((=))~~ medical facilities, emergency resources, and recreational opportunities;

(6) Enable the client to keep in touch with family and friends in a way preferred by the client;

(7) Use instruction techniques appropriate for the client's learning style;

(8) Protect the client's financial interests;

~~((8) Fulfill))~~ (9) Follow mandatory reporting requirements ((as required in this chapter and the companion home contract)) under chapter 74.34 RCW;

~~((9))~~ (10) Know how and when to contact the client's legal representative ((and the client's case manager));

~~((10) Successfully complete the training required in this chapter;))~~

(11) Know how and when to contact the client's case manager;

(12) Meet training requirements under chapter 388-829 WAC;

(13) Maintain all necessary license ~~((, registration))~~ and certification ~~((required))~~ requirements under this chapter ~~((, see WAC 388-829C-110, 388-829C-130, 388-829C-190, and 388-829C-260));~~ and

~~((12))~~ (14) Comply with all applicable laws, regulations, and contract requirements; and

(15) Complete nurse delegation training if the client needs medication administration or delegated nursing tasks.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-110 ((What training)) When must a ((person have before becoming a contracted)) companion home provider complete their training requirements? (1) Before ~~((DDD may issue))~~ a companion home ~~((contract, the prospective))~~ provider may deliver services to a client, the provider must complete:

~~((1) Obtain CPR and first aid certification))~~ (a) Five hours of safety and orientation training;

(b) Forty hours of DDA-developed residential services curriculum;

(c) Six hours of first aid certification and CPR training; and

(d) Six hours of DDA companion home orientation.

(2) ~~((Successfully complete bloodborne pathogens training with HIV/AIDS information; and))~~ No more than one hundred twenty days after the effective date of the companion home provider's contract, the provider must complete eighteen hours of population-specific or client-specific training under chapter 388-829 WAC.

(3) ~~((Receive contract orientation and client specific training from DDD))~~ A companion home provider must complete twelve continuing education credits annually.

(4) If the client needs medication administration or delegated nursing tasks, the companion home provider must complete nurse delegation training before they deliver services to the client.

NEW SECTION

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate equals the sum of the client's support assessment scale scores multiplied by 12.5.

(2) The residential algorithm under chapter 388-829 WAC determines the level of services and supports a companion home client may receive.

(3) The CARE assessment assigns support levels of "none," "low," "medium," or "high" to each support assessment scale that correspond to the values below:

Category	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

- (4) DDA assigns a behavior score of four if the client has a:
- (a) Behavior score of three on their support assessment scale;
 - (b) Challenging behavior documented on form DSHS 10-234; and
 - (c) Current positive behavior support plan.
- (5) DDA reviews a companion home daily rate annually and if a significant change assessment occurs during the plan year.
- (6) DDA may adjust a companion home daily rate if:
- (a) Any of the client's support assessment scale levels change;
 - (b) The multiplier changes due to a vendor rate change; or
 - (c) The annual cost of respite services increased because DDA approved additional respite hours under WAC 388-829C-234(3) and the client's assessed support needs remain unchanged since the most recent CARE assessment.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-140 ((Are)) Is a companion home ((providers mandatory reporters)) provider a mandated reporter? ((1)) A companion home ((providers are mandatory reporters. They must report all instances of suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults as defined in)) provider is a mandated reporter under chapter 74.34 RCW.

- (2) As a mandated reporter, the companion home ((providers)) provider must ((comply with DDD's residential reporting requirements specified in the companion home contract)) notify adult protective services and law enforcement as required under chapter 74.34 RCW.
- (3) ((Providers)) A companion home provider must ((retain a signed copy of the DDD policy on residential reporting requirements specified in the)) complete incident reports as required by the provider's companion home contract ((and submit a signed copy of the policy to DDD)).

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-150 How must a companion home ((providers)) provider report abuse and neglect? A companion home ((providers)) provider must immediately report suspected abandonment, abuse, financial exploitation or neglect of a vulnerable ((adults to)) adult:

- (1) ((Adult protective services using the DSHS toll free telephone number, provided by the department. 1-866-END-HARM or 1-866-363-4276)) As required under chapter 74.34 RCW; and
- (2) ((DDD)) In compliance with the ((DDD)) DDA residential reporting requirements ((as specified)) in the companion home contract((; and
- (3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse)).

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-160 What health care ((assistance)) support must a companion home provider provide ((a client))? ((The companion home provider must)) To provide the client ((necessary)) health care ((assistance by)) support the companion home provider must:

- (1) ((Arranging)) Schedule or assist the client in scheduling appointments and ((accessing health, mental health, and dental)) any follow-up appointments for dental, mental, and physical health services;
- (2) ((Ensuring)) Ensure the client receives an annual physical and dental examination, unless the client has a written exemption from a physician or dentist ((gives a written exemption. For client refusal of services, see WAC 388-829C-310));
- (3) ((Observing the client for changes(s)) Document the client's refusal of any annual physical or dental examination under WAC 388-829C-370;
- (4) In the event of an emergency or a change in the client's health, ((taking appropriate action and responding to emergencies)) act in the client's best interest;
- ((4) Managing) (5) If necessary, provide medication assistance ((per)) under chapter 246-888 WAC ((and));
- (6) If necessary, perform delegated nursing tasks and medication administration ((per)) under WAC 246-840-910 ((to)) through 246-840-970 ((and per the DDD residential medication management requirements specified in the companion home contract));
- ((5) Maintaining) (7) Maintain health care records ((see)) under WAC ((388-829C-280)) 388-829C-340;
- ((6) Assisting) (8) Assist the client ((with any medical treatment prescribed by)) to understand and follow their health ((professionals that does not require registered nurse delegation or professionally licensed services)) care professional's instructions, referrals, and medication directions;
- ((7) Communicating) (9) Communicate directly with the client's health care professionals ((when needed)), if necessary; ((and
- (8) Providing) (10) Provide a balanced((; nutritional)) and nutritious diet; and

(11) Assist the client to access health care benefits available through medicare, medicaid, private health insurance, and other resources while acting in the client's financial best interest and supporting client choice.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-170 ~~((How may a))~~ **When can the companion home provider ~~((assist a client with medications))~~ provide medication assistance?** ~~((+))~~ A companion home provider may provide medication assistance ~~((per))~~ under chapter 246-888 WAC ~~((;))~~ if the client:

~~((a))~~ (1) Is able to put the medication into ~~((his or her))~~ their mouth or apply or instill the medication; and

~~((b))~~ (2) Is aware that they are ~~((receiving))~~ taking medication.

~~((2))~~ Some tasks that may be provided under the Medication assistance, chapter 246-888 WAC, are listed in the following chart. Medication assistance may only be provided if the client meets both criteria in (a) and (b) of this section.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Remind or coach the client to take their medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand;	Yes
Transfer medication from a container to another for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device).	Yes
Alter a medication by crushing, mixing, etc.	Yes, if the client is aware that the medication is being altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a pre-filled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.

Medication Assistance Task	May a companion home provider complete this task if the client meets both criteria in (a) and (b) of this section?
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medications.	No, this is not allowed.
Hand-over-hand assistance with medication.	No, may only be done under registered nurse delegation.
Assistance with medication beyond the examples provided above.	No, may only be done under registered nurse delegation.)

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-180 ~~((What is required for))~~ **When may a companion home provider ~~((to))~~ administer ~~((medications))~~ medication and provide delegated nursing tasks?** (1) A companion home ~~((providers must meet the following requirements before administering medications))~~ provider may administer medication and ~~((providing))~~ perform delegated nursing tasks ~~((for their clients. The companion home))~~ if the provider ~~((must either))~~ is:

~~((1-Be))~~ (a) A registered nurse ~~((RN))~~ or licensed practical nurse ~~((LPN))~~; or

~~((2-Be))~~ (b) Delegated to perform nursing care tasks by a ~~((register))~~ registered nurse ~~((as described in WAC 388-829C-190)).~~

(2) To provide delegated nursing tasks, the companion home provider must:

(a) Provide the delegated nursing tasks under WAC 246-840-910 through 246-840-970;

(b) Receive client-specific training from the delegating registered nurse under WAC 246-840-930;

(c) Complete training requirements under WAC 246-840-930; and

(d) Be credentialed by the department of health under WAC 246-840-930.

(3) If the companion home provider is performing delegated nursing tasks as a nursing assistant-registered, the provider must complete seventy hours of basic training under chapter 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-200 **When must a companion home provider ~~((become))~~ be delegated to perform nursing tasks?** (1) ~~((If a client needs registered nurse delegation,))~~ The companion home provider must ~~((comply with the))~~ meet requirements ~~((necessary to perform delegated nursing tasks before offering services to the client. (Note: A companion home provider may not offer support to a client whose needs they are unable to meet.))~~ for nurse delegation no

more than thirty days after the client's need for medication administration or a delegated nursing task is identified by a delegating nurse when a change in the client's health or ability to manage their own medications occurs.

(2) If the companion home provider is not ~~((eligible))~~ qualified to perform delegated nursing tasks, the task must be provided by a person legally authorized to do so ~~((such as an RN or LPN))~~ until the provider meets nurse delegation requirements.

~~((3) The companion home provider must become eligible to perform nursing tasks within thirty days of the client being assessed to need medication administration.))~~

AMENDATORY SECTION (Amending WSR 09-20-004, filed 9/24/09, effective 10/25/09)

~~WAC 388-829C-230 ((Are companion home clients eligible to receive))~~ What is respite? ~~((Companion home clients are eligible to receive))~~ (1) Respite ~~((care to provide))~~ is short-term, intermittent ~~((relief))~~ care to provide relief for the companion home provider.

(2) ~~((DDD))~~ DDA assessment ~~((will determine how much))~~ determines a client's annual allocation of respite ~~((you can receive per chapter 388-828 WAC))~~ hours.

(3) Respite may be provided in:

- (a) The companion home where the client lives;
- (b) A community setting available to an adult, such as a camp, senior center, or adult day care center;
- (c) An adult family home;
- (d) An assisted living facility;
- (e) A group home; or
- (f) A group training home.

(4) To be a qualified respite provider, a person or agency must be contracted with DDA to provide respite services.

(5) A companion home client must not receive overnight planned respite services under chapter 388-829R WAC.

(6) A companion home client must not receive respite at a residential habilitation center.

NEW SECTION

WAC 388-829C-231 What are the companion home provider's responsibilities when using respite? (1) The companion home provider must review with the respite provider:

- (a) The support needs identified in the client's person-centered service plan;
- (b) The need for the client to have access to their money as identified in their plan; and
- (c) Record keeping requirements.

(2) The companion home provider must inform the respite provider of any scheduled events and appointments that will occur during the planned respite period.

NEW SECTION

WAC 388-829C-232 How does DDA determine a companion home client's annual respite allocation? DDA determines a companion home client's annual respite allocation by adding the client's companion home services support

score under WAC 388-828-6010 to their adjusted companion home services support score under WAC 388-828-6011.

NEW SECTION

WAC 388-829C-233 May the client or companion home provider request additional respite hours? (1) A client may request respite hours in addition to their annual respite allocation, or the companion home provider may request additional respite on behalf of the client in consultation with the client's legal representative if the client has one.

(2) DDA may approve additional respite hours if a temporary and unexpected event occurs in the client or the companion home provider's life, such as an illness or injury.

NEW SECTION

WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional respite hours are approved? (1) If DDA approves additional respite hours under WAC 388-829C-233(2), the daily rate remains unchanged.

(2) If DDA approves additional respite hours for any reason not under WAC 388-829C-233(2), DDA may reduce the companion home daily rate.

(3) If DDA approves additional respite hours under subsection (2) of this section, DDA:

- (a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and
- (b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.

(4) The cost of the additional respite hours is based on the identified respite provider's hourly rate.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

~~WAC 388-829C-250 ((Are))~~ When may a companion home ~~((providers responsible to))~~ provider transport a client? ~~((The companion home provider must ensure that all of the client's transportation needs are met, as identified in the client's ISP))~~ (1) The companion home provider may transport a client if the provider has:

- (a) A valid driver's license under chapter 46.20 RCW; and
- (b) Automobile insurance under chapter 46.29 and 46.30 RCW

(2) The companion home provider must ensure all transportation needs identified in the client's person-centered service plan are met.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-270 May a companion home provider manage a client's funds? A companion home provider may manage ~~((, disperse, and limit access to))~~ a client's funds if the provider:

- (1) ~~((There is))~~ Has written consent from the client, ~~((when the client has no court appointed))~~ or the client's legal representative if the client has one; or

(2) ~~((There is written consent from))~~ Is the client's ~~((court appointed legal))~~ representative ~~((for making financial decisions for the client; or~~
 (3) ~~The companion home provider is the designated))~~ payee ~~((for the client's earned and unearned income)).~~

NEW SECTION

WAC 388-829C-275 When must a client have an individual financial plan and what components must be included? (1) The companion home provider must develop and implement an individual financial plan if:

(a) The client's person-centered service plan identifies that the client needs support to manage their funds; and

(b) The companion home provider manages any portion of the client's funds.

(2) The client's individual financial plan must be accurate and current, and:

(a) List all of the client's income sources, such as wages, social security benefits, supplemental security disability income, retirement income, and the projected monthly amount of the income;

(b) Identify all known client accounts and who manages each account, such as a checking account, savings account, and cash account;

(c) Include a budget and describe how the client's funds will be spent during a typical month;

(d) Identify all known client assets and who manages each asset, such as a burial plan, retirement funds, stocks, trusts, and vehicles; and

(e) Include a plan for maintaining resources under WAC 182-513-1350.

(3) The companion home provider must review the individual financial plan with the client and the client's legal representative if the client has one:

(a) At least every twelve months; and

(b) If the client's income, expenses, or assets change, or if there is a change in who manages an asset.

(4) The provider, the client, and the client's legal representative if the client has one, must sign the individual financial plan when it is developed and each time it is revised.

(5) Every twelve months, or more often if the plan has been revised, the companion home provider must provide a copy of the individual financial plan to the:

(a) Client;

(b) Client's legal representative if the client has one; and

(c) Client's case manager.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-280 What are the companion home provider's responsibilities when managing client funds?

(1) When managing ~~((the))~~ a client's funds, the companion home provider must:

~~((1) Keep the client's accounts current by maintaining a running balance;~~

~~(2) Reconcile the client's accounts, including cash accounts, on a monthly basis;~~

~~(3) Prevent the client's account from becoming overdrawn;~~

~~(4) Keep receipts for purchases over twenty-five dollars;~~
~~(5) Assist the client with any checks, if applicable;~~
~~(6)) (a) Protect the client's financial interests; ((and~~
~~(7) Ensure that the client is informed regarding how his or her money is being spent and that the client participates to the maximum extent possible in the decision making regarding his or her funds, consistent with responsible management of funds))~~

(b) Include the client to the highest degree possible in decision making about how their funds are spent;

(c) Maintain a detailed ledger with a running balance for each account managed by the provider, including:

(i) Cash received from writing checks over the purchase amount; and

(ii) A list of where the money was spent or gift card funds were used;

(d) Deposit any client funds into the client's bank account within one week of receiving the funds;

(e) Reconcile the client's accounts, including cash and gift card accounts, on a monthly basis;

(f) Retain receipts, bills, and invoices for purchases over twenty-five dollars;

(g) Notify DDA if the client's resources reach one thousand seven hundred dollars; and

(h) Assist the client with writing checks, if needed.

(2) When managing a client's funds, the companion home provider must not:

(a) Commingle the client's funds with the provider's funds;

(b) Ask the client to sign a blank check unless stated otherwise in the client's individual financial plan;

(c) Let the client's bank account be overdrawn; or

(d) Let the client's cash funds exceed seventy-five dollars, unless stated otherwise in the client's individual financial plan.

(3) If the client manages their own funds and requests that the companion home provider hold their checkbook, debit card, or credit card:

(a) The provider is not considered to be managing the client's funds;

(b) The client must continue to have access to their funds; and

(c) The provider must document the request in the client's individual financial plan.

(4) Social security administration requirements for managing the client's social security benefits take precedence over these rules if:

(a) The service provider is the client's representative payee; and

(b) The social security administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-290 What ~~((happens if a companion home provider mismanages a client's))~~ is mismanagement of client funds? (1) ~~((The companion home provider must reimburse the client, when responsible for mismanagement of client funds. The reimbursement includes any fees~~

incurred as a result of the mismanagement, such as fees due to late payments.

~~(2) DDD may terminate the companion home contract if the provider has mismanaged client funds.~~

~~(3) Suspected exploitation of client finances must be reported to law enforcement and adult protective services.)~~

Mismanagement of client funds includes any action or inaction by the companion home provider when managing a client's funds that results in:

(a) Interest charges;

(b) Late payment fees;

(c) Overdraft and non-sufficient funds fees;

(d) A violation of the room and board agreement;

(e) Any stolen, missing, or misplaced funds;

(f) Expenditures over twenty-five dollars without documentation; or

(g) Past-due financial obligations.

(2) No more than fourteen days after a companion home provider becomes aware of an error that resulted in mismanagement of client funds, the provider must:

(a) Reimburse the client for any mismanagement, including punitive charges, under subsection (1)(a) through (1)(f) of this section;

(b) Pay for past-due financial obligations under subsection (1)(g) of this section; and

(c) Submit proof of the transaction to the client's case manager.

NEW SECTION

WAC 388-829C-305 When must the companion home provider transfer the client's funds? (1) If a client chooses a new service provider and the current provider manages the client's funds, the current provider must:

(a) Establish a written agreement with the client, before the client moves, that states the amount of money the provider may withhold to cover any unpaid bills and room and board;

(b) Provide to the client's case manager a copy of any agreement under subsection (1)(a) of this section;

(c) Give the client, and the client's legal representative if the client has one, a ledger of all known client funds;

(d) Transfer the funds to the client or the client's designee as soon as possible, but no more than thirty days after the client leaves the companion home;

(e) Give the new provider a ledger of all transferred client funds if the new provider manages the client's funds; and

(f) Obtain a written receipt for all transferred funds.

(2) If the companion home provider manages a client's funds and the client's whereabouts are unknown, the provider must transfer the client's funds no more than ninety days after notifying DDA the client's whereabouts are unknown to:

(a) The client's legal representative, if the client has one; or

(b) The department of revenue, unclaimed property.

(3) If the companion home provider manages the client's funds and the client dies, the provider must transfer the client's funds within ninety days to:

(a) The client's legal representative;

(b) The requesting governmental entity; or

(c) The DSHS office of financial recovery if the client does not have a legal heir.

(4) The social security administration's requirements for managing the client's social security benefits take precedence over these rules for transferring client funds if:

(a) The service provider is the client's representative payee; and

(b) The social security administration requirement conflicts with these rules.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-310 Must ~~((clients))~~ a client pay for room and board in the companion home? (1) ~~((Clients))~~ A client who ~~((receive))~~ receives residential habilitation services in a companion home ~~((residential services))~~ must pay monthly room and board ~~((directly))~~ to the companion home provider ~~((from their personal financial resources)).~~

(2) The monthly room and board the client pays to the provider ~~((is))~~ must be specified in a room and board agreement ~~((and))~~ that includes:

(a) Rent~~((;))~~;

(b) Utilities~~((, and))~~;

(c) Food costs; and

(d) The date the provider collects the room and board payment each month.

(3) The room and board agreement must be:

(a) Developed by the provider, the client ~~((and)), or the~~ ~~((provider))~~ client's legal representative if the client has one;

(b) Developed before the client moves into the companion home;

~~((b))~~ (c) Signed by the client~~((, the))~~ or the client's legal representative ~~((and the provider))~~ if the client has one; ~~((and))~~

~~((c))~~ (d) Signed by the provider; and

(e) Submitted to ~~((DDD))~~ DDA for ~~((approval))~~ review.

(4) Before implementing any changes to the room and board agreement, the companion home provider must ~~((be submitted))~~ submit the proposed agreement to ~~((DDD))~~ DDA for ~~((approval))~~ review.

NEW SECTION

WAC 388-829C-315 What is a violation of the room and board agreement? (1) A provider violates the room and board agreement if the provider:

(a) Requests the client's room and board payment earlier than the due date established in the room and board agreement; or

(b) Requests a payment other than the amount established in the room and board agreement.

(2) If the provider violates the room and board agreement, the provider must reimburse the client under WAC 388-829C-290.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-320 What are the physical and safety requirements ~~((exist))~~ for companion homes? (1) A

companion home (~~((providers))~~) must (~~((ensure that the following physical and safety requirements are met for the client))~~):

(a) (~~((A safe and healthy environment))~~) Be accessible to the client;

(b) (~~((A separate bedroom))~~) Provide the client direct, unrestricted access to all common areas;

(c) (~~((Accessible telephone equipment with local 911 access))~~) Have adequate space for mobility aids, such as a wheelchair, walker, or lifting device;

(d) (~~((A list of emergency contact numbers accessible to the client))~~) Have unblocked exits;

(e) (~~((An evacuation plan developed, posted, and practiced monthly with the client))~~) Be maintained in a safe and healthy manner;

(f) (~~((An entrance and/or exit that does not rely solely upon windows, ladders, folding stairs, or trap doors;~~

(g) ~~((A safe storage area for))~~) Safely store flammable and combustible materials;

(~~((h))~~) ~~Unblocked exits;~~

(~~((i))~~) (g) Have a working smoke ((detectors which are)) detector, located close to the client's ((room)) bedroom ((and meet the specific needs of)), that meets the ((client)) client's specialized needs, including any vision or hearing loss;

(~~((j))~~) ~~((A flashlight or other non-electrical light source in working condition;~~

(~~((k))~~) (h) Have a five-pound 2A:10B-C fire extinguisher ((meeting the fire department standards)); ((and

(~~((l))~~) ~~Basic))~~ (i) Have a first-aid ((supplies)) kit;

(j) Provide the client access to a telephone;

(k) Provide the client access to a working flashlight or alternative light source;

(l) Display emergency contact information in a manner accessible to the client;

(m) Display an evacuation plan, which must be practiced monthly with the client; and

(n) Have a railing for any patio, deck, porch, or balcony that is more than twelve inches off the ground.

(2) The companion home client must (~~((be accessible to meet the client's needs))~~) have a private bedroom with:

(a) A door that locks from the inside, unless the client's person-centered service plan indicates that it is unsafe for the client to have a locking door; and

(b) An exit that does not rely solely on a window, ladder, folding stairs, or trap door.

NEW SECTION

WAC 388-829C-325 How must a companion home provider protect a client from risks associated with bodies of water? (1) Any body of water at the companion home over twenty-four inches deep must be enclosed by a fence at least forty-eight inches high.

(2) Any door or gate that directly leads to the body of water must have an audible alarm.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-330 ((How)) Must a companion home ((providers)) provider regulate the water temperature at ((their residence)) the companion home? The com-

panion home (~~((providers))~~) provider must (~~((regulate the water temperature at their residence.))~~):

(1) Maintain the water temperature in the ((household must be kept between 105 degrees and)) home no higher than 120 degrees Fahrenheit((-);

(2) (~~((The provider must))~~) Check the water temperature when the client ((first)) moves into the ((household and at least every six months from then on. (Note: The water temperature is best measured two hours after substantial hot water usage.))) home and monthly thereafter; and

(3) (~~((The companion home provider must))~~) Document compliance with this requirement under WAC 388-829C-345.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-340 What ((information must companion home providers keep in their)) client records must the companion home provider maintain? A companion home (~~((providers))~~) provider must (~~((keep))~~) maintain all of the following ((information in their)) client records:

(1) ~~((Client information:~~

(~~((a))~~) The client's name, address, and social security number((-);

(~~((b))~~) (2) The name, address, and telephone number of the client's legal representative, if the client has one, and any of the client's relatives that the client chooses to include((-;

(~~((c))~~) ~~Client health records);~~

(3) Appropriate documents establishing the legal representative's legal authority to act on behalf of the client, if applicable.

(4) Signed authorization for release of information forms.

(5) Health care information, including:

(~~((i))~~) (a) The name, address, and telephone number of the client's ((physician, dentist, mental health service provider, and any other)) health care ((service provider)) providers;

(~~((ii))~~) (b) Instructions from the client's health care ((service)) providers ((about necessary health care, including appointment dates));

(~~((iii))~~) ~~Written documentation that))~~ (c) The ((instructions from)) client's health care ((service providers have been followed)) appointment dates;

(~~((iv))~~) ~~Medication, health, and surgery records; and~~

(~~((v))~~) ~~A record of))~~ (d) The client's known ((surgeries and)) major health events;

(~~((d))~~) ~~Copies of legal guardianship papers;))~~

(e) (~~((A copy of))~~) The client's ((most recent ISP)) medication, health, and surgery records;

(f) (~~((Copies of any positive behavior support plan or cross-systems crisis plan, if applicable))~~) Written documentation that instructions from the client's health care providers have been followed;

(g) (~~((Financial records, if managing client funds (see WAC 388-829C-300))~~) A copy of the client's medical insurance card; and

~~(h) ((Client property records (see WAC 388-829C-380;))) Refusals to participate in services under WAC 388-829C-370.~~

~~((i) Signed release of information forms; and~~

~~(j) Burial plans and wills.~~

~~(2) Provider information:~~

~~(a) Water temperature monitoring records (see WAC 388-829C-330);~~

~~(b) Provider training records (see WAC 388-829C-110 through 388-829C-130);~~

~~(c) Evacuation plan and practice records;~~

~~(d) Emergency response plan (see WAC 388-829C-410);~~

~~(e) All written reports submitted to DDD (see WAC 388-829C-350);~~

~~(f) Signed DDD policy on residential reporting requirements (see WAC 388-829C-140);~~

~~(g) Nurse delegation records (see WAC 388-829C-210); and~~

~~(6) If the client receives nurse delegation services, nurse delegation records including:~~

~~((h) Payment records)) (a) A signed consent for nurse delegation;~~

~~(b) Written instructions from the delegating nurse for performing each delegated nursing task; and~~

~~(c) A log of each delegated nursing task performed in the last six months.~~

~~(7) Current service and support plans, including the client's:~~

~~(a) Person-centered service plan;~~

~~(b) Individual education plan, if the client is in school;~~

~~(c) Individual employment plan, if the client has one;~~

~~(d) Positive behavior support plan, if the client has one; and~~

~~(e) Cross-systems crisis plan, if the client has one.~~

~~(8) Financial information, including:~~

~~(a) The client's individual financial plan under WAC 388-829C-270;~~

~~(b) Documentation of any money management and instruction provided to the client;~~

~~(c) The client's property records under WAC 388-829C-380;~~

~~(d) The client's burial plan, if the client has one; and~~

~~(e) The client's will, if the client has one.~~

NEW SECTION

WAC 388-829C-345 What records must the companion home provider maintain? The companion home provider must maintain:

(1) Client records under WAC 388-829C-340;

(2) Water temperature monitoring records under WAC 388-829C-330;

(3) Provider training records under WAC 388-829C-110;

(4) An evacuation plan and practice records under WAC 388-829C-320;

(5) An emergency response plan under WAC 388-829C-410;

(6) Quarterly reports under WAC 388-829C-350;

(7) A signed copy of form DSHS 10-403;

(8) Nurse delegation records under WAC 388-829C-340;

(9) The room and board agreement under WAC 388-829C-310; and

(10) Financial records under WAC 388-829C-270 through 388-829C-280, if the provider is managing any portion of the client's funds.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-350 What ~~((written))~~ quarterly reports must ~~((be submitted to DDD))~~ the companion home provider submit to DDA? (1) The companion home provider must submit ~~((the following written reports to DDD))~~ a quarterly report to DDA that describes the instruction and support activities performed as identified in the person-centered service plan.

(2) The quarterly report must:

(a) ~~((Reports that describe the instruction and support activities performed as identified in the ISP. These reports must))~~ Be submitted every ~~((six))~~ three months ~~((or more frequently))~~ and upon DDA's request ~~((of DDD;))~~;

(b) ~~((Reports on unusual incidents and emergencies as required in the DDD residential reporting requirements specified in the companion home contract.))~~ Include a list of community and other activities the client has participated in;

(c) ~~((Reports on client refusal of services as described in this chapter (WAC 388-829C-370)))~~ List health care appointments that have occurred during the quarter;

(d) Document the client's progress toward each goal identified in the client's person-centered service plan;

(e) Document the client's progress toward their habilitation goal; and

(f) Document the review of any client refusal under WAC 388-829C-370.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-360 What are the requirements for record entries? (1) The companion home provider must ensure all record entries are:

(a) ~~((Note all record entries in ink or electronically;~~

~~(b) Make entries))~~ Made at the time of or immediately following the ~~((occurrence of the))~~ event ~~((recorded));~~

~~((e) Make entries in legible writing; and~~

~~(d) Initial and date entries))~~ (b) Made electronically or written legibly in ink;

(c) Signed and dated by the person making the entry;

(d) Stored securely; and

(e) Kept confidential.

(2) ~~((If a provider makes a mistake on the))~~ To correct an error in a record entry, the provider must ~~((show both the original and corrected entries))~~ strike through the error in a way that the underlying text remains legible.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-370 When must a companion home provider document a client's refusal to participate in services? (1) ~~((A))~~ The companion home provider must document a client's refusal to participate in:

(a) ~~((Physical and safety requirements as outlined in))~~ Monthly evacuation drills under WAC 388-829C-320; and

(b) ~~((services as outlined in))~~ care support under WAC 388-829C-160.

(2) ~~((When))~~ If a client refuses ((to participate in these services)) a service, the companion home ((providers)) provider must document:

(a) ~~((Record a description of))~~ Events ((relating)) related to the client's refusal to participate in ((these services)) the service;

(b) ~~((Inform))~~ That the client was informed of the benefits of ((these services)) the service and the possible risks of refusal; ((and))

(c) ~~((Provide the client or the client's legal representative and DDD with:~~

(i) ~~A description of))~~ The service provider's efforts to ((give)) provide or acquire the ((services to)) service for the client; and

~~((ii))~~ (d) Any health or safety ((concerns that the refusal may pose)) risks posed by the refusal.

(3) The companion home ((providers)) provider must ((submit this information to DDD in a)) give written ((report as soon as possible following)) notice to the client's case manager and legal representative, if the client has one, if the client's health and safety is adversely affected by their refusal to participate in a service.

(4) The companion home provider must:

(a) Review the refusal of service document with the client, or the client's legal representative if the client has one, at least every six months;

(b) Request that the client, or the client's legal representative if the client has one, sign and date the document after reviewing it; and

(c) Document the review in the quarterly report under WAC 388-829C-350.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-380 Must a companion home ((providers)) provider keep a record of a client's property ((records))? ~~((The))~~ (1) A companion home provider must assist ((clients in maintaining)) a client to maintain a current, written ((property records)) record of the client's property.

(2) The property record must include:

~~((+))~~ (a) A descriptive list of items ((including a description, and serial numbers of items that are valued at seventy-five)) with an original purchase price of twenty-five dollars or ((over, and were owned by)) more that the client owned when ((moving into the program)) residential habilitation services in the companion home began;

~~((2))~~ (b) A descriptive list of items ((including a description, date of purchase and cost of items that are valued at seventy-five)) with an original purchase price of twenty-

five dollars or ((over and have been)) more that the client has acquired ((by the client)) while living ((with)) in the companion home ((provider)); and

(c) A date, explanation, and review by the client's legal representative if the client has one, for any item with an original purchase price of twenty-five dollars or more that is removed from the client's property record.

(3) For any item originally purchased for seventy-five dollars or more, the companion home provider must record ((must contain dates and reasons for all items removed from)) the item's serial number in the client's property record if the item has one.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-390 ~~((Are clients' records considered confidential))~~ May a provider share information about a client? ~~((The companion home provider must consider all client record))~~ To transfer or access information ((privileged and confidential-

(1) Any transfer or inspection of records, to parties other than DSHS, must be authorized by a release of information form that:

(a) Specifically gives information about the transfer or inspection; and

(b) Is signed by the)) about a client ((or the client's legal representative.

(2) A signed)) the provider must have a legally valid authorization for release of information ((is valid for up to one year and must be renewed annually from the signature date)).

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-400 How long must a companion home provider keep client and provider records? A companion home provider must keep ~~((a client's))~~ client and provider records for ((a period of)) six years.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-410 What must a companion home ((providers)) provider do ((when emergencies occur)) in an emergency? (1) The companion home provider must develop an emergency response plan ((to address natural and other disasters)) and practice it with the client.

(2) In ((an)) a medical emergency, the companion home provider must:

(a) Immediately call 911((s)) in a life threatening emergency;

(b) Provide ((emergency services,)) first aid or CPR if necessary, unless limited by physician orders for life-sustaining treatment (POLST) or an advance directive;

(c) Follow the emergency response plan then notify:

(i) The client's legal representative if the client has one; and

(ii) The ((division of developmental disabilities)) client's case manager.

~~((e))~~ (3) Following an emergency, the companion home provider must submit a written incident report to ~~((DDD, as required by the DDD residential reporting requirements specified in the companion home contract))~~ the client's case manager.

NEW SECTION

WAC 388-829C-449 When must DDA immediately decertify a companion home provider? DDA must immediately decertify a companion home provider if the provider or another person age sixteen or older living in the companion home:

- (1) Has been convicted of, or has a pending charge for a crime that is disqualifying under chapter 388-113 WAC; or
- (2) Has a negative action under WAC 388-825-640.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-450 What ~~((happens))~~ if the companion home provider ~~((is found to be out of compliance))~~ fails to comply with this chapter or the companion home contract? (1) If ~~((an evaluation finds the))~~ a companion home provider ~~((out of compliance))~~ fails to comply with any part of this chapter or the ~~((DDD))~~ companion home contract, the provider ~~((and DDD))~~ and DDA resource management must develop a ~~((corrective action))~~ plan of correction.

~~((H))~~ (2) The ~~((corrective action))~~ plan of correction must:

- (a) Outline methods for the provider to ~~((comply with the required corrections))~~ complete corrective actions; and
- (b) Provide a time frame for the provider to complete the corrective actions.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-829C-460 When ~~((may))~~ must DDA ~~((stop the authorization for))~~ deny payment ~~((or))~~ and terminate a ~~((contract for))~~ companion home ~~((services))~~ provider's contract? DDA ~~((may stop the authorization for))~~ must deny payment ~~((or))~~ and terminate a companion home provider's contract ~~((for the services of a companion home))~~ if the provider ~~((, when that provider))~~:

- (1) Is no longer ~~((the client's choice of provider))~~ providing paid services to the client; or
- (2) ~~((Demonstrates inadequate performance or inability to deliver quality care which is jeopardizing the client's health, safety, or well-being. DDD may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy;~~
- (3) ~~Is unable to clear a background check or other individuals living in the companion home are unable to clear a background check required by RCW 43.20A.710;~~
- (4) ~~Has been convicted of, or has a pending charge for a crime that is disqualifying under chapter 388-113 WAC;~~
- (5) ~~Has been subject to a negative action described in WAC 388-825-0640;~~
- (6) ~~Does not successfully complete the training requirements within the time limits required in this chapter;~~

~~(7) Does not complete the corrective actions within the agreed upon time frame; or~~

~~(8) Fails to comply with the requirements of this chapter or the))~~ Fails to maintain certification as a companion home ~~((contract))~~ provider.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-480 What if the companion home provider is no longer ~~((wants))~~ willing or able to provide services to a client? (1) ~~((When))~~ If a companion home provider is no longer ~~((wants))~~ willing or able to provide services to a client, they must provide a sixty-day written notice to:

- (a) ~~((Give at least thirty days written notice to:~~
 - ~~((i))~~ The client;
 - ~~((ii))~~ (b) The client's legal representative if the client has one; and
 - ~~((iii))~~ ~~DDD~~ (c) DDA.

(2) If ~~((an emergency occurs and services must be terminated immediately, the provider must give immediate notice to DDD, the client, and the client's representative.~~

~~(3) The))~~ a companion home provider ~~((will be expected to continue working for thirty days unless otherwise determined by DDD))~~ must terminate services immediately due to unforeseen circumstances, the provider must give a three business days' written notice to:

- (a) The client;
- (b) The client's legal representative if the client has one; and
- (c) DDA.

AMENDATORY SECTION (Amending WSR 07-16-102, filed 7/31/07, effective 9/1/07)

WAC 388-829C-490 What are ~~((the))~~ a client's ~~((appeal rights if DDD denies, or terminates a companion home services contract))~~ administrative hearing rights? ~~((If DDD denies, or terminates a companion home services contract, the))~~ A client has the right to an administrative hearing to appeal ~~((the decision, per chapter 388-02 WAC and))~~ department decisions under WAC 388-825-120.

NEW SECTION

WAC 388-829C-492 What if the companion home provider disagrees with a certification evaluation or certification decision? If a companion home provider disagrees with a certification evaluation or certification decision under this chapter, the companion home provider may request an informal dispute resolution meeting with DDA by:

- (1) Submitting a written request to DDA no more than ten days after receiving the final certification letter and report; and
- (2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

NEW SECTION

WAC 388-829C-494 What if the companion home provider disagrees with a certification action or the outcome of an informal dispute resolution? (1) If a companion home provider disagrees with a certification action or the outcome of an informal dispute resolution, the companion home provider may request an administrative hearing under chapter 388-02 WAC.

(2) To request an administrative hearing the companion home provider must submit a written request to the office of administrative hearings no more than twenty-eight days after receiving the written notice of the outcome of the informal dispute resolution.

(3) The administrative hearing request must include:

- (a) A copy of the contested certification action; and
- (b) The reason the provider is contesting the certification action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-829C-005 What is the purpose of this chapter?
- WAC 388-829C-060 Where are companion home residential services provided?
- WAC 388-829C-090 What values must companion home providers focus on when implementing the ISP?
- WAC 388-829C-120 What training must a companion home provider complete within the first ninety days of serving the client?
- WAC 388-829C-130 What training must a companion home provider complete after the first year of service?
- WAC 388-829C-190 What is required for a companion home provider to perform nursing tasks under the registered nurse delegation program?
- WAC 388-829C-210 What records must the companion home provider keep regarding registered nurse delegation?
- WAC 388-829C-220 What is an individual support plan (ISP)?
- WAC 388-829C-240 Where may respite care be provided?
- WAC 388-829C-260 What requirements must be met before a companion home provider transports a client?
- WAC 388-829C-300 What documents must companion home providers keep to protect a client's financial interests?
- WAC 388-829C-420 How must DDD monitor and provide oversight for companion home services?

- WAC 388-829C-430 How often must the companion home be evaluated?
- WAC 388-829C-440 How must the companion home provider participate in the evaluation process?
- WAC 388-829C-445 What occurs during the review and evaluation process?
- WAC 388-829C-470 When may DDA deny the client's choice of a companion home provider?
- WAC 388-829C-500 Does the provider of companion home services have a right to an administrative hearing?

WSR 18-18-008**PROPOSED RULES****COLUMBIA RIVER****GORGE COMMISSION**

[Filed August 23, 2018, 2:14 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Legal descriptions of boundaries for maps of the Columbia River Gorge National Scenic Area Act.

Hearing Location(s): On November 13, 2018, at 9:00 a.m., at Skyline Hospital, 211 N.E. Skyline Drive, White Salmon, WA 98672. Note: the time is the start time for the commission's meeting. The meeting agenda, which will have the hearing time, will be available approximately one week prior to the hearing date.

Date of Intended Adoption: November 13, 2018.

Submit Written Comments to: Jeffrey B. Litwak, Counsel, P.O. Box 730, White Salmon, WA 98672, email jeff.litwak@gorgecommission.org, by October 31, 2018. Note: Comments submitted prior to October 31, 2018, will be addressed in a staff report. The commission accepts written and oral comments until the close of the rule-making hearing.

Assistance for Persons with Disabilities: Contact Nancy Andring, phone 509-493-3323, email nancy.andring@gorgecommission.org, by November 6, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule adopts legal boundary descriptions for the exterior boundary and special management area boundaries designated in the Columbia River Gorge National Scenic Area Act. The rule also amends the legal boundary descriptions of the urban area boundaries to show coincident angle points, to reflect new angle points where the exterior and SMA boundaries touch the urban area boundaries, and to conform terms, style, abbreviations and acronyms to the newer exterior and SMA boundary descriptions. No urban area boundaries are changed as a result of these amendments to the urban areas legal boundary descriptions. The rule is, in effect, an interpretation of the National Scenic Area Act. The rule will provide

greater certainty for landowners and land managers about the precise location of the national scenic area boundaries. Where a legal boundary description in this rule differs from a prior interpretation of a national scenic area boundary, the legal boundary description will supersede the prior interpretation. Existing uses based on a prior interpretation will be managed in accordance with the existing uses provisions of the commission's management plan and county land use ordinances administering the plan. The rule does not change any national scenic area boundary; changes to boundaries may only occur as specified in the National Scenic Area Act. 16 U.S.C. § 544b.

Reasons Supporting Proposal: Congress provided maps of exterior and special management area boundaries with the National Scenic Area Act. The National Scenic Area Act states that the boundaries are "generally depicted." The maps were not as precise as needed for making planning and land development decisions on individual parcels. To date, the commission and United States Forest Service have interpreted those maps as needed, which has led to litigation and claims of inconsistent procedure and outcome. Previously, the commission adopted legal descriptions of the thirteen urban areas. This rule making adopts similar descriptions with the same intent of reducing litigation and increasing consistency in surveying urban area boundaries on individual parcels..

Statutory Authority for Adoption: RCW 43.97.015; ORS 196.150; 16 U.S.C. § 544b (a), (b), (e).

Statute Being Implemented: RCW 43.97.015; ORS 196.150; 16 U.S.C. § 544b (a), (b), (e).

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Columbia River Gorge Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jeffrey B. Litwak, Counsel, White Salmon, Washington 98672, 509-493-3323; **Implementation and Enforcement:** Krystyna Wolniakowski, Executive Director, White Salmon, Washington 98672, 509-493-3323.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt under RCW 34.05.328(5), including, but not limited to, RCW 34.05.328 (5)(b)(iii). This rule adopts without material change 16 U.S.C. § 544b (a), (b), and (e).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: This rule adopts without material change 16 U.S.C. § 544b (a), (b), and (e).

August 23, 2018
Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-20 issue of the Register.

WSR 18-18-021
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed August 24, 2018, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-066.

Title of Rule and Other Identifying Information: WAC 182-550-6300 Outpatient nutritional counseling; and new chapter 182-555 WAC, Medical nutrition therapy.

Hearing Location(s): On October 9, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than October 10, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 9, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by October 5, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency removed the outdated language in WAC 182-550-6300. The agency has created a new chapter 182-555 WAC to establish updated definitions, eligibility requirements, provider requirements, covered services, and documentation requirements for medical nutrition therapy provided by a registered dietitian for clients age twenty and younger.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; **Implementation and Enforcement:** Jean Gowen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-2005.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not disproportionately impact small businesses.

August 24, 2018
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

WAC 182-550-6300 Outpatient nutritional counseling. ~~((1) The medicaid agency will cover nutritional counseling services only for eligible medicaid clients age twenty and under referred during an early and periodic screening, diagnosis and treatment screening to a certified dietitian.~~

~~(2) Except for children under the children's medical program, the agency will not cover nutritional counseling for clients under the medically indigent and other state only funded programs.~~

~~(3) The agency will pay for nutritional counseling for the following conditions:~~

~~(a) Inadequate or excessive growth, such as failure to thrive, undesired weight loss, underweight, major change in weight to height percentile, and obesity;~~

~~(b) Inadequate dietary intake, such as formula intolerance, food allergy, limited variety of foods, limited food resources, and poor appetite;~~

~~(c) Infant feeding problems, such as poor suck/swallow reflex, breast-feeding difficulties, lack of developmental feeding progress, inappropriate kinds or amounts of feeding offered, and limited caregiver knowledge or skills;~~

~~(d) Chronic disease requiring nutritional intervention, such as congenital heart disease, pulmonary disease, renal disease, cystic fibrosis, metabolic disorder, and gastrointestinal disease;~~

~~(e) Medical conditions requiring nutritional intervention, such as iron deficiency anemia, familial hyperlipidemia, and pregnancy;~~

~~(f) Developmental disability, such as increasing the risk of altered energy and nutrient needs, oral-motor or behavioral feeding difficulties, medication-nutrient interaction, and tube feedings; or~~

~~(g) Psycho-social factors, such as behavior suggesting eating disorders.~~

~~(4) The agency will pay for maximum of twenty sessions, in any combination, of assessment/evaluation and/or nutritional counseling in a calendar year.~~

~~(5) The agency will require each assessment/evaluation or nutritional counseling session be for a period of twenty-five to thirty minutes of direct interaction with a client and/or the client's caregiver.~~

~~(6) The agency will pay the provider for a maximum of two sessions per day per client.)~~ See chapter 182-555 WAC for medical nutrition therapy.

Chapter 182-555 WAC

MEDICAL NUTRITION THERAPY

NEW SECTION

WAC 182-555-0100 General. The medical nutrition therapy program ensures that clients have access to medically necessary outpatient medical nutrition therapy and associated follow-ups.

NEW SECTION

WAC 182-555-0200 Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter:

"**Enteral nutrition**" - See WAC 182-554-200.

"**Medical nutrition therapy**" - Means an interaction between the registered dietitian (RD) and the client or client's guardian for the purpose of evaluating and making recommendations regarding the client's nutritional status.

"**Nutrition assessment**" - Means the collection and documentation of information such as food or nutrition-related history; biochemical data, medical tests and procedures; anthropometric measurements, nutrition-focused physical findings and client history.

"**Nutrition care process**" - Means a systematic approach to providing high-quality nutrition care. Provides a framework for the registered dietitian to individualize care, taking into account the client's needs and values and evidence available to make decisions.

"**Nutrition-related diagnosis**" - Means a diagnosis within the scope of practice for an RD to diagnose and treat as defined by the Academy of Nutrition and Dietetics.

"**Registered dietitian**" - Means a dietitian who is registered with the Academy of Nutrition and Dietetics and who is certified by the Washington state department of health (DOH).

NEW SECTION

WAC 182-555-0300 Eligibility. The medicaid agency covers medical nutrition therapy for clients who are:

- (1) Age twenty and younger; and
- (2) Referred to a registered dietitian for medical nutrition therapy by a physician, physician assistant (PA), or an advanced registered nurse practitioner (ARNP).

NEW SECTION

WAC 182-555-0400 Provider requirements. Medical nutrition therapy services must be delivered by a registered dietitian (RD) who:

- (1) Has a current core provider agreement with the medicaid agency; and
- (2) Has a national provider identifier (NPI).

NEW SECTION

WAC 182-555-0500 Covered services. (1) The medicaid agency covers medically necessary medical nutrition

therapy when related to a nutrition-related diagnosis for eligible clients, as described under WAC 182-555-0300.

(2) The agency covers medical nutrition therapy, nutrition assessment, and counseling for conditions that are within the scope of practice for a registered dietitian (RD) to evaluate and treat.

NEW SECTION

WAC 182-555-0600 Documentation requirements. In addition to the health care record requirements found in WAC 182-502-0020, the medical nutrition therapy provider must maintain the following documentation in the client's file:

- (1) Referral from the provider, as described under WAC 182-555-0300;
- (2) The medical nutrition therapy provider assessment following the nutrition care process:
 - (a) Nutrition assessment;
 - (b) Nutrition diagnosis, including the problem, etiology, signs, and symptoms (PES) statement;
 - (c) Nutrition intervention;
 - (d) Nutrition monitoring and evaluation.
- (3) Any correspondence with the referring provider;
- (4) Information on associated medical conditions; and
- (5) Information concerning the medical need.

WSR 18-18-039
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed August 29, 2018, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-078.

Title of Rule and Other Identifying Information: WAC 308-124A-815 Prohibited firm and assumed names.

Hearing Location(s): On October 16, 2018, at 1:00 p.m., at the Department of Licensing, Black Lake Building #3, 2nd Floor, Conference Room 3204, 2000 4th Avenue West, Olympia, WA 98502.

Date of Intended Adoption: October 17, 2018.

Submit Written Comments to: Jerry McDonald, Department of Licensing, Real Estate Programs, P.O. Box 9021, Olympia, WA 98507-9021, email jmcdonald@dol.wa.gov, by October 15, 2018.

Assistance for Persons with Disabilities: Contact Jerry McDonald, phone 360-664-6525, TTY 711, email jmcdonald@dol.wa.gov, by October 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend the rule to more clearly define naming requirements for real estate firm and assumed names, and to clarify the basis under which the department may deny, suspend, or reject a real estate firm or assumed name.

Reasons Supporting Proposal: The amended rule will reduce the liability of the agency in deciding how a licensee may conduct real estate business.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: Chapter 18.85 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98502, 360-664-6525.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt under RCW 34.05.328 and this rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis.

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

Is exempt under RCW 19.85.020(3).

Explanation of exemptions: This rule affects only individual applicants or licensees.

August 29, 2018
 Damon Monroe
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-14-077, filed 7/1/13, effective 8/1/13)

WAC 308-124A-815 Prohibited firm and assumed names. (1) The department can deny, suspend, or reject a firm name((s)) or assumed name((s that are in the department's opinion:)) if it:

(a) Is derogatory((:));

(b) Is similar or the same as ((other)) another licensed firm name((s));

(c) Implies that ((#)) the firm is a public agency or part of government((:));

(d) Implies ((nonprofit or)) the firm is a not-for-profit organization;

(e) Implies it is a research organization.

(2) The following are nonexclusive examples of language that are deemed to be similar when used individually or in combination:

(a) The use of a different corporate designator, for example, Corp., Co., Inc., Ltd., and the like.

(b) The addition or deletion of an article or conjunction from the name, such as "the," "a," or "and."

(c) The use of a plural.

(d) The use of a geographic designator after the association's name. In the case of affiliates using the same name with a geographic or other designator, written consent will be required from the parent or affiliate.

(e) The abbreviation of a word in the same name.

(f) The substitution of a symbol for a word or vice versa.

(g) The use of the terms "realty," "real estate," "group," "realtors," or "firm."

(3) A real estate firm shall not ((be issued a license nor)) advertise in any manner using a name which ((is in the department's opinion similar to currently issued firm or assumed name licenses or imply that either the real estate firm is a nonprofit organization, research organization, public

~~bureau or public group))~~ has not been licensed by the department. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

August 29, 2018
Damon Monroe
Rules Coordinator

WSR 18-18-040
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed August 29, 2018, 9:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-079.

Title of Rule and Other Identifying Information: WAC 308-124A-713 Application for managing broker license examination—Other qualification or related experience and 308-124A-715 Unsuccessful managing broker applicants—Alternate qualifications.

Hearing Location(s): On October 16, 2018, at 1:00 p.m., at the Department of Licensing, Black Lake Building #3, 2nd Floor, Conference Room 3204, 2000 4th Avenue West, Olympia, WA 98502.

Date of Intended Adoption: October 17, 2018.

Submit Written Comments to: Jerry McDonald, Department of Licensing, Real Estate Programs, P.O. Box 9021, Olympia, WA 98507-9021, email jmcdonald@dol.wa.gov, by October 15, 2018.

Assistance for Persons with Disabilities: Contact Jerry McDonald, phone 360-664-6525, TTY 711, email jmcdonald@dol.wa.gov, by October 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend rules to clarify the options and testing protocol for applicants who want to request managing broker exam approval based on qualifications other than three years of full-time broker experience.

Reasons Supporting Proposal: This rule amendment is based on recommendations from the real estate commission after their review of the current rule.

Statutory Authority for Adoption: RCW 18.85.041.

Statute Being Implemented: Chapter 18.85 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jerry McDonald, 2000 4th Avenue West, Olympia, WA 98502, 360-664-6525.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt under RCW 34.05.328 and this rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis.

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

Is exempt under RCW 19.85.020(3).

Explanation of exemptions: This rule affects only individual applicants or licensees.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-713 Application for managing broker license examination—Other qualification or related experience. Applications for a managing broker license examination by persons who do not possess three years of actual experience as a full-time broker as required by RCW 18.85.111 who show qualification by reason of practical experience in a business allied with or related to real estate shall be submitted to the real estate program. The application shall be accompanied by a letter requesting approval of alternative qualifications or experience and indicating the basis for such approval. The letter must include a detailed personal history or work resume, with supporting documentation, ~~((and a letter from each of five business references describing from personal knowledge the qualifications and experience of the applicant))~~ which will include a certified license affidavit from the issuing agency as applicable. The following ~~((guidelines are provided as examples of))~~ are deemed alternative qualifications or experience which may qualify in lieu of three years of full-time broker experience:

(1) Postsecondary education with major study in real estate together with one year experience as a real estate broker ~~((or one year experience under the provisions of subsections (2) through (7) of this section))~~ actively licensed in good standing in Washington or another state, U.S. possession, or foreign jurisdiction with similar licensing standards.

(2) Full-time experience as ~~((an))~~ a licensed attorney at law, in good standing, with practice in real estate transactions for not less than one year.

(3) Five years' full-time experience ~~((with decision-making responsibility, in closing real estate transactions for escrow companies, mortgage companies, or similar institutions))~~ as a licensed mortgage broker or loan originator in good standing.

(4) Five years' full-time experience ~~((with a commercial bank, savings and loan association, title company or mortgage company, involving all details of real estate transactions))~~ as a licensed limited practice officer or escrow agent in good standing.

(5) Five years' full-time experience as a licensed or certified real property ~~((fee appraiser or salaried))~~ appraiser in good standing.

(6) Five years' full-time experience ~~((in all phases of land development, construction, financing, selling and leasing of residences, apartments or commercial buildings.~~

~~(7) Five years' experience in real estate investment, property management, or analysis of investments or business opportunities))~~ managing, leasing, selling, or buying real property on behalf of a third-party corporation, limited liability company, or partnership.

All experience time periods referenced in WAC 308-124A-713 shall ~~((be within the last seven years prior to))~~ have been completed within the six years immediately preceding the date of application.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-715 Unsuccessful managing broker applicants—Alternate qualifications. The managing broker applicant who is approved to take the exam based upon alternate qualifications or experience pursuant to WAC 308-124A-713 and subsequently fails the exam is not permitted to repeat the exam ~~((unless they satisfy the requirements in RCW 18.85.114))~~ using alternative qualifications or experience.

WSR 18-18-057
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed August 30, 2018, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-073.

Title of Rule and Other Identifying Information: Chapter 352-40 WAC, Public records.

Hearing Location(s): On November 15, 2018, at 9:00 a.m., at the Auburn City Hall, 25 West Main Street, Auburn, WA 98001.

Date of Intended Adoption: November 15, 2018.

Submit Written Comments to: Brian Thrasher, Records and Forms Manager, P.O. Box 42650, Olympia, WA 98504-2650, email brian.thrasher@parks.wa.gov, by 5:00 p.m., on November 9, 2018.

Assistance for Persons with Disabilities: Contact Brian Thrasher, Records and Forms Manager, phone 360-902-8514, TTY 800-833-6388, email brian.thrasher@parks.wa.gov, by 5:00 p.m., on November 9, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of this proposal is to remove outdated information, as well as some information that already exists in the Public Records Act (chapter 42.56 RCW) (e.g., definitions, information RE: Record indexing information). Additions include how and when parks' records can be viewed, and that a public record request must be submitted in writing.

Reasons Supporting Proposal: This update is being made at the recommendation of the Washington state office of the attorney general.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

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

Name of Proponent: Michael Young, assistant attorney general, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Thrasher, Records Office, 360-902-8514.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting Chris Leeper, Operating Budget Manager, P.O. Box 42650, phone 360-902-8542, TTY 800-833-6388, email christeen.leeper@parks.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

August 29, 2018
Valeria Veasley
Management Analyst

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-010 What is the purpose of this chapter? The purpose of this chapter is to ~~((implement the procedural requirements that))~~ set forth the procedures by which state parks will respond to public records requests made under the Public Records Act, chapter 42.56 RCW((places on state agencies)).

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-030 When and where can I access state parks' public records? Most public records of the commission and the agency are located at the ~~((Olympia))~~ state parks' headquarters office((Copies of certain records may be accessible at regional offices.

~~(1) The director and administrative offices are located at the headquarters office at 1111 Israel Road S.W., Tumwater, WA 98501. Mailing address for the headquarters office is:~~

~~**Washington State Parks and Recreation Commission**
P.O. Box 42650
Olympia, WA 98504-2650
360-902-8500
FAX: 360-753-1594
TDD: 360-664-3133~~

~~(a) The public affairs office is available to assist with media inquiries and general public information requests.~~

~~Phone: 360-902-8561
Email: pao@parks.wa.gov~~

~~(b) The public records officer is available to assist with public records requests or questions.~~

~~Phone: 360-902-8514
Email: public.disclosure@parks.wa.gov~~

~~(2) Location of regional offices:~~

~~**Southwest Region**
Headquarters Office
11838 Tilley Road S.E.
Olympia, WA 98512-9167
360-956-4800~~

Northwest Region

Headquarters Office
220 N. Walnut
Burlington, WA 98233
360-755-9231

Eastern Region

Headquarters Office
270 9th St. N.E., Suite 200
East Wenatchee, WA 98802
509-665-4319

Puget Sound Region

2840 Riverwalk Drive S.E.
Auburn, WA 98002-8207

(253-931-3907) in Tumwater. Access to public records will only be made available at this location. Arrangements can be made by contacting the agency's public records officer.

Mailing address:

P.O. Box 42650

Olympia, WA 98504-2650

Physical address:

1111 Israel Road S.W.

Tumwater, WA 98501

Email: public.disclosure@parks.wa.gov

Phone: 360-902-8514

The communications office is available to assist with media inquiries and general public information requests.

Phone: 360-902-8562

Email: washington.state.parks@parks.wa.gov

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-040 How is the agency organized and how is it operated? The Washington state park system includes approximately one hundred ~~((twenty))~~ twenty-four developed parks, recreation programs, trails, boating safety and winter recreation.

(1) State parks is governed by a commission consisting of seven citizens of the state, appointed by the governor to provide policy direction for the agency.

(2) The director is the commission appointed executive head of the agency.

(3) ~~((The deputy director is the chief operating officer.~~

(4) ~~Regional directors are responsible for management of regional headquarters and parks within their regions.)~~ An executive leadership team reports to the director. These team members manage various aspects of agency operations such as operations, parks development, administrative services, communications, human resources, and policy and governmental affairs.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-060 Who do I contact to request state parks' public records? The agency public records officer, located at headquarters, is responsible for:

(1) Receiving and reviewing requests for public records.

(2) Coordinating agency records management ~~((and agency indexing standards))~~ to ensure protection of, and prompt access to, public records.

(3) Implementing and ensuring compliance by the commissioners and staff with the public records disclosure requirements of chapter 42.56 RCW.

Mailing address:

P.O. Box 42650

Olympia, WA 98504-2650

Physical address:

1111 Israel Road S.W.

Tumwater, WA 98501

Email: public.disclosure@parks.wa.gov

Phone: 360-902-8514

~~((FAX: 360-586-5875))~~

(4) Contact information and ~~((our form for requesting public records from state parks are also))~~ general information regarding public records requests, a current fee schedule, and access to our public records form is available on our web site ((www.parks.wa.gov)) (www.parks.wa.us).

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-070 When can I inspect public records? Public records are available for inspection by appointment only during regular business hours, Monday through Friday, excluding legal holidays.

~~((It is recommended that you make arrangements in advance as the records that you wish to inspect may not be readily available for immediate inspection.))~~

Agency facilities shall be made available to any person for the inspection of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-080 How do I request copies of state parks' public records? ~~((Call, mail, email, fax or drop your request at any state park))~~ Requests for state parks' public records must be made in writing by emailing, mailing, or hand delivering a written request for public record to the records office.

Using our request ~~((form))~~ for public record, while not required, provides the information we need to assist you and provides you with our copy and mailing fees.

(1) The information that we will need is:

(a) The name, address ~~((and))~~, phone number, and email address (if available) of the person requesting the record;

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

~~(c) (If inspection of the record is requested, the day and time you wish to inspect the public records;~~

~~(d))~~ A description, with as much detail as you can provide, to help identify the record(s) requested;

~~((e))~~ (d) A statement that the information will not be used for commercial purposes.

(2) The agency does not distinguish among persons requesting records under the Public Records Act and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate RCW 42.56.070(9) or other statute that exempts or prohibits disclosure of specific information or records to certain persons.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-090 Will I have to pay to ~~((view))~~ inspect or get copies of state parks' public records? The agency does not charge a fee for the inspection of public records.

The agency will charge an amount necessary to recover its costs for producing and mailing copies of records, as provided for by RCW 42.56.120.

~~((A list of copy charges is provided with state parks' "Request for Public Records" form, or you can contact the public records officer for a list of copy and mailing fees.))~~ Our fee schedule can be found on the request for public record form and on our web site (www.parks.wa.us). Payment is required prior to receiving copies of records.

Charges totaling less than five dollars ~~((will))~~ may be waived.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-100 Can my request be denied? (1) ~~((Yes,))~~ A request can be denied if it is for records that are exempt from disclosure under the provisions of the Public Records Act, chapter 42.56 RCW ~~((State parks may also deny access to records, or parts of records, that are exempt from disclosure by)), or other statute including RCW 79A.60.210((;)) and 79A.60.220((-5.60.060 (2)(a), 46.52.080, 7.69A.030(4) and 13.50.050(3))).~~

(2) Whenever possible, the agency will make requested records available after exempt information has been ~~((deleted or))~~ redacted.

(3) Under the provisions of RCW 42.56.070~~((9))~~ (8), public records requests will also be denied if the purpose of the request is to sell or use the information for commercial purposes.

If a request is denied, or if a record is withheld entirely or redacted, the agency will specify in writing the reason for the denial, withholding, or redaction, including ~~((a statement))~~ identification of the specific exemption authorizing the withholding or redaction of the record and a brief explanation of how the exemption applies to the record withheld or redacted.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-110 What can I do if I object to the agency's denial to inspect or receive a copy of a public record? You have options. You can:

(1) Request an internal administrative review of the denial for access.

(a) Provide state parks' public records officer with your written request for a review of the decision. Include a copy of the denial or refer specifically to the denial statement in your petition.

(b) The public records officer will promptly provide the petition and any other relevant information to the director or designee to conduct a review.

(c) The director or designee will ~~((immediately))~~ consider the matter and, within two business days of receiving the petition, or within such time as state parks and the requestor mutually agree, either affirm or reverse the denial. If the director or designee has not responded to the requestor by the end of the two business days following denial of access, then the request is deemed denied.

(2) Ask the attorney ~~((general))~~ general's office to review the matter. Pursuant to RCW 42.56.530, the attorney ~~((general))~~ general's office will provide a written opinion on whether the record is exempt.

(3) Initiate an action in the superior court ~~((where the record is located. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial)).~~

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-120 ~~((How does the agency protect))~~ What rules must be followed when inspecting public records? (1) The following ~~((guidelines))~~ rules have been put in place to help the agency protect the public records under its care:

(a) You may not remove any public record from the agency premises.

(b) ~~((You must have))~~ State parks may require that a designated agency employee be present while inspecting public records.

(c) You may not mark or deface a public record in any manner during inspection.

(d) You may not dismantle public records that are maintained in a file or jacket or in chronological or other filing order.

(2) Access to file cabinets, shelves, vaults, or other storage areas is restricted to agency personnel unless other arrangements are made with the public records officer or designee.

(3) State parks follows rules established under RCW 40.14.060 regarding destruction of public records. The destruction of records responsive to a public records request will be delayed until the request is resolved.

AMENDATORY SECTION (Amending WSR 08-24-005, filed 11/20/08, effective 12/21/08)

WAC 352-40-130 How are agency records indexed?

Records retention schedules established and maintained under the directives of RCW 40.14.060 serve as an index for the ~~((identification and location of agency))~~ agency's records.

~~((The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the minimum required retention period. With the assistance of the public records officer or designee, the records retention schedule is available to the public for inspection and copying.~~

A separate index of policy statements as defined in RCW 34.05.010(15) entered after June 30, 1990, is maintained by the agency.

~~In addition,))~~ The agency has a functional ~~((index coding))~~ indexing system for ~~((physical files,))~~ commission policy~~((s))~~ and the agency's administrative policy and ~~((agency))~~ procedures.

Commission meetings minutes and agenda items are indexed by year~~((, month, and agenda item number. They are also summarized by topic))~~ and month.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-40-020 How do we define terms?

WSR 18-18-065

PROPOSED RULES

DEPARTMENT OF TRANSPORTATION

[Filed August 31, 2018, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-066.

Title of Rule and Other Identifying Information: WAC 468-38-073 Measurement exclusive devices.

Hearing Location(s): On October 22, 2018, at 9:00 a.m., at the Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: October 22, 2018.

Submit Written Comments to: Anne Ford, P.O. Box 47367, Olympia, WA 98504-7367, email FordA@wsdot.wa.gov, fax 360-704-6391, by October 19, 2018.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, email EngleK@wsdot.wa.gov, by October 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The original rule did not include a vehicle combination type that is commonly included with this rule description. The purpose is to include "single unit vehicle" with this rule as it was intended.

Reasons Supporting Proposal: The missing vehicle configuration was pointed out by our partner agency (Washing-

ton state patrol). This information was shared with the Federal Highway Administration and all parties agree that this missing vehicle type was intended to be included in original rule.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; and Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7341.

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

A cost-benefit analysis is not required under RCW 34.05.328. There is no cost for updating this rule.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Adding a vehicle combination to the existing rule does not create any type of fiscal impact or cost. The rule has a question and answer format. The question includes the verbiage for a "single unit vehicle," however, the answer to the question excluded the vehicle type in error. This rule change is to correct the exclusion of this specific vehicle type.

August 31, 2018

Kara Larsen, Director
Risk Management and
Legal Services Division

AMENDATORY SECTION (Amending WSR 13-20-002, filed 9/19/13, effective 10/20/13)

WAC 468-38-073 Measurement exclusive devices. (1) What are the criteria for being a measurement exclusive device? Generally, measurement exclusive devices are vehicle appurtenances designed and used for reasons of safety, aerodynamics, or efficient vehicle operation. A measurement exclusive device must not carry property, create a space that property could occupy outside of legal or permitted dimensions, or exceed the specific dimensional limitations stated in this section.

(2) What devices at the front of a single unit vehicle, or power unit in a vehicle combination, are excluded from length determinations? The following devices have been identified as measurement exclusive when determining length from the front of a single unit vehicle or power unit in a vehicle combination:

(a) Resilient bumpers that do not extend more than six inches from the vehicle;

(b) A fixed step up to three inches deep at the front of an existing automobile transporter until April 29, 2005. It will

be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. After April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(3) **What devices at the front of a semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the front of a semi-trailer or trailer:

- (a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;
- (b) A front coupler device on a semi-trailer or trailer used in road and rail intermodal operations;
- (c) Aerodynamic devices, air deflector;
- (d) Air compressor;
- (e) Certificate holder (manifest box);
- (f) Door vent hardware;
- (g) Electrical connector;
- (h) Gladhand (air hose connectors joining tractor to trailer);
- (i) Handhold;
- (j) Hazardous materials placards and holders;
- (k) Heater;
- (l) Ladder;
- (m) Nonload carrying tie-down devices on automobile transporters;
- (n) Pickup plate lip (plate at front of trailer to guide fifth wheel under trailer);
- (o) Pump offline on tank trailer;
- (p) Refrigeration unit;
- (q) Removable bulkhead;
- (r) Removable stake;
- (s) Stabilizing jack (antinosedive device);
- (t) Stake pocket;
- (u) Step;
- (v) Tarp basket;
- (w) Tire carrier; and
- (x) Uppercoupler.

(4) **What devices at the rear of a single unit vehicle, semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the rear of a single unit vehicle, semi-trailer or trailer:

- (a) Aerodynamic devices that extend up to a maximum of five feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a vehicle so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings (i.e., reflective tape);
- (b) Handhold;
- (c) Hazardous materials placards and holder;
- (d) Ladder;
- (e) Loading and unloading device not to exceed two feet;
- (f) Pintle hook;
- (g) Removable stake;

- (h) Splash and spray suppression device;
- (i) Stake pocket; and
- (j) Step.

(5) **What devices at the side of a vehicle are excluded from width determinations?** The following devices have been identified as measurement exclusive, not to exceed three inches from the side of the vehicle, when determining width of a vehicle:

- (a) Corner cap;
- (b) Handhold for cab entry/egress;
- (c) Hazardous materials placards and holder;
- (d) Lift pad for trailer on flatcar (piggyback) operation;
- (e) Load induced tire bulge;
- (f) Rain gutter;
- (g) Rear and side door hinge and protective hardware;
- (h) Rearview mirror;
- (i) Side marker lamp;
- (j) Splash and spray suppressant device, or component thereof;
- (k) Structural reinforcement for side doors or intermodal operation (limited to one inch from the side within the three-inch maximum extension);
- (l) Tarping system for open-top cargo area;
- (m) Turn signal lamp;
- (n) Movable device to enclose the cargo area of a flatbed

semi-trailer or trailer, usually called "tarping system," where no component part of the system extends more than three inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of a tarping system, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 C.F.R. 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to one hundred eight inches wide if properly centered so that neither side extends more than three inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 C.F.R. 393.106 is load bearing and thus limited to one hundred two inches in width. The "wings" designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

- (o) Tie-down assembly on platform trailer;
- (p) Wall variation from true flat; and
- (q) Weevil pins and sockets on a platform or low-bed trailer (pins and sockets located on both sides of a trailer used to guide winch cables when loading skid mounted equipment).

(6) **Are there weight measurement exclusive devices?** Yes. Any vehicle equipped with idle reduction technology, designed to promote reduced fuel usage and emissions from engine idling, may have up to four hundred pounds in total

gross, axle, tandem or bridge formula weight exempt (excluded) from the weight measurement. To be eligible for the weight exemption, the vehicle operator must be able to prove:

(a) By written certification the weight of the idle reduction technology; and

(b) By demonstration or certification, that the idle reduction technology is fully functional at all times.

The weight exemption cannot exceed five hundred fifty pounds or the certified weight of the unit, whichever is less.

(7) **Can exclusion allowances be combined to create a larger allowance (i.e., adding a five-foot aerodynamic device to a two-foot loading/unloading device for a total exclusion of seven feet)?** No. Each exclusion allowance is specific to a device and may not be combined with the exclusion allowance for another device.

(8) **Can a device receive exclusion if it is not referenced in law or administrative rule?** If the device meets the criteria in subsection (1) of this section, a request for measurement exclusion may be made to the administrator for commercial vehicle services. If approved for an exclusion allowance, the administrator will provide the requestor a written authorization.

WSR 18-18-066
PROPOSED RULES

BOARD OF
PILOTAGE COMMISSIONERS

[Filed August 31, 2018, 10:07 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district.

Hearing Location(s): On October 18, 2018, at 10:00 a.m., at 2901 Third Avenue, 1st Floor, Agate Conference Room, Seattle, WA 98121.

Date of Intended Adoption: October 18, 2018.

Submit Written Comments to: Sheri J. Tonn, Chair, 2901 Third Avenue, Suite 500, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by October 11, 2018.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, by October 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish a 2019 Grays Harbor pilotage district annual tariff.

The proposal as detailed calls for the following adjustments: *Pension Charge*: A decrease from \$500 to \$450.*

* As the administrator of Grays Harbor pension funds for retired Grays Harbor pilots, Puget Sound pilots provides this calculation.

Reasons Supporting Proposal: RCW 88.16.035 requires that a tariff be set annually.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Grays Harbor pilotage district expire December 31, 2018. New rates must be set accordingly. All requirements necessary to amend the existing Grays Harbor pilotage district tariff as set forth in chapter 53.08 RCW have been met. The board may adopt a rule that varies from the proposed rule upon consideration of presentations and written comments from the public and any other interested party.

Name of Proponent: Port of Grays Harbor, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 Third Avenue, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, 206-515-3904.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

August 30, 2018

Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 17-22-128, filed 11/1/17, effective 1/1/18)

WAC 363-116-185 Pilotage rates for the Grays Harbor pilotage district. Effective 0001 hours January 1, (~~2018~~) 2019, through 2400 hours December 31, (~~2018~~) 2019.

CLASSIFICATION

RATE

Charges for piloting of vessels in the inland waters and tributaries of Grays Harbor shall consist of the following:

Draft and Tonnage Charges:

Each vessel shall be charged according to its draft and tonnage for each vessel movement inbound to the Grays Harbor pilotage district, and for each movement outbound from the district.

CLASSIFICATION	RATE
Draft	\$114.97 per meter
	or
	\$35.04 per foot
Tonnage	\$0.329 per net registered ton
Minimum Net Registered Tonnage	\$1,152.00
Extra Vessel (in case of tow)	\$646.00

Provided that, due to unique circumstances in the Grays Harbor pilotage district, vessels that call, and load or discharge cargo, at Port of Grays Harbor Terminal No. 2 shall be charged \$6,387.00 per movement for each vessel movement inbound to the district for vessels that go directly to Terminal No. 2, or that go to anchor and then go directly to Terminal No. 2, or because Terminal No. 2 is not available upon arrival that go to layberth at Terminal No. 4 (without loading or discharging cargo) and then go directly to Terminal No. 2, and for each vessel movement outbound from the district from Terminal No. 2, and that this charge shall be in lieu of only the draft and tonnage charges listed above.

Boarding Charge:

Per each boarding/deboarding from a boat or helicopter \$1,092.00

Harbor Shifts:

For each shift from dock to dock, dock to anchorage, anchorage to dock, or anchorage to anchorage \$803.00

Delays per hour \$189.00

Cancellation charge (pilot only) \$315.00

Cancellation charge (boat or helicopter only) \$944.00

Two Pilots Required:

When two pilots are employed for a single vessel transit, the second pilot charge shall include the harbor shift charge of \$803.00 and in addition, when a bridge is transited the bridge transit charge of \$346.00 shall apply.

Pension Charge:

Charge per pilotage assignment, including cancellations \$((~~500.00~~) 450.00)

Travel Allowance:

Transportation charge per assignment \$105.00

Pilot when traveling to an outlying port to join a vessel or returning through an outlying port from a vessel which has been piloted to sea shall be paid \$1,064.00 for each day or fraction thereof, and the travel expense incurred.

Bridge Transit:

Charge for each bridge transited \$346.00

Additional surcharge for each bridge transited for vessels in excess of 27.5 meters in beam \$946.00

Miscellaneous:

The balance of amounts due for pilotage rates not paid within 30 days of invoice will be assessed at 1 1/2% per month late charge.

WSR 18-18-075
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed September 4, 2018, 9:00 a.m.]

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-478-0015 Needs standards for cash assistance.

Hearing Location(s): On October 9, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Original Notice.
 Preproposal statement of inquiry was filed as WSR 18-15-020.

Date of Intended Adoption: Not earlier than October 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-478-0015 Need standards for cash assistance, to revise the basic need standards for cash assistance.

Reasons Supporting Proposal: The department is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

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

Statute Being Implemented: RCW 74.04.770.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504-5470, 360-522-2214.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 74.04.770.

August 30, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-01-040, filed 12/12/17, effective 1/12/18)

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

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

Assistance unit size	Need standard
1	\$(1,388) <u>1,460</u>
2	((1,756)) <u>1,848</u>
3	((2,168)) <u>2,281</u>
4	((2,558)) <u>2,692</u>

Assistance unit size	Need standard
5	((2,948)) <u>3,102</u>
6	((3,339)) <u>3,513</u>
7	((3,859)) <u>4,060</u>
8	((4,271)) <u>4,494</u>
9	((4,683)) <u>4,927</u>
10 or more	((5,095)) <u>5,360</u>

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

Assistance unit size	Need standard
1	\$(643) <u>659</u>
2	((813)) <u>833</u>
3	((1,004)) <u>1,029</u>
4	((1,185)) <u>1,214</u>
5	((1,365)) <u>1,399</u>
6	((1,546)) <u>1,585</u>
7	((1,787)) <u>1,832</u>
8	((1,978)) <u>2,027</u>
9	((2,169)) <u>2,223</u>
10 or more	((2,359)) <u>2,418</u>

WSR 18-18-080
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed September 4, 2018, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-075.

Title of Rule and Other Identifying Information: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations.

Hearing Location(s): On October 29, 2018, at 11:00 a.m., at the Northwest Regional Training Center (NWRTC), Rainier Room, 11606 N.E. 66th Circle, Suite 103, Vancouver, WA 98662, for directions to NWRTC <https://www.google.com/maps/dir/Northwest+Regional+Training+Center,+11606+NE+66th+St+%23103,+Vancouver,+WA+98662,+United+States/@45.6713097,-122.5559612,17z/data=!4m8!4m7!1m0!1m5!1m1!1s0x5495b01867fa1451:0x6860dd4a217a8ff6!2m2!1d-122.5537672!2d45.6713097?hl=en>; on October 30, 2018, at 10:00 a.m., at the Washington State Department of Labor and Industries (L&I), Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501, for directions to L&I <https://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/>; on October 30, 2018, at 2:00 p.m., at L&I, Tukwila Service Location, Room C30, 12806 Gateway Drive South, Tukwila, WA 98168, for directions to L&I <https://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/tukwila.asp>; and on October 31, 2018, at 10:00 a.m., at Spokane CenterPlace, Auditorium, 2426 North Discovery Place, Spokane

Valley, WA 99216, for directions to CenterPlace http://www.centerplacespokanevalley.com/map_09.pdf.

Date of Intended Adoption: December 4, 2018.

Submit Written Comments to: K. C. Wilkerson, P.O. Box 44890, Olympia, WA 98504-4890, email kc.wilkerson@lni.wa.gov, fax 360-902-6977, by November 1, 2018.

Assistance for Persons with Disabilities: Contact K. C. Wilkerson, phone 360-902-6851, fax 360-902-6977, email kc.wilkerson@lni.wa.gov, by October 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing rules are outdated and lead to inefficient processes for workers, employers and the department. The goals of the new rules are to create more focused intervention and adjudication for the department, establish more efficient lines of communication for workers and ensure greater certainty for employers. Also included in the rule changes are language clarifications as well as a change to WAC 296-15-4316 that will bring it back into alignment with statute regarding the termination of time loss benefits when Option 2 is selected.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Nylander, Program Manager, Tumwater, Washington, 360-902-6907; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting K. C. Wilkerson, P.O. Box 44890, Olympia, WA 98504-4890, phone 360-902-6851, fax 360-902-6977, email kc.wilkerson@lni.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule does not affect small businesses.

September 4, 2018

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 15-01-162, filed 12/23/14, effective 1/23/15)

WAC 296-15-266 Penalties. (1) **Under what circumstances will the department consider assessing a penalty for an unreasonable delay of benefits, when requested by a worker?** Upon a worker's request, the department will consider assessment of an unreasonable delay of benefits penalty for:

(a) Time loss compensation benefits: The department will issue an unreasonable delay order, and assess associated

penalties based on the unreasonably delayed time loss as determined by the department, if a self-insurer:

(i) Has written medical certification based on objective findings from the attending medical provider authorized to treat that the claimant is unable to work because of conditions proximately caused by the industrial injury or occupational disease, or the claimant is participating in a department-approved vocational plan; and

(ii) Fails to make the first time loss payment to the claimant within fourteen calendar days of notice that there is a claim*, or fails to continue time loss payments on regular intervals as required by RCW 51.32.190(3); and

(iii) Fails to (~~request, with supporting medical evidence and within thirty days of receiving written notice of a newly contended medical condition related to the industrial injury or occupational disease, that the department settle a dispute about the covered conditions or eligibility for time loss compensation. For good cause, in the department's sole discretion, a sixty-day extension may be granted~~) take action per WAC 296-15-425.

* Notice of claim is provided to the self-insured employer when all the elements of a claim are met. The elements of a claim are:

- Description of incident. Examples: Self-Insurance Form 2 (SIF-2), physician's initial report (PIR), employer incident report.
- Diagnosis of the medical condition. Examples: PIR, on-site medical facility records if supervised by provider qualified to diagnose.
- Treatment provided or treatment recommendations. Examples: PIR, on-site medical facility records if supervised by provider qualified to treat.
- Application for benefits. Examples: SIF-2, PIR, or other signed written communication that evinces intent to apply.

(b) Unreasonable delays of loss of earning power compensation payments or permanent partial disability award payments will also be subject to penalty.

(c) ~~Unreasonable delays of payment of medical treatment benefits(=The department will issue an unreasonable delay order, and assess associated penalties based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to pay all fees and medical charges within sixty days of receiving a proper billing, as defined in WAC 296-20-125 through 296-20-17004, or sixty days after the claim is allowed per RCW 51.36.080.~~

(i) ~~If the self-insurer believes that it should not pay the billing, or if the self-insurer believes that the treatment is not for a condition proximately caused by the industrial injury or occupational disease, the self-insurer must, within sixty calendar days of receiving a billing, clearly state in writing to the worker and the medical provider why the payment is denied.~~

(ii) ~~If a denial is disputed by the worker or medical provider and the self-insurer does not allow the bill, the self-insurer must notify the department within thirty days, and the department will review the reasons provided by the self-insurer and will make a decision by order within thirty days) will also be subject to penalty.~~

(d) ~~Unreasonable delays of authorization of ((emergent or life-saving)) medical treatment benefits(=The department will issue an unreasonable delay order, and assess associated penalties, based on the department's fee schedule, order, and accrued principal and interest, if a self-insurer fails to respond to requests to authorize emergent or life-saving treat-~~

ment within fourteen days after receiving written notice of the request for treatment.

(i) If the request is denied, the self-insured employer must clearly tell the medical provider and the claimant, in writing, why the request is being denied.

(ii) If the medical provider or claimant disagrees with the self-insurer's decision, either of them may file a dispute with the department)) will also be subject to penalty.

(e) Failure to pay benefits without cause: The department will issue an order determining an unreasonable refusal to pay benefits, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer fails to pay a benefit such as time loss compensation, loss-of-earning-power compensation, permanent partial disability award payments, or medical treatment when there is no medical, vocational, or legal doubt about whether the self-insurer should pay the benefit. Accrued principal and interest will apply to nonpayment of medical benefits.

(f) Paying benefits during an appeal to the board of industrial insurance appeals: The department will issue an unreasonable delay order, and assess associated penalties, based on the department's calculation of benefits or fee schedule, if a self-insurer appeals a department order to the board of industrial insurance appeals, and fails to provide the benefits required by the order on appeal within fourteen calendar days of the date of the order, and thereafter at regular fourteen day or semi-monthly intervals, as applicable, until or unless the board of industrial insurance appeals grants a stay of the department order, or until and unless the department reassumes jurisdiction and places the order on appeal in abeyance, or until the claimant returns to work, or the department issues a subsequent order terminating the benefits under appeal.

(g) Benefits will not be considered unreasonably delayed if paid within three calendar days of the statutory due date. In addition, if benefits are delayed due to an underpayment from the monthly wage calculation for time-loss compensation under RCW 51.08.178, then the department shall presume the benefits are not unreasonably delayed if:

(i) The self-insurer sent a written copy of the wage calculation to the injured worker on a department-developed template; and

(ii) The self-insurer informed the worker, in writing, on a department-developed template that the worker should contact the self-insurer with any questions; and

(iii) The self-insurer notified the worker, in writing, on a department-developed template to write to the department within sixty days if the worker disputed the calculation; and

(iv) Whether the worker disputed the wage calculation in writing to the department.

This presumption may be rebutted by a showing of action without foundation or unsupported by evidence demonstrating an unreasonable delay of benefits despite the notification to the worker and the worker's failure to dispute.

Provided, (g)(i) through (iv) of this subsection will not apply to payments for statutory cost-of-living adjustments, payments that do not use the amount stated in the department-developed template, or a refusal to make payments ordered by the department.

(2) How is a penalty request created and processed?

(a) An injured worker may request a penalty against his or her self-insured employer by:

(i) Completing the appropriate self-insurance form or sending a written request providing the reasons for requesting the penalty;

(ii) Attaching supporting documents (optional).

(b) Within ten working days of receipt of a certified request, the self-insured employer must send its claim file to the department. Failure to timely respond may subject the self-insured employer to a rule violation penalty under RCW 51.48.080. The employer may attach supporting documents, or indicate, in writing, if the employer will be providing further supporting documents, which must be received by the department within five additional working days. If the employer fails to timely respond to the penalty request, the department will issue an order in response to the injured worker's request based on the available information.

(c) The department will issue an order within thirty days after receiving a complete written request for penalty per (a) of this subsection. The department's review during the thirty-day period for responding to the injured worker's request will include only the claim file records and supporting documents provided by the worker and the employer per (a) and (b) of this subsection.

(d) In deciding whether to assess a penalty, the department will consider only the underlying record and supporting documents at the time of the request which will include documents listed in (a) and (b) of this subsection, if timely available, to determine if the alleged untimely benefit was appropriately requested and if the employer timely responded.

(e) The department order issued under (c) of this subsection is subject to request for reconsideration or appeal under the provisions of RCW 51.52.050 and 51.52.060.

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-320 Reporting of injuries. What elements must a self-insurer have in place to ensure the reporting of injuries? Every self-insurer must:

(1) Establish procedures to assist injured workers in reporting and filing claims.

~~((2)) (a) Immediately provide a Self-Insurer Accident Report (SIF-2) form F207-002-000 to every worker who makes a request, or upon the self-insurer's first knowledge of the existence of an industrial injury or occupational disease, whichever occurs first. ((Only department provided SIF-2 forms may be used. Copies or reproductions are not acceptable.~~

~~(3))~~

(b) Establish procedures for ensuring the timely delivery of completed SIF-2s to the claims management entity.

~~((4)) (2) Designate individuals as resources to address employee questions. These resources must:~~

(a) Have sufficient knowledge to answer routine questions; and

(b) Have responsibility for seeking answers to more complex problems; and

(c) Have detailed knowledge of the self-insurer's claim filing process; and

(d) Be reasonably accessible to employees (~~at every work location.~~

~~(5) Maintain a claims log of all workers' compensation claims filed.~~

~~(a) For each claim, the log must consist of only the following information:~~

~~(i) The complete first and last name of the injured worker (no initials or abbreviations).~~

~~(ii) The date of injury, or for an occupational disease, the date of manifestation.~~

~~(iii) The claim number found on the department's Self-Insurer Accident Report (SIF-2, form F207-002-000).~~

~~(iv) The date the claim is closed.~~

~~(v) Whether the claim is a time loss claim or medical only.~~

~~(b) The self-insurer must designate the location of the official claims log.~~

~~(i) The self-insurer may maintain the log on its premises; or~~

~~(ii) The self-insurer may elect to have its third-party administrator maintain the claims log on its behalf. If this option is selected, there must be a written agreement between the self-insurer and the third-party administrator acknowledging that the official claims log is maintained by the third-party administrator.~~

~~The self-insurer must notify the department in writing of the location of their official claims log. If the option in (b)(ii) of this subsection is selected, a copy of the written agreement between the self-insurer and the third-party administrator must be provided to).~~

~~(3) Upon request, produce a report of all workers' compensation claims filed in a format required by the department.~~

AMENDATORY SECTION (Amending WSR 13-09-023, filed 4/9/13, effective 5/10/13)

WAC 296-15-330 Authorization of medical care. What are the requirements for authorization of medical care? Every self-insurer must:

(1) Authorize treatment and pay bills in accordance with Title 51 RCW and the medical aid rules and fee schedules of the state of Washington.

(2) Provide a written explanation of benefits (EOB) to the provider, with a copy to the worker if requested, for each bill adjustment. A written explanation is not required if the adjustment was made solely to conform to the maximum allowable fees as set by the department.

(3) Provide a written explanation to the worker and provider(s) regarding any denied bill. Bills returned to the provider because a proper bill was not submitted under WAC 296-20-125 do not require a written explanation.

(4) Establish procedures to ensure prompt responses to inquiries regarding authorization decisions and bill adjustments.

~~((4))~~ (5) Comply with the requirements of the health care provider network. This includes:

(a) Utilizing only those providers approved for the provider network, except when the provider specialty or geographic location is not yet covered by the network;

(b) Providing information to workers about the requirement for providers to be enrolled in the network in order to treat injured workers and information on how a worker can find network providers. This information must be included in publications used by self-insurers to comply with WAC 296-15-400 (2)(a);

(c) Ensuring, when applicable, that only network providers are paid for care after the initial office or emergency room visit; and

(d) Promptly assisting workers who are being treated by a nonnetwork provider to transfer their care to a network provider of their choice; including, at a minimum, notification to the worker within forty-five days of receipt of the first bill from a nonnetwork provider that the provider will not be paid for treatment beyond the initial visit on the claim and information about how to find network providers.

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-340 Payment of compensation. What are the requirements for payment of compensation? Every self-insurer must:

(1) Pay time loss compensation in accordance with Title 51 RCW and the rules and regulations of the department.

~~(2) ((Select one method for payment of ongoing time loss compensation, either semimonthly or biweekly, and report the selected method to the department.~~

~~(3) Provide the department with a detailed written description of any practice of paying workers' regular wages in lieu of time loss compensation, or of paying workers any benefits including sick leave, health and welfare insurance benefits, or any other compensation in conjunction with time loss compensation.)~~ Provide to workers a statement of benefits with each time-loss payment, to include the type of benefit paid and the period paid with from and to dates. In addition, provide to workers a statement of benefits with payments for reimbursements to workers.

~~(3) When payable, time-loss must continue at regular semi-monthly or bi-weekly intervals. When making an initial payment, an employer may adjust the date for payment of time-loss to align with a worker's normal date for payment of wages; however, the payment must be made within ten days of entitlement period.~~

AMENDATORY SECTION (Amending WSR 14-02-121, filed 1/2/14, effective 2/2/14)

WAC 296-15-350 Handling of claims. What elements must a self-insurer have in place to ensure appropriate handling of claims? Every self-insurer must:

(1) Establish procedures for securing the confidentiality of claim information.

(2) Have sufficient numbers of certified claims administrators to ensure uninterrupted administration of claims.

(a) There must be at least one certified claims administrator involved in the daily management of the employer's claims.

(b) If claims are administered in more than one location, there must be at least one certified claims administrator in each location where claims are managed. Effective July 1, 2020, to ensure consistent application and delivery of benefits pursuant to Washington laws, every person making claim decisions outside the state of Washington must be a certified claims administrator and maintain core business office hours for Pacific Standard Time. For the purposes of this section, every person making claim decisions includes:

- (i) Those persons who manage claims directly; and
- (ii) Who request to allow or deny claims under WAC 296-15-420;
- (iii) Take action on claims under WAC 296-15-425; or
- (iv) Close claims under WAC 296-15-450.

Excluded from this requirement are those persons who manage operations indirectly in support of claims administrators, such as, human resources, accounting, or executive management.

When a new person is hired by the out-of-state employer to make claims decisions, if the new person is not already a certified claims administrator, then the new person must begin working toward achievement of certification through a goal-oriented curriculum approved by the department to achieve certification within two years. While in process of meeting educational needs, the employer must ensure mentoring is provided by a Washington certified claims administrator and maintain a minimum of one Washington certified employee at each out-of-state location where claims are managed.

Providers of the goal-oriented curriculum will conduct regular training courses to allow for a new person in the process of completing the training to successfully manage Washington claims and achieve Washington certification within two years. This will include considering online alternatives, when feasible.

When a certified claims administrator leaves the hire of an employer or third-party administrator, whether in-state or out-of-state, and this results in an employer temporarily not meeting the qualifications for a certified claims administrator, the employer may apply for a temporary waiver for up to six months pending hiring of a replacement.

(3) Designate one certified claims administrator as the department's primary contact person for claim issues.

(4) Designate one address for the mailing of all claims-related correspondence. The self-insurer is responsible for forwarding documents to the appropriate location if an employer's claims are managed by more than one organization.

(5) Establish procedures to answer questions and address concerns raised by workers, providers, or the department.

(6) Ensure claims management personnel are informed of new developments in workers' compensation due to changes in statute, case law, rule, or department policy.

(7) Include the department's claim number in all claim-related communications with workers, providers, and the department.

(8) Legibly date stamp incoming correspondence, identifying both the date received and the location or entity that received it.

(9) Ensure a means of communicating with all injured workers.

AMENDATORY SECTION (Amending WSR 14-02-121, filed 1/2/14, effective 2/2/14)

WAC 296-15-360 Qualifications of personnel—Certified claims administrators. (1) **What is a certified claims administrator?** An experienced adjudicator who has been certified by the department to meet the requirements of WAC 296-15-350(2).

(2) **How do I become a certified claims administrator for self-insured claims?**

(a) Have a minimum of ~~((three))~~ two years of experience, at least twenty hours per week, in the administration or oversight of time loss claims under Title 51 RCW. The experience must have occurred within the five years immediately prior to your filing of the application to take the "self-insurance claims administrator" test; ~~((and))~~

(b) Have completed:

(i) A comprehensive goal-oriented curriculum approved by the department and resulting in a worker's compensation professional designation; or

(ii) An approved training program within the department.

(c) Take and pass the department's "self-insurance claims administrator" test. The department will provide annual reports to stakeholders. The department will report the results, identify and consider feasible alternative methods of test delivery, make any recommendations for improvements, seek comments from stakeholders, and subsequently make a determination on methods for further administration of the testing processes.

(i) If you have the requisite experience under (a) of this subsection, you may take the test without completing the training required under (b)(i) or (ii) of this subsection. If you do not pass the test, then you must wait a minimum of three months to retake the test at a date and time scheduled by the department. The provision to take the test for certification without completing the requisite training will expire two years from the effective date of this rule.

(ii) If you have already passed the test and are a certified claims administrator, you will maintain your certified claims administrator designation without completing the training required under (b)(i) or (ii) of this subsection, and you will need to fulfill the continuing education credits under subsection (6) of this section.

After passing the test, you are designated a certified claims administrator. ~~((The initial))~~ This is a lifetime certification ((is valid for five years)), provided that continuing education requirements are met.

(3) **How do I receive approval to take the test?** To be approved to take the "self-insurance claims administrator" test, you must apply using the department's online database no less than forty-five days prior to the next scheduled test date.

The department will review your application and determine if you meet the minimum requirements to take the test. ~~((We))~~ The department will respond to your application no less than fourteen days prior to the next scheduled test date.

(4) **What happens if I fail the test?** You may retest six months after the failed test.

If you are a certified claims administrator and you fail the test, your certification will be terminated until you retest and pass.

(5) **What must a department-approved curriculum for a worker's compensation professional designation include?** The curriculum must include:

(a) All phases of basic, intermediate, and advanced claim validity issues, including injury during the course of employment, occupational exposure and illness or disease, causal relationship of injury or illness, prima facie consideration, and submittal of claims to department;

(b) All phases of basic, intermediate, and advanced medical benefit management, including treatment authorization, surgery approval, aggravation of conditions, segregation of conditions, use of consultations and independent medical examinations (IMEs), and department medical guidelines;

(c) All phases of basic, intermediate, and advanced compensation management, including determining the wage as the basis of compensation, payment of temporary total disability payments, permanent partial disability payments, and loss of earning power compensation; and

(d) All phases of basic, intermediate, and advanced work disability prevention, including worker-centric return to work practices, modified or light duty jobs, other vocational recovery interventions, and medical provider collaboration on return to work, activity prescription forms, and job analyses.

(e) Training must include at least seventy-two credit hours as provided in subsection (6)(b) of this section.

(f) Curriculum submitters must provide their written core curriculum plan to the department with a table of contents listing the courses in the curriculum, and a detailed description of the content for each course. The curriculum advisory committee will review the submitters' proposed curriculum content and advise of any recommended adjustments, and the department will determine and provide notice of approval or denial within ninety days, or extend the time for approval or denial of the plan for another ninety days. The department may request additional materials, and require adjustments in the core curriculum plan prior to approval, as it deems necessary.

A department-approved curriculum must be reapproved every three years.

(6) **How does a certified claims administrator maintain their certified status ((beyond the initial five year designation))?** A certified claims administrator may maintain certified status by ~~((a) Retaking and passing the "self-insurance claims administrator" test as outlined in subsections (2) and (3) of this section;~~

or

(b) Remaining employed for a minimum of three of the last five years in the administration or oversight of claims under Title 51 RCW;

~~and))~~ garning the required continuing education credits as outlined in this subsection (((6) of this section;

and

Applying to the department for renewal.

(6) What is required if I choose to maintain my certified status using continuing education credits?

(a) You must earn ~~((a minimum of seventy-five))~~ forty-five credits ~~((and submit your renewal application prior to lapse of the certified status. Extensions will not be granted))~~ every three years.

Credits earned within five years prior to the effective date of this rule may be carried forward and applied toward meeting the required continuing education credits for three years following the effective date of this rule up to a maximum of forty-five credits.

Credits ~~((must))~~ may be earned in the following ~~((categories))~~ areas:

(i) ~~((Forty claims management credits, defined as:~~

~~Instruction on any complex claim adjudication activity that is geared to an experienced adjudicator, containing information that goes beyond known, common everyday practices, including instruction on complex medical issues related to the adjudication of claims under Title 51 RCW;~~

~~and~~

~~That is not specific to the legal category.~~

(ii) ~~Twenty legal credits, defined as:~~

~~Instruction on any recent changes to: Title 51 RCW, the Washington Administrative Code, significant board decisions, and case law. "Recent" will generally be considered decisions and changes that occurred within the eighteen-month period prior to course submittal.~~

(iii) ~~Fifteen general claims education credits, defined as:~~

~~Instruction on common everyday claims and related practices such as refresher classes, industry specific training, safety, and injury prevention courses. For this category only, credit will be awarded one credit for every hour of instruction.~~

~~Excess claims management or legal credits may be applied toward the general claims education credit requirement.)~~ Instruction on relevant workers' compensation subjects that help injured workers heal and return to work, and focus on areas of recovery such as, but not limited to, medical benefit management, payment of compensation, and vocational services;

(i) Instruction on existing or historical workers' compensation statutes, case law, rule, or departmental policy, which may assist with managing claims, answering questions, and addressing concerns in accordance with WAC 296-15-350(5);

(ii) Instruction on new developments in workers' compensation such as, but not limited to, changes in statute, case law, rule, or departmental policy, which may assist claims management personnel in remaining current in accordance with WAC 296-15-350(6); or

(iv) Credits may also be earned in injury prevention and safety, in addition to credits for injury recovery and claims administration.

The ~~((seventy-five))~~ forty-five credits must include any training designated as mandatory by the department. All training must be specific to Washington law, or describe in detail how the training is relevant to administering Washington law. If you fail to earn sufficient continuing education credits, you will be required to retake the written test to maintain your certified status.

(b) Continuing education providers must submit a training plan with a detailed outline of each area of training to the

department when courses are offered. The curriculum advisory committee will review the submitters' proposed training plan and advise of any recommended adjustments, and assignment of course credit will be determined by the ((curriculum review committee)) department as follows: A maximum of one credit per hour of training will be awarded ((if all of the material submitted meets the definition of that category)). Credit will be assigned based on 0.5 increments; no credit will be awarded for increments less than 0.5. ((The curriculum review committee's decision will be final)).

(c) ((Courses approved for elective credits prior to the effective date of this rule change will be applied as general claims education credits.)) Department-approved continuing education courses must be reapproved biannually (every two years).

(d) You must track and report earned credits at the department's online database. You must obtain and retain signed verification of courses attended. Verification of earned credits must be received by the department by the date the certified claims administrator's certification date expires. Extensions will not be granted. If your certification lapses, you will not need to complete the comprehensive goal-oriented curriculum if you apply for reinstatement within two years of the lapse, and then take and pass the department's "self-insurance claims administrator" test.

(e) The department may audit the reported credits of any certified claims administrator at random, or "for cause." Falsification of reported credits will result in revocation of the individual's certified claims administrator status, and may result in the department's refusal of future applications to take the self-insurance claims administrator test.

(7) How often must certified claims administrators notify the department of changes to their contact information? Certified claims administrators must notify the department within thirty calendar days of the effective date of a change in mailing address, work location, or name. Changes must be reported using the department's online database.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-400 Self-insured workers' rights and obligations. How must a self-insurer notify its workers of their rights and obligations under the industrial insurance laws?

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-420 ((After a self-insured claim is filed.)) Requesting allowance or denial, or interlocutory order from the department—Providing claim file. ((1) What must a self-insurer do when beginning time loss (TL) benefits on a claim?

When	Send to the worker	Send to the department	The department will
On the date of the first TL payment.	A complete and accurate SIF-5 ¹ and SIF-5A ² .		
Within 5 working days of first TL payment.		Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2)) or denial.

Self-insurers must notify workers of their industrial insurance rights and obligations at the following times:

(1) Within thirty days of hire, provide a form substantially similar to the one page Workers' Compensation Filing Information L&I form F207-155-000, or if authorized by the worker provide a link to the form giving electronic access online in lieu of a paper form.

(2) When a worker files a claim, provide the following information in writing:

(a) The current edition of the department's ((pamphlet Employees of Self-Insured Businesses Guide to Industrial Insurance Benefits L&I)) pamphlet P207-085-000 ((or this same information in substantially similar format)), A Guide to Workers' Compensation Benefits for Employees of Self-Insured Businesses, or if authorized by the worker provide a link to the pamphlet giving electronic access online in lieu of a paper pamphlet; and

(b) The name, address, and phone number of the person or organization handling the worker's claim.

AMENDATORY SECTION (Amending WSR 98-24-121, filed 12/2/98, effective 1/2/99)

WAC 296-15-405 Filing a self-insured claim. (1) What form is used to report a self-insured worker's industrial injury or occupational illness?

The reporting form for a self-insured worker's industrial injury or occupational illness is the Self-Insurer Accident Report (SIF-2) L&I form F207-002-000. Self-insurers must obtain these forms from the department and must report their workers' industrial injuries and illnesses to the department with SIF-2s. The department tracks the claim numbers assigned to self-insurers.

When notified of injury or illness, the self-insurer must provide the worker with this prenumbered form and assistance in filing a claim. The self-insurer must provide the worker the designated copy of the completed SIF-2 (which includes an explanation of the worker's rights and responsibilities) within five working days of completion.

(2) What form does a ((doctor)) health care provider use to report a self-insured worker's industrial accident or occupational illness?

Physicians should report a self-insured claim with a ((Physician's)) Provider's Initial Report (PIR) L&I form F207-028-000 when a self-insured worker has an industrial injury or is notified of an occupational illness. Replacements are acceptable.

When	Send to the worker	Send to the department	The department will
			(see subsection (3)) has been received.
If kept on salary ² , within 5 working days of the date the first TL payment would have been due.	A complete and accurate SIF-5 and SIF-5A.	Copies of the SIF-2, SIF-5, and SIF-5A.	Allow the claim UNLESS a request for interlocutory order (see subsection (2) of this section) or denial (see subsection (3) of this section) has been received.

¹ The SIF-5 is the Self-Insurer's Report on Occupational Injury or Disease. Use a form substantially similar to L&I form F207-005-000.

² The SIF-5A is the Time Loss Calculation Rate Notice. Use a form substantially similar to L&I form F207-156-000.

³ If the worker is kept on salary, report the amount of time loss the worker would have been entitled to on the SIF-5.

(2) How must a self-insurer request an interlocutory¹ order?

When requesting an interlocutory order from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60 ² days of claim filing.	A complete and accurate SIF-5 and SIF-5A if TL was paid or if worker was kept on salary.	Copies of the SIF-2, SIF-5 (with the interlocutory order box checked), SIF-5A, AND all records excluding bills AND a reasonable explanation why an interlocutory order is needed.	If it agrees, issue an interlocutory order.	Provisional TL if the worker is eligible AND other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible, and other entitled benefits.

¹ An interlocutory order places a claim in provisional status while the self-insurer investigates the validity of the claim.

² When not specified, time is in calendar days.

(3) How must a self-insurer request claim denial from the department?

When requesting claim denial from the department, a self-insurer must:

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
Within 60 days of claim filing.	SIF-4. ¹ Copy to the attending or treating doctor.	SIF-4 AND all records excluding bills.	If it agrees, issue a denial order. The denial order will restate the self-insurer's right to request reimbursement of provisional TL from the worker.	For all medical evaluations and diagnostic studies used to make the determination.
			If it finds insufficient information to make a decision, issue an interlocutory order AND direct the employer to obtain the necessary information.	Provisional TL if the worker is eligible and other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.

When	Send to the worker	Send to the department	The department will	And the self-insurer pays
			If it disagrees, issue an allowance order if the facts show the claim should be allowed.	TL if the worker is eligible AND other entitled benefits.

† The SIF-4 is the Self-Insured Employer's Notice of Denial of Claim. Use a form substantially similar to L&I form F207-163-000.))

(1) How must a self-insurer request claim allowance on a time-loss compensation claim?

Within sixty days of notice of claim, a self-insurer must:

(a) Send a department-developed form¹ requesting allowance to the department (may be submitted electronically or paper copy), and attach copies of the SIF-2 and SIF-5A². The department will allow the claim unless a request for interlocutory order (see subsection (2) of this section) or denial (see subsection (3) of this section) has been received.

(b) If the injured worker is kept on salary, send copies of the department-developed form³ and SIF-5A within five working days of the date the first time-loss payment would have been due. The department will allow the claim UNLESS a request for interlocutory order (see subsection (2) of this section) or denial (see subsection (3) of this section) has been received.

¹The department-developed form is the form used to request allowance (formerly SIF-5).

²The SIF-5A is the time-loss calculation rate notice. Use a form substantially similar to L&I form F207-156-000.

³If the worker is kept on salary, report the amount of time loss the worker would have been entitled to on the department-developed form.

(2) How must a self-insurer request an interlocutory order?

When requesting an interlocutory order from the department, a self-insurer must send the department:

(a) A department-developed form requesting interlocutory status to the department (may be submitted electronically or paper copy), and attach copies of the SIF-2, and SIF-5A;

(b) The entire claim file excluding medical bills; and

(c) A reasonable explanation why an interlocutory order is needed.

A self-insurer must pay provisional time-loss if worker is eligible AND other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed. If the department disagrees with the request for an interlocutory order, it will issue an allowance order if the facts show the claim should be allowed.

¹An interlocutory order places a claim in provisional status while the self-insurer investigates the validity of the claim.

(3) How must a self-insurer request claim denial?

(a) Within sixty days of notice of claim, a self-insurer must:

(i) Send a department-developed form requesting denial to the department (may be submitted electronically or paper copy) AND submit the entire claim file excluding bills. The

employer will also notify the worker when a request for denial of the claim is sent to the department.

(ii) Pay for all medical evaluations and diagnostic studies used to make the determination.

(iii) Pay provisional time-loss if the worker is eligible and other benefits as entitled. Ongoing medical treatment and vocational services are NOT PAYABLE unless the claim is allowed.

(b) Upon receipt and after consideration of the request, the department will:

(i) If in agreement, issue a denial order. The denial order will restate the self-insurer's right to request reimbursement of provisional time-loss from the worker.

(ii) If information is insufficient to make a decision, issue an interlocutory order AND direct the employer to obtain the necessary information.

(iii) If it disagrees, issue an allowance order if the facts show the claim should be allowed.

¹The department-developed form (formerly SIF-4) is the form used to request denial.

(4) What if a self-insurer does not request allowance, denial, or an interlocutory order for a claim within sixty days?

If a self-insurer does not request allowance, denial, or an interlocutory order within sixty days, the department will intervene and adjudicate the claim. The department may obtain additional medical information to make the determination. The claim remains in provisional status until the department makes the determination.

The exception to this requirement is the allowance of medical only claims. Self-insurers are not required to request allowance for medical only claims.

(5) Must a self-insurer submit (()) a department-developed form (formerly SIF-5) each time the department requests one?**

Yes. A self-insurer must submit a complete and accurate department-developed form (formerly SIF-5) within ten working days of receipt of a written request from the department.

(6) What must a self-insurer do when the department requests information on a claim by certified mail?

A self-insurer must submit all requested information concerning the claim within ten working days of receipt of the department's request by certified mail.

(7) How long does a self-insurer have to provide a copy of the claim file to the worker or worker's representative?

A self-insurer must provide a copy of the claim file within fifteen days of receiving a written request from the

worker or worker's representative. Unless the worker or representative requests a particular portion of the file, the self-insurer must provide a copy of the entire file.

(8) When may a self-insurer charge a worker or his/her representative for a copy of the claim file?

A self-insurer must provide the first copy of a claim file free of charge. Upon receipt of a subsequent written request, the self-insurer must provide any material not previously supplied free of charge. The self-insurer may charge the worker or any representative a reasonable fee for any material previously supplied.

~~**((9) What must a self-insurer do when it terminates time loss?**~~

~~No later than the date of time loss termination, a self-insurer must notify the worker in writing of the reasons for time loss termination. If termination is based on a release to work not received directly from the worker, attach a copy of the release to the notice.))~~

NEW SECTION

WAC 296-15-425 Communicating to injured workers during the course of the claim. (1) How does a self-insurer communicate claims administration actions to workers?

The self-insurer must communicate in writing using a department-developed template to inform workers of actions involving delivery of benefits.

(2) What is the purpose of the department-developed template?

To provide timely and accurate delivery of benefits and prompt resolution of disputes during the course of a claim (between the allowance and closure of a claim); to promote efficient claims processing that is protective of workers and effective for employers by improving communications to workers, clarifying requirements and providing certainty of claims administration for self-insurers, and streamlining regulatory oversight by the department.

(3) When must a department-developed template be completed and sent to the worker?

Within five days of a claims administrator taking action on a claim involving:

(a) Calculation of the worker's monthly wage that forms the basis for time-loss compensation at time of payment;¹

(b) Starting*, stopping, or denying time-loss compensation;

(c) Acceptance or denial of a condition contended under the claim;

(d) Authorization or denial of treatment requested by a medical provider with specified diagnosis and procedure codes for treatment requiring authorization under WAC 296-20-03001; or

(e) Assessment of an underpayment or overpayment of benefits (from date of knowledge).

*When starting time-loss compensation the self-insurer must send a copy of the department-developed template and SIF-2 to the department.

(4) What is a department-developed template?

A department-developed template is used by the self-insurer to inform a worker of administrative actions on the claim involving delivery of benefits. The template:

(a) Informs the worker of the action being taken, and that if the worker disputes the action the worker should within sixty days write and ask the department to intervene to adjudicate the dispute.

(b) Upon receipt of a dispute, the department will intervene to adjudicate the matter and issue an order in accordance with RCW 51.52.050.

(c) If no dispute is received, then the department will not issue an order, and when the condition of the injured worker has become fixed, the self-insurer may close the claim in accordance with RCW 51.32.055 and WAC 296-15-450. If an overpayment remains unpaid at the time of closure, then upon request, the department will issue an overpayment order in accordance with RCW 51.32.240.

¹When communicating the worker's monthly wage, the department-developed template will serve as a cover letter to the SIF-5A, the time loss calculation rate notice under WAC 296-15-420.

AMENDATORY SECTION (Amending WSR 16-21-074, filed 10/18/16, effective 11/18/16)

WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits? When the department approves a rehabilitation plan, the department will notify the worker in writing of their right to decline further vocational rehabilitation services and elect option 2 benefits. The worker must make an election within the time frame required in WAC 296-19A-600. When the worker elects option 2 benefits, the self-insurer must take the following action within five working days of receiving the worker's request:

~~(1) ((Terminate time loss benefits with proper notification to the worker as required in WAC 296-15-420(9));~~

~~(2) Establish the total amount of the option 2 award and a payment schedule for the option 2 benefits that begins the date time loss is terminated;~~

~~(3)) Submit a Self-Insurance Vocational Reporting Form to the department. The Self-Insurance Vocational Reporting Form must include:~~

~~(a) The total vocational services costs paid since the date the worker was found eligible for services; and~~

~~(b) The option 2 election form signed by the worker((; and~~

~~(e) Documentation that includes the total amount of the option 2 award and payment schedule)).~~

((4)) (2) Upon issuance of a department order confirming the option 2 election, terminate time loss benefits effective the date of the department order with proper notification to the worker as required in WAC 296-15-425, and commence payment of option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than fifteen days after the date time-loss is terminated. Option 2 benefits may be paid before the department issues an order.

AMENDATORY SECTION (Amending WSR 06-06-066, filed 2/28/06, effective 4/1/06)

WAC 296-15-450 Closure of self-insured claims. (1) Who closes self-insured claims?

The department has the authority to close all self-insured claims. Self-insurers have the authority to close certain claims.

Within two years of claim closure on a claim the self-insurer closed, the department may require a self-insurer to pay additional benefits (~~(on a claim the self-insurer closed)~~) if the self-insurer:

- (a) Made ~~((an))~~ a clerical error in benefits paid; ~~((or))~~
- (b) Paid benefits due to mistake of identity or innocent misrepresentation; or
- (c) Violated the conditions of claim closure.

(2) What claims may a self-insurer close?

A self-insurer may close	If the	With time loss?	Other requirements?	With PPD?
Medical only (MO) claims	Claim was filed on or after 07/01/90 and before 08/01/97	Without	None.	Without ¹
Time loss (TL) claims	Claim was filed on or after 07/01/86 and before 08/01/97	With	1. Not if the department issued an order resolving a dispute; AND 2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits. ²	Without ¹
All claims: Medical only (MO) claims Time loss (TL) claims Permanent partial disability (PPD) claims	Claim was filed on or after 08/01/97	With or without	1. Not if the department issued an order resolving a dispute; AND 2. Only if the worker returned to work with the employer of record at the same job or at a job with comparable wages and benefits; ² AND 3. Only if the closing medical report was sent to the attending or treating doctor and 14 ³ days allowed for response.	With or without

¹ A self-insurer may not close a claim with PPD if the injury or illness occurred before 08/01/97.

² Comparable means the wages and benefits are at least ninety-five percent of the wages and benefits received by the worker at the time of injury.

³ When not specified, time is in calendar days.

(3) When a self-insurer is closing a PPD claim, what must it do with the closing medical report?

When a self-insurer is closing a PPD claim, it must send the closing medical report to the attending or treating doctor, and the doctor must be allowed fourteen days to respond. When the attending or treating doctor responds:

Within 14 days	And the doctor AGREES with	And the doctor DISAGREES with	Then the self-insurer	
Within	Fixed and stable and PPD rating		MAY	Close the claim.
Does not respond			MAY	Close the claim
Within or before the order is issued		Fixed and stable	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.

Within 14 days	And the doctor AGREES with	And the doctor DISAGREES with	Then the self-insurer	
Within or before the order is issued	Fixed and stable	PPD rating	MUST	1. Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list; OR 2. Forward the claim to department for closure. The department may require additional medical examinations.
Not within, after the order is issued, but before the order is final		Fixed and stable and/or PPD rating	MUST	Forward the claim including the doctor's response to the department as a protest within five working days of receipt.

(4) What must a self-insurer do with a closing medical report, regardless of who is closing the claim?

A self-insurer must send the closing medical report to the attending or treating doctor. If the doctor responds that he/she does not concur with the results, the self-insurer must:

- (a) Obtain a supplemental medical opinion from (an) examiner(s) listed on the department's approved examiner's list in order to do the closing action itself; OR
- (b) Forward the claim to department for closure. The department may require additional medical examinations.

(5) When a self-insurer is closing a claim, what written notice must it provide to the worker and attending or treating doctor?

At claim closure, a self-insurer must send the closing order to the worker and attending or treating doctor.

- (a) For a MO claim, use a Self-Insurer's Claim Closure Order and Notice substantially similar to F207-020-111.
- (b) For a TL claim, use a Self-Insured Employers' Time Loss Claim Closure Order and Notice substantially similar to F207-070-000. Include a complete and accurate SIF-5 substantially similar to L&I form F207-005-000 with the worker's copy.

(c) For a PPD claim:

- (i) When no TL or loss of earning power (LOEP) was paid, use a form substantially similar to L&I form F207-165-000 (MO with PPD). Include a complete and accurate SIF-5 with the worker's copy.
- (ii) When TL or LOEP was paid, use a form substantially similar to L&I form F207-164-000 (TL with PPD). Include a complete and accurate SIF-5 with the worker's copy.

(6) When a self-insurer is closing a claim, what information must it submit to the department?

A self-insurer must submit to the department:

- (a) MO claim closures by the end of the month following closure. These may be transferred electronically or reported by paper.
 - (i) Closures transferred electronically must be in the department's format.
 - (ii) Closures submitted in paper must include the SIF-2 L&I form F207-002-000 showing the date of closure and any vocational services provided.
- (b) TL and PPD claim closures at the time of closure. Include copies of each of the following:
 - (i) SIF-2 if not previously submitted.

(ii) Closure order.

Note: If no one protests the self-insurer's closure order, it will become final and binding in sixty days, just like a department order.

(iii) A PPD Payment Schedule, if necessary, substantially similar to L&I form F207-162-000.

(A) A payment schedule is required when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(B) The first payment of the PPD award must be paid within five working days of claim closure. Continuing payments must be paid according to the established payment schedule.

(iv) A complete and accurate SIF-5 showing all requirements for closure have been met, any TL or LOEP paid, period of payment, and total amount paid.

(7) ~~((When the department is closing a claim,))~~ What must the self-insurer ~~((submit when requesting claim closure))~~ do to request closure of a claim by the department?

When a self-insurer is asking the department to close the claim, it must submit:

- (a) A complete and accurate ~~((SIF-5; and))~~ department-developed form;
- (b) A transaction record of all time loss payments made; and
- (c) All records not previously submitted to the department excluding bills.

(8) When the department has closed a PPD claim, when must the self-insurer create a payment schedule?

When the department has closed a PPD claim, the self-insurer must create a PPD Payment Schedule substantially similar to L&I form F207-162-000 when the amount of the award is more than three times the state's average monthly wage at the date of injury. At initial/down payment, send copies to the worker and the department.

(9) When the department has closed a PPD claim, when must the self-insurer make the first payment of the award?

When the department has closed a PPD claim, the self-insurer must make the first payment of the award without delay. Continuing payments must be paid according to the established payment schedule.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-15-200 Claims log—Evaluation.

WSR 18-18-083
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 4, 2018, 12:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-086.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology, hair design, barber, esthetics and manicuring.

Hearing Location(s): On October 9, 2018, at 10:30 a.m., at Valley View Library, 17850 Military Road South, SeaTac, WA 98188.

Date of Intended Adoption: October 10, 2018.

Submit Written Comments to: Cameron Dalmas, P.O. Box 9026, Olympia, WA 98507, email plssunit@dol.wa.gov, fax 360-664-2550, by October 8, 2018.

Assistance for Persons with Disabilities: Contact Cameron Dalmas, phone 360-664-6643, fax 360-664-2550, TTY 711, email plssunit@dol.wa.gov, by October 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed language amends rules to allow the department to:

- Establish and administer a trust recovery fund no later than January 2019 to provide relief to students in the event of a school closure;
- Adopt a schedule for collecting fees to reach the amount determined within five years from the effective date of the act.

Reasons Supporting Proposal: E2SHB 1439 was passed during the 2018 legislative session requiring the department of licensing to establish rules.

Statutory Authority for Adoption: Section 9, E2SHB 1439, RCW 18.16.030, 43.24.086.

Statute Being Implemented: Chapter 18.16 RCW.

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

Name of Proponent: Department of licensing, cosmetology program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6647.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department is exempt under RCW 34.05.328 and this rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's

analysis showing how costs were calculated. This rule proposal, or portions of the proposal, is exempt under RCW 19.85.030 (1)(a) because it does not impose more-than-minor costs on businesses as defined in RCW 19.85.020. This rule establishes a fee for cosmetology schools for the purposes of funding a tuition recovery trust fund as required in E2SHB 1439 (2018). The proposed fee will be sixteen hundredths of a percent (.16% or .0016) of annual tuition which is less than the definition of minor costs, or three-tenths of one percent (.3% or .003) of annual revenue or income, as defined in RCW 19.85.020.

September 4, 2018
 Damon Monroe
 Rules Coordinator

NEW SECTION

WAC 308-20-580 Tuition recovery trust fund (TRTF). (1) TRTF funding.

(a) Upon submission of an initial school license application, a deposit of three hundred dollars into the TRTF is required. A change in school location does not exempt the school from the initial application deposit.

(b) Upon submission of a renewal application, a deposit of .16% (.0016) of the school's gross annual tuition for the previous calendar year into the TRTF is required.

(c) Renewal applications for schools whose gross annual tuition for the previous calendar year is zero, will be required to deposit twenty-five dollars into the TRTF.

(d) Failure to submit a deposit is grounds for denial of a renewal application.

Initial application deposit	\$300
Renewal deposit	.16% of previous calendar year gross annual tuition
Renewal deposit (if gross annual tuition is zero)	\$25

(2) The department shall periodically review the fund balance to ensure the fund is of a sufficient balance.

(3) The department will attempt to notify all potential claimants within thirty days of receiving closure notification from a school.

(4) Students will have three years from the last date of attendance at the school to file a claim. Claims must be submitted in writing to the department of licensing.

(5) After verification and review, the department shall disburse funds from the TRTF to settle claims for an amount up to the value of unearned prepaid tuition.

(6) Schools will notify students of the TRTF program.

WSR 18-18-091
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed September 4, 2018, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-085.

Title of Rule and Other Identifying Information: The department is amending WAC 388-78A-2190 Activities of daily living.

Hearing Location(s): On October 9, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than October 10, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 9, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 25, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-78A-2190 to assure compliance with SHB 1671 (chapter 201, Laws of 2017), which requires the term "medication assistance" to be added to the "activities of daily living" which currently includes bathing, dressing, eating, personal hygiene, transferring, toileting, and ambulation and mobility.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: RCW 18.20.310.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2591.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.328 (5)(b)(v).

Explanation of exemptions: This proposal implements changes from the 2017 legislative session (chapter 201, Laws of 2017).

August 29, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2190 Activities of daily living. Assistance with activities of daily living is ~~((an optional))~~ a service that the assisted living facility may provide.

(1) If an assisted living facility chooses not to provide assistance with activities of daily living:

(a) The assisted living facility must admit or retain only those residents who are independent in activities of daily living; except that

(b) A resident, or the resident's representative, may independently arrange for outside services to assist with activities of daily living.

(2) When an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the assisted living facility must provide that assistance consistent with the reasonable accommodation requirements in state and federal laws.

(3) When an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the assisted living facility must provide to each resident, consistent with the resident's assessed needs, minimal assistance with the following activities of daily living:

(a) **Bathing:** Minimal assistance with bathing means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to wash and dry all areas of the body as needed;

(ii) Stand-by assistance getting into and out of the tub or shower; and

(iii) Physical assistance limited to steadying the resident during the activity.

(b) **Dressing:** Minimal assistance with dressing means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to put on, take off, or lay out clothing, including prostheses when the assistance of a licensed nurse is not required;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(c) **Eating:** Minimal assistance with eating means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to eat and drink; and

(ii) Physical assistance limited to cutting food up, preparing food and beverages, and bringing food and fluids to the resident.

(d) **Personal hygiene:** Minimal assistance with personal hygiene means the assisted living facility must provide the resident with occasional:

(i) Reminding and cuing to comb hair, perform oral care and brush teeth, shave, apply makeup, and wash and dry face, hands and other areas of the body;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(e) **Transferring:** Minimal assistance in transferring means the assisted living facility must provide the resident with occasional:

(i) Reminders or cuing to move between surfaces, for example to and from the bed, chair and standing;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during self-transfers.

(f) **Toileting:** Minimal assistance in toileting means the assisted living facility must provide the resident with occasional:

(i) Reminders and cuing to toilet, including resident self-care of ostomy or catheter, to wipe and cleanse, and to change and adjust clothing, protective garments and pads;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(g) **Mobility:** Minimal assistance in mobility means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to move between locations on the assisted living facility premises;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity; and

(h) **Medication assistance:** As defined in RCW 69.41.-010.

(4) The assisted living facility may choose to provide more than minimal assistance with activities of daily living consistent with state and federal law.

WSR 18-18-093

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 5, 2018, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-181.

Title of Rule and Other Identifying Information: Chapter 504-04 WAC, Practice and procedure and chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): On October 16, 2018, at 4:00 p.m., at Lighty 405, Washington State University (WSU) Pullman, Pullman, Washington; SAC 503A, WSU Spokane, Spokane, Washington; East 212, WSU Tri-Cities, Richland, Washington; VECS 122, WSU Vancouver, Vancouver, Washington; and Seminar Room 461, WSU Everett, Everett, Washington.

Date of Intended Adoption: November 16, 2018.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 16, 2018.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 12, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the rules regarding standards of conduct for students, chapter 504-26 WAC, and the rules regarding practice and procedure, chapter 504-04 WAC.

Reasons Supporting Proposal: The proposed amendments modify, clarify, and update the student conduct procedures in the university's standards of conduct for students and rules regarding practice and procedure, including, but not limited to, student conduct hearings and appeals. The proposed amendments include, but are not limited to, changes to incorporate legal requirements and help ensure that students' rights are well protected throughout the process, while also protecting the university community and holding individuals accountable for violations.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is necessary because of federal law, Title IX of the Civil Rights Act of 1964.

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Senior Assistant Attorney General, Attorney General's Office, WSU Division, French Administration 332, Pullman, Washington 99164-1031, 509-335-2636; Implementation and Enforcement: Mary Jo Gonzales, Vice President, Student Affairs, French Administration 134, Pullman, Washington 99164-1013, 509-335-4531 and Stacy Pearson, Vice President, Finance and Administration, French Administration 442, Pullman, Washington 99164-1048, 509-335-2600.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025.

Explanation of exemptions: The amendments to WSU student conduct code only apply to students at WSU, and therefore do not effect business or commerce in any way.

September 5, 2018

Deborah L. Bartlett, Director
Procedures, Records, and Forms

and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-010 Matters subject to brief adjudication. The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) Student conduct proceedings ~~(-Student conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter), except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization. The procedural rules of chapter 504-26 WAC apply to all student conduct proceedings.~~

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of ~~((admissions))~~ the registrar.

(3) Appeals of parking violations. Appeals of parking violations are brief ~~((adjudicatory))~~ adjudicative proceedings conducted pursuant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. ~~((§))~~ Sec. 1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of ~~((scholarships and))~~ student financial ((aid)) services.

(6) ~~((Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.~~

(7) ~~((Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees ((shall be)) are brief adjudicative proceedings.~~

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings. The president of Washington State University or his or her designee ~~((shall have))~~ has the power to appoint members of the faculty, staff, and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the

presiding officer, one person shall be designated by the president or ~~((president's))~~ designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter ~~((shall be))~~ is read in the plural when the context demands.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-110 Adoption of model rules of procedure for formal (full) ~~((proceedings))~~ adjudications— Exceptions. In formal ~~((proceedings))~~ adjudications (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC, with the following exceptions ~~((and modifications))~~:

(1) WAC 10-08-190 Adjudicative proceedings—Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

(2) ~~((WAC 10-08-040 Adjudicative proceedings— Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.~~

(3) ~~The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s) if the complainant(s) notifies the university that she/he wishes to participate as a party.~~

(4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX, the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(5) Cross examination. As required by RCW 34.05.449, ~~cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record. At the request of either participating party in a student conduct matter implicating Title IX, the requesting party shall be permitted to participate remotely, or in a different room, in accordance with chapter 504-26 WAC.~~

(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted

in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.

(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.

(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initiative, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty one days, or the day after the appeal period specified in the initial order, whichever is sooner.)) Chapter 504-26 WAC sets forth exceptions and modifications to the model rules of procedure for formal hearings involving student discipline.

(3) The university's faculty manual sets forth exceptions and modifications to the model rules of procedure for formal hearings involving faculty discipline.

(4) Other procedural rules adopted in this title and this chapter are supplementary to the model rules. In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university ((shall)) govern.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-120 Confidentiality of student, faculty, and staff formal adjudicative proceedings. In formal adjudicative proceedings, the presiding officer ((shall have)) has the power to close all or part of the hearing to public observation. The presiding officer ((shall have)) has the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also ((shall have)) has the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or ((medical withdrawal)) administrative cancellation of enrollment, hearings ((with)) are normally ((be)) closed to public observation. In student conduct matters implicating Title IX, hearings ((will be)) are closed to public observation.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding ((shall have)) has the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns ((pursuant to

admission to practice rule 9, shall be)), are permitted to act as ((a)) representatives at the proceedings. The presiding officer ((shall have)) has the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-04-140 Discovery. Discovery in formal hearings may be permitted at the discretion of the presiding officer, ((except as provided in WAC 504-04-110(6))) unless specific limitations apply. In permitting discovery, reference ((shall)) must be made to the civil rules applicable in court proceedings for guidance.

The presiding officer ((shall have)) has the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

PART I

GENERAL MATTERS

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-001 Preamble. Washington State ((University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct.)) University's long-standing commitment to providing students with a transformational experience continues with a focus on enhancing the quality and relevance of the learning experience, providing more personalized student services, expanding learning opportunities outside the classroom, and developing a more cohesive student community. To this end, students are expected to uphold and be accountable ((for these)) to high standards ((both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these)) of conduct that foster a safe, healthy, and inclusive campus community. The basic philosophy behind the student conduct standards and processes is one of education, centered on student learning through personal development and accountability. Therefore, the student conduct process is designed to guide and correct behaviors, challenge students to make better choices, and protect the rights and safety of all students, the university, and the community at large.

The university strives to provide a fair process for every student without bias or favor regardless of socioeconomic status, connections, race, color, creed, religion, national or ethnic origin, sex/gender, sexual orientation, gender identity/expression, age, marital status, disability, genetic information, or status as an honorably discharged veteran or member of the military. It also has responsibility to inform and educate the university community, parents, and the public at large on these standards, uphold them, and exercise the

authority to take educational and/or disciplinary action accordingly.

Correspondingly, students have the responsibility to read and be familiar with the standards of conduct ((this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community)), to abide by them, and to understand that violation of these standards, if the student is found responsible, will result in disciplinary and/or educational sanctions. The vice president for student affairs is the person designated by the university president to be responsible for the administration of the standards of conduct.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-010 Definitions. ~~((1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).~~

(2) The term "a) For purposes of this conduct code, the following definitions apply:

(1) Academic integrity hearing board. Teaching faculty and student representatives who, collectively, are authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(2) Appeals board ("means any person or persons authorized by the vice president for student affairs)). The group of students, faculty, and staff, collectively, authorized in accordance with WAC 504-26-115 to consider ((an)) appeals from a university conduct board's or conduct officer's determination((- or a determination after a full adjudication,)) as to whether a student has violated the standards of conduct ((for students)) and any sanctions imposed.

(3) ((The term "-)) Brief adjudication. The process by which a conduct officer may adjudicate student conduct matters involving possible sanctions, other than matters involving suspension for more than ten instructional days, expulsion, loss of recognition, or revocation of degree. Also referred to as a "conduct officer hearing" or "brief adjudicative proceeding."

(4) Cheating((-)). Includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact((;)). The office of research must be consulted in matters involving alleged research misconduct as that term is defined in the university's executive policy 33.

(ii) Counterfeiting a record of internship or practicum experiences((;)).

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the ((office of student conduct)) center for community standards. The policy for responding to allegations of scientific misconduct (executive policy 33) may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(((4) The term "-)) (5) Complainant("means any party)). Any person who is the alleged victim of prohibited student conduct, whether or not such person has made an actual complaint. Any individual, group, or entity, including the university, who submits a ((charge)) complaint alleging that a student or a registered or recognized student organization violated the standards of conduct ((for students.

((5) The term "-)).

(6) Conduct board. The group of students, faculty, and staff, collectively, authorized to adjudicate certain student conduct matters in accordance with WAC 504-26-110.

(7) Conduct officer. A university official authorized by the vice president for student affairs to initiate, manage, and/or adjudicate certain student conduct matters in accordance with WAC 504-26-401 and 504-26-402.

(8) Faculty member((")). For purposes of this chapter, ((means)) any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

((6) The term ") (9) Full adjudication. The process by which a conduct board adjudicates matters involving possible suspension of greater than ten instructional days, expulsion, loss of recognition, revocation of degree, or other matters as determined by the university. Also referred to as "formal adjudication," "formal (or full) adjudicative proceeding," or "conduct board hearing."

(10) Gender identity((" means)). Having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

((7) The term "may" is used in the permissive sense.

(8) The term ") (11) Member of the university community((")). Includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university, including guests of and visitors to the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

((9) The term "policy" means)) (12) Parties. The parties to a student conduct proceeding must include the university and the respondent. The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 must include the complainant(s), if the complainant(s) notifies the university in writing that they wish to participate as a party. The university may designate other complainants, individuals or recognized or registered student organizations as parties to conduct proceedings, or allow individuals or recognized or registered student organizations to intervene in conduct proceedings.

(13) Policies. The written rules and regulations of the university as found in, but not limited to, the standards of conduct ((for students)) university policy manuals, residence life handbook, ((the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term ") academic regulations, and the university's graduate, undergraduate, and professional catalogs and other publications, including electronic publications.

(14) Recognized or registered student organization((" means any number of persons who have)). A group of students, collectively, that has complied with the formal requirements for university recognition or registration.

((11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons)) (15) Respondent. A student or recognized or registered student organization accused of violating these standards of conduct.

(16) Student. Any person taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct ((for students)), who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, ((although)) even if not enrolled ((in this institution.

((13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students)).

((14) The term "university" means)) (17) University. Includes all locations, premises, programs, and operations of Washington State University.

((15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term ") (18) University official((" includes)). Any person employed by the university, performing assigned administrative or professional responsibilities.

((18) The term ") (19) University premises((" includes)). All land, buildings, facilities, vehicles, web sites, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks), including its study abroad program sites, as well as university-sponsored or hosted online platforms.

((19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.))

NEW SECTION

WAC 504-26-015 Jurisdiction and applicability—Relationship to other proceedings. (1) General. The standards of conduct apply to conduct that occurs on university premises or in connection with university sponsored activities, including transit to or from the activity.

(2) Off-campus conduct. In addition to subsection (1) of this section, the standards of conduct may apply to conduct that occurs off university premises and not in connection with university-sponsored activities, if the conduct adversely affects the health and/or safety of the university community or the pursuit of the university's vision, mission, or values.

(a) The university has sole discretion to make this determination. In making this determination, the conduct officer considers whether the alleged conduct:

(i) Required exercise of jurisdiction under law or as required by federal or state agencies;

(ii) Negatively impacted the reputation of the university or its students;

(iii) Occurred on the property of recognized or registered student organizations;

(iv) Caused physical, mental, or emotional harm to another; or

(v) Was recognized by onlookers, complainants, or witnesses as being carried out by a student or recognized or registered student organization.

(b) When the university chooses to exercise jurisdiction for off-campus conduct not in connection with a university-sponsored activity, the parties must be notified in writing of the decision and the reasons for the decision, and their right to appeal the decision to the vice president for student affairs or designee. Challenges to jurisdiction must be in writing and filed within five calendar days from the date the notice is sent. In cases implicating Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct, the vice president for student affairs or designee must consult with the university's Title IX coordinator.

(3) Online conduct - Electronic communications. These standards of conduct may be applied to behavior conducted online, via electronic mail, text message, or other electronic means.

(4) Time frame for applicability. Each student is responsible and accountable for their conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates.

(5) Group accountability. Recognized or registered student organizations that violate university policies and the standards of conduct are subject to sanctions. A recognized or registered student organization may be held accountable for the behavior of its officers, members, or guests when the university demonstrates that:

(a) The organization or its officers should have foreseen that behavior constituting a violation was likely to occur, yet failed to take reasonable precautions against such behavior;

(b) A policy or practice of the organization was responsible for a violation; or

(c) The behavior constituting a violation was committed by, condoned by, or involved a significant number of organizational officers, members, or guests.

(6) International and national study programs. Students who participate in any university-sponsored or sanctioned international or national study program must observe the following rules and regulations:

(a) The laws of the host country and/or state;

(b) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(c) Any other agreements related to the student's study program; and

(d) These standards of conduct.

(7) Academic and professional standards. Nothing in these standards of conduct is to be construed as limiting academic action that may be taken by a program or other academic unit against a respondent who, based on an established violation of these standards or otherwise, demonstrates a failure to meet the academic and/or professional standards of the program.

(8) Relationship between student conduct process and other legal processes. The university is not required to stay student conduct proceeding pending any criminal or civil proceeding, nor must the disposition of any such criminal or civil proceeding control the outcome of any student conduct proceeding. Respondents may choose to remain silent during conduct proceedings, in accordance with WAC 504-26-045.

NEW SECTION

WAC 504-26-020 Advisors and representatives. (1)

Advisors. Any party may have an advisor of their choice present during all stages of a conduct process. Upon a party's request, a list of trained advisors from outside the office of the dean of students (and those offices reporting to the dean of students) is provided. Advisors may assist any party engaged in the conduct process and attend conferences, meetings, and hearings. Advisors may not be witnesses to the alleged behavior. Students should select an advisor whose schedule allows for attendance at the scheduled date and time of the informational meeting and/or hearing, because delays are not normally allowed due to scheduling conflicts of the advisor.

(2) Communication with the center for community standards. Advisors and representatives may communicate directly with the center for community standards to receive information on dates and times of meetings, status of conduct processes, and outcomes. As a condition of participation in the conduct process, the center for community standards may require advisors and representatives to sign a statement agreeing to comply with legal requirements and university rules including, but not limited to, requirements related to confidentiality of student information.

(3) Advisors in conduct meetings and hearings. During any conduct process, breaks may be taken, within reason, to allow a party to consult with their advisor. However, advisors are not permitted to speak on behalf of parties.

(4) Representatives. A party may choose to be represented during a full adjudication, at their own expense. Only persons currently admitted to practice law, including licensed legal interns, are permitted to act as representatives. In conduct board hearings, questions regarding logistical and administrative issues are to be directed to the presiding officer, who may impose reasonable conditions upon participation of advisors and representatives.

NEW SECTION

WAC 504-26-025 Confidentiality and participation in student conduct hearings. Student conduct meetings and hearings are closed to public observation. The parties and their advisors or representatives may attend the entire hearing, excluding deliberations. Admission of any other person

to the hearing is at the discretion of the conduct officer or presiding officer, as applicable. For convenience, or to accommodate concerns for the personal safety, well-being, or fears of confrontation of any party or witness, the conduct officer or presiding officer may allow participation remotely, in separate rooms, or by other means.

NEW SECTION

WAC 504-26-030 Consolidation. In any student conduct matter in which there are common issues or parties, the parties may request, or the conduct officer or presiding officer may decide, to consolidate the proceedings. This decision is within the sole discretion of the conduct officer or presiding officer.

NEW SECTION

WAC 504-26-035 Service and notification. Service of all university notices under this chapter is sent by electronic mail addressed to the party's university-issued email address or, if the party does not have a university-issued email address, to the email address on record with the university. Service is complete when the email is sent to the email address. Service may also be accomplished by personal delivery or regular U.S. mail. Notifications via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar, and service is complete on the date the notice is placed in the mail. The student is responsible for maintaining an updated mailing address on file with the registrar. Recognized or registered student organizations are responsible for updating their mailing address on file with the center for fraternity and sorority life, university recreation, or student involvement. Deadlines described in this chapter begin the date the notification is sent via email, personally delivered, or placed in regular U.S. mail.

NEW SECTION

WAC 504-26-040 Presumptions and standard of proof. All students and registered or recognized student organizations are presumed "not responsible" for alleged violations. Any violation must be proven by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred. As part of the university's opening statement in any conduct board hearing, the university's representative must read a statement to this effect.

NEW SECTION

WAC 504-26-045 Evidence. (1) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence. The sexual history of a complainant is not admissible in a student conduct proceeding except to the extent permitted by evidence rule 412 and RCW 34.05.452 (stating that presiding

officers must refer to the Washington rules of evidence as guidelines for evidentiary rulings).

(2) Students may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No student must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a student's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

NEW SECTION

WAC 504-26-050 Interim measures. (1) While a student conduct matter is pending, the university may take a number of interim actions in order to ensure the preservation of the educational experience and the overall university environment of the parties. These actions may include, but are not limited to:

- (a) A no-contact order imposed on any party;
- (b) University housing room change for one or more involved parties;
- (c) Changes in academic schedules or assignments for one or both parties.

(2) As stated in the university's housing policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.

(3) University departments taking interim measures must coordinate with the center for community standards, which advises the parties of the interim measures and the process for challenging them. For matters involving the university's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct, the departments must also consult with the university's office for equal opportunity regarding interim measures. Interim measures are not sanctions and do not imply or assume responsibility for a violation of the standards of conduct.

((ARTICLE I

AUTHORITY FOR STANDARDS OF CONDUCT FOR STUDENTS)) PART II

OFFICERS AND BOARDS

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-100 ((Composition of conduct and appeals boards.)) Presiding officers. ((1) The university) Full adjudicative proceedings are conducted by the conduct board ((shall be composed of five individuals appointed by the vice president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairper-

son of the conduct board shall be named by the vice president for student affairs and shall be a university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

~~(2) The appeals board shall be appointed by the vice president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students. Three persons constitute a quorum of the appeals board.)~~ and are presided over by an individual who is licensed to practice law in the state of Washington and has judicial training. The presiding officer's role is to ensure a fair and impartial process and is limited to making procedural and evidentiary rulings and handling logistical and other matters related to facilitating the proceedings to ensure compliance with legal requirements. The presiding officer must transmit a full and complete record of the proceedings to the center for community standards and the conduct board, including such comments upon demeanor of witnesses as the presiding officer deems relevant, in accordance with RCW 34.05.461. The presiding officer does not vote and is not considered for purposes of creating a quorum of the conduct board.

NEW SECTION

WAC 504-26-105 Recruitment, appointment, and term of conduct and appeals board members. A committee comprised of students, staff, and faculty members and convened by the vice president for student affairs selects a pool of members of the university community to serve as conduct board members, as well as a separate pool for appeals board members. Each pool must include representatives from all WSU campuses. Board members are appointed by the university president and must be in good standing with the university. Board members serve a maximum term of four calendar years but may apply to serve another four-year term after a break of two years. Terms of board members are staggered. Boards are convened by the vice president for student affairs or designee. The center for community standards is not involved in the recruitment or application processes for board members.

NEW SECTION

WAC 504-26-110 Composition of conduct board. A conduct board must consist of five members. A quorum of five is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A majority of conduct board members hearing a matter must be enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

NEW SECTION

WAC 504-26-115 Composition of appeals board. The appeals board must consist of three members. A quorum of three is needed to review a matter. A majority of appeals board members hearing a matter must be enrolled WSU students (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. No appeals board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent. The vice president for student affairs or designee is responsible for designating one of the three appeals board members as chair. The chair is responsible for ensuring a fair and impartial process and is a voting member of the appeals board.

NEW SECTION

WAC 504-26-120 Training. (1) Board members and presiding officers. Conduct board members, appeals board members, and presiding officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:

- (a) Cultural competency and implicit bias;
 - (b) Student development and student conduct philosophies, including the educational component of the student conduct process;
 - (c) Identifying bias against individuals and against groups;
 - (d) Conflict of interest;
 - (e) Sexual assault and gender-based violence;
 - (f) Alcohol and drug prevention;
 - (g) Due process and burden of proof in student conduct matters; and
 - (h) Sanctioning principles and guidelines.
- (2) Conduct officers. Conduct officers must not participate in any student conduct matter until, at a minimum, training in the following areas has been completed:
- (a) Alternative dispute resolution;
 - (b) Restorative justice; and
 - (c) All training required of board members (see subsection (1) of this section).
- (3) Renewal of training. Training must be renewed on an annual basis.

NEW SECTION

WAC 504-26-125 Recusal. (1) Notification of names of conduct officers and board members. All parties must be notified of the names of conduct officers, conduct board members, and/or appeals board members assigned to their case no later than ten calendar days prior to the hearing or appeals board meeting date, unless the parties agree to a shorter period.

(2) Requesting recusal of conduct officers and board members. A party requesting recusal of a conduct officer or conduct/appeals board member must demonstrate good cause. The request must be made in writing no later than five calendar days prior to the date of the conduct hearing or appeals board meeting. For conduct board members, the pre-

siding officer is responsible for granting or denying requests. For conduct officers and appeals board members, the vice president for student affairs or designee is responsible for granting or denying requests.

(3) Presiding officer. Requests for recusal of the presiding officer are governed by the model rules of procedure, WAC 10-08-050(2).

(4) Self-recusal in the event of conflict of interest. Conduct officers and board members must be trained in conflict of interest. For any matter in which they are participating, if they identify a potential conflict of interest, appeals board members and conduct officers must promptly notify and consult with the vice president for student affairs or designee, while conduct board members must promptly notify and consult with the presiding officer. Conduct officers and board members must recuse themselves if, after consultation, an actual conflict is determined to exist. If a potential conflict is identified but is determined by the vice president or designee or presiding officer, as applicable, to be insufficient to justify removal of the person, the parties must be notified of the potential conflict and reasons for determining that it does not pose an actual conflict. For purposes of this subsection, a conflict of interest is defined as a personal interest, financial, familial, or otherwise, that might impair, or reasonably appear to an objective, outside observer to impair, a person's independent unbiased judgment in the discharge of their official responsibilities.

~~((ARTICLE H~~

~~PROSCRIBED)) PART III~~

PROHIBITED CONDUCT

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or recognized or registered student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through 504-26-230) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 07-11-030, filed 5/8/07, effective 6/8/07)

WAC 504-26-203 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of others or disrupt the university's activities. Prohibited behavior includes: Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other university activities, including its public service functions on or off campus, or of other authorized nonuniversity activities when the conduct occurs on university premises or is directed toward any member of the university community (~~((members))~~) by any means including use of telephone, computer, or some other medium.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-204 Abuse of others or disruption or interference with the university community. Abuse of others or disruption or interference with the university community includes, but is not limited to:

(1) Physical abuse, threats, intimidation, and/or other conduct that threatens, endangers, harms, or undermines the health, safety, or welfare of the university community or any person, including, but not limited to, domestic or intimate partner violence.

(2) Conduct that disrupts the university community or prevents (~~((other students, employees, or guests of))~~) any member of the university community from completing their duties.

(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-206 Hazing. (1) No student or recognized or registered student organization at Washington State University may conspire to engage in hazing or participate in hazing of another.

(a) Hazing includes any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include but are not limited to the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and NCAA athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law also prohibits hazing which may subject violators to criminal prosecution. As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any method of initiation into a recognized or registered student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary education institution in this state.

(3) Washington state law (RCW 28B.10.901) also provides sanctions for hazing:

(a) Any person who violates this rule, in addition to other sanctions that may be imposed, (~~((shall))~~) forfeits any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the university.

(b) Any recognized or registered student organization (~~(association, or student living group)~~) that knowingly permits hazing by its members or others subject to its direction or control (~~(shall)~~) must be deprived of any official recognition or approval granted by the university.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-213 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university (~~(property)~~) premises or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. Students wishing to maintain a firearm on campus for hunting or sporting activities must store the firearm with the Washington State University department of public safety.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-214 Disruptive activity. Participating in an on-campus or off-campus riot or unlawful assembly that disrupts the normal operations of the university and/or infringes on the rights of other members of the university community; leading or inciting others to disrupt scheduled and/or normal activities within any (~~(campus building or area)~~) university premises. For peaceful demonstrations, students should consult with university police for safety guidelines.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system including, but not limited to:

(1) Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.

(2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.

(3) Disruption or interference with the orderly conduct of a university conduct board proceeding.

(4) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.

(5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.

(7) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board, any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.

(8) Failure to comply with or failure to complete any term or condition of any disciplinary sanction(s) imposed under the standards of conduct (~~(for students)~~).

(9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.

(10) Violation of probation or any probationary conditions.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-220 Discrimination and discriminatory harassment. Discrimination or discriminatory harassment on the basis of race; sex/gender; sexual orientation; gender identity/expression; religion; age; color; creed; national or ethnic origin; physical, mental, or sensory disability (including disability requiring the use of a trained service animal); marital status; genetic information; and/or status as an honorably discharged veteran or member of the military; and as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-225 Trespassing. Knowingly entering or remaining unlawfully in or on university premises or any portion thereof. Any person who has been given notice by a university official of the university's decision to exclude him or her from all or a portion of the university (~~(property)~~) premises is not licensed, invited, or otherwise privileged to enter or remain on the identified portion of university (~~(property)~~) premises, unless given prior explicit written permission by university administration.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-227 Sexual harassment. Sexual harassment includes behavior defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-230 Retaliation. Retaliation includes any act that would dissuade a reasonable person from making or supporting a complaint, or participating in an investigation, under the standards of conduct (~~(for students)~~) (this chapter). Retaliatory behavior includes action or threat of action that could negatively affect another's employment, education, reputation, or other interest. It also includes retaliation as defined in Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

~~((ARTICLE III~~~~RULES AND REGULATIONS))~~~~((ARTICLE)) PART IV~~~~((STANDARDS OF CONDUCT FOR STUDENTS))
PROCEDURES~~

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-401 ((Complaints and student)) Initiating conduct ((process)) proceedings. (1) Complaints. Any member of the university community may ((file)) submit a complaint against a student or recognized or registered student organization for violations of the standards of conduct ((for students).

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if)). In addition, the university may initiate conduct proceedings when it receives any direct or indirect report of conduct that may violate the standards of conduct.

(2) Decision not to refer the matter for hearing. After reviewing the initial information, if the conduct officer determines that further conduct proceedings are not warranted, the conduct officer dismisses the matter. If the conduct officer decides not to initiate a conduct proceeding when requested by a complainant, the conduct officer must notify the complainant in writing of the decision, the reasons for the decision, and how to seek review of the decision. Conduct matters may be reopened if new relevant information becomes known.

(3) Notice of informational meeting. After reviewing initial information regarding a possible student conduct violation, if the student conduct officer decides conduct proceedings are warranted, the student conduct officer sends the respondent written notice of an informational meeting. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific conduct code provisions(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of the meeting. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 (Interpretation—Policies, procedures, and

guidelines) must be provided. If there is a possibility that the initial meeting could be converted into a conduct officer hearing, the notice must include a statement to this effect. Any request to change or extend the time or date of the informational meeting should be addressed to the conduct officer.

(4) Purpose of informational meeting. The purpose of the informational meeting is to provide the respondent with information on the conduct process and their rights and responsibilities, and to determine next steps, if any, in resolving the matter. During the informational meeting, the respondent may provide names of witnesses to the conduct officer to potentially contact. In cases involving Title IX, an informational meeting is also offered to a complainant.

(5) Agreement and alternative dispute resolution. A conduct officer may resolve a matter by agreement. Agreements may be reached directly or through alternative dispute resolution. In cases where agreement is not reached directly, before referring the matter to a hearing, the conduct officer must consider, and make a written determination, whether alternative dispute resolution is appropriate to resolve the matter. Alternative dispute resolution must not be used in matters involving sexual misconduct or sexual harassment. When resolution of a matter is reached by agreement or alternative dispute resolution, the agreement must be in writing and signed by the parties and the conduct officer. In the agreement, the parties must be advised in writing that:

(a) The disposition is final and they are waiving any right to a hearing on the matter, including any right to appeal; and

(b) If any party decides not to sign the agreement, and the matter proceeds to a hearing, neither the agreement nor a party's refusal to sign will be used against either party at the hearing.

(6) Referral for adjudication. After the informational meeting, if the conduct officer determines that a conduct hearing is warranted, and the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing ((or referred for a)) (brief adjudication) in accordance with WAC 504-26-402, or conduct board hearing (full adjudication) in accordance with ((chapter 504-04 WAC.

(a) If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, the matter is referred for a full adjudication in accordance with chapter 504-04 WAC.

(b) Matters other than those listed in (a) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the

accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence)) WAC 504-26-403. In determining which process is appropriate, the conduct officer considers factors including, but not limited to, the nature and severity of the allegations, the respondent's past contacts with the center for community standards, and the range of possible sanctions that could be imposed. A student may request that a conduct board hear the case, but the final decision regarding whether to refer the matter to the conduct board for hearing is made by the conduct officer and is not subject to appeal.

AMENDATORY SECTION (Amending WSR 17-13-049, filed 6/15/17, effective 7/16/17)

WAC 504-26-402 Conduct officer ((actions)) **hearings (brief adjudications).** (((1) Any student alleged by a conduct officer to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of)) (1) The majority of student conduct matters are adjudicated through conduct officer hearings. However, conduct officer hearings are not used to adjudicate matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree or when a recognized or registered student organization faces possible loss of recognition. In addition, conduct officer hearings generally are not used to adjudicate matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221.

(2) Notice of hearing. The conduct officer must provide the parties with written notice no later than ten calendar days prior to the conduct officer hearing, unless the parties agree in writing to a shorter notice period. The notice must, at a minimum, briefly describe the factual allegations or issues involved, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violations, and the time, date, and place of ((a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5))) the hearing. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided. The notice must also include:

(a) A jurisdiction statement if the alleged behavior occurred off campus and information regarding the right to challenge jurisdiction in accordance with WAC 504-26-015; and

(b) Information regarding the right to request recusal of a conduct officer under WAC 504-26-125.

(c) Any request to extend the time ((and/or)) or date of the conduct officer conference/hearing should be addressed to the conduct officer ((or presiding officer, as applicable).

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing)).

(3) ((After a review of the evidence and interviewing the student(s) involved in the case,)) Hearing and possible outcomes. Conduct officer hearings are brief adjudications conducted in accordance with RCW 34.05.482 through 34.05-494. The hearing allows the conduct officer to review available information, hear the parties' view of the matter, and render a decision regarding responsibility.

(a) Before the hearing begins, the conduct officer must inform the respondent that:

(i) All respondents are presumed "not responsible" for pending charges;

(ii) The university must prove all charges by a preponderance of the evidence, meaning that it is more likely than not that the violation occurred; and

(iii) The parties have the right to have an advisor present at the hearing.

(b) Upon conclusion of the hearing, the conduct officer may take any of the following actions:

~~((a)) (i) Terminate the proceeding and enter a finding that the ~~(accused student or recognized student organization)~~ respondent is not responsible for the alleged conduct violation;~~

~~((b)) (ii) Dismiss the ~~(investigation,)~~ matter with no finding regarding responsibility, in which case the matter may be reopened at a later date if relevant new information ~~(that was unknown to the conduct officer arises)~~ becomes known;~~

~~((c)) (iii) Find the respondent responsible for any violations and impose ~~(appropriate)~~ sanctions ~~(as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct)~~ within the limitations described in subsection (1) of this section; or~~

~~((d)) (iv) Refer the matter ~~(for a full adjudication in accordance with chapter 504-04 WAC.~~~~

~~(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a full adjudication.~~

~~(5) The student is notified in writing of the determination made by) to the conduct board.~~

~~(4) Notice of decision and right to appeal. The conduct officer notifies the parties in writing of the decision within ten ~~(business)~~ calendar days of the ~~(proceeding. The notice)~~ conduct officer hearing. This is the initial order of the university and includes information regarding the ~~(student's)~~ parties' right to appeal ~~(pursuant to WAC 504-26-407)~~ under WAC 504-26-420.~~

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

WAC 504-26-403 Conduct board ~~(proceedings)~~ hearings (full adjudications). ~~((1) Any student charged by a conduct officer with a violation of any provision of the standards of conduct for students that is to be heard by a conduct board is provided notice as described in WAC 504-26-401 (5).~~

~~(2) The written notice shall be completed by the conduct officer and shall include:~~

~~(a) The specific complaint, including the university policy or regulations allegedly violated;~~

~~(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;~~

~~(c) The time, date, and place of the hearing;~~

~~(d) A list of the witnesses who may be called to testify, to the extent known;~~

~~(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.~~

~~(3) Time for hearings:~~

~~(a)) (1) Conduct board hearings are used in matters in which the respondent faces possible sanctions of suspension for more than ten instructional days, expulsion, or revocation of degree and matters in which a recognized or registered student organization faces possible loss of recognition. In addition, conduct board hearings are generally used to adjudicate~~

matters in which the respondent faces allegations of sexual misconduct, as that term is defined in WAC 504-26-221. Other matters may be referred to a conduct board in the discretion of the conduct officer.

(2) Adoption of model rules of procedure. Conduct board hearings are full adjudications governed by the Administrative Procedure Act, RCW 34.05.413 through 34.05.476, and chapter 10-08 WAC. Model rules of procedure, except as otherwise provided in this chapter. In the event of a conflict between these rules and the model rules, this chapter governs.

(3) Notice of hearing. Notice to the parties of a conduct board hearing must comply with model rule WAC 10-08-040 and standards of conduct rule WAC 504-26-035. In addition, information regarding the student conduct process and student rights, as required by WAC 504-26-504 must be provided.

(4) Time for conduct board hearings. The conduct board hearing is scheduled not less than ~~(seven)~~ ten calendar days after the ~~(student has)~~ parties have been sent notice of the hearing ~~(, except in the case of interim suspensions as set forth in WAC 504-26-406).~~

~~((b)) Requests to extend the time and/or date for hearing must be addressed to the ~~(chair of the university conduct board, and must be copied to the office of student conduct)~~ presiding officer. A request for extension of time is granted only upon a showing of good cause.~~

~~((4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the following guidelines, except as provided by subsection (6) of this section:~~

~~(a) Procedures:~~

~~(i) University conduct board hearings are conducted in private.~~

~~(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.~~

~~(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.~~

~~(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.~~

~~(v) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the~~

hearing. Witnesses provide information to and answer questions from the university conduct board, the complainant, and the accused student, as appropriate. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board. The chair of the university conduct board shall have the discretion to determine admissibility of information.

(vi) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board))

(5) Subpoenas. Subpoenas may be issued and enforced in accordance with model rule WAC 10-08-120. In determining whether to issue, quash, or modify a subpoena to a complainant/witness, the presiding officer must give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal Office for Civil Rights. The party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(6) Discovery. Depositions, interrogatories, and physical or medical examinations of parties are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the ((chair and/or conduct officer.

(vii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(viii) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged and what sanctions, if any, are appropriate.

(b) If the accused student is found responsible for any of the charges, the board may, at that time, consider the student's past contacts with the office of student conduct in determining an appropriate sanction.

(c) The accused student or recognized student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or recognized student organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered, deposited in the U.S. mail, or electronically mailed, and a statement of how to file an appeal.

(i) The written decision is the university's initial order.

(ii) If the student or recognized student organization does not appeal the conduct board's decision before twenty-one

calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as an audio record, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice president for student affairs or designee to be appropriate)) presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process.

(7) Cross-examination. As required by RCW 34.05.449, cross-examination of witnesses is permitted to the extent necessary for full disclosure of all relevant facts and issues. The preferred method of cross-examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. Regardless, in no circumstance may the complainant or respondent be permitted to cross-examine each other directly in person or through counsel. The presiding officer may decline to ask cross-examination questions that are irrelevant, immaterial, or unduly repetitious. All questions submitted by the parties must be retained as part of the agency record, in accordance with RCW 34.05.566.

(8) Decision requirements. Decisions regarding responsibility and sanctions are made by a majority of the conduct board hearing the matter, except that any sanction of expulsion, revocation of degree, or loss of recognition of a recognized or registered student organization requires a supermajority consisting of no more than one "no" vote.

(9) Notice of decision and right to appeal. Within ten calendar days of the completion of the hearing, the conduct board must issue a decision, which is the initial order of the university and must contain the following:

(a) Appropriately numbered findings of fact and conclusions;

(b) The sanction(s) to be imposed, if any, and the rationale for the sanction(s);

(c) Information regarding the parties' right to appeal according to WAC 504-26-420, including the time frame for seeking review; and

(d) Notice that the initial order becomes final unless an appeal is filed within twenty-one calendar days of service of the initial order.

NEW SECTION

WAC 504-26-409 Emergency suspension. (1) Definition. An emergency suspension is a temporary exclusion of a student from all or specified portions of university premises,

programs, or activities pending an investigation or student conduct proceeding relating to alleged standards of conduct violations. An emergency suspension may be imposed at any time prior to the issuance of the university's final order in the matter.

(2) Circumstances warranting emergency suspension. Emergency suspension may be imposed only in situations when the vice president for student affairs or campus chancellor (in consultation with the center for community standards), or their designee, has cause to believe that the student:

(a) Has violated any provision of the standards of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of any part of the university community or the public at large. Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from completing their duties or accessing their education or the educational environment, is conduct harmful to the welfare of members of the university community.

(3) Procedure. The vice president for student affairs or campus chancellor, or their designee, ordering an emergency suspension must send the student a written notice of emergency suspension. The notice must contain the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct), and the policy reasons for the emergency suspension. The emergency suspension does not replace the regular hearing process, which must proceed to a conduct officer hearing or conduct board hearing, as applicable, as quickly as feasible. Once a final order is entered following the hearing, any emergency suspension is lifted and the sanction, if any, set forth in the final order is imposed.

NEW SECTION

WAC 504-26-415 Procedure for academic integrity violations. (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor must assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the center for community standards in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor must make a determination as to whether the student did or did not violate the academic integrity policies. If the instructor finds that the student was in violation, the instructor must provide the student and the center for community standards with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determina-

tion and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policies, the academic integrity hearing board must make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policies and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Academic integrity hearing board proceedings.

(i) Any student appealing a responsible instructor's finding of an academic integrity violation is provided written notice in accordance with WAC 504-26-035. The written notice must include:

(A) The specific complaint, including the university or instructor academic integrity policy or regulation allegedly violated;

(B) The approximate time and place of the alleged act that forms the factual basis for the violation;

(C) The time, date, and place of the hearing;

(D) A list of the witnesses who may be called to testify, to the extent known; and

(E) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student must have the right to inspect the documentation.

(ii) Time for hearings.

(A) Academic integrity hearing board hearings are scheduled not less than seven calendar days after the student has been sent notice of the hearing.

(B) Requests to extend the time and/or date for hearing must be addressed to the chair of the academic integrity hearing board, and must be copied to the center for community standards. A request for extension of time is granted only upon a showing of good cause.

(iii) Academic integrity hearing board hearings are conducted according to the following procedures, except as provided by (c)(iv) of this subsection:

(A) Academic integrity hearing board hearings are conducted in private.

(B) The instructor, respondent, and their advisor, if any, are allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the hearing is at the discretion of the academic integrity hearing board chair.

(C) In academic integrity hearings involving more than one respondent, the academic integrity hearing board chair may permit joint or separate hearings at the chair's discretion.

(D) In hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(E) The responsible instructor and the respondent may arrange for witnesses to present relevant information to the academic integrity hearing board. Witnesses must provide written statements to the conduct officer at least two weeks before the hearing. The respondent is responsible for informing their witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the academic integrity hearing board, the responsible instructor, and the respondent, as appropriate. The respondent and/or responsible instructor may suggest written questions to be answered by each other or by other witnesses. Written questions are submitted to, and asked by, the academic integrity hearing board chair. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the academic integrity hearing board chair, who has the discretion to determine admissibility of information.

(F) Pertinent records, exhibits, and written statements may be accepted as information for consideration by an academic integrity hearing board at the discretion of the chair.

(G) Questions related to the order of the proceedings are subject to the final decision of the chair of the academic integrity hearing board.

(H) After the portion of the hearing concludes in which all pertinent information is received, the academic integrity hearing board determines (by majority vote) whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(I) The student is notified of the academic integrity hearing board's decision within twenty calendar days from the date the matter is heard. The student must receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the academic integrity policies), and the sanction.

(iv) If a student to whom notice of the hearing has been sent (in the manner provided above) does not appear at the hearing, the information in support of the complaint is presented and considered in the student's absence, and the board may issue a decision based upon that information.

(v) The academic integrity hearing board may for convenience, or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of any person, provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the chair of the academic integrity hearing board to be appropriate.

(vi) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the center for community standards ordinarily requires the

student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily referred for a full adjudicative hearing in accordance with WAC 504-26-403, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings must be reported to the responsible instructor and the chair or dean.

NEW SECTION

WAC 504-26-420 Appeals. (1) Time for appeals. Decisions made by a conduct officer or conduct board become final twenty-one calendar days after the date the decision is served on the parties, unless a petition for appeal is filed before that date in accordance with the provisions in subsection (3) of this section.

(2) Effect of appeal - Stay. Except in extraordinary circumstances, which must be explained in writing in the conduct officer's or conduct board's initial order, the implementation of an initial order imposing sanctions must be stayed pending the time for filing an appeal and the issuance of the university's final order.

(3) Appeals of conduct officer decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the petition and an opportunity to respond and conducts a limited review as described below.

(a) Scope of review. Except as required to explain the basis of new information, appeal of a conduct officer decision is limited to a review of the record for one or more of the following purposes:

(i) To determine whether the conduct officer hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures; deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results;

(ii) To determine whether the decision reached was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct occurred;

(iii) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct that the respondent was found to have committed; or

(iv) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the origi-

nal conduct officer hearing, because such information and/or facts were not known to the person appealing at the time of the original conduct officer hearing.

(b) Conversion to conduct board hearing. The appeals board makes any inquiries necessary to ascertain whether the proceeding must be converted to a conduct board hearing in accordance with WAC 504-26-403.

(4) Appeals of conduct board decisions. Upon receipt of a timely appeal, the appeals board provides the other parties, if applicable, with a copy of the petition and an opportunity to respond.

(a) The appeals board must have and exercise all the decision-making power that the conduct board had, except that the appeals board must give due regard to the conduct board's opportunity to observe the witnesses, if applicable. The appeals board members must personally consider the whole record or such portions of it as may be cited by the parties.

(b) Scope of review. The appeals board conducts a full review in accordance with RCW 34.05.464.

(5) University's right to initiate appeal. The university president or designee, at their own initiative, may request that the appeals board review any initial order. Prior to taking action, the appeals board must notify the parties and allow them an opportunity to explain the matter.

(6) Appeals board decisions.

(a) Actions. After reviewing the record and any information provided by the parties, the appeals board may take the following actions:

(i) Affirm, reverse, or modify the conduct board's or conduct officer's decision, or any part of the decision;

(ii) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer, or any part of the sanctions; or

(iii) Set aside the findings or sanctions, or any part of the findings or sanctions, and remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(b) Content of decision. The decision includes the outcome, any sanction, and a brief statement of the reasons for the decision. The letter must advise the parties that judicial review may be available. For appeals of conduct board hearings, the decision includes, or incorporates by reference to the conduct board's decision, all matters as set forth in WAC 504-26-403.

(c) Service and effective date of decision. For appeals of conduct officer decisions, the appeals board's decision must be sent to the parties within twenty calendar days of receipt of the petition for review. For appeals of conduct board decisions, the appeals board's decision must be served on the parties within thirty calendar days of receipt of the appeal, unless the appeals board notifies the parties in writing that additional time (up to ninety calendar days) is needed. The appeals board's decision is the final order of the university, except in the case of remand, and is effective upon service.

(7) Reconsideration of final orders. Within ten calendar days of service of a final order, any party may file a request for reconsideration. The request must be in writing, directed to the appeals board, and must state the reasons for the request. The request for reconsideration does not stay the

effective date of the final order. However, the time for filing a petition for judicial review does not commence until the date the appeals board responds to the request for reconsideration or twenty-one calendar days after the request has been filed, whichever is sooner. If the appeals board does not respond to the request for reconsideration within twenty-one calendar days, the request is deemed to have been denied.

(8) Stay. A party may request that the university delay the date that the final order becomes effective by directing a petition to the appeals board within ten calendar days of the date the order was served.

NEW SECTION

WAC 504-26-425 Sanctions. (1) Publication of guidelines for sanctioning. Sanctioning guidelines and other information regarding sanctioning must be published on the center for community standards web site. Guidelines must explain in plain language the types of sanctions that a respondent may face for a particular violation and the factors that are used to determine the sanction(s) imposed for a particular violation. Factors must include, but not be limited to, the following:

(a) Conduct record. Any record of past violations of the standards of conduct, and the nature and severity of such past violations;

(b) Malicious intent. If a respondent is found to have intentionally selected a victim based upon the respondent's perception of the victim's race, color, religion, national or ethnic origin, age, sex/gender, marital status, status as an honorably discharged veteran or member of the military, sexual orientation, genetic information, gender identity/expression, or mental, physical, or sensory disability (including disability requiring the use of a trained service animal), such finding is considered an aggravating factor in determining a sanction for such conduct; and

(c) Impact on victim and/or university community.

(2) Effective date of sanctions. Except as provided in WAC 504-26-420(2), sanctions are implemented when a final order becomes effective. If no appeal is filed, an initial order becomes a final order on the day after the period for requesting review has expired. (See WAC 504-26-420.)

(3) Types of sanctions. The following sanctions may be imposed upon any respondent found to have violated the standards of conduct. More than one of the sanctions listed below may be imposed for any single violation:

(a) Warning. A notice in writing to the respondent that the respondent is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the respondent's continued attendance, recognition, or registration at the university. Probation is for a designated period of time and warns the student or recognized or registered student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be imposed if the student or recognized or registered student organization is found to have violated any institutional regulation(s) or fails to complete any conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized or registered student group or organization; they are not eligible for

certain jobs on campus including, but not limited to, resident advisor or orientation counselor; and they are not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the respondent to successfully complete an educational project designed to create an awareness of the respondent's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of a recognized or registered student organization).

(g) University housing suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) University housing expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in these standards of conduct, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on their misconduct.

(n) Loss of recognition. A recognized or registered student organization's recognition (or ability to register) may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing first year students. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a recognized or registered student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and center for fraternity and sorority life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice president for student affairs.

(r) Additional sanctions for hazing. In addition to other sanctions, a student who is found responsible for hazing forfeits any entitlement to state-funded grants, scholarships, or awards for a specified period of time, in accordance with RCW 28B.10.902.

(4) Academic integrity violations. No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

~~((ARTICLE))~~ PART V

ADMINISTRATION AND RECORDS

NEW SECTION

WAC 504-26-504 Interpretation—Policies, procedures, and guidelines. (1) The vice president for student affairs or designee has authority to interpret these rules and develops policies, procedures, and guidelines for the administration of the university's student conduct system that are consistent with the provisions in this chapter. These must be published, at a minimum, on the center for community standards web site and in the university's student handbook. A link to the student handbook or center for community standards web site must be provided to students prior to any informational meeting with a conduct officer or student conduct hearing and must provide the following information:

(a) Rights in the student conduct process;

(b) A clear explanation of what to expect during the process;

(c) Information regarding legal resources available in the community;

(d) A statement that respondents are presumed "not responsible";

(e) A statement regarding the right not to self-incriminate in accordance with WAC 504-26-045; and

(f) Notice of the right to bring a prepared written statement or argument to an informational meeting with a conduct officer.

(2) Definitions from these standards are incorporated into Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.

NEW SECTION

WAC 504-26-510 Good Samaritan policy. A conduct officer may elect not to initiate a conduct proceeding regarding alcohol or other drug violations against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol or drugs, provided that the possession was for personal consumption and the use did not place the health or safety of any other person at risk. In addition, a conduct officer may elect not to initiate a conduct proceeding against a complainant who admits to the possession or use of alcohol or drugs in connection with a report under this policy.

NEW SECTION

WAC 504-26-515 Periodic review and assessment. At the end of each academic year, the center for community standards provides a report to the vice president for student affairs which must include, at a minimum, a numerical breakdown of the types of matters handled and the sanctions imposed. The vice president for student affairs must make the report publicly available, provided all personally identifiable or readily ascertainable student information is removed.

The standards of conduct and the student conduct system as a whole are reviewed every three years under the direction of the vice president for student affairs or designee. The student government council is asked to provide recommendations and input on proposed changes. After completion of any adjudication or other resolution of a student conduct matter, the center for community standards must send a survey to all parties requesting feedback on the process. Feedback results must be reviewed, at a minimum, every three years in connection with the periodic review and assessment.

NEW SECTION

WAC 504-26-520 Conduct hold on student record. When a student leaves the university or completes course work required for a degree after an incident occurs that could result in violations of the standards of conduct, the center for community standards may place a conduct hold on the student's record. A conduct hold may also be placed on the student's account if the student has failed to adequately complete sanctions by the proscribed timeline. A conduct hold may restrict the student from adding or dropping classes, requesting an official transcript, or receiving a degree from the university until the hold is removed. The center for community standards must advise the student of the hold and the process for challenging the hold. A conduct hold under these circumstances is not a sanction and does not imply or assume responsibility for a violation of the standards of conduct.

NEW SECTION

WAC 504-26-525 Good standing. The award of a degree and/or diploma is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of the

misconduct. The university has the sole authority in determining whether to withhold the degree and/or diploma in cases where the student is not in good standing. The university must deny the award of a degree if the student is dismissed from the university based on their misconduct. Neither diplomas nor transcripts are sent until students have resolved any unpaid fees and resolved any acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of misconduct. (See also academic regulation 45 in the university general catalog.)

NEW SECTION

WAC 504-26-530 Recordkeeping and confidentiality. (1) Removal of conduct record. Graduating seniors may request removal from their record of a single conduct violation relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs. The dean of students has discretion regarding whether to grant a request.

(2) Conduct records are maintained in accordance with the university's records retention schedule.

(3) The conduct record is confidential and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and chapter 504-21 WAC, University policy on student education records.

(4) A student may request a copy of their own conduct record at their own reasonable expense by making a written request to the center for community standards.

(5) Personally identifiable student information is redacted to protect other students' privacy, except as otherwise required by law.

(6) A student may authorize release of their own conduct record to a third party in compliance with FERPA by making a written request to the center for community standards.

(7) The university may inform the complainant of the outcome of any conduct proceeding involving a crime of violence as defined by FERPA.

(8) The university informs the complainant of the outcome of any conduct proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)

(9) The university may not communicate a student's conduct record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a dependent for tax purposes as defined by FERPA.

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA.

~~(ARTICLE VI~~~~INTERPRETATION AND REVISION))~~REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 504-26-005 Good standing.
- WAC 504-26-101 Convening boards.
- WAC 504-26-102 Policies.
- WAC 504-26-103 Decisions.
- WAC 504-26-200 Jurisdiction of the standards of conduct for students.
- WAC 504-26-301 Malicious intent.
- WAC 504-26-302 Responsibility for guests.
- WAC 504-26-303 International and national exchange programs.
- WAC 504-26-304 Recognized student organization conduct.
- WAC 504-26-305 Violation of law and university discipline.
- WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings.
- WAC 504-26-404 Procedure for academic integrity violations.
- WAC 504-26-405 Sanctions.
- WAC 504-26-406 Interim suspension.
- WAC 504-26-407 Review of decision in brief adjudications.
- WAC 504-26-408 Interim measures.
- WAC 504-26-501 Records.
- WAC 504-26-601 Interpretations.
- WAC 504-26-602 Periodic review.

WSR 18-18-095**PROPOSED RULES****WASHINGTON STATE UNIVERSITY**

[Filed September 5, 2018, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-14-109.

Title of Rule and Other Identifying Information: Health and safety regulations, WAC 504-36-030 Spectator events—Safety rules.

Hearing Location(s): On October 17, 2018, at 4:00 p.m., at Lighty 403, Washington State University (WSU) Pullman, Pullman, Washington.

Date of Intended Adoption: November 16, 2018.

Submit Written Comments to: Deborah Bartlett, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 17, 2018.

Assistance for Persons with Disabilities: Contact Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the safety rules for spectator events.

Reasons Supporting Proposal: In order to meet industry best practices applicable to safety and security at PAC-12 (Pacific Athletic Conference) and NCAA (National Collegiate Athletic Association) events, the university administration is implementing a "clear bag" policy along with other item restrictions. Clear bags help streamline the security process for entry into university events and allow for greater visibility of items being brought into the venues. This policy mirrors those implemented by a majority of peer institutions.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Benjamin Clarke, Assistant Director, Athletic Events/Facilities Operations, Intercollegiate Athletics, Bohler Gym 103a, Pullman, Washington 99164-1602, 509-335-5109; Implementation: Stacy Pearson, Vice President, Finance and Administration, French Administration 442, Pullman, Washington 99164-1048, 509-335-5524; and Enforcement: Bill Gardner, Associate Vice President, WSU Police/Public Safety, Public Safety 104, Pullman, Washington 99164-1072, 509-335-4484.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

September 5, 2018

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-11-010, filed 5/8/17, effective 6/8/17)

WAC 504-36-030 Spectator events—Safety rules. (1) Protection of the safety and general welfare of students, faculty and staff, performers and officials, and members of the general public attending or participating in spectator events on campus is a primary concern of Washington State University.

(2) The following rules of conduct apply to all spectator events of Washington State University. "Spectator event," for the purposes of this section, means ticketed or nonticketed athletic or entertainment events held on any portion of university property, including, but not limited to, Martin Stadium and the Beasley Coliseum (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials constitutes a disruption of the event or a safety hazard for other spectators or participants is prohibited.

(b) For ticketed events, an individual is entitled to occupy only the seat for which he or she has the proper ticket.

(c) Photographing or making audio or visual recordings of a spectator event for commercial purposes is not permitted without specific written permission from the WSU athletic department (for athletic events) or the performer and applicable designated university official (for entertainment events).

(d) Aisles, walkways, and stairs must be kept clear of hazards and obstacles at all times to ensure safe and easy passage for all persons.

(e) Possession and/or consumption of illegal drugs or marijuana is prohibited. Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.

(i) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (e)(ii) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.

(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board and restrictions and policies imposed by the university, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.

(f) Smoking and other uses of tobacco and/or nicotine products are prohibited in all areas of the Pullman campus in accordance with chapter 504-38 WAC and all areas of the Vancouver campus in accordance with chapter 504-37 WAC.

(g) Each spectator is allowed to bring one empty nondisposable water bottle into the event site, provided that the capacity of the water bottle is no more than one and one-half liters. All other beverage containers and devices used for carrying beverage containers are prohibited. All such items are subject to a visual inspection by designated university officials upon entry to the event site. If designated university officials make the determination that a given container or device is prohibited, the possessor of the container or device must remove the container or device from the event site premises or may surrender the container or device to such designated university officials for disposal.

(h) Each spectator is allowed to bring ~~((one soft sided))~~ the following sizes and styles of bags into the event site, provided ~~((such bag is no larger than fourteen inches by eight inches by fourteen inches and))~~ that, for seated events, ~~((is))~~

the bags are small enough to fit completely under the spectator's seat, where such bags must be kept. ~~((All other))~~

(i) Bags made of clear plastic, vinyl, or PVC that are no larger than fourteen inches by eight inches by fourteen inches.

(ii) Clear drawstring bags that are no larger than fourteen inches by fourteen inches.

(iii) One gallon clear plastic freezer bags (Ziploc bag or similar).

(iv) Small clutch bags, with or without a handle strap, that are no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).

(v) Exceptions are made for medically necessary items after proper inspection upon entrance.

(vi) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue.

(i) Prohibited bags and containers ~~((are prohibited))~~ include, but are not limited to:

(i) Purses larger than a clutch bag;

(ii) Coolers;

(iii) Briefcases;

(iv) Backpacks;

(v) Fanny packs;

(vi) Cinch bags;

(vii) Luggage of any kind;

(viii) Computer or camera bags;

(ix) Binocular cases;

(x) Any bag larger than the permissible sizes specified in subsection (h) of this section.

(j) Spectators are allowed to bring personal items, e.g., keys, cellular telephones, wallet, makeup, in their pockets if they choose not to use a clear bag.

(k) Additional items such as diapers, wipes, and other supplies for babies and small children are allowed if placed in an approved clear bag.

(l) All ~~((such))~~ items are subject to a visual inspection by designated university officials upon entry into the event site. If designated university officials make the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university officials for disposal.

~~((+))~~ (m) The following items are also prohibited in the event site:

(i) Fireworks, weapons, explosive devices, or artificial noisemaking devices (such as airhorns);

(ii) Items deemed dangerous or unacceptable by designated university officials;

(iii) Drones;

(iv) Laser pointers;

(v) Extension items used to hold cellular telephones or cameras in place (e.g., "selfie sticks");

(vi) Flag poles, or any items that act as an extension of an arm and have a flag or sign affixed;

(vii) Footballs, frisbees, sport balls, any kind of inflatable balls, or any other projectiles;

(viii) Umbrellas;

(ix) Seat cushions with rigid frames. Seatback cushions must:

(A) Be soft sided;

(B) Contain no pockets or zippers; and

(C) Be no wider than eighteen inches.

(x) Pets or animals, except as allowed by WAC 504-36-020 or as otherwise required by state or federal law;

~~((x))~~ (xi) Food and beverages, unless purchased from a vendor within the event site.

(3) Where there is reasonable cause to believe that a person is violating, or is attempting to violate, the requirements identified in subsection (2) of this section, such person is denied license or privilege to enter or remain in or upon the event site premises, and designated university officials may take necessary action to deny entry or to remove such persons from the event site premises.

Prohibited items found in the possession of a spectator or otherwise found on the event site are to be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate. Violation of the requirements identified in subsection (2) of this section or failure to vacate the event site premises upon request of designated university officials may result in university disciplinary action (if applicable) and/or subsequent legal proceedings under federal or state law and/or the Washington Administrative Code.

(4) For purposes of this section, designated university officials include the president of the university, the vice president for finance and administration, and the following officials:

(a) Director of athletics or designee for athletic events;

(b) Director of the Beasley Coliseum or designee for Beasley Coliseum events;

(c) Director of the Compton Union Building or designee for events in the Compton Union Building;

(d) Director of the School of Music or designee for events sponsored by that school;

(e) The WSU executive director of public safety or designee;

(f) Officers of the WSU police department when (i) acting at the request of any of the above-named officials to enforce university regulations, or (ii) enforcing state laws or local ordinances;

(g) Contracted or hired security personnel and crowd management personnel when acting at the direction of the above-named officials or designees to enforce university regulations.

WSR 18-18-096

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed September 5, 2018, 8:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-087.

Title of Rule and Other Identifying Information: Campus parking and traffic regulations for Washington State University (WSU) Vancouver, chapter 504-19 WAC.

Hearing Location(s): On October 10, 2018, at 4:00 p.m., at Lighty Student Services, Building 403, WSU Pullman,

Pullman, Washington; and Multimedia Classroom, Building 202Q, WSU Vancouver, Vancouver, Washington.

Date of Intended Adoption: October 31, 2018.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 10, 2018.

Assistance for Persons with Disabilities: Contact Joy B. Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the WSU Vancouver campus parking and traffic rules including the expansion of rules regarding bicycles and other unmotorized vehicles.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting and Enforcement: Dave Stephenson, Director of Public Safety and Police Services, Classroom (VCLS) 120, WSU Vancouver, Vancouver, Washington 98686-9600, 360-546-9004; and Implementation: Mel Netzhammer, Chancellor, Dengerink Administration Building (VDEN) 230, WSU Vancouver, Vancouver, Washington 98686-9600, 360-546-9589.

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

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

September 5, 2018

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Campus. Describes all property owned, leased, and/or controlled by WSUV which is or may hereafter be dedicated mainly to the educational, research, recreational, parking, or other activities of WSUV.

(2) Day. Unless otherwise specified, the term "day" refers to a calendar day.

~~((3) Disability parking. See persons with disability.~~

~~(4))~~ (3) Disability zone. A parking zone designated for exclusive use by persons with disability and identified with a sign bearing the associated international symbol.

~~((5))~~ (4) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

~~((6))~~ ~~Holiday. See university holiday.~~

~~((7))~~ (5) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license number on the permit.

(b) Use of a parking permit or indicator obtained under false pretenses.

(c) Use of a modified parking permit or indicator.

(d) Use and/or retention of a parking permit or indicator by person(s) ineligible, or no longer eligible, for such permit as described and authorized in this chapter.

~~((8))~~ (6) Impound. To take and hold a vehicle in legal custody, either by use of a wheel lock and/or towing.

~~((9))~~ (7) Indicator. A vinyl, plastic, or paper instrument displayed adjacent to a parking permit which defines the parking areas available to a permit holder.

~~((10))~~ (8) Loading zone. A loading dock or an area signed "loading zone" adjacent to a facility or in a parking area. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

~~((11))~~ (9) Moped. Any two-wheeled or three-wheeled motor vehicle with an engine displacement of 50cc or less.

~~((12))~~ (10) Motorcycle. Any two-wheeled or three-wheeled motor vehicle with an engine displacement greater than 50cc.

~~((13))~~ (11) Motor vehicle. All motor-driven conveyances except wheelchairs. Also referred to as "vehicle" in this chapter.

~~((14))~~ (12) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow or red.

~~((15))~~ (13) Officer. Any parking or police official employed by the university who is designated by the parking administrator or police department head to issue parking tickets, to place or remove wheel locks, or to cause vehicles to be towed under this chapter.

~~((16))~~ (14) Owner. The person registered with any state as the present owner of a vehicle in the most current registration record available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or police department head has received actual written notice of the transfer.

~~((17))~~ (15) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

~~((18))~~ (16) Parking administrator. The manager in charge of the parking department or designee.

~~((19))~~ (17) Parking appeals committee. Any person or persons appointed to consider parking violations and the application of fees, fines, and sanctions. Said person or persons are appointed by the vice chancellor whose responsibilities

include supervision of the parking department or designee.

~~((20))~~ (18) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities and enforcing the parking regulations for the WSUV campus.

~~((21))~~ (19) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

~~((22))~~ (20) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on campus. A parking payment device is not a parking meter.

~~((23))~~ (21) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking department that is displayed from a vehicle and authorizes parking in specified areas. Also referred to as "permit" in this chapter.

~~((24))~~ (22) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

~~((25))~~ (23) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

~~((26))~~ (24) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances.

~~((27))~~ (25) Persons with disability. For the purposes of this chapter, ~~((persons))~~ individual with ~~((disability))~~ disabilities shall refer to a person or persons with disability or disabilities who qualify for a state-issued ~~((persons))~~ individual with ~~((disability))~~ disabilities parking identification and permit.

~~((28))~~ (26) Service vehicle. A vehicle used to provide a service for WSUV or a tenant or contractor of WSUV (e.g., a university-owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

~~((29))~~ (27) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones for a maximum of fifteen minutes, except for vehicles that display a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

~~((30))~~ (28) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university, and the nonstudent employees of other entities located on or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university or other entities located on or regularly doing business on campus are not "staff." They are considered as students for the purpose of these rules.

~~((31))~~ (29) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

~~((32))~~ (30) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

~~((33))~~ (31) Student. The term "student" includes all persons who are not staff, who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

~~((34))~~ (32) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session and ending on the last day of the latest session.

~~((35))~~ (33) University. Refers to Washington State University Vancouver.

~~((36))~~ (34) University holiday. A day regarded by the university as an official university holiday.

~~((37))~~ (35) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

~~((38))~~ (36) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of WSUV typically are open during this time.

~~((39))~~ (37) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.

~~((40))~~ (38) Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

~~((41))~~ (39) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((42))~~ (40) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((43))~~ (41) WSUV. Refers to Washington State University Vancouver.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-350 Use of areas for emergency, maintenance, events, or construction~~(- or special needs)~~. (1) WSUV reserves the right to close any campus parking area at any time it is deemed necessary for maintenance, safety, events, construction, or ~~(to meet special needs. WSUV public safety will provide notice to users when possible)~~ emergencies.

(2) The public safety or parking department may authorize the towing of vehicles parked in areas that are designated to be used for emergencies, maintenance, events, or construction. Towing is at the owner's expense.

(3) Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

NEW SECTION

WAC 504-19-370 Vehicle storage. The storage of vehicles, including motorcycles and mopeds, is prohibited on campus unless otherwise authorized by the parking department.

Reviser's note: The unnecessary underscoring 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.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-520 Parking permits—Form and display. All parking permits must be displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of this section are subject to parking tickets for the violation of improperly displaying a permit, or for the violation of no parking permit if a valid permit cannot be verified from the exterior of the vehicle.

(1) Autos and trucks:

(a) ~~(Hanging)~~ Daily permits~~(, both annual and daily,)~~ must be displayed ~~(by hanging the permit from the rear view mirror post or laying the permit on the dashboard with the proof of payment and valid dates visible from the exterior of the vehicle))~~ as instructed on the permit.

(b) ~~(Permits)~~ Annual and semester permits ~~(mounted solely by suction cup and permit decals directly affixed to the windshield))~~ must be displayed on the ~~(front windshield at the lower)~~ left ~~(corner)~~ side (driver's side) of the windshield. Permits must be mounted completely by means of their own design. No additional substances may be used to adhere the permit to the windshield unless approved by the parking department.

(2) Motorcycles and mopeds: Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-560 Other parking permits—Availability and use. (1) Visitor permits. Visitor permits may be used only by bona fide visitors as defined by this chapter. Use by any other person constitutes illegal use of a parking permit. Visitor permits are valid in any zone and parking spaces signed for visitors only. Visitor permits are not valid at meters or restricted spaces.

(2) Golden cougar permits. Golden cougar permits are special ~~(visitor)~~ permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in any zone that is designated and approved by the parking department. Staff who are employed by the university or other entities located on

campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) President's associates decals. President's associates decals are issued to eligible members of the Washington State University foundation. Use of these decals for parking shall be in accordance with a separate agreement between WSU and the WSU foundation. However, WSU faculty, staff, and students may not use a president's associates decal or any other parking benefit instrument in lieu of a paid zone permit.

(4) Conference permits. Conference permits are available to visitors who participate in conferences held on the WSUV campus. They are available on a daily basis only. Conference permits are valid as marked on the issued permit.

(5) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits.

(6) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are assigned to a specific parking area.

(7) Carpool. Upon application to WSUV parking services, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(8) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are valid in zones and areas indicated on the permit.

(9) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters, service zones, orange, green, red, and gray permit zones, and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-600 Parking ((permits)) for ((persons)) individuals with ((disability)) disabilities. (1) The provisions of this chapter cover ~~((the purchase and display of parking permits))~~ disability parking and the payment of fees and fines associated with parking for ~~((persons))~~ individuals with ~~((disability))~~ disabilities.

(2) For the purpose of this chapter, ~~((persons))~~ individuals with ~~((disability))~~ disabilities shall refer to ~~((a person or persons))~~ individuals with ~~((disability))~~ disabilities who qualify for a state-issued ~~((persons))~~ individual with ~~((disability))~~ disabilities parking identification and permit as provided in WAC 308-96(b). Use of disability accommodation parking at ~~((WSU Vancouver))~~ WSUV also requires payment for parking in the form of a WSUV parking permit or receipt of payment.

(3) The university uses the state ~~((persons))~~ individual with ~~((disability))~~ disabilities parking permit system to determine eligibility for ~~((a university persons with))~~ disability parking ((permit)). ~~((Persons desiring to purchase a university persons with disability parking permit must present a valid state issued persons with disability parking identification and permit.))~~

(4) Unless otherwise authorized, ~~((long-term))~~ parking in spaces designated for ~~((persons))~~ individuals with ~~((disability))~~ disabilities requires a ~~((valid university persons with disability parking permit))~~ state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment to park on campus. University semester and annual parking permits for ~~((persons))~~ individuals with ~~((disability))~~ disabilities are available at the gray zone rate. Daily and temporary parking permits are available at the regular rates.

(5) Persons with a ~~((university persons with disability parking permit))~~ state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment may park in ~~((a persons with disability parking space))~~ parking spaces designated for individuals with disabilities and any other, nonrestricted permit space within a parking permit zone.

(6) Persons with a ~~((university persons with disability parking permit))~~ state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment may not park in restricted spaces with the exception of ~~((persons))~~ individuals with ~~((disability))~~ disabilities parking spaces.

(7) Unless otherwise posted, any university parking permit to include a ~~((persons with disability parking permit))~~ state-issued disability parking placard or license plate is not valid in lieu of payment of regular posted fees in pay parking lots and facilities.

(8) A state-issued ~~((persons))~~ individuals with ~~((disability))~~ disabilities license plate, placard, or permit is valid ~~((in lieu of a university persons with disability parking permit))~~ in parking zones during times when a university permit is not required.

(9) The university intends to retain control of access to the pedestrian malls on campus. For that reason a ~~((university persons with disability parking permit is required in lieu of a state issued persons with disability license plate, placard, or permit))~~ state-issued disability parking placard or license plate and a WSUV parking permit or proof of payment is required as authorization to use a pedestrian mall to access marked ~~((persons))~~ individuals with ~~((disability))~~ disabilities parking spaces within the confines of a pedestrian mall.

Reviser's note: The typographical 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.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 12-11-024, filed 5/8/12, effective 6/8/12)

WAC 504-19-650 Parking fees and fines. (1) Schedules for parking fees, parking administrative fees, late payment fees, parking fines and sanctions, parking meter rates, prorated and refund schedules, and the effective date thereof are submitted to the president or his/her designee and to the board of regents for approval by motion, provided however, that increases in fees and fines do not exceed limits established by the board of regents. Increases in fees and fines that do not exceed limits established by the board of regents are not submitted to the board of regents so long as the board of regents has delegated authority to the president or his designee to approve all such fees and fines. The schedules described above for all parking fees and fines are thereafter posted in the public area of the parking department office and posted on the parking department's web site.

(2) Before purchasing a permit, the balance of any fees and fines owed to the parking department must be paid in full.

~~((2))~~ (3) Payments. Parking fees and fines may be paid at the parking department by cash, check, approved payment card, or money order, and online through the WSUV parking services payment portal web site. A payroll deduction plan is available for eligible university employees and eligible graduate students.

~~((3))~~ (4) The annual fee for any shorter period relative to all permits shall be prorated according to the published schedule.

~~((4))~~ (5) The proper fee must be paid for all vehicles parked in parking meter spaces unless otherwise authorized.

~~((5))~~ (6) Staff members whose work schedules qualify them for nighttime differential pay may purchase a permit for one-half the regular fee. Verification is required.

~~((6))~~ (7) Refunds. Annual permits being relinquished may be returned to the parking department for a pro rata refund in accordance with university policy. Identifiable remnants of the permit must be returned. The balance of any fees and fines owed the parking department is deducted from any refund due. Refunds for temporary permits are not granted. Refunds for pretax payroll deductions cannot be granted pursuant to federal tax laws.

~~((7))~~ (8) The parking department makes a wide array of options available in advance to university departments for use by their visitors, guests, and employees for the purpose of conducting departmental business. However, when necessary, university departments that can establish in writing that a parking ticket issued by the parking department was received as a result of parking any vehicle for the purpose of conducting official state business, or while conducting official business with the university or an entity located at the university are assessed a parking fee assessment (PFA) in lieu of the parking fine. Such requests for PFAs are signed by a department fiscal custodian. A PFA consists of the maximum daily parking fee plus an additional administrative fee for failing to purchase and provide the necessary parking permit or fee in advance or at the time of parking. University departments are encouraged to avoid additional administrative fees associated with PFAs by purchasing and storing pre-paid parking permits and by making them available as the department deems necessary. Nothing in this rule allows a

university employee to receive, or attempt to receive, any benefit associated with his or her personal expenses in violation of the State Ethics Act. All questionable employee conduct regarding the application of this section is reported to, and investigated by, the university internal auditor. This section applies only to parking tickets issued pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 08-08-049, filed 3/27/08, effective 7/1/08)

WAC 504-19-865 General. (1) Pursuant to the provisions of this chapter, an officer shall cause a vehicle to be wheel locked, or towed, or both, if:

(a) The vehicle is on the wheel lock-eligible list; or

(b) The vehicle displays a lost, stolen, or counterfeit parking permit.

(2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:

(a) Has been immobilized by wheel lock for more than twenty-four hours; or

(b) Is illegally parked in a marked tow-away zone; or

(c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or

(d) Cannot be immobilized with a wheel lock device; or

(e) Is illegally parked in a disability space~~((:))~~; or

(f) Is parked in an area designated to be used for emergencies, maintenance, events, or construction; or

(g) Is otherwise illegally parked on the executive authority of the parking department or the university police department.

(3) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.

(4) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours is assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.

(5) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a wheel lock device installed.

(6) No vehicle impounded by towing or wheel lock devices shall be released until the following fines are paid in cash or with an approved payment card:

(a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the owner;

(b) A wheel lock fee; and

(c) All towing and storage fees.

(7) A person wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-19-860. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which shall be refunded to the extent the appeal is successful.

(8) An accumulation of six unpaid violations during any twelve-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of

violations may be prohibited from parking on university property.

AMENDATORY SECTION (Amending WSR 09-11-069, filed 5/14/09, effective 7/1/09)

WAC 504-19-930 Bicycles, skateboards, scooters, and roller blades/skates. (1) The riding and use of bicycles, skateboards, scooters, and roller blades/skates is prohibited from all building plazas, ~~((and))~~ interior building spaces, stairways, steps, ledges, benches, planting areas, any other fixtures, and in any other posted area.

(2) Bicycles, skateboards, scooters, and roller blades/skates may be ridden and used on sidewalks when a bike path is not provided. Operators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of bicycles, skateboards, scooters, and roller blades/skates on any part of campus is prohibited.

(3) ~~((Bicycles, skateboards, and roller blades/skates may not be ridden on or over stairways, steps, ledges, benches, planting areas, or any other fixtures.))~~ Electric-assisted bicycles must be used in human propulsion only mode on pedestrian malls and sidewalks.

(4) Motorized foot scooters must be used in a human propulsion only mode on sidewalks.

~~((4))~~ (5) Bicyclists must obey all traffic rules of the road when operating a bicycle in roadways.

~~((5))~~ (6) Bicycles may be secured only at bicycle racks and facilities designed for such purpose.

(7) Bicycles that are not secured at university-provided bicycle racks or bicycle storage facilities may be impounded at the owner's expense.

(8) Abandoned and inoperable bicycles. Internal policies regarding abandoned and inoperable bicycles, including the impoundment of bicycles at the WSUV campus, may be established upon approval by the vice chancellor or designee whose responsibilities include supervision of the parking department.

WSR 18-18-098

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 5, 2018, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-047.

Title of Rule and Other Identifying Information: Chapter 16-250 WAC, Commercial feed rules and chapter 16-252 WAC, Commercial feed rules—Pet food and specialty pet food.

Hearing Location(s): On October 10, 2018, at 10:00 a.m., at the Washington State Department of Agriculture, Natural Resources Building, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: October 24, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-

2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by October 10, 2018, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Angela Starr, phone 360-902-1967, fax 360-902-2087, TTY 800-833-6388, email astarr@agr.wa.gov, by October 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing adoption of current regulations of the Food, Drug, and Cosmetic Act applicable to animal feed as well as many of the provisions in the 2018 edition of the Association of American Feed Control Officials (AAFCO) Official Publication as specified in RCW 15.53.9012(1). The department is also restructuring these chapters to replicate the AAFCO Official Publication, adopting the requirements of chapters 15.36 and 15.37 RCW regarding raw milk and clarifying several definitions and application requirements.

Reasons Supporting Proposal: RCW 15.53.9012(1) specifies that the department shall consider adopting both the official definitions of feed ingredients and official feed terms adopted by AAFCO and published in the official publication of that organization as well as the regulations adopted pursuant to the authority of the Federal Food, Drug, and Cosmetic Act.

The AAFCO Official Publication are national consensus codes that the commercial feed industry, state feed control agencies, and the United States Food and Drug Administration jointly develop to provide guidance and uniformity in the manufacture and distribution of commercial feed, including pet food and specialty pet food.

The existing rule adopts the 2002 edition of specified federal regulations and the 2003 edition of the AAFCO Official Publication. Multiple updates have been made to both the federal regulations and the AAFCO Official Publication since these earlier editions. The proposed rule amendments adopt the February 9, 2017, version of regulations under the Federal Food, Drug, and Cosmetic Act, the September 27, 2017, version of 21 U.S.C. 301 et seq., and the 2018 edition of the AAFCO Official Publication.

These amendments enable Washington state to remain uniform with current federal regulations and national consensus codes so that commercial feed, including pet food and specialty pet food, produced in Washington may be freely shipped in interstate and international commerce and commercial feed distributed within and into Washington is labeled and branded according to industry standards.

The proposed revisions restructure the chapters to replicate the AAFCO Official Publication's regulations specified in the "Model Regulations Under the Model Bill" and "Model Regulations for Pet Food and Specialty Pet Food Under the Model Bill" sections. Since the commercial feed industry is familiar with the format of the AAFCO Official Publication, this will make it easier for readers to follow. The restructure includes repealing all sections of the existing WAC and replacing them with new sections that replicate the format of the AAFCO Official Publication as well as recodifying and clarifying some of the existing rule language.

The proposed revisions to certain definitions and application requirements in these chapters provide additional clarification, modernize the rules to industry standards and

enable Washington state to remain uniform with requirements in other states that regulate commercial feed.

These revisions are ultimately necessary for Washington state to protect consumers from contaminated, adulterated, and/or misbranded animal food. Requiring the commercial feed industry to follow provisions of an outdated version of federal regulations and the AAFCO Official Publication creates confusion. Commercial feed must meet the requirements under current federal regulations whether the department adopts them into rule or not. Ensuring that our rules do not conflict with the current versions of the AAFCO Official Publication and federal regulations, except where a conflict exists in state law, reduces confusion for the commercial feed industry that is trying to meet the differing requirements of state feed control agencies.

Statutory Authority for Adoption: RCW 15.53.9012, 15.53.9013, 15.53.9016, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.53 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Claudia G. Coles, 1111 Washington Street S.E., Olympia, WA 98504, 206-321-1124; Implementation and Enforcement: Dr. Ali Kashani, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-2028.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(3)/34.05.310 (4)(c) and (d).

Explanation of exemptions: Adoption of federal regulations and national consensus codes without material change is exempt from completing a small business economic impact statement under RCW 19.85.025(3)/34.05.310 (4)(c). Adoption of definitions for "all life stages," "guarantor," and "immediate container"; and modification of the definitions for "label" and "labeling" fall under the exemption specified in RCW 19.85.025(3)/34.05.310 (4)(d). Revision of the definition for "sale" and "sell" falls under the exemption speci-

fied in RCW 19.85.025(3)/34.05.310 (4)(c). Creation of the additional seven sections and repeal of all the sections of the existing rule falls under the exemption specified in RCW 19.85.025(3)/34.05.310 (4)(d). Adding language requiring that raw milk distributed for animal consumption must meet the requirements under chapters 15.36 and 15.37 RCW falls under the exemption specified in RCW 19.85.025(3)/34.05.310 (4)(c).

September 4, 2018
Steve Fuller
Assistant Director
FSCS Division

Chapter 16-250 WAC

COMMERCIAL FEED ((RULES))

NEW SECTION

WAC 16-250-002 Purpose. This chapter is pursuant to RCW 15.53.9012 and regulates commercial feed distributed in Washington state for the purpose of uniformity with federal regulations and national consensus codes and ultimately to protect consumers from contaminated, adulterated, or misbranded commercial feed.

NEW SECTION

WAC 16-250-004 Applicability. (1) This chapter applies to commercial feed as defined in RCW 15.53.901 which includes, but is not limited to, food for beef cattle, dairy cattle, equine, goats and sheep, chickens and turkeys, ducks and geese, fish, rabbits, and swine.

(2) Pet food for dogs (*Canis familiaris*), cats (*Felis catus*), and specialty pet food for any animal normally maintained in a household such as, but not limited to, rodents, ornamental birds, ornamental fish, reptiles and amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur are regulated under chapter 16-252 WAC.

(3) Processed animal waste as a commercial feed is regulated under chapter 16-256 WAC.

(4) If adulterated under RCW 15.53.902 for some but not all purposes, the following commodities are subject to the requirements of this chapter. If unadulterated, the following commodities are exempt from the requirements of this chapter.

(a) Unmixed whole seeds and physically altered entire unmixed seeds when such seeds are not chemically changed.

(b) Raw meat, hay, loose salt, straw, stover, silage, cobs, husks, and hulls when such commodities are not ground, mixed or intermixed with other materials.

NEW SECTION

WAC 16-250-006 Adoption of federal regulations and national consensus codes—Order of precedence. (1) Adoption of regulations under the Federal Food, Drug and Cosmetic Act in this chapter is of the version effective February 9, 2017, and 21 U.S.C. 301 et seq., in this chapter is adoption of the version effective September 27, 2017.

(2) Adoption of provisions under the Association of American Feed Control Officials (AAFCO) official publication in this chapter is adoption of the provisions in the 2018 edition.

(3) If there is conflict between this chapter, chapter 15.53 RCW, adopted federal regulations, and adopted AAFCO provisions, the conflict must be resolved by giving precedence in the following order:

- (a) Adopted federal regulations;
- (b) Chapter 15.53 RCW;
- (c) This chapter; and
- (d) Adopted AAFCO provisions.

NEW SECTION

WAC 16-250-008 Definitions and terms. (1) The department adopts the Official Feed Terms and the Official Common and Usual Names and Definitions of Feed Ingredients in the AAFCO official publication.

(2) In addition, the following definitions apply to this chapter:

"Dehydrated grass meal" means the aerial portion of a grass plant that is:

- (a) Cut before the formation of seed;
- (b) Reasonably free of other crop plants, weeds, and mold;
- (c) Finely ground; and
- (d) Dried by artificial thermal means.

"Grain mixture feed" means mixed or intermixed whole or physically altered grains that:

- (a) Are not chemically altered;
- (b) May or may not contain molasses; and
- (c) Except for molasses, contain no other additives.

"Grass seed by-products meal or pellets" means a ground product consisting of light and broken seeds, hulls, chaff, straw, and some weed seeds but excluding sand, dirt, and heavy weed seeds.

"Grass seed screenings meal or pellets" means a product comprised chiefly of hulls obtained from the cleaning of various grass seeds.

"Guarantee" means a listing of specified nutrients or nonnutritive substances contained in a commercial feed that the manufacturer or distributor named on the label warrants.

"Guaranteed analysis" means a listing of the minimum, maximum or both minimum and maximum concentrations of specified nutrients contained in a commercial feed that the manufacturer or distributor named on the label warrants. Both minimum and maximum concentrations of specified nutrients contained in a commercial feed are stated on an "as is" basis rather than on a "one hundred percent moisture free" basis in units specified by these rules.

"Guarantor" means any person whose name appears on the label of a commercial feed and is responsible for:

- (a) Product/label information that is not misleading or misbranded; and
- (b) Compliance with product/label information and all applicable rules and regulation; and
- (c) Licensing the facility that distributes in/into the state.

"Ingredient statement" means a collective and contiguous listing on the label of all ingredients of which the commercial feed is composed.

"Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed, or on the invoice or delivery slip with which a bulk commercial feed is distributed. This includes statements and promotions on company web sites or other internet-based customer interfaces.

"Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed or any of its containers or wrappers, or accompanying such commercial feed. This includes statements and promotions on company web sites or other internet-based customer interfaces.

"Lot identifier" means a unique identifier for each lot, batch or production run that enables the manufacturer to accurately trace the complete manufacturing and distribution history of the product. A lot identifier is an individual lot, batch or production run number, code, date, or other suitable identification applied to the label, container, or package. In the case of bulk feed, the lot identifier is on a label, invoice, or shipping document accompanying the feed.

"Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Examples of materials, substances, or items not considered to be part of a commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons. (See RCW 19.94.010 (1)(i))

"Nutritionally adequate" means the feed, when fed according to directions on the label, will meet the nutritional requirements of the class of animals for which the feed was manufactured.

"Nutritionally suitable" means nutritionally adequate.

"Pea bran" means a product consisting primarily of the various components from a pea splitting operation. Pea bran must contain at least ten percent crude protein and not more than thirty-eight percent crude fiber.

"Pea by-products meal" means a product containing light and broken peas, and offal from pea cleaning, which includes chips, pea powder, pea hulls, and screenings. Pea by-products meal must contain at least fifteen percent crude protein and not more than thirty percent crude fiber.

"Pea meal" means a pea product resulting from the grinding of whole peas that are reasonably free of other crop seeds, weeds, and mold. Pea meal must contain at least twenty percent crude protein and not more than eight percent crude fiber.

"Pea screenings meal" means a product consisting primarily of the various components from the screening and cleaning of peas. Pea screenings meal must contain at least ten percent crude protein and not more than thirty-eight percent crude fiber.

"Principal display panel" means the out-facing side of the feed tag, or if no tag, the part of the label that is most likely to be displayed, presented, shown or examined under normal and customary conditions of display for retail sale.

"Prohibited mammalian protein" has the same meaning as that term is defined in 21 C.F.R. Part 589.2000 (a)(1).

"Quantity statement" means the part of the label expressing net weight (mass), net volume (liquid or dry) or count.

"Repackage" means taking commercial feed from packages (no larger than one hundred pounds for dry feed or fifty-five gallons for liquid feed) and placing it into smaller packages for resale.

"Salvage commercial feed" means commercial feed still under control of the original manufacturer and will not be offered for sale at retail. Examples include, but are not limited to, start-up and over-run product, unpelleted commercial feed, specialty pet food fines, and other products not suitable for packaging for retail sale.

"Sell" or **"sale"** means all parts of exchanges concerning commercial feed including, but not limited to, advertising, offering, acceptance, dispensing, giving, delivering, serving, bartering, trading, or other supplying, holding for sale, and preparing for sale.

NEW SECTION

WAC 16-250-012 Label format. (1) The department adopts 21 C.F.R. Part 501 - Animal food labeling.

(2) Commercial feed, other than customer-formula feed, shall bear the information prescribed in this section on the label of the product and in the following format:

(a) Product name and brand name, if any, as specified in WAC 16-250-014(1).

(b) If a drug is used, label as specified in WAC 16-250-014(4).

(c) Purpose statement as specified in WAC 16-250-014(5).

(d) Guaranteed analysis as specified in WAC 16-250-014(6) and 16-250-036.

(e) Feed ingredients as specified in WAC 16-250-014(7) and 16-250-064.

(f) Directions for use and precautionary statements as specified in WAC 16-250-014(8).

(g) Name and principal mailing address of manufacturer or persons responsible for distributing the feed as specified in WAC 16-250-014(9).

(h) Quantity statement as specified in WAC 16-250-014(10).

(3)(a) The information as required in (2)(a),(b),(c) and (h) of this section must appear in its entirety on the principal display panel.

(b) The information as required in (2)(d),(e),(f) and (g) of this section shall be displayed in a prominent place on the feed tag or label, but not necessarily on the principal display panel. When a precautionary statement required by WAC 16-250-078 does not appear on the principal display panel, it must be referenced on the principal display panel with a statement such as "See back of label for precautions."

(4) None of the information required in this section shall be subordinated or obscured by other statements or designs.

(5) Customer-formula feed shall be accompanied with the information prescribed in this chapter using labels, invoice, delivery ticket, or other shipping document bearing the following information:

(a) The name and address of the manufacturer;

(b) The name and address of the purchaser;

(c) The date of sale or delivery;

(d) The customer-formula feed name and brand name, if any; and

(e) The product name and net quantity of each commercial feed and each other ingredient used in the customer-formula feed must be on file at the plant producing the product. These records do not have to be delivered with the customer-formula feed, but they must be:

(i) Kept on file for at least one year after the date of the last distribution;

(ii) Available to the purchaser, the dealer making the distribution, and the department on request; and

(iii) Meet the ingredient statement requirements in WAC 16-252-064.

(f) The direction for use and precautionary statements as required in WAC 16-250-078 and 16-250-082(1);

(g) If a drug containing product is used:

(i) The purpose of the medication (claim statement);

(ii) The established name of each active drug ingredient and the level of each drug used in the final mixture expressed in accordance with WAC 16-250-036(4); and

(h) The quantity statement.

(6) There are no label format requirements for customer-formula feed. However, a label, invoice, delivery ticket or other shipping document containing all of the information required in WAC 16-250-012(5) must:

(a) Accompany all deliveries of bulk or packaged customer-formula feed; and

(b) Be given to the purchaser; or

(c) If the purchaser is not present when the customer-formula feed is delivered, the label, invoice, delivery ticket or other shipping document may be left with the delivered feed in a place predetermined by the purchaser.

(7) All commercial feed must be labeled with a lot identifier sufficient to allow the manufacturer to accurately trace the complete manufacturing and distribution history of the product, but the lot identifier may be separate from the label information required in WAC 16-250-014.

(8) Labels must state all required label information in English. Commercial feed may be additionally labeled in other languages if the other language labels provide the same information as the English version of the label.

(9) No printed or written material (for example, pictures of animals or birds) of any kind that is misleading, incorrect, or at variance in any respect with the information required on the label may be attached to, appear on, or distributed with commercial feed.

(10) No label may contain statements referring to a competitive product or comparing the properties of a packaged feed to those of a competitive product unless the label specifically identifies the competitive product.

(11) No label may contain negative statements about a competitive product unless the director determines that such information is beneficial to the product's purchaser.

(12) The term "organic" may not appear on labels or shipping documents of any commercial feed unless the feed was produced under conditions that comply with the National Organic Standard for the production and handling of organic crops, livestock and processed food products. The National

Organic Standard may be obtained from the department, or on the internet at <http://www.ams.usda.gov/rules-regulations/organic>.

NEW SECTION

WAC 16-250-014 Label information. Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this section.

(1) Product name and brand name, if any.

(a) The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A commercial feed for a particular animal class, must be suitable for that purpose.

(b) Commercial, registered brand or trade names are not permitted in guarantees or ingredient listings and may only be used in the product name of feeds produced by or for the firm holding the rights to such a name.

(c) The name of a commercial feed shall not be derived from one or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as a part of the brand name or product name if the ingredients or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading.

(d) The word "protein" shall not be permitted in the product name of a feed that contains added nonprotein nitrogen.

(e) When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word "protein": Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer.

(f) Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the department designates otherwise.

(g) The word "vitamin," or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in WAC 16-250-036(3).

(h) The term "mineralized" shall not be used in the name of a feed except for "TRACE MINERALIZED SALT." When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

(i) The term "meat" and "meat by-products" shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and/or goats.

(j) If the commercial feed consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

(2) Commercial feed must be considered a distinct brand if it differs in guaranteed analysis, trademark name, or any other characteristic method of marking. However, this requirement does not prevent a brand from being distributed in various physical forms.

(3) If the brand name contains either a percentage value that signifies crude protein or the word "protein," then the feed must contain no more than one and one-quarter percent nonprotein nitrogen.

(4) If a drug is used, the following shall appear on the label:

(a) The word "medicated" directly following and below the product name in a type size no smaller than one-half the type size of the product name.

(b) Purpose statement as required in subsection (5) of this section.

(c) The purpose of medication (claim statement).

(d) An active ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with WAC 16-250-036(4).

(5) Purpose statement:

(a) The purpose statement shall contain the specific species and animal class(es) for which the feed is intended as defined in subsection (6) of this section.

(b) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, species and purpose while being consistent with the category of animal class defined in subsection (6) of this section which may include, but is not limited to, weight range(s), sex, or ages of the animal(s) for which the feed is manufactured.

(c) The purpose statement may be excluded from the label if the product name includes a description of the species and animal class(es) for which the product is intended.

(d) The purpose statement of a premix for the manufacture of feed may exclude the animal class and species and state "For Further Manufacture of Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds and premix specifications are provided by the end user of the premix. This section is applicable to commercial feeds regulated under subsection (6)(k) of this section.

(e) The purpose statement of a single purpose ingredient blend, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may exclude the animal class and species and state "For Further Manufacture of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds. This section is applicable to commercial feeds regulated under subsection (6)(k) of this section.

(f) The purpose statement of a product shall include a statement of enzyme functionality if enzymatic activity is represented in any manner.

(g) The statement of purpose for single ingredient feeds shall be stated as "Single Ingredient Feed" or "Feed Ingredi-

ent." The manufacturer of a single ingredient feed or feed ingredient shall have flexibility in describing in more specific and common language the intended use of the feed ingredient dependent on species and class.

(6) Guarantees - Crude protein, equivalent crude protein from nonprotein nitrogen, amino acids, crude fat, crude fiber, acid detergent fiber, neutral detergent fiber, calcium, phosphorus, salt and sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure. Individual nutrient guarantees are not required if listed as exempt in (l) of this subsection.

(a) Required guarantees for swine formula feeds.

(i) Animal classes:

Swine	
Class	Approximate Size
Prestarter	2 to 11 pounds
Starter	11 to 44 pounds
Grower	44 to 110 pounds
Finisher	110 pounds to market weight
Gilts, sows and adult boars	None specified
Lactating gilts and sows	None specified

(ii) Guaranteed analysis for swine complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Swine Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of lysine; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum selenium in parts per million (ppm).

(b) Required guarantees for formula poultry feeds (broilers, layers and turkeys).

(i) Animal classes:

Layers (chickens that are grown to produce eggs for food, e.g., table eggs)	
Classes	Approximate Age
Starting/growing	From day of hatch to

Layers (chickens that are grown to produce eggs for food, e.g., table eggs)	
Classes	Approximate Age
	approximately 10 weeks of age.
Finisher	From approximately 10 weeks of age to time first egg is produced. (Approximately 20 weeks of age).
Laying	From time first egg is laid throughout the time of egg production.
Breeders (chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs)	From time first egg is laid throughout their productive cycle.

Broilers (chickens that are grown for human food)	
Classes	Approximate Age
Starting/growing	From day of hatch to approximately 5 weeks of age.
Finisher	From approximately 5 weeks of age to market, (42 to 52 days).
Breeders (hybrid strains of chickens whose offspring are grown for human food - Broilers)	Any age and either sex.

Broiler, Breeders (chickens whose offspring are grown for human food)	
Classes	Approximate Age
Starting/growing	From day of hatch until approximately 10 weeks of age.
Finishing	From approximately 10 weeks of age to time first egg is produced, approximately 20 weeks of age.
Laying (fertile egg producing chickens - Broilers/roasters)	From day of first egg throughout the time fertile eggs are produced.

Turkeys		
Classes	Purpose	Approximate Age
Starting/growing	Turkeys that are grown for human food.	Females - From day of hatch to approximately 13 weeks of age.
		Males - From day of hatch to approximately 16 weeks of age.
Finisher	Turkeys that are grown for human food.	Females - From approximately 13 weeks of age to approximately 17 weeks of age.
		Males - From 16 weeks of age to 20 weeks of age, (or desired market weight).
Laying	Female turkeys that are producing eggs.	From time first egg is produced, throughout the time they are producing eggs.
Breeder	Turkeys that are grown to produce fertile eggs.	Both sexes - From day of hatch to time first egg is produced (approximately 30 weeks of age).

(ii) Guaranteed analysis for poultry complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Poultry Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of lysine; • Minimum percentage of methionine; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(c) Required guarantees for beef cattle formula feeds.
 (i) Animal classes:

Beef Cattle	
Classes	Production Stage
Calves	Birth to weaning.
Cattle on pasture	May be specific as to production stage; e.g., stocker, feeder, replacement heifers, brood cows, bulls, etc.
Feedlot cattle	Not specified.

(ii) Guaranteed analysis for beef complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Beef Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Maximum percentage of equivalent crude protein from nonprotein nitrogen (NPN) when added; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum percentage of potassium; • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(iii) Guaranteed analysis for beef mineral feeds must include the following nutrients (if added) on the label in the order listed below (all animal classes):

Beef Mineral Feeds
Nutrients
<ul style="list-style-type: none"> • Minimum and maximum percentage calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt; • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum percentage of magnesium; • Minimum percentage of potassium; • Minimum copper in parts per million (ppm); • Minimum selenium in parts per million (ppm); • Minimum zinc in parts per million (ppm); • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound.

(d) Required guarantees for dairy formula feeds.
 (i) Animal classes:

Dairy
Classes
Veal milk replacer
Herd milk replacer
Starter
Nonlactating dairy cattle: Replacement dairy heifers, dairy bulls and dairy calves
Lactating dairy cows
Dry dairy cows

(ii) Guaranteed analysis for veal and herd replacement milk replacer must include the following nutrients on the label in the order listed below:

Veal and Herd Replacement Milk Replacer
Nutrients
<ul style="list-style-type: none"> • Minimum percentage crude protein; • Minimum percentage crude fat; • Maximum percentage of crude fiber; • Minimum and maximum percentage calcium; • Minimum percentage of phosphorus; • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(iii) Guaranteed analysis for dairy cattle complete feeds and supplements must include the following nutrients on the label in the order listed below:

Dairy Cattle Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Maximum percentage of equivalent crude protein from nonprotein nitrogen (NPN) when added; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Maximum percentage of acid detergent fiber (ADF); • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum selenium in parts per million (ppm); • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(iv) Guaranteed analysis for dairy mixing and pasture mineral feeds must include the following nutrients (if added) on the label in the order listed below:

Dairy Mixing and Pasture Mineral Feeds
Nutrients
<ul style="list-style-type: none"> • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt; • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

Dairy Mixing and Pasture Mineral Feeds
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of magnesium; • Minimum percentage of potassium; • Minimum selenium in parts per million (ppm); • Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound.

(e) Required guarantees for equine formula feeds.

(i) Animal classes:

Equine
Classes
Growing
Broodmare
Maintenance
Performance (including stallions)

(ii) Guaranteed analysis for equine complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Equine Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Maximum percentage of acid detergent fiber (ADF); • Maximum percentage of neutral detergent fiber (NDF); • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum copper in parts per million (ppm) (if added); • Minimum selenium in parts per million (ppm); • Minimum zinc in parts per million (ppm); • Minimum vitamin A, other than the precursors of vitamin A, in International Units per pound (if added).

(ii) Guaranteed analysis for equine mineral feeds (all animal classes) must include the following nutrients on the label in the order listed below:

Equine Mineral Feeds
Nutrients
<ul style="list-style-type: none"> • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of sodium; • Minimum copper in parts per million (ppm) (if added); • Minimum selenium in parts per million (ppm); • Minimum zinc in parts per million (ppm); • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(f) Required guarantees for goat formula feeds.

(i) Animal classes:

Goats
Classes
Starter
Grower
Finisher
Breeder
Lactating

(ii) Guaranteed analysis for goat complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Goat Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Maximum percentage of equivalent crude protein from nonprotein nitrogen (NPN) when added; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Maximum percentage of acid detergent fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum and maximum copper in parts per million (ppm) (if added); • Minimum selenium in parts per million (ppm); • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(g) Required guarantees for sheep formula feeds.
 (i) Animal classes:

Sheep
Classes
Starter
Grower
Finisher
Breeder
Lactating

(ii) Guaranteed analysis for sheep complete feeds and supplements (all animal classes) must include the following nutrients on the label in the order listed below:

Sheep Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Maximum percentage of equivalent crude protein from nonprotein nitrogen (NPN) when added; • Minimum percentage of crude fat;

Sheep Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Maximum percentage of crude fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm); • Minimum selenium in parts per million (ppm); • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(h) Required guarantees for duck and geese formula feeds.

(i) Animal classes:

Ducks	
Classes	Approximate Age
Starter	0 to 3 weeks of age
Grower	3 to 6 weeks of age
Finisher	6 weeks to market
Breeder Developer	8 to 19 weeks of age
Breeder	22 weeks to end of lay

Geese	
Classes	Approximate Age
Starter	0 to 4 weeks of age
Grower	4 to 8 weeks of age
Finisher	8 weeks to market
Breeder Developer	10 to 22 weeks of age
Breeder	22 weeks to end of lay

(ii) Guaranteed analysis for duck and geese complete feeds and supplements (for all animal classes) must include the following nutrients on the label in the order listed below:

Duck and Geese Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(i) Required guarantees for fish complete feeds and supplements must include the following nutrients on the label in

the order listed below must include the following nutrients on the label in the order listed below:

Animal species shall be declared in lieu of animal class:

Fish
Species
Trout
Catfish
Species other than trout or catfish

Fish Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minimum percentage of phosphorus.

(j) Required guarantees for rabbit complete feeds and supplements.

(i) Animal classes:

Rabbits	
Classes	Approximate Age
Grower	4 to 12 weeks of age
Breeder	12 weeks of age and over

(ii) Guaranteed analysis for rabbit complete feeds and supplements must include the following nutrients on the label in the order listed below:

Rabbit Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • Minimum percentage of crude protein; • Minimum percentage of crude fat; • Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 units); • Minimum and maximum percentage of calcium; • Minimum percentage of phosphorus; • Minimum and maximum percentage of salt (if added); • Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; • Minimum vitamin A, other than precursors of vitamin A, in International Units per pound (if added).

(k) The required guarantees of grain mixtures with or without molasses and feeds other than those described in (a) through (j) of this subsection shall include the following items, unless exempted in (l) of this subsection, in the order listed:

(i) Animal class(es) and species for which the product is intended.

(ii) Guaranteed analysis must include the following nutrients on the label in the order listed below:

Grain Mixtures
Nutrients
<ul style="list-style-type: none"> • Minimum percentage crude protein; • Maximum or minimum percentage of equivalent crude protein from nonprotein nitrogen as required in WAC 16-250-036(5); • Minimum percentage of crude fat; • Maximum percentage of crude fiber; • Minerals in formula feeds, to include in the following order: <ul style="list-style-type: none"> - Minimum and maximum percentage of calcium; - Minimum percentage of phosphorus; - Minimum and maximum percentage of salt (if added); - Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee; - Other minerals. • Minerals in feed ingredients - As specified by the official definitions of the Association of American Feed Control Officials; • Vitamins in such terms as specified in WAC 16-250-036(3); • Total sugars as invert on dried molasses products or products being sold primarily for their sugar content; • Viable lactic acid producing microorganisms for use in silages in terms specified in WAC 16-250-036(7); • A commercial feed (e.g., vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose. Article II of AAFCO's "Criteria for Labeling Nutritional Indicators" is not applicable to the label guarantees for these specialized commercial feeds.

(l) Exemptions.

(i) A mineral guarantee for feed, excluding those feeds manufactured as complete feeds and for feed supplements intended to be mixed with grain to produce a complete feed for swine, poultry, fish, and veal and herd milk replacers, is not required when:

(A) The feed or feed ingredient is not intended or represented or does not serve as a principal source of that mineral to the animal; or

(B) The feed or feed ingredient is intended for nonfood producing animals and contains less than 6.5 percent total mineral.

(ii) Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement.

(iii) Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses.

(iv) Guarantees for microorganisms are not required when the commercial feed is intended for a purpose other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, and no specific label claims are made.

(v) The indication for animal class(es) and species is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal class(es) or species.

(7) Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of RCW 15.53.9016 (1)(c).

(a) The name of each ingredient as defined in the official publication of the Association of American Feed Control Officials, common or usual name, or one approved by the department.

(b) Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the official publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that:

(i) When a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label.

(ii) The manufacturer shall provide the department, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. These records must be available to the department for inspection and copying for at least two years after the last date of distribution of the commercial feed.

(8) Directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by WAC 16-250-078 and 16-250-082 appear elsewhere on the label.

(9) Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory.

(10) Quantity statement:

(a) Net quantity shall be declared in terms of weight, liquid measure or count, based on applicable requirements under Section 4 of the Fair Packaging and Labeling Act.

(b) Net quantity labeled in terms of weight shall be expressed both in pounds, with any remainder in terms, of ounces or common or decimal fractions of the pound, and in appropriate metric system units; or in the case of liquid measure, both in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart, and in appropriate metric system units.

(c) When the declaration of quantity of contents by count does not give adequate information as to the quantity of feed in the container, it shall be combined with such statement of weight, liquid measure, or size of the individual units as will provide such information.

(11) When screenings are added to unmixed by-product feed, the term "screenings" must appear on the label:

(a) In the same size of type as the brand name; and

(b) Either as part of or immediately below the brand name.

(12) License applicants and licensees must submit copies of their commercial feed labels and labeling to the department upon request for reasonable cause.

(13) When a commercial feed contains any ingredient or combination of ingredients for the purpose of imparting a distinct characteristic to the product that is significant to the purchaser, the name of that ingredient or combination of ingredients may be used as part of the brand name or product name if:

(a) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(b) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

NEW SECTION

WAC 16-250-036 Expression of guarantees. (1) The guarantees for crude protein, equivalent crude protein from nonprotein nitrogen, lysine, methionine, other amino acids, crude fat, crude fiber and acid detergent fiber shall be in terms of percentage.

(2) Mineral guarantees:

(a) When the calcium, salt, and sodium guarantees are given in the guaranteed analysis such shall be stated and conform to the following:

(i) When the minimum is below 2.5 percent, the maximum shall not exceed the minimum by more than 0.5 percentage point.

(ii) When the minimum is 2.5 percent but less than 5.0 percent, the maximum shall not exceed the minimum by more than one percentage point.

(iii) When the minimum is 5.0 percent or greater, the maximum shall not exceed the minimum by more than 20 percent of the minimum and in no case shall the maximum exceed the minimum by more than five percentage points.

(b) When stated, guarantees for minimum and maximum total sodium, and salt: Minimum potassium, magnesium, sulfur, phosphorus and maximum fluorine shall be in terms of percentage. Other minimum mineral guarantees shall be stated in parts per million (ppm) when the concentration is less than 10,000 ppm and in percentage when the concentration is 10,000 ppm (1 percent) or greater.

(c) Products labeled with a quantity statement (e.g., tablets, capsules, granules, or liquids) may state mineral guarantees in milligrams (mg) per unit (e.g., tablet, capsule, granule, or liquid) consistent with the quantity statement and directions for use.

(3) Guarantees for minimum vitamin content of commercial feed shall be listed in the order specified and are stated in mg/lb. or in units consistent with those employed for the quantity statement unless otherwise specified:

(a) Vitamin A, other than precursors of vitamin A, in International Units per pound.

(b) Vitamin D-3 in products offered for poultry feeding, in International Chick Units per pound.

(c) Vitamin D for other uses, International Units per pound.

(d) Vitamin E, in International Units per pound.

(e) Concentrated oils and feed additive premixes containing vitamins A, D and/or E may, at the option of the distributor be stated in units per gram instead of units per pound.

(f) Vitamin B-12, in milligrams or micrograms per pound.

(g) All other vitamin guarantees shall express the vitamin activity in milligrams per pound in terms of the following: Menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B-6, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid, and carotene.

(4) Guarantees for drugs shall be stated in terms of percent by weight, except:

(a) Antibiotics, present at less than two thousand grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed.

(b) Antibiotics present at two thousand or more grams per ton (total) of commercial feed, shall be stated in grams per pound of commercial feed.

(c) Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic.

(d) The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions.

(5) Commercial feeds containing any added nonprotein nitrogen shall be labeled as follows:

(a) For ruminants:

(i) Complete feeds, supplements, and concentrates containing added nonprotein nitrogen and containing more than 5 percent protein from natural sources shall be guaranteed as follows: Crude protein, minimum, ___ percent (this includes not more than ___ percent equivalent crude protein from nonprotein nitrogen).

(ii) Mixed feed concentrates and supplements containing less than 5 percent protein from natural sources may be guaranteed as follows: Equivalent crude protein from nonprotein nitrogen, minimum, ___ percent.

(iii) Ingredient sources of nonprotein nitrogen such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic nonprotein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows: Nitrogen, minimum, ___ percent equivalent crude protein from nonprotein nitrogen, minimum, ___ percent.

(b) For nonruminants:

(i) Complete feeds, supplements and concentrates containing crude protein from all forms of nonprotein nitrogen, added as such, shall be labeled as follows: Crude protein, minimum ___ percent (this includes not more than ___ per-

cent equivalent crude protein which is not nutritionally available to species of animal for which feed is intended).

(ii) Premixes, concentrates or supplements intended for nonruminants containing more than 1.25 percent equivalent crude protein from all forms of nonprotein nitrogen, added as such, must contain adequate directions for use and a prominent statement:

WARNING: This feed must be used only in accordance with directions furnished on the label.

(6) Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(7) Guarantees for microorganisms shall be stated in colony forming units per gram (CFU/g) when directions are for using the product in grams, or in colony forming units per pound (CFU/lb.) when directions are for using the product in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

(8) Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (*Bacillus subtilis*) 5.5 mg amino acids liberated/min./milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based on the amount of enzymatic activity provided.

(9) Guarantees for dietary starch, sugars, and fructans for commercial feeds, other than customer-formula feed, pet food and specialty pet food products:

(a) A commercial feed which bears on its labeling a claim in any manner for levels of "dietary starch," "sugars," "fructans," or words of similar designation, shall include on the label:

(i) Guarantees for maximum percentage of dietary starch and maximum percentage sugars, in the guaranteed analysis section immediately following the last fiber guarantee.

(ii) A maximum percentage guarantee for fructans immediately following sugars, if the feed contains forage products.

(b) When such guarantees for dietary starch, sugars or fructans for commercial feeds appear on the label, feeding directions shall indicate the proper use of the feed product and a recommendation to consult with a veterinarian or nutritionist for a recommended diet.

(10) The labels on commercial feeds such as vitamin/mineral premix and base mix intended as a specialized nutritional source for use in the manufacture of other feeds, must state the intended purpose and guarantee that the nutrients are relevant to that purpose.

(11) When approved by the department, guarantees may be made for these special feeds even if there are no approved Association of Official Analytical Chemists (AOAC) methods for determining specific nutritional content of these specialized feeds.

(12) The sliding scale method of expressing a guaranteed analysis on a commercial feed label (for example "minimum crude protein 15-18 percent") is prohibited.

(13) Minerals, except salt, when quantitatively guaranteed, must be stated in terms of percentage of the element.

(14) Guaranteed analysis for all grain mixture, with or without molasses, commercial feed must include the following nutrients on the label in the order listed:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of crude fat; and
- (c) Maximum percentage of crude fiber.

NEW SECTION

WAC 16-250-044 Substantiation of nutritional suitability. (1) A commercial feed, other than a customer-formula feed, shall be nutritionally suitable for its intended purpose as represented by its labeling.

(2) If the department has reasonable cause to believe a commercial feed is not nutritionally suitable, the department may request the feed manufacturer to either submit an "affidavit of suitability" or an alternative procedure acceptable to the department, certifying the nutritional adequacy of the feed. The affidavit of suitability or alternate procedure of suitability shall serve as substantiation of the suitability of the feed.

(3) If an affidavit of suitability, or alternative procedure acceptable to the department, is not submitted by the feed manufacturer within thirty days of written notification, the department may deem the feed adulterated under RCW 15.53.902 and order the feed removed from the marketplace.

(4) The affidavit of suitability shall contain the following information:

- (a) The feed company's name;
- (b) The feed's product name;
- (c) The name and title of the affiant submitting the document;
- (d) A statement that the affiant has knowledge of the nutritional content of the feed and based on valid scientific evidence the feed is nutritionally adequate for its intended purpose;
- (e) The date of submission; and
- (f) The signature of the affiant notarized by a certified notary public.

NEW SECTION

WAC 16-250-064 Ingredients. (1) The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the AAFCO official publication, the common or usual name, or one approved by the department.

(2) The name of each ingredient must be shown in letters or type of the same size.

(3) No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed.

(4) The term "dehydrated" may precede the name of any product that has been artificially dried.

(5) A single ingredient product defined by the Association of American Feed Control Officials is not required to have an ingredient statement.

(6) Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or

the ingredient has a common accepted name that requires no definition, (i.e., sugar).

(7) When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than 0.007 percent iodine, uniformly distributed.

(8) Ingredients on labels must be listed in descending order by weight.

(9) The ingredient statement must not contain commercial, copyrighted, brand, or trade names.

(10) The term "degermed" must precede the name of any product from which germs were wholly or partially removed.

(11) If a drug is used, the drug does not have to be listed in the ingredient statement. However, the drug name is required to be listed on the label.

NEW SECTION

WAC 16-250-078 Directions for use and precautionary statements. (1) Directions for use and precautionary statements on the labeling of all commercial feeds and customer-formula feeds containing additives (including drugs, special purpose additives, or nonnutritive additives) shall:

(a) Be adequate to enable safe and effective use for the intended purposes by users with no special knowledge of the purpose and use of such articles; and

(b) Include, but not be limited to, all information described by all applicable regulations adopted under the Federal Food, Drug, and Cosmetic Act.

(2) Adequate directions for use and precautionary statements are required for feeds containing nonprotein nitrogen as specified in WAC 16-250-082.

(3) Adequate directions for use and precautionary statements necessary for safe and effective use are required on commercial feeds distributed to supply particular dietary needs or for supplementing or fortifying the usual diet or ration with any vitamin, mineral, or other dietary nutrient or compound.

(4) Raw milk distributed as a commercial feed shall comply with the provisions under chapters 15.36 and 15.37 RCW. The label shall display the following statements:

"WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." and "DECHARACTERIZED WITH HARMLESS FOOD COLORING."

(5) The label type size must meet the following:

(a) The name and address of the producer or distributor in letters not less than one-fourth inch in size.

(b) The name of the contents in letters not less than one-fourth inch in size.

(c) The words "WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." in letters at least one-half inch in size.

(d) The words "DECHARACTERIZED WITH HARMLESS FOOD COLORING." in letters not less than one-fourth inch in size.

NEW SECTION

WAC 16-250-082 Nonprotein nitrogen. (1) Urea and other nonprotein nitrogen products defined in the AAFCO official publication are acceptable ingredients only in commercial feeds for ruminant animals as a source of equivalent crude protein. If the commercial feed contains more than 8.75 percent of equivalent crude protein from all forms of nonprotein nitrogen, added as such, or the equivalent crude protein from all forms of nonprotein nitrogen, added as such, exceeds one-third of the total crude protein, the label shall bear adequate directions for the safe use of feeds and a precautionary statement: "CAUTION: USE AS DIRECTED." The directions for use and the caution statement shall be in type of such size so placed on the label that they will be read and understood by ordinary persons under customary conditions of purchase and use.

(2) Nonprotein nitrogen defined in the AAFCO official publication, when so indicated, are acceptable ingredients in commercial feeds distributed to nonruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from nonprotein nitrogen sources when used in nonruminant rations shall not exceed 1.25 percent of the total daily ration.

(3) On labels such as those for medicated feeds which bear adequate feeding directions and/or warning statements, the presence of added nonprotein nitrogen shall not require a duplication of the feeding directions or the precautionary statements as long as those statements include sufficient information to ensure the safe and effective use of this product due to the presence of nonprotein nitrogen.

NEW SECTION

WAC 16-250-094 Drug and feed additives. (1) Prior to approval of a registration application and/or approval of a label for commercial feed which contain additives (including drugs, other special purpose additives, or nonnutritive additives), the distributor may be required to submit evidence to prove the safety and efficacy of the commercial feed when used according to the directions furnished on the label.

(2) Satisfactory evidence of safety and efficacy of a commercial feed may be:

(a) When the commercial feed contains such additives, the use of which conforms to the requirements of the applicable regulation in 21 C.F.R., or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(b) When the commercial feed is itself a drug and is generally recognized as safe and effective for the labeled use or is marketed subject to an application approved by the United States Food and Drug Administration under section 512 of the Federal Food, Drug, and Cosmetic Act; or

(c) When one of the purposes for feeding a commercial feed is to impart immunity (that is to act through some immunological process) the constituents imparting immunity have been approved for the purpose through the Federal Virus, Serum and Toxins Act of 1913, as amended; or

(d) When the commercial feed is a direct fed microbial product and:

(i) The product meets the particular fermentation product definition; and

(ii) The microbial content statement, as expressed in the labeling, is limited to the following: "Contains a source of live (viable) naturally occurring microorganisms." This statement shall appear on the label; and

(iii) The source is stated with a corresponding guarantee expressed in accordance with WAC 16-250-036(7).

(e) When the commercial feed is an enzyme product, and:

(i) The product meets the particular enzyme definition defined by the Association of American Feed Control Officials; and

(ii) The enzyme is stated with a corresponding guarantee expressed in accordance with WAC 16-250-036(8).

(3) An artificial color may be used in commercial feed only if it has been shown to be harmless to animals. The department will accept the permanent or provisional listing of an artificial color in the United States Food and Drug Administration regulations as safe for use as satisfactory evidence that the color is harmless to animals provided that the manufacturer's use of the artificial color is consistent with the conditions, limitations, and tolerance prescribed by the federal regulation.

(4) Any feed ingredients or feed product must not contain materials that enhance the natural color of a feed if it conceals inferiorities.

NEW SECTION

WAC 16-250-136 Adulterants. (1) The department adopts 21 C.F.R. Part 589 - Substances prohibited from use in animal food or feed.

(2) For the purpose of RCW 15.53.902, the terms "poisonous substances" or "deleterious substances" include, but are not limited to, the following:

(a) Fluorine and any mineral or mineral mixture which is to be used directly for the feeding of domestic animals and in which the fluorine exceeds 0.20 percent for breeding and dairy cattle; 0.30 percent for slaughter cattle; 0.30 percent for sheep; 0.35 percent for lambs; 0.45 percent for swine; and 0.60 percent for poultry.

(b) Fluorine bearing ingredients when used in such amounts that they raise the fluorine content of the total ration (exclusive of roughage) above the following amounts: 0.004 percent for breeding and dairy cattle; 0.009 percent for slaughter cattle; 0.006 percent for sheep; 0.01 percent for lambs; 0.015 percent for swine and 0.03 percent for poultry.

(c) Fluorine bearing ingredients incorporated in any feed that is fed directly to cattle, sheep or goats consuming roughage (with or without) limited amounts of grain, that results in a daily fluorine intake in excess of 50 milligrams of fluorine per 100 pounds of body weight.

(d) Soybean meal, flakes or pellets or other vegetable meals, flakes or pellets which have been extracted with trichlorethylene or other chlorinated solvents.

(e) Sulfur dioxide, sulfurous acid, and salts of sulfurous acid when used in or on feeds or feed ingredients which are

considered or reported to be a significant source of vitamin B1 (thiamine).

(3) When screenings are added to unmixed by-product feed, the screening must not contain any seed, pesticide, or other product that renders it adulterated within the meaning of RCW 15.53.902.

(4) All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy the viability of such weed seeds so that the finished product contains no more than one viable prohibited noxious weed seed per pound and not more than twenty-five viable restricted noxious weed seeds per pound.

(5) For purposes of this rule, prohibited noxious weed seeds are those listed in WAC 16-301-045 (Prohibited noxious weed seeds) and restricted noxious weed seeds are those listed in WAC 16-301-050 (Restricted noxious weed seeds).

(6) Feed containing raw or unprocessed animal waste is adulterated under this chapter.

(7) In addition to the requirements in subsection (2) of this section, the terms "poisonous substances" or "deleterious substances" as used in RCW 15.53.902 include, but are not limited to, any ingredient that contains more than twenty parts per billion aflatoxin B1, B2, G1, G2, individually or in total.

NEW SECTION

WAC 16-250-148 Current good manufacturing practice and hazard analysis and risk-based preventive controls. The department adopts the following federal regulations as current good manufacturing practice:

(1) The regulations prescribing good manufacturing practices for Type B and Type C medicated feeds as published in 21 C.F.R. Part 225.1 - 225.202.

(2) The regulations prescribing good manufacturing practices for Type A medicated articles as published in 21 C.F.R. Part 226.1 - 226.115.

(3) The requirements of 21 C.F.R. Part 507 - Current good manufacturing practice, hazard analysis, and risk-based preventive controls for food for animals.

(4) The requirements of 21 C.F.R. Part 113 - Thermally processed low-acid foods packaged in hermetically sealed containers.

(5) The regulations and requirements governing emergency permit control in 21 C.F.R. Part 108.

NEW SECTION

WAC 16-250-152 Certain mammalian proteins prohibited in ruminant feed. The department adopts the requirements of 21 C.F.R. Part 589.2000 - Animal proteins prohibited in ruminant feed; and 21 C.F.R. Part 589.2001 - Cattle materials prohibited in animal food or feed to prevent the transmission of bovine spongiform encephalopathy.

NEW SECTION

WAC 16-250-164 Veterinary feed directive. (1) The department adopts the definitions of 21 C.F.R. Part 558.3(b).

(2) The department adopts the requirements of 21 C.F.R. Part 558.6 - Veterinary feed directive drugs.

NEW SECTION

WAC 16-250-166 Recordkeeping requirements.

Records relating the lot identifier to the manufacture, processing, packing, distribution, receipt, or holding of the product must be kept for two years after the last date of distribution.

NEW SECTION

WAC 16-250-178 Licensing requirements.

(1) Except as provided for in RCW 15.53.9013, any person who manufactures a commercial feed in this state, or who distributes a commercial feed in or into this state; or whose name appears on a commercial feed label as guarantor, must obtain a commercial feed license for each facility that distributes in or into this state.

(2) The license application must be submitted on a form prescribed by the department.

(3) The license application must include:

(a) The name, mailing address, and contact information of the applicant;

(b) The name, mailing address, and contact information of the individual responsible for reporting tonnage;

(c) The name, mailing address, physical address, and contact information of the facility being issued the license;

(d) Types of business the firm is engaged in (manufacturer, distributor, guarantor);

(e) Types of processing;

(f) Types of feed distributed;

(g) Types of ingredients;

(h) Applicant's signature; and

(i) Date signed.

(4) A separate license application form is required for each location or facility.

(5) A fifty dollar fee must accompany each license application form.

(6) License application forms can be obtained from the department online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>; by emailing the animal feed program at feedreg@agr.wa.gov, or by phone at 360-902-1942.

NEW SECTION

WAC 16-250-182 Semiannual feed distribution reporting requirements and inspection fees.

(1)(a) Each licensee must file a semiannual report on forms provided by the department setting forth the number of tons of commercial feed distributed in or into this state as required by RCW 15.53.9018.

(b) The report must include the amount of feed distributed by type of mixed feed by animal class, feed ingredients, signature of person filing report, and date signed.

(2) An inspection fee on all commercial feed sold for distribution in or into this state during the year must accompany the semiannual report.

(3) The minimum inspection fee, the late fee, and exceptions to payment of the fee are described in RCW 15.53.9018.

(4) Semiannual reporting forms can be obtained online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>; by emailing the animal feed program at feedreg@agr.wa.gov; or by phone at 360-902-1942.

(5) Any reports and associated fees may be submitted to the department by mail to:

Washington State Department of Agriculture
Animal Feed Program
P.O. Box 42591
Olympia, WA 98504-2591

NEW SECTION

WAC 16-250-194 Access to publications adopted under this chapter. (1) Electronic access to 21 C.F.R. is available at <https://www.gpo.gov/fdsys/search/home.action>. Print copies of the titles can be purchased from the U.S. Government Bookstore online at <https://bookstore.gpo.gov/catalog/laws-regulations/code-federal-regulations-cfrs-print>. If you do not have electronic access, contact:

U.S. Government Publishing Office
P.O. Box 979050
St. Louis, MO 63197-9000
Phone 1-866-512-1800

(2) Online and print copies of the AAFCO official publication can be purchased from AAFCO online at <http://www.aafo.org/Publications>. If you do not have electronic access, print copies can also be purchased from:

AAFCO
1800 South Oak Street, Suite 100
Champaign, IL 61820
Phone 217-356-4221

(3) A copy of these publications are available for inspection at:

Washington State Department of Agriculture
Natural Resources Building
1111 Washington Street S.E.
Olympia, WA 98504-2560

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-250-005 Commercial feed regulated by this chapter.
- WAC 16-250-007 The Code of Federal Regulation.
- WAC 16-250-010 Commercial feed terms and definitions.
- WAC 16-250-015 Feed ingredient names and definitions.
- WAC 16-250-018 Customer-formula feed labeling required.
- WAC 16-250-020 Label information and recordkeeping requirements for customer-formula feed.

- WAC 16-250-028 Commercial feed labeling required except customer-formula feed.
- WAC 16-250-030 Recordkeeping requirements and label information required on all commercial feed labels except customer-formula feed.
- WAC 16-250-035 Format required for all commercial feed labels except customer-formula feed.
- WAC 16-250-040 Product or brand name label information required for all commercial feeds except customer-formula feed.
- WAC 16-250-042 Label information required when a drug is used in commercial feed.
- WAC 16-250-045 Purpose of feed statement requirements for commercial feed, except grain mixture feeds.
- WAC 16-250-050 Guarantee requirements that apply to WAC 16-250-052 through 16-250-065.
- WAC 16-250-051 Exemptions from the guarantees required in WAC 16-250-052 through 16-250-063.
- WAC 16-250-052 Guarantees for all swine commercial feed except customer-formula feed.
- WAC 16-250-053 Guarantees for all poultry commercial feed (broilers, layers and turkeys) except customer-formula feed.
- WAC 16-250-054 Guarantees for all beef cattle commercial feed except customer-formula feed.
- WAC 16-250-055 Guarantees for all dairy cattle commercial feed except customer-formula feed.
- WAC 16-250-056 Guarantees for all equine commercial feed except customer-formula feed.
- WAC 16-250-057 Guarantees for all goat and sheep commercial feed except customer-formula feed.
- WAC 16-250-058 Guarantees for all duck and goose commercial feed except customer-formula feed.
- WAC 16-250-059 Guarantees for all fish commercial feed except customer-formula feed and specialty pet food.
- WAC 16-250-060 Guarantees for all rabbit commercial feed except customer-formula feed.
- WAC 16-250-063 Guarantees for commercial feeds for animal species not specified in WAC 16-250-052 through 16-250-060 or in chapter 16-252 WAC, except customer-formula feed.

- WAC 16-250-065 Guarantees for grain mixture commercial feeds, except customer-formula feed.
- WAC 16-250-067 Guarantees for commercial feed sold primarily for sugar content.
- WAC 16-250-068 Guarantees for vitamin/mineral premix and base mix commercial feed.
- WAC 16-250-069 Expression of guarantees—Expressed as is.
- WAC 16-250-070 Expression of guarantees—Sliding-scale method prohibited.
- WAC 16-250-071 Expression of guarantees—Protein, amino acids, fat, and fiber.
- WAC 16-250-072 Expression of guarantees—Minerals.
- WAC 16-250-073 Expression of guarantees—Minimum vitamin content.
- WAC 16-250-074 Expression of guarantees—Drugs.
- WAC 16-250-075 Expression of guarantees and special requirements—Commercial feeds containing any added nonprotein nitrogen.
- WAC 16-250-076 Expression of guarantees—Microorganisms and enzymes.
- WAC 16-250-080 Substantiating nutritional suitability of commercial feed except for customer-formula feed.
- WAC 16-250-090 Feed ingredient statement terms and recordkeeping requirements.
- WAC 16-250-095 Drug and feed additive requirements.
- WAC 16-250-100 Directions for use and precautionary statement requirements.
- WAC 16-250-110 Screenings.
- WAC 16-250-120 Adulteration of feed.
- WAC 16-250-140 Use of artificial coloring.
- WAC 16-250-150 Reusing bags, totes, and containers.
- WAC 16-250-155 Tonnage fee requirements.
- WAC 16-250-160 Commercial feed license application requirements.
- WAC 16-250-170 Commercial feed label submission requirements.
- WAC 16-250-180 Good manufacturing practices adopted.

Chapter 16-252 WAC

COMMERCIAL FEED ((~~RULES~~))—PET FOOD AND SPECIALTY PET FOOD

NEW SECTION

WAC 16-252-002 Purpose. This chapter is pursuant to RCW 15.53.9012 and regulates commercial feed, specifically pet food and specialty pet food distributed in Washington

state for the purpose of uniformity with federal regulations and national consensus codes and ultimately to protect consumers from contaminated, adulterated, or misbranded pet food and specialty pet food.

NEW SECTION

WAC 16-252-004 Applicability. (1) This chapter applies to pet food as defined in RCW 15.53.901, which includes food for dogs (*Canis familiaris*) and cats (*Felis catus*).

(2) This chapter applies to specialty pet food as defined in RCW 15.53.901 and includes any animal normally maintained in a household, such as, but not limited to, rodents, ornamental birds, ornamental fish, reptiles and amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

(3) If adulterated under RCW 15.53.902 for some but not all purposes, the following commodities are subject to the requirements of this chapter. If unadulterated, the following commodities are exempt from the requirements of this chapter.

(a) Unmixed whole seeds and physically altered entire unmixed seeds when such seeds are not chemically changed.

(b) Raw meat, hay, loose salt, straw, stover, silage, cobs, husks, and hulls when such commodities are not ground, mixed or intermixed with other materials.

NEW SECTION

WAC 16-252-006 Adoption of federal regulations and national consensus codes—Order of precedence. (1) Adoption of regulations under the Federal Food, Drug and Cosmetic Act in this chapter is of the version effective February 9, 2017, and 21 U.S.C. 301 et seq. in this chapter is adoption of the version effective September 27, 2017.

(2) Adoption of provisions under the Association of American Feed Control Officials (AAFCO) official publication in this chapter is adoption of the provisions in the 2018 edition.

(3) If there is conflict between this chapter, chapter 15.53 RCW, adopted federal regulations, and adopted AAFCO provisions, the conflict must be resolved by giving precedence in the following order:

(a) Adopted federal regulations;

(b) Chapter 15.53 RCW;

(c) This chapter;

(d) Adopted AAFCO pet food and specialty pet food provisions; and

(e) Adopted AAFCO commercial feed provisions.

(4) If this chapter is silent with regard to any aspect of pet food or specialty pet food, then the regulations under chapter 16-250 WAC apply.

NEW SECTION

WAC 16-252-008 Definitions and terms. (1) The department adopts the Official Feed Terms and the Official Common and Usual Names and Definitions of Feed Ingredients in the AAFCO official publication.

(2) In addition, the following definitions apply to this chapter:

"All life stages" means gestation/lactation, growth, and adult maintenance life stages.

"Dehydrated grass meal" means the aerial portion of a grass plant that is:

- (a) Cut before the formation of seed;
- (b) Reasonably free of other crop plants, weeds, and mold;
- (c) Finely ground; and
- (d) Dried by artificial thermal means.

"Distressed specialty pet food" means specialty pet food in distribution that is no longer available for retail sale. Examples of distressed specialty pet food include, but are not limited to, dented cans, torn bags, or specialty pet food past its sell-by date.

"Family" means a group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an AAFCO feeding protocol(s).

"Grain mixture specialty pet food" means mixed or intermixed whole or physically altered grains, that:

- (a) Are not chemically altered;
- (b) May or may not contain molasses; and
- (c) Except for molasses, contain no other additives.

"Grass seed by-products meal or pellets" means a ground product consisting of light and broken seeds, hulls, chaff, straw, and some weed seeds but excluding sand, dirt, and heavy weed seeds.

"Grass seed screenings meal or pellets" means a product comprised chiefly of hulls obtained from the cleaning of various grass seeds.

"Guarantee" means a listing of specified nutrients or nonnutritive substances contained in a pet food or specialty pet food that the manufacturer or distributor named on the label warrants.

"Guaranteed analysis" means a listing of the minimum, maximum or both minimum and maximum concentrations of specified nutrients contained in a pet food or specialty pet food that the manufacturer or distributor named on the label warrants. Both minimum and maximum concentrations of specified nutrients contained in a pet food or specialty pet food are stated on an "as is" basis rather than on a "one hundred percent moisture free" basis in units specified by this chapter.

"Guarantor" means any person whose name appears on the label of a commercial feed and is responsible for:

- (a) Product/label information that is not misleading or misbranded;
- (b) Compliance with product/label information and all applicable rules and regulation; and
- (c) Registering pet food/specialty pet food products distributed in/into the state.

"Immediate container" means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

"Ingredient statement" means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

"Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a pet food or specialty pet food is distributed, or on the invoice or delivery slip with which a bulk pet food or specialty pet food is distributed. This includes statements and promotion on company web sites or other internet based customer interfaces.

"Labeling" means all labels and other written, printed, or graphic matter upon a pet food or specialty pet food or any of its containers or wrappers, or accompanying such pet food or specialty pet food. This includes statements and promotion on company web sites or other internet based customer interfaces.

"Lot identifier" means a unique identifier for each lot, batch or production run that enables the manufacturer to accurately trace the complete manufacturing and distribution history of the product. A lot identifier is an individual lot, batch or production run number, code, date, or other suitable identification applied to the label, container, or package. In the case of bulk pet food or specialty pet food, the lot identifier is on a label, invoice, or shipping document accompanying the pet food or specialty pet food.

"Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of the commodity. Examples of materials, substances, or items not considered to be part of a commodity include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons. (See RCW 19.94.010 (1)(i).)

"Nutritionally adequate" means the pet food or specialty pet food, when fed according to directions on the label, will meet the nutritional requirements of the class of animals for which the pet food or specialty pet food was manufactured.

"Nutritionally suitable" means nutritionally adequate.

"Pea bran" means a product consisting primarily of the various components from a pea splitting operation. Pea bran must contain at least ten percent crude protein and not more than thirty-eight percent crude fiber.

"Pea by-products meal" means a product containing light and broken peas, and offal from pea cleaning, which includes chips, pea powder, pea hulls, and screenings. Pea by-products meal must contain at least fifteen percent crude protein and not more than thirty percent crude fiber.

"Pea meal" means a pea product resulting from the grinding of whole peas that are reasonably free of other crop seeds, weeds, and mold. Pea meal must contain at least twenty percent crude protein and not more than eight percent crude fiber.

"Pea screenings meal" means a product consisting primarily of the various components from the screening and cleaning of peas. Pea screenings meal must contain at least ten percent crude protein and not more than thirty-eight percent crude fiber.

"Principal display panel" has the same meaning as that term is defined in 21 C.F.R. Part 589.2000 (a)(1).

"Quantity statement" means the part of the label expressing net weight (mass), net volume (liquid or dry) or count.

"Repackage" means taking pet food and specialty pet food from packages (no larger than one hundred pounds for dry feed or fifty-five gallons for liquid feed) and placing it into smaller packages for resale.

"Salvage pet food and specialty pet food" means pet food and specialty pet food still under control of the original manufacturer and will not be offered for sale at retail. Examples include, but are not limited to, start-up and over-run product, unpelleted specialty pet food, specialty pet food fines, and other products not suitable for packaging for retail sale.

"Sell" or "sale" means all parts of exchanges concerning commercial feed including, but not limited to, advertising, offering, acceptance, dispensing, giving, delivering, serving, bartering, trading, or other supplying, holding for sale, and preparing for sale.

NEW SECTION

WAC 16-252-012 Label format and labeling. (1) Pet food and specialty pet food shall be labeled with the following information:

(a) Product name and brand name, if any, on the principal display panel as specified in WAC 16-252-024;

(b) A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel;

(c) Quantity statement, as defined in WAC 16-252-008, by weight (pounds and ounces, and metric), liquid measure (quarts, pints and fluid ounces, and metric) or by count, on the principal display panel;

(d) Guaranteed analysis as specified in WAC 16-252-036;

(e) Ingredient statement as specified in WAC 16-252-064;

(f) A statement of nutritional adequacy or purpose if required under WAC 16-252-044;

(g) Feeding directions if required under WAC 16-252-106; and

(h) Name and address of the manufacturer or distributor as specified in WAC 16-252-122.

(2) When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper.

(3) A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package.

(4) The use of the word "proven" in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence.

(5) No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product.

(a) Statements referring to a competitive product or comparing the properties of a packaged food to those of a competitive product must not appear on a label unless the competitive product is specifically identified.

(b) Negative statements regarding a competitive product must not appear on a label unless the director determines that the information provided by the statements is beneficial to the product's purchaser.

(6) A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading.

(7) A statement on a pet food or specialty pet food label stating "Improved," "New," or similar designation shall be substantiated and limited to six months production.

(8) A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one year production, after which the claim shall be removed or resubstantiated.

(9)(a) Raw milk distributed as a commercial feed shall comply with the provisions under chapters 15.36 and 15.37 RCW. The label shall display the following statements: "WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." and "DECHARACTERIZED WITH HARMLESS FOOD COLORING."

(b) The label type size must meet the following:

(i) The name and address of the producer or distributor in letters not less than one-fourth inch in size;

(ii) The name of the contents in letters not less than one-fourth inch in size;

(iii) The words "WARNING: NOT FOR HUMAN CONSUMPTION - THIS PRODUCT HAS NOT BEEN PASTEURIZED AND MAY CONTAIN HARMFUL BACTERIA." in letters at least one-half inch in size; and

(iv) The words "DECHARACTERIZED WITH HARMLESS FOOD COLORING." in letters not less than one-fourth inch in size.

(10) All pet food and specialty pet food must be labeled with a lot identifier sufficient to allow the manufacturer to accurately trace the complete manufacturing and distribution history of the product, but the lot identified may be separate from the label information required under this section.

(11) Labels must state all required label information in English. Pet food and specialty pet food may be additionally labeled in other languages if the other language labels provide the same information as the English version of the label.

(12) The term "organic" may not appear on labels or shipping documents of any pet food or specialty pet food unless the food was produced under conditions that comply with the National Organic Standard for the production and handling of organic crops, livestock and processed food products. The National Organic Standard may be obtained from the department, or on the internet at <http://www.ams.usda.gov/rules-regulations/organic>.

(13) When screenings are added to unmixed by-product pet food or specialty pet food, the term "screenings" must appear on the label:

(a) In the same size of type as the brand name; and

(b) Either as part of or immediately below the brand name.

(14) Distressed or salvage pet food or specialty pet food that contains, or may contain, prohibited mammalian protein must be labeled with the bovine spongiform encephalopathy precautionary statement "Do not feed to cattle or other ruminants."

NEW SECTION

WAC 16-252-024 Brand and product names. (1) The words "100%," or "All," or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments.

(2) An ingredient or combination of ingredients may form part of a product name of a pet food or specialty pet food:

(a) When the ingredient(s) constitutes at least ninety-five percent of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredients shall constitute at least seventy percent of the total product weight.

(b) When any ingredient(s) constitutes at least twenty-five percent of the weight of the product, provided that:

(i) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredient(s) shall constitute at least ten percent of the total product weight; and

(ii) A descriptor is used with the ingredient name(s). This descriptor shall imply other ingredients are included in the product formula.

(iii) Examples of descriptors include "dinner," "platter," "entree," "formula," and "recipe"; and

(iv) The descriptor shall be in the same size, style, and color print as the ingredient name(s).

(c) When a combination of ingredients which are included in the product name in accordance with this subsection meets all of the following:

(i) Each ingredient constitutes at least three percent of the product weight, excluding water sufficient for processing;

(ii) The names of the ingredients appear in the order of their respective predominance by weight in the product; and

(iii) All such ingredient names appear on the label in the same size, style, and color print.

(3) When the name of any ingredient appears in the product name of a pet food or specialty pet food or elsewhere on the product label and includes a descriptor such as "with" or similar designation, the named ingredient(s) must each constitute at least three percent of the product weight exclusive of water sufficient for processing. If the names of more than one ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The three percent minimum level shall not apply to claims for nutrients, such as, but not limited to, vitamins, minerals, and fatty acids, as well as condiments. The word "with," or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

Panel Size	Max "With Claim" Type Size
≤5 in. ²	1/8 in.
>5 to ≤25 in. ²	1/4 in.
>25 to ≤100 in. ²	3/8 in.
>100 to ≤400 in. ²	1/2 in.
>400 in. ²	1 in.

(4) A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following:

(a) The flavor designation:

(i) Conforms to the name of the ingredient as listed in the ingredient statement; or

(ii) Is identified by the source of the flavor in the ingredient statement.

(b) The word "flavor" is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and

(c) Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request.

(5) The product name of the pet food or specialty pet food shall not be derived from one or more ingredients unless all ingredients are included in the name, except as specified by WAC 16-252-024 (2) or (3); provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if:

(a) The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or

(b) It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients.

(6) Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with WAC 16-252-024 (2), (3), or (4).

(7) When pet food or specialty pet food consists of raw milk, the words, "Raw (blank) Milk" shall appear conspicuously on the principal display panel. (Blank is to be completed by using the species of animal from which the raw milk is collected.)

NEW SECTION

WAC 16-252-036 Expression of guarantees. (1) The "Guaranteed Analysis" shall be listed in the following order and format unless otherwise specified in this chapter:

(a) A pet food or specialty pet food label shall list the following required guarantees:

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of crude fat;

(iii) Maximum percentage of crude fat, if required by WAC 16-252-121;

(iv) Maximum percentage of crude fiber;

- (v) Maximum percentage of moisture; and
- (vi) Additional guarantees shall follow moisture.

(b) When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture.

(c) A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO dog (or cat) food nutrient profiles. Guarantees for substances not listed in the AAFCO dog (or cat) food nutrient profiles, or not otherwise provided for in this chapter, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees.

(d) A specialty pet food label shall list other required or voluntary guarantees in the same order and units of the nutrients in an AAFCO-recognized nutrient profile for the specific species; however, if no species-specific AAFCO-recognized nutrient profile is available, the order and units shall follow the same order and units of nutrients in the AAFCO cat food nutrient profile. Guarantees for substances not listed in an AAFCO-recognized nutrient profile for the specific species of animal shall immediately follow the listing of recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the _____." (Blank is to be completed by listing the specific AAFCO-recognized nutrient profile.) This disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. No such disclaimer shall be required unless an AAFCO-recognized nutrient profile is available for the specific species of specialty pet.

(2) The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein 15-18%") is prohibited.

(3) The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include:

(a) Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or

(b) Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in the AAFCO cat food nutrient profiles when no species-specific nutrient profile has been recognized by AAFCO; and provided that:

(c) Mineral guarantees required by WAC 16-252-036 (3)(a) and (b) may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(d) A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

(4) The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include:

(a) Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an

AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or

(b) Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in the AAFCO cat food nutrient profiles when no species-specific nutrient profile has been recognized by AAFCO; and provided that:

(i) Vitamin guarantees required by WAC 16-252-036 (4)(a) and (b), may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and

(ii) A weight equivalent (e.g., 1 fl. oz. = 28 grams) for liquid products.

(5) When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply:

(a) The product shall meet the AAFCO-recognized nutrient profile;

(b) The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile: However, the statement that the product meets the AAFCO-recognized nutrient profile is not required provided that the nutritional adequacy statement as per WAC 16-252-044 (1)(a) or (2)(b)(i) appears elsewhere on the product label;

(c) The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and

(d) The statement of comparison may appear on the label separate and apart from the guaranteed analysis.

(6) The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight percent or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of seventy-eight percent.

(7) Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement.

(8) Guarantees for microorganisms and enzymes shall be stated in the format as specified in WAC 16-250-036 (7) and (8).

(9) Guaranteed analysis for all grain mixture, with or without molasses, specialty pet food must include the following nutrients on the label in the order listed:

- (a) Minimum percentage of crude protein;
- (b) Minimum percentage of crude fat; and
- (c) Maximum percentage of crude fiber.

(10) A single mineral product that is defined in the "Mineral Products" subsection of the AAFCO official publication's "Official Common and Usual Names and Definitions of Feed Ingredients" section must guarantee the minerals

included in the mineral products definition. For example, bone charcoal must guarantee calcium and phosphorous; calcium iodate must guarantee calcium and iodine.

NEW SECTION

WAC 16-252-044 Nutritional adequacy. (1) The label of a pet food or specialty pet food which is intended for all life stages and sizes of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as "complete and balanced," "perfect," "scientific," or "100% nutritious" if at least one of the following apply:

(a) The product meets the nutrient requirements for all life stages and sizes established by an AAFCO-recognized nutrient profile;

(b) The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or

(c) The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided that:

(i) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;

(ii) The family product meets the criteria for all life stages; and

(iii) Under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy.

(2) The label of a pet food or specialty pet food which is intended for a limited purpose (such as size of dog) or a specific life stage, but not for all life stages and sizes, may include a qualified claim such as "complete and balanced," "perfect," "scientific," or "100% nutritious" when the product and claim meet all of the following:

(a) The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, "complete and balanced for puppies (or kittens)." The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style and color print; and

(b) The product meets at least one of the following:

(i) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile;

(ii) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or

(iii) The requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing, and provided that:

(A) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO;

(B) The family product meets the criteria for such limited purpose; and

(C) Under circumstances of reasonable doubt, the department may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy.

(3) Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a "snack," "treat," or "supplement." The statement shall consist of one of the following:

(a) A claim that the dog or cat food meets the requirements of one or more of the recognized categories of nutritional adequacy: Gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one of the following:

(i) "(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____." (Blank is to be completed by using the stage or stages of the pet's life, such as gestation/lactation, growth, maintenance or the words "All Life Stages.") For a dog food, when the blank includes the words "Growth" or "All Life Stages," one of the following phrases must also be added verbatim to the end of the claim:

(A) "... including growth of large size dogs (70 lb. or more as an adult)" if the product has been formulated to meet the levels of nutrients specifically referenced in the dog food nutrient profiles as being applicable to large size growing dogs.

(B) "... except for growth of large size dogs (70 lb. or more as an adult)" if the product has not been formulated to meet the levels of nutrients specifically referenced in the dog food nutrient profiles as being applicable to large size growing dogs.

(ii) "Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for _____." (Blank is to be completed by using the stage or stages of the pet's life tested, such as, gestation/lactation, growth, maintenance or the words "All Life Stages"); or

(iii) "(Name of Product) provides complete and balanced nutrition for _____ (blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words "All Life Stages") and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests."

(b) A nutritional or dietary claim for purposes other than those listed in WAC 16-252-044 (1) or (2) if the claim is scientifically substantiated; or

(c) The statement: "This product is intended for intermittent or supplemental feeding only," if a product does not meet the requirements of WAC 16-252-044 (1) or (2) or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding.

(4) A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with WAC 16-252-044 (3)(a) or (c).

(5) A signed affidavit attesting that the product meets the requirements of WAC 16-252-044 (1) or (2)(b) shall be submitted to the department upon request.

(6) If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated.

(7) The following AAFCO-recognized nutritional authority, nutrient profile, and/or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy:

(a) As an AAFCO-recognized nutrient profile or nutritional authority:

- (i) For dogs, the AAFCO dog food nutrient profiles;
- (ii) For cats, the AAFCO cat food nutrient profiles;
- (iii) For specialty pets, the nutrient recommendations approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that, this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended.

(b) As an AAFCO-recognized animal feeding protocol(s), the AAFCO dog and cat food feeding protocols.

NEW SECTION

WAC 16-252-064 Ingredients. (1) Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows:

(a) The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size, style and color;

(b) The ingredients shall be listed in descending order by their predominance by weight in nonquantitative terms;

(c) Ingredients shall be listed and identified by the name and definition established by AAFCO; and

(d) Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient.

(2) The ingredient "meat" or "meat by-products" shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as "horsemeat" or "horsemeat by-products."

(3) Commercial, copyrighted, brand or trade names shall not be used in the ingredient statement.

(4) A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following:

- (a) The designation is not false or misleading;
- (b) The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and
- (c) A reference to quality or grade of the ingredient does not appear in the ingredient statement.

(5) If there is no official definition for an ingredient in the AAFCO official publication, then an ingredient with an AAFCO tentative definition may be used.

(6) Each ingredient of a pet food or specialty pet food must be listed separately. Collective terms may not be used on pet food or specialty pet food labeling.

(7) The term "degermed" must precede the name of any product from which germs were wholly or partially removed.

(8) When water is added in the preparation of canned pet food or specialty pet food, the water must be listed as an ingredient.

NEW SECTION

WAC 16-252-094 Drugs and pet food additives. (1) An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug Administration regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets.

(2) Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established:

(a) When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in 21 C.F.R., or which are "prior sanctioned" or "informal review sanctioned" or "generally recognized as safe" for such use; or

(b) When the pet food or specialty pet food itself is a drug or contains a drug as defined in RCW 15.53.901 and is "generally recognized as safe and effective" for the labeled use or is marketed subject to an application approved by the United States Food and Drug Administration under 21 U.S.C. 360(b).

(3) When a drug is included in a pet food or specialty pet food, the format required by WAC 16-250-014(4) for labeling medicated feeds shall be used.

(4) Any pet food or specialty pet food ingredient or pet food or specialty pet food product must not contain materials that enhance the natural color of a food if it conceals inferiorities.

NEW SECTION

WAC 16-252-106 Feeding directions. (1) Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in WAC 16-252-044 (3)(a), except those pet foods labeled in accordance with WAC 16-252-044(4), shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., "adult formula"). These directions shall be expressed in common terms and shall

appear prominently on the label. Feeding directions shall, at a minimum, state, "Feed (weight/unit of product) per (weight only) of dog (or cat)." The frequency of feeding shall also be specified.

(2) When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: "Use only as directed by your veterinarian" may be used in lieu of feeding directions.

(3) Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in WAC 16-252-044(1), shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified.

(4) Any pet food or specialty pet food labeled as "snacks" or "treats" that contains a drug, must list feeding directions on the label. The directions must be expressed in common terms and appear prominently on the label. Feeding directions must, at a minimum, state, "Feed (weight/unit of product) per (weight only) of dog (or cat)." The frequency of feeding must also be specified.

(5) Pet food and specialty pet food snacks and treats do not require feeding directions on the label except when they are labeled as "complete and balanced" or contain a drug.

(6) Feeding directions may be on the label for snacks and treats even when not required.

NEW SECTION

WAC 16-252-118 Statements of calorie content. (1)

The label of a dog or cat food, including snacks, treats, and supplements, shall bear a statement of calorie content and meet all of the following:

(a) The statement shall be separate and distinct from the "Guaranteed Analysis" and appear under the heading "Calorie Content";

(b) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed both as "kilocalories per kilogram" (kcal/kg) of product, and as kilocalories per familiar household measure (e.g., cans or cups) or unit of product (e.g., treats or pieces); and

(c) The calorie content is determined by one of the following methods:

(i) By calculation using the following "Modified Atwater" formula: $ME (kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$, where ME = metabolizable energy, CP = % crude protein "as fed," CF = % crude fat "as fed," NFE = % nitrogen-free extract (carbohydrate) "as fed," and the percentages of CP and CF are the average values of these components in the product as determined by sound scientific methods, such as, but not limited to, scientifically accurate calculations made from the formula of the product or upon chemical analysis of the product. The NFE is calculated as the difference between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or

(ii) In accordance with a testing procedure established by AAFCO.

(d) An affidavit shall be provided upon the request of substantiating that the calorie content was determined by:

(i) WAC 16-252-118 (1)(c)(i) in which case the summary data used in the calculation shall be included in the affidavit; or

(ii) WAC 16-252-118 (1)(c)(ii) in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(e) The calorie content statement shall appear as one of the following:

(i) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with (c)(i) of this subsection; or

(ii) The heading "Calorie Content" on the label or other labeling shall be followed parenthetically by the word "fed" when the calorie content is determined in accordance with (c)(ii) of this subsection.

(2) Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared.

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.

NEW SECTION

WAC 16-252-121 Descriptive terms. (1) Calorie terms:

(a) "Light":

(i) A dog food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(A) Contain no more than 3100 kcal ME/kg for products containing less than twenty percent moisture, no more than 2500 kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five percent or more moisture; and

(B) Include on the label a calorie content statement:

(I) In accordance with the format provided in WAC 16-252-118; and

(II) Which states no more than 3100 kcal ME/kg for products containing less than twenty percent moisture, no more than 2500 kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than 900 kcal ME/kg for products containing sixty-five percent or more moisture.

(C) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(ii) A cat food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall:

(A) Contain no more than 3250 kcal ME/kg for products containing less than twenty percent moisture, no more than 2650 kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more

than 950 kcal ME/kg for products containing sixty-five percent or more moisture; and

(B) Include on the label a calorie content statement:

(I) In accordance with the format provided in WAC 16-252-118;

(II) Which states no more than 3250 kcal ME/kg for products containing less than twenty percent moisture, no more than 2650 kcal ME/kg for products containing twenty percent or more but less than sixty-five percent moisture, and no more than 950 kcal ME/kg for products containing sixty-five percent or more moisture; and

(III) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use.

(b) "Less" or "Reduced Calories":

(i) A dog or cat food product which bears on its label a claim of "less calories," "reduced calories," or words of similar designation, shall include on the label:

(A) The name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

(B) The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim;

(C) A calorie content statement in accordance with the format provided in WAC 16-252-118; and

(D) Feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison.

(ii) A comparison between products in different categories of moisture content (i.e., less than twenty percent, twenty percent or more but less than sixty-five percent, sixty-five percent or more) is misleading.

(2) Fat terms:

(a) "Lean":

(i) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(A) Contain no more than nine percent crude fat for products containing less than twenty percent moisture, no more than seven percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than four percent crude fat for products containing sixty-five percent or more moisture;

(B) Include on the product label in the guaranteed analysis:

(I) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in WAC 16-252-036 (1)(a); and

(II) A maximum crude fat guarantee which is no more than nine percent crude fat for products containing less than twenty percent moisture, no more than seven percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than four percent crude fat for products containing sixty-five percent or more moisture.

(ii) A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall:

(A) Contain a maximum percentage of crude fat which is no more than ten percent crude fat for products containing less than twenty percent moisture, no more than eight percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than five percent crude fat for products containing sixty-five percent or more moisture; and

(B) Include on the product label in the guaranteed analysis:

(I) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in WAC 16-252-036 (1)(a); and

(II) A maximum crude fat guarantee which is no more than ten percent crude fat for products containing less than twenty percent moisture, no more than eight percent crude fat for products containing twenty percent or more but less than sixty-five percent moisture, and no more than five percent crude fat for products containing sixty-five percent or more moisture.

(b) "Less" or "Reduced Fat":

(i) A dog or cat food product which bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label:

(A) The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears;

(B) The comparative statement printed in type of the same color and style and at least one-half the type size used in the claim; and

(C) A maximum crude fat guarantee in the guaranteed analysis immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in WAC 16-252-036 (1)(a).

(ii) A comparison on the label between products in different categories of moisture content (i.e., less than twenty percent, twenty percent or more but less than sixty-five percent, sixty-five percent or more) is misleading.

NEW SECTION

WAC 16-252-122 Manufacturer or distributor—Name and address. (1) The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label.

(2) When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed.

NEW SECTION

WAC 16-252-136 Adulterants. (1) The department adopts: 21 C.F.R. Chapter I, Part 589, Substances Prohibited from Use in Animal Food or Feed.

(2) For the purpose of RCW 15.53.902, the terms "poisonous or deleterious substances" include, but are not limited to, the following:

(a) When screenings are added to a pet food or specialty pet food, the screening must not contain any seed, pesticide, or other product that renders it adulterated within the meaning of RCW 15.53.902; and

(b) Be ground fine enough or otherwise treated to destroy the viability of the noxious weed seeds contained in the screening so that the finished product contains no more than one viable prohibited noxious weed seed per pound and not more than twenty-five viable restricted noxious weed seeds per pound.

(3) For purposes of this chapter, prohibited noxious weed seeds are those listed in WAC 16-301-045 (prohibited noxious weed seeds) and restricted noxious weed seeds are those listed in WAC 16-301-050 (restricted noxious weed seeds).

(4) Pet food or specialty pet food containing raw or unprocessed animal waste is adulterated under this chapter.

(5) In addition to the requirements under subsection (2) of this section, the terms "poisonous substances" or "deleterious substances" as used in RCW 15.53.902 include, but are not limited to, any ingredient that contains more than twenty parts per billion aflatoxin B1, B2, G1, G2, individually or in total.

NEW SECTION

WAC 16-252-148 Current good manufacturing practices and hazard analysis and risk-based preventive controls. The department adopts the following as current good manufacturing practices:

(1) The requirements of 21 C.F.R. Part 507 - Current good manufacturing practice, hazard analysis, and risk-based preventive controls for food for animals.

(2) The requirements of 21 C.F.R. Part 113 - Thermally processed low-acid foods packaged in hermetically sealed containers.

(3) The regulations and requirements governing emergency permit control in 21 C.F.R. Part 108.

NEW SECTION

WAC 16-252-164 Recordkeeping requirements. Records relating the lot identifier to the manufacture, processing, packing, distribution, receipt, or holding of the product must be kept for two years after the last date of distribution.

NEW SECTION

WAC 16-252-178 Registration requirements. (1) Any person who distributes a pet food or specialty pet food in or into this state must register the product with the department as required under RCW 15.53.9014.

(2) The registration application must be submitted on a form prescribed by the department.

(3) The registration application must include:

(a) The name, mailing address, physical address, and contact information of the applicant;

(b) The name, mailing address, physical address, and contact information of the guarantor;

(c) The name, mailing address, physical address, and contact information of the manufacturer;

(d) Type of activities the manufacturer is engaged in:

(i) Species of animals the facility manufactures products for the guarantor;

(ii) Types of product the facility handles.

(e) Package size:

(i) Number of products distributed only in packages of ten pounds or more;

(ii) Number of products distributed both in packages of less than ten pounds and/or packages of ten pounds or more.

(f) Applicant's signature;

(g) Date signed;

(h) Electronic product label(s); and

(i) Registration fees as specified in RCW 15.53.9014(3).

(4) Registration application forms can be obtained from the department online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>; by emailing the animal feed program at petfood@agr.wa.gov, or by phone at 360-902-1844.

NEW SECTION

WAC 16-252-182 Semi-annual feed distribution reporting requirements and inspection fees. (1)(a) Each registrant must file a semi-annual report on forms provided by the department setting forth the number of tons of pet food or specialty pet food distributed in or into this state as required by RCW 15.53.9018.

(b) The report must include the amount of pet food or specialty pet food distributed by type of species, applicant's signature, and date signed.

(2) An inspection fee on all pet food or specialty pet food sold for distribution in or into this state during the year must accompany the semi-annual report.

(3) The minimum inspection fee, the late fee, and exceptions to payment of the fee are described in RCW 15.53.9018.

(4) Semi-annual reporting forms can be obtained online at <https://agr.wa.gov/FoodAnimal/AnimalFeed/Forms.aspx>; by emailing the animal feed program at petfood@agr.wa.gov; or by phone at 360-902-1844.

(5) Any reports and associated fees may be submitted to the department by mail to:

Washington State Department of Agriculture
Animal Feed Program
P.O. Box 42591
Olympia, WA 98504-2591

NEW SECTION

WAC 16-252-194 Access to publications adopted under this chapter. (1) Electronic access to 21 C.F.R. is available at <https://www.gpo.gov/fdsys/search/home.action>. Print copies of the titles can be purchased from the U.S. Gov-

ernment Bookstore online at <https://bookstore.gpo.gov/catalog/laws-regulations/code-federal-regulations-cfrs-print>. If you do not have electronic access, contact:

U.S. Government Publishing Office
P.O. Box 979050
St. Louis, MO 63197-9000
Phone 1-866-512-1800

(2) Online and print copies of the AAFCO Official Publication can be purchased from AAFCO online at <http://www.aaftco.org/Publications>. If you do not have electronic access, print copies can also be purchased from:

AAFCO
1800 South Oak Street, Suite 100
Champaign, IL 61820
Phone 217-356-4221

(3) A copy of these publications are available for inspection at:

Washington State Department of Agriculture
Natural Resources Building
1111 Washington Street S.E.
Olympia, WA 98504-2560

REPEALER

The following sections of the Washington Administrative Code are repealed:

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| <p>WAC 16-252-005 Commercial feed regulated by this chapter.</p> <p>WAC 16-252-007 The Code of Federal Regulation.</p> <p>WAC 16-252-010 Commercial feed terms and definitions.</p> <p>WAC 16-252-015 Feed ingredient names and definitions.</p> <p>WAC 16-252-025 Label information and recordkeeping requirements.</p> <p>WAC 16-252-040 Product or brand name label information required.</p> <p>WAC 16-252-042 Additional label information required when a drug is used.</p> <p>WAC 16-252-051 Exemptions from the guarantees required in WAC 16-252-061 and 16-252-062.</p> <p>WAC 16-252-061 Guarantees for pet food.</p> <p>WAC 16-252-062 Guarantees for specialty pet food.</p> <p>WAC 16-252-065 Guarantees for grain mixture specialty pet food, with or without molasses.</p> <p>WAC 16-252-069 Expression of guarantees—Expressed as is.</p> <p>WAC 16-252-070 Expression of guarantees—Sliding-scale method prohibited.</p> <p>WAC 16-252-071 Expression of guarantees—Protein, amino acids, fat, and fiber in specialty pet food.</p> | <p>WAC 16-252-072 Expression of guarantees—Minerals in specialty pet food.</p> <p>WAC 16-252-073 Expression of guarantees—Minimum vitamin content in specialty pet food.</p> <p>WAC 16-252-074 Expression of guarantees—Pet food and specialty pet food containing drugs.</p> <p>WAC 16-252-075 Expression of guarantees and special requirements—Pet food and specialty pet food containing any added nonprotein nitrogen.</p> <p>WAC 16-252-076 Expression of guarantees—Microorganisms and enzymes.</p> <p>WAC 16-252-080 Substantiating nutritional suitability.</p> <p>WAC 16-252-090 Ingredient statement terms.</p> <p>WAC 16-252-095 Drug and feed additive requirements.</p> <p>WAC 16-252-100 "Directions for use" and "precautionary statement" requirements.</p> <p>WAC 16-252-110 Screenings.</p> <p>WAC 16-252-120 Adulteration of pet food and specialty pet food.</p> <p>WAC 16-252-140 Use of artificial coloring.</p> <p>WAC 16-252-150 Reusing bags, totes, and containers.</p> <p>WAC 16-252-155 Tonnage fee required.</p> <p>WAC 16-252-165 Registration requirements.</p> <p>WAC 16-252-170 Label submission requirements.</p> <p>WAC 16-252-180 Good manufacturing practices adopted.</p> |
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