

WSR 18-21-001
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed October 3, 2018, 1:03 p.m., effective November 3, 2018]

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

Purpose: The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services, to update rates in the table for all settings to reflect new rates paid effective July 1, 2018, currently in place by emergency filed as WSR 18-14-060.

Citation of Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Adopted under notice filed as WSR 18-17-085 on August 14, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 3, 2018.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-097, filed 1/17/18, effective 2/17/18)

WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services. For contracted adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((70.59)) <u>73.34</u>	\$((76.01)) <u>81.18</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$71.96
A Med	\$((76.38)) <u>79.35</u>	\$((81.80)) <u>87.19</u>	\$((56.74)) <u>58.95</u>	\$((56.74)) <u>61.37</u>	\$74.74
A High	\$((85.66)) <u>88.99</u>	\$((91.08)) <u>96.83</u>	\$((62.27)) <u>64.70</u>	\$((62.27)) <u>67.12</u>	\$81.23
B Low	\$((70.59)) <u>73.34</u>	\$((76.01)) <u>81.18</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$73.40
B Med	\$((78.72)) <u>81.78</u>	\$((84.14)) <u>89.62</u>	\$((63.42)) <u>65.89</u>	\$((63.42)) <u>68.31</u>	\$79.78
B Med-High	\$((89.08)) <u>92.54</u>	\$((94.50)) <u>100.38</u>	\$((67.41)) <u>70.04</u>	\$((67.41)) <u>72.46</u>	\$86.56
B High	\$((93.75)) <u>97.39</u>	\$((99.17)) <u>105.23</u>	\$((76.98)) <u>79.97</u>	\$((76.98)) <u>82.39</u>	\$89.05
C Low	\$((76.38)) <u>79.35</u>	\$((81.80)) <u>87.19</u>	\$((56.74)) <u>58.95</u>	\$((56.74)) <u>61.37</u>	\$81.03

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
C Med	\$((85.66)) <u>88.99</u>	\$((91.08)) <u>96.83</u>	\$((71.09)) <u>73.83</u>	\$((71.09)) <u>76.28</u>	\$93.33
C Med-High	\$((106.51)) <u>110.64</u>	\$((111.93)) <u>118.48</u>	\$((94.60)) <u>98.27</u>	\$((94.60)) <u>100.69</u>	\$98.41
C High	\$((107.57)) <u>111.74</u>	\$((112.99)) <u>119.58</u>	\$((95.51)) <u>99.22</u>	\$((95.51)) <u>101.64</u>	\$99.76
D Low	\$((78.72)) <u>81.78</u>	\$((84.14)) <u>89.62</u>	\$((76.52)) <u>79.50</u>	\$((76.52)) <u>81.92</u>	\$86.46
D Med	\$((87.40)) <u>90.79</u>	\$((92.82)) <u>98.63</u>	\$((88.58)) <u>92.02</u>	\$((88.58)) <u>94.44</u>	\$95.25
D Med-High	\$((112.88)) <u>117.26</u>	\$((118.30)) <u>125.10</u>	\$((112.50)) <u>116.86</u>	\$((112.50)) <u>119.28</u>	\$((112.59)) <u>114.84</u>
D High	\$((121.59)) <u>126.30</u>	\$((127.01)) <u>134.14</u>	\$((121.59)) <u>126.30</u>	\$((121.59)) <u>128.72</u>	\$((128.01)) <u>130.57</u>
E Med	\$((146.85)) <u>152.53</u>	\$((152.27)) <u>160.37</u>	\$((146.85)) <u>152.53</u>	\$((146.85)) <u>154.95</u>	\$((154.39)) <u>157.48</u>
E High	\$((172.10)) <u>178.76</u>	\$((177.52)) <u>186.60</u>	\$((172.10)) <u>178.76</u>	\$((172.10)) <u>181.18</u>	\$((180.80)) <u>184.42</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$70.78
A Med	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.51)) <u>56.64</u>	\$((54.51)) <u>59.06</u>	\$73.49
A High	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((59.39)) <u>61.71</u>	\$((59.39)) <u>64.13</u>	\$79.80
B Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$72.18
B Med	\$((74.05)) <u>76.93</u>	\$((78.97)) <u>84.27</u>	\$((60.09)) <u>62.43</u>	\$((60.09)) <u>64.85</u>	\$78.39
B Med-High	\$((83.83)) <u>87.09</u>	\$((88.78)) <u>94.43</u>	\$((63.86)) <u>66.35</u>	\$((63.86)) <u>68.77</u>	\$84.98
B High	\$((91.43)) <u>94.98</u>	\$((96.35)) <u>102.32</u>	\$((74.82)) <u>77.73</u>	\$((74.82)) <u>80.15</u>	\$87.41
C Low	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.73)) <u>56.87</u>	\$((54.73)) <u>59.29</u>	\$79.61

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
C Med	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((70.19)) <u>72.92</u>	\$((70.19)) <u>75.31</u>	\$91.57
C Med-High	\$((103.01)) <u>107.01</u>	\$((107.93)) <u>114.35</u>	\$((87.92)) <u>91.33</u>	\$((87.92)) <u>93.75</u>	\$93.63
C High	\$((105.05)) <u>108.09</u>	\$((108.97)) <u>115.43</u>	\$((93.50)) <u>97.13</u>	\$((93.50)) <u>99.55</u>	\$97.03
D Low	\$((74.05)) <u>76.93</u>	\$((78.97)) <u>84.27</u>	\$((75.47)) <u>78.41</u>	\$((75.47)) <u>80.83</u>	\$84.89
D Med	\$((85.04)) <u>88.34</u>	\$((89.96)) <u>95.68</u>	\$((86.81)) <u>90.18</u>	\$((86.81)) <u>92.60</u>	\$93.44
D Med-High	\$((109.19)) <u>113.42</u>	\$((114.11)) <u>120.76</u>	\$((109.74)) <u>113.99</u>	\$((109.74)) <u>116.41</u>	\$((109.19)) <u>111.37</u>
D High	\$((118.27)) <u>122.85</u>	\$((123.19)) <u>130.19</u>	\$((118.27)) <u>122.85</u>	\$((118.27)) <u>125.27</u>	\$((123.88)) <u>126.36</u>
E Med	\$((142.31)) <u>147.82</u>	\$((147.23)) <u>155.16</u>	\$((142.31)) <u>147.82</u>	\$((142.31)) <u>150.24</u>	\$((149.01)) <u>151.99</u>
E High	\$((166.34)) <u>172.77</u>	\$((171.23)) <u>180.11</u>	\$((166.34)) <u>172.77</u>	\$((166.34)) <u>175.19</u>	\$((174.13)) <u>177.61</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((63.65)) <u>66.13</u>	\$((68.89)) <u>73.79</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$69.07
A Med	\$((68.28)) <u>70.94</u>	\$((73.52)) <u>78.60</u>	\$((53.41)) <u>55.50</u>	\$((53.41)) <u>57.92</u>	\$71.67
A High	\$((83.38)) <u>86.59</u>	\$((88.59)) <u>94.25</u>	\$((58.45)) <u>60.73</u>	\$((58.45)) <u>63.15</u>	\$77.73
B Low	\$((63.65)) <u>66.13</u>	\$((68.89)) <u>73.79</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$70.42
B Med	\$((74.05)) <u>76.93</u>	\$((79.29)) <u>84.59</u>	\$((58.97)) <u>61.27</u>	\$((58.97)) <u>63.69</u>	\$76.38
B Med-High	\$((83.83)) <u>87.09</u>	\$((89.07)) <u>94.25</u>	\$((62.67)) <u>65.11</u>	\$((62.67)) <u>67.53</u>	\$82.71
B High	\$((91.43)) <u>94.98</u>	\$((96.67)) <u>102.64</u>	\$((70.79)) <u>73.55</u>	\$((70.79)) <u>75.97</u>	\$85.04

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC/EARC	ARC/EARC	AFH
	Add-on	Add-on	Without Capital Add-On	With Capital Add-On	
C Low	\$(68.28) <u>70.94</u>	\$(73.52) <u>78.60</u>	\$(53.41) <u>55.50</u>	\$(53.41) <u>57.92</u>	\$77.55
C Med	\$(83.35) <u>86.59</u>	\$(88.59) <u>94.25</u>	\$(66.67) <u>68.96</u>	\$(66.37) <u>71.38</u>	\$89.04
C Med-High	\$(103.01) <u>107.01</u>	\$(108.25) <u>114.67</u>	\$(84.58) <u>87.87</u>	\$(84.58) <u>90.29</u>	\$91.01
C High	\$(104.05) <u>108.09</u>	\$(109.29) <u>115.75</u>	\$(88.40) <u>91.83</u>	\$(88.40) <u>94.25</u>	\$93.08
D Low	\$(74.05) <u>76.93</u>	\$(79.29) <u>84.59</u>	\$(71.36) <u>74.14</u>	\$(71.36) <u>76.56</u>	\$82.62
D Med	\$(85.04) <u>88.34</u>	\$(90.28) <u>96.00</u>	\$(82.09) <u>85.28</u>	\$(82.09) <u>87.70</u>	\$90.83
D Med-High	\$(109.19) <u>113.42</u>	\$(114.43) <u>121.08</u>	\$(103.74) <u>107.76</u>	\$(103.74) <u>110.18</u>	\$(104.36) <u>103.46</u>
D High	\$(111.81) <u>116.14</u>	\$(117.05) <u>123.80</u>	\$(111.81) <u>116.14</u>	\$(111.81) <u>118.56</u>	\$(117.20) <u>119.54</u>
E Med	\$(134.53) <u>139.74</u>	\$(139.77) <u>147.40</u>	\$(134.53) <u>139.74</u>	\$(134.53) <u>142.16</u>	\$(140.94) <u>143.76</u>
E High	\$(157.25) <u>163.33</u>	\$(162.49) <u>170.99</u>	\$(157.25) <u>163.33</u>	\$(157.25) <u>165.75</u>	\$(164.70) <u>167.99</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 18-21-011
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 4, 2018, 8:29 a.m., effective November 4, 2018]

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

Purpose: Amends WAC 181-79A-221 and 181-79A-257 to clarify requirements for certain national board certified counselors and psychologists to earn professional certificates including out-of-state educators.

Citation of Rules Affected by this Order: Amending WAC 181-79A -221 and 181-79A-257.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-12-055 on May 31, 2018.

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

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 27, 2018.

David Brenna
 Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-11-104, filed 5/22/17, effective 6/22/17)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors and school psychologists. Candidates for school counselor and school psychologist certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program. This examination shall be an examination of an accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC) or, in the case of school psychologists, hold the ~~((NCSP accreditation))~~ Nationally Certified School Psychologist (NCSP) credential from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) Residency.

(i) Hold a master's degree with a major in counseling.

(ii) Completion of an approved school counselor program.

(b) Continuing.

(i) Hold or have held an initial or residency school counselor certificate, and have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by an accredited institution or one hundred fifty clock hours of study which meets the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. The study shall:

(A) Be based on the school counselor performance domains included in WAC 181-78A-270 (4)(a);

(B) Be taken subsequent to the issuance of the most recent initial or residency school counselor certificate.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the role of school counselor with an authorized employer—i.e., school district, educational service district, state agency, private school, or private school system—and at least thirty days of such employment with the same employer.

(c) Professional. A professional certificate may be earned by an individual who holds ~~((or has held))~~ a valid school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS).

(d) Beginning with certificates first issued or renewed after July 1, 2015, continuing and professional certificates for school counselors include a requirement for suicide prevention training per RCW 28A.410.226.

(2) School psychologist.

(a) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) Completion of an approved school psychology program.

(b) Continuing.

(i) Hold or have held an initial or residency school psychologist certificate, a master's degree with a major or specialization in school psychology, and have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by an accredited institution or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. The study shall:

(A) Be based on the school psychologist performance domains included in WAC 181-78A-270 (5)(a);

(B) Be taken subsequent to the issuance of the most recent initial or residency school psychologist certificate.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the role of school psychologist with an authorized employer—i.e., school district, educational service district, state agency, private school, or private school system—and at least thirty days of such employment with the same employer.

(c) Professional. An individual who holds ~~((an NCSP certificate))~~ a valid Nationally Certified School Psychologist (NCSP) credential issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for professional certification.

(d) Beginning with certificates first issued or renewed after July 1, 2015, continuing and/or professional certificates for school psychologists include a requirement for suicide prevention training per RCW 28A.410.226.

AMENDATORY SECTION (Amending WSR 15-23-013, filed 11/6/15, effective 12/7/15)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) Residency certificates. The residency certificate shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who meets one of the following:

(a) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter, and has completed a state approved preparation program in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

(b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) of this subsection, a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from ~~((a regionally))~~ an accredited college or university.

(ii) Holds or has held a certificate in the role, comparable to a residency certificate, issued by another state and has practiced at the P-12 level in the role outside the state of Washington for at least three years ~~((within the last seven years))~~.

(c) Holds an appropriate degree from ~~((a regionally))~~ an accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

(d) Holds a valid Nationally Certified School Psychologist (NCSP) ~~((certificate))~~ credential issued by the National Association of School ~~((Psychology Certification Board (NSPCB) after December 31, 1991,))~~ Psychologists (NASP); and applies for ~~((an initial/residency))~~ a residency educational staff associated school psychologist certificate.

(2) Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

(3) As per RCW 18.340.020 out-of-state candidates who are military spouses shall receive expedited issuance of the appropriate certificate in accordance with this section.

(4) Out-of-state candidates must meet the assessment requirements per chapters 181-01 and 181-02 WAC. Equivalent assessments will be published by the board.

WSR 18-21-014
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 4, 2018, 10:34 a.m., effective November 4, 2018]

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

Purpose: Amends WAC 181-86-180 concerning voluntary surrender/revocation. The amendment clarifies and simplifies the process.

Citation of Rules Affected by this Order: Amending WAC 181-86-180.

Statutory Authority for Adoption: [Chapter 28A.410 RCW].

Adopted under notice filed as WSR 118-17-157 [18-17-157] on August 21, 2018.

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

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Date Adopted: September 27, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-180 Voluntary surrender of certificates. A holder of a certificate who has not received a final order for revocation of his or her certificate may voluntarily surrender his or her certificate to the superintendent of public instruction ~~((if the certificate holder believes that he or she is or might be ineligible to hold a certificate for any reason which is or might constitute grounds for revocation of the certificate))~~ for any reason other than conviction of a felony crime stated within WAC 181-86-013(1).

A certificate holder voluntarily surrendering a certificate shall provide the superintendent of public instruction the following affidavit(=

~~"I,, have reason to believe that I am or might be ineligible to hold a certificate(s) for reasons which do or might constitute grounds for revocation of the certificate(s). Accordingly, I hereby voluntarily surrender the following certificate(s):~~

- (1) Cert. No.
- (2) Cert. No.

~~I have not been to the best of my knowledge convicted of any felony crime listed within WAC 181-86-013(1).~~

~~I agree, if I request reinstatement of the certificate(s) I have voluntarily surrendered, to provide the superintendent of public instruction with an affidavit describing in full the~~

~~reasons for my voluntary surrender of the certificate(s) listed above. I further understand that the superintendent of public instruction will notify other states and public and private school officials within the state of Washington that I have voluntarily surrendered).~~

I hereby voluntarily surrender my certificate(s). Certificate #

I further understand that the superintendent of public instruction will notify other states and public and private school officials with the state of Washington that I have voluntarily surrendered my certificate(s)."

Name: _____ Certificate Number: _____

Upon request for reinstatement of such certificate, the applicant must comply with chapter 181-77 or 181-79A WAC and, in addition, must disclose in full the reasons for the voluntary surrender of the certificate. In the event the surrendered certificate would have expired or lapsed but for the surrendering of the certificate, the applicant must meet all requirements for reinstating an expired or lapsed certificate.

WSR 18-21-020
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 4, 2018, 4:45 p.m., effective November 4, 2018]

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

Purpose: WAC 246-221-010 Occupational dose limits for adults, the adopted rule makes a correction in word usage to align with federal regulations under 10 C.F.R. 20.1201 (a)(1)(ii). This change is necessary for Washington state rules to be consistent with the Nuclear Regulatory Commission regulations to retain Washington's formal state agreement.

Citation of Rules Affected by this Order: Amending WAC 246-221-010.

Statutory Authority for Adoption: RCW 70.98.050.

Other Authority: 56 F.R. 23396, 10 C.F.R. 20.1201 (a)(1)(ii).

Adopted under notice filed as WSR 18-17-062 on August 9, 2018.

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

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

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

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

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

Date Adopted: October 3, 2018.

Kim Zabe
Acting Assistant Secretary

AMENDATORY SECTION (Amending WSR 14-01-077, filed 12/16/13, effective 1/16/14)

WAC 246-221-010 Occupational dose limits for adults. (1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to WAC 246-221-030, to the following dose limits:

- (a) An annual limit, which is the more limiting of:
 - (i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or
 - (ii) The sum of the ((effective)) ~~deep~~ dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).
- (b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:
 - (i) A lens dose equivalent of 0.15 Sv (15 rem); and
 - (ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits specified in WAC 246-221-030 for planned special exposures that the individual may receive during the current year and during the individual's lifetime.

(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC or the department. The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of the individual monitoring are unavailable.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in WAC 246-221-290 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year as determined in accordance with WAC 246-221-020.

WSR 18-21-021
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 4, 2018, 4:51 p.m., effective November 4, 2018]

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

Purpose: WAC 246-296-040 Use of funds by the state, 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses, and 246-296-080 Ineligible projects and project-related costs, the adopted rule clarifies and aligns WAC 246-296-040 with the federal rule under 40 Code of Federal Regulations (C.F.R.) Part 35 for set-aside activities which will allow the department of health (department) to broaden the use of the loan fee account. The adopted rule amends WAC 246-296-060 to include the use of the loan fee account for projects that are eligible to receive a drinking water state revolving fund (DWSRF) loan under 40 C.F.R. 35.3520. The United States Environmental Protection Agency (EPA) has the authority to grant a deviation for prohibited projects on a case-by-case basis. The adopted rule amends WAC 246-296-080 to allow projects currently prohibited from receiving a DWSRF loan under 40 C.F.R. 35.3535 to be considered eligible to receive funds when EPA grants a deviation. This change will allow the department to request a deviation from EPA on a case-by-case basis.

Citation of Rules Affected by this Order: Amending WAC 246-296-040, 246-296-060, and 246-296-080.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: 40 C.F.R. 35.352 and 35.3535.

Adopted under notice filed as WSR 18-17-119 on August 17, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: October 3, 2018.

Kim Zabel
Acting Assistant Secretary

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

WAC 246-296-040 Use of funds by the state. (1) The department may use the following funds to carry out the purposes of the DWSRF:

(a) Capitalization grants provided by the federal government;

(b) State matching funds appropriated under RCW 70.119A.170;

(c) Principal and interest payments;

(d) DWSRF loan fees; and

(e) Any other funds earned and deposited.

(2) The department may use these funds to:

(a) Finance DWSRF loans for planning, design, and construction of public water system infrastructure projects that will address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Finance reasonable costs for the department to administer the DWSRF program; and

(c) Fund set-aside activities as authorized in ~~((categories (b) through (e) of))~~ 40 C.F.R. Section 35.3535 ~~((of the SDWA,))~~ including, but not limited to:

(i) DWSRF program administration;

(ii) Technical assistance specific to small public water systems;

(iii) State drinking water program management; and

(iv) Local assistance and other state programs.

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

WAC 246-296-060 Establishing a DWSRF loan fee, loan fee account, and loan fee uses. (1) The department shall:

(a) Establish the terms of a DWSRF loan fee; and

(b) Annually set the DWSRF loan fee amount.

(2) The department shall set the DWSRF loan fee for each project.

(3) The DWSRF loan amount may include the DWSRF loan fee.

(4) The department shall determine the amount of DWSRF loan fee account funds to be used for program administration.

(5) The department shall use DWSRF loan fees ~~((only))~~ for program administration activities and for projects in accordance with WAC 246-296-040.

(6) The department shall deposit and retain DWSRF fees in a dedicated DWSRF loan fee account.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-080 Ineligible projects and project-related costs. Except for projects and project-related costs under subsections (1) and (2) of this section, which are considered eligible to receive funds when EPA grants a deviation as allowed under Section 1452 of the SWDA, the following projects and project-related costs ~~((that))~~ are not eligible for assistance from the DWSRF program ~~((include))~~:

(1) Acquiring, building, or repairing dams or raw water reservoirs;

(2) Acquiring water rights, except if the water rights are owned by a public water system that is being acquired by restructuring;

(3) Laboratory costs for monitoring;

(4) Operation and maintenance costs;

(5) Projects needed primarily for fire protection;

(6) Projects needed primarily to serve future population growth;

(7) Projects that have received assistance from the national set-aside for Indian tribes and Alaska native villages under Section 1452(i) of the SDWA;

(8) Projects for an individual water supply system or a Group B public water system unless the public water system is being restructured into a Group A public water system under WAC 246-296-110; and

(9) Projects that are solely for the purpose of installing service meters.

WSR 18-21-026

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 5, 2018, 1:42 p.m., effective November 5, 2018]

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

Purpose: Title 98 WAC, Cemetery board, new section, abandoned cemeteries. As outlined in HB 1907, this new section outlines the requirements for landowners to allow for burials; records management and endowment care fund requirements.

Citation of Rules Affected by this Order: New WAC 98-20-030.

Statutory Authority for Adoption: RCW 68.05.105, chapter 68.60 RCW.

Adopted under notice filed as WSR 18-10-046 on April 26, 2018.

Changes Other than Editing from Proposed to Adopted Version: Added language to WAC 98-20-030 (1)(b): The person(s) having the right to control disposition per RCW 68.50.160 has documentation issued by the cemetery authority prior to the date of abandonment establishing ownership of the plot, right of interment or vested right of placement for the human remains to be buried.

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

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

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

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

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

Date Adopted: October 5, 2018.

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 98-20-030 Allowing burials in an abandoned cemetery. The definitions found in chapters 68.04 and 68.60 RCW apply to this section.

(1) Human remains or cremated human remains may be buried in an abandoned cemetery under the following conditions:

(a) Ownership of the plot, right of interment or vested right of placement can be clearly established pursuant to chapter 68.32 RCW; or

(b) The person(s) having the right to control disposition per RCW 68.50.160 has documentation issued by the cemetery authority prior to the date of abandonment establishing ownership of the plot, right of interment or vested right of placement for the human remains to be buried; or

(c) When a court of competent jurisdiction finds that there is sufficient evidence of ownership, right of interment or vested right of placement and issues a court order.

(2) The person(s) having the right to control disposition must follow the requirements found in RCW 70.58.230 through 70.58.260 prior to the burial of human remains.

(3) Human remains may be removed from an abandoned cemetery with the permission of the superior court of the county where the cemetery is situated and a disinterment permit per RCW 70.58.230.

(4) The person(s) having the right to control disposition may place a grave marker on the grave of human remains buried in an abandoned cemetery and may do all things commonly allowed on dedicated cemetery property.

(5) The person(s) having the right to control disposition must provide a record of the burial to the department of archaeology and historic preservation.

WSR 18-21-028

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 5, 2018, 3:09 p.m., effective November 5, 2018]

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

Purpose: This rule order strikes language regarding the department's ability to suspend a professional license due to student loan default. This rule making is a result of the passage of 3SHB 1169 (2018), Enacting the Student Opportunity, Assistance, and Relief Act, which repealed the department's authority to suspend professional licenses due to student loan default. This rule making cleans up the administrative law to match the authorizing statutes.

Citation of Rules Affected by this Order: Amending WAC 98-08-005 Brief adjudicative proceedings—When they can be used (cemetery board), 196-09-050 Brief adjudicative proceedings (engineers and land surveyors), 196-09-055 Records required for brief adjudicative proceeding (engineers and land surveyors), 308-08-525 Brief adjudicative proceedings—When they can be used (DOL general authority), 308-12-345 Brief adjudicative proceedings (architects), 308-12-350 Records required for the brief adjudicative proceeding (architects), 308-13-250 Brief adjudicative proceedings (landscape architects), 308-13-260 Records required for

the brief adjudicative proceeding (landscape architects), 308-15-105 Brief adjudicative proceedings (geologist), 308-15-107 Records required for the brief adjudicative proceeding (geologist), 308-17-180 Application of brief adjudicative proceedings (private investigative agencies/private investigator), 308-17-185 Preliminary record in brief adjudicative proceedings (private investigative agencies/private investigator), 308-18-180 Application of brief adjudicative proceedings (private security guards/guard companies), 308-18-185 Preliminary record in brief adjudicative proceedings (private security guards/guard companies), 308-19-400 Brief adjudicative proceeding (bail bond agencies/agents), 308-19-410 Records used in a brief adjudicative proceeding (bail bond agencies/agents), 308-29-090 Brief adjudicative proceedings—When they can be used (collection agencies), 308-48-810 Brief adjudicative proceedings—When they can be used (funeral directors and embalmers), and 308-124-310 Preliminary record in brief adjudicative proceedings (real estate brokers).

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: 3SHB 1169.

Adopted under notice filed as WSR 18-16-073 on July 30, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 19, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 19, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 19, Repealed 0.

Date Adopted: October 5, 2018.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-23-149, filed 11/22/05, effective 12/23/05)

WAC 98-08-005 Brief adjudicative proceedings—When they can be used. (1) The board adopts RCW 34.05-482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the board. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary

cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profession for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(c) Whether a sanction proposed by the department is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant or licensee failed to cooperate in an investigation by the department;

(f) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

~~(g) ((Whether an applicant or licensee has defaulted on educational loans;~~

~~(h))~~ Whether an applicant or licensee has violated the terms of a final order issued by the director or director's designee;

~~((h))~~ ~~(h)~~ Whether a licensee has committed recordkeeping violations;

~~((j))~~ ~~(j)~~ Whether a licensee has committed trust account violations;

~~((k))~~ ~~(k)~~ Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

~~((l))~~ ~~(l)~~ Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 06-11-121, filed 5/19/06, effective 6/19/06)

WAC 196-09-050 Brief adjudicative proceedings. (1) The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapter 18.43 RCW, chapter 18.210 RCW, chapter 18.235 RCW, administrative rules in Title 196 WAC or any statutes or rules that specifically govern the defined practices of engineering, land surveying and on-site wastewater treatment system designs. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and

desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

~~((2))~~ (2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

- (a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;
- (b) Whether an applicant is eligible to sit for a professional licensing examination;
- (c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;
- (d) Whether an applicant meets minimum requirements for an initial or renewal application;
- (e) Whether an applicant has failed the professional licensing examination;
- (f) Whether a licensee has sufficient continuing education credits when the licensee submits a renewal application;
- (g) Whether an applicant or licensee failed to cooperate in an investigation by the board
- (h) Whether an application or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;
- (i) ~~((Whether an applicant or licensee has defaulted on educational loans;~~
- ~~((j))~~ Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;
- ~~((k))~~ (j) Whether a person has engaged in false, deceptive or misleading advertising; or
- ~~((l))~~ (k) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 06-11-121, filed 5/19/06, effective 6/19/06)

WAC 196-09-055 Records required for brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

- (1) Renewal or reinstatement of license:
 - ~~((1))~~ All correspondence between the applicant and the board about the renewal or reinstatement;
 - ~~((2))~~ Copies of renewal notice(s) sent by the department of licensing to the licensee;
 - ~~((3))~~ All documents received by the board from or on behalf of the licensee relating to information, payments, or explanations that have been provided to the board.
- (2) Applicants for certification/licensing:
 - ~~((1))~~ Original complete application with all attachments as submitted by the applicant;

~~((4))~~ Copies of all supplementary information related to application review by staff or board member;

~~((5))~~ All documents relied upon in reaching the determination of ineligibility;

~~((6))~~ All correspondence between the applicant and the board about the application or appeal.

(3) ~~((Default of student loan payments:~~

~~((1))~~ Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;

~~((2))~~ Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;

~~((3))~~ All documents received by the board from or on behalf of the licensee relating to rebutting such identification [identification];

~~((4))~~ Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed student loan or service conditional scholarship; or

~~((5))~~ A written release, if any issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.

~~((6))~~ Determination of compliance with previously issued board order:

~~((1))~~ The previously issued final order or agreement;

~~((2))~~ All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

~~((3))~~ All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

~~((4))~~ All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

AMENDATORY SECTION (Amending WSR 05-02-006, filed 12/22/04, effective 1/22/05)

WAC 308-08-525 Brief adjudicative proceedings—When they can be used. (1) The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the director. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the department issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profession for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(d) Whether a sanction proposed by the department is appropriate based on the stipulated facts;

(e) Whether an applicant meets minimum requirements for an initial or renewal application;

(f) Whether an applicant has failed the professional licensing examination;

(g) Whether a licensee has sufficient continuing education credits when the licensee submits a renewal application;

(h) Whether an applicant or licensee failed to cooperate in an investigation by the department;

(i) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

(j) ~~((Whether an applicant or licensee has defaulted on educational loans;~~

~~((k))~~ Whether an applicant or licensee has violated the terms of a final order issued by the director or director's designee;

~~((l))~~ ~~((k))~~ Whether a licensee has committed recordkeeping violations;

~~((m))~~ ~~((l))~~ Whether a licensee has committed trust account violations;

~~((n))~~ ~~((m))~~ Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

~~((o))~~ ~~((n))~~ Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the department may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-345 Brief adjudicative proceedings. (1)

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.08 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or con-

dition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the department;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

~~((h))~~ ~~((Whether an applicant or licensee has defaulted on educational loans;~~

~~((i))~~ Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

~~((j))~~ ~~((i))~~ Whether a person has engaged in false, deceptive, or misleading advertising; or

~~((k))~~ ~~((j))~~ Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 11-11-019, filed 5/9/11, effective 7/1/11)

WAC 308-12-350 Records required for the brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

~~(3) ((Default of student loan payments:~~

~~(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;~~

~~(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;~~

~~(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;~~

~~(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed student loan or service conditional scholarship; or~~

~~(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.~~

~~(4)) Determination of compliance with previously issued board order:~~

~~(a) The previously issued final order or agreement;~~

~~(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;~~

~~(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and~~

~~(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.~~

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

WAC 308-13-250 Brief adjudicative proceedings. (1)

The board will conduct brief adjudicative proceedings as provided for in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.96 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of landscape architects. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

~~(h) ((Whether an applicant or licensee has defaulted on educational loans;~~

~~(i))~~ Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;

~~((j))~~ (i) Whether a person has engaged in false, deceptive, or misleading advertising; or

~~((k))~~ (j) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 07-05-039, filed 2/15/07, effective 3/18/07)

WAC 308-13-260 Records required for the brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

~~(3) ((Default of student loan payments:~~

~~(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;~~

~~(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;~~

~~(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;~~

~~(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or~~

~~(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.~~

(4)) Determination of compliance with previously issued board order:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

AMENDATORY SECTION (Amending WSR 07-13-038, filed 6/13/07, effective 7/14/07)

WAC 308-15-105 Brief adjudicative proceedings. (1)

The board will conduct brief adjudicative proceedings as provided in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.220 and 18.235 RCW, administrative rules in Title 308 WAC or any statutes or rules that specifically govern the defined practices of geologists. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.

(2) Brief adjudicative proceedings may be used to determine the following issues(±) including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant has failed the professional licensing examination;

(f) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(g) Whether an applicant or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;

~~(h) ((Whether an applicant or licensee has defaulted on educational loans;~~

~~(i)) Whether an applicant or licensee has violated the terms of a final order issued by the board or the board's designee;~~

~~((j)) (i) Whether a person has engaged in false, deceptive, or misleading advertising; or~~

~~((k)) (j) Whether a person has engaged in unlicensed practice.~~

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 07-13-038, filed 6/13/07, effective 7/14/07)

WAC 308-15-107 Records required for the brief adjudicative proceeding. The records for the brief adjudicative proceeding shall include:

(1) Renewal or reinstatement of a license:

(a) All correspondence between the applicant and the board about the renewal or reinstatement;

(b) Copies of renewal notice(s) sent by the department of licensing to the licensee;

(c) All documents received by the board from or on behalf of the licensee relating to information, payments or explanations that have been provided to the board.

(2) Applicants for certification/licensing:

(a) Original complete application with all attachments as submitted by applicant;

(b) Copies of all supplementary information related to application review by staff or board member;

(c) All documents relied upon in reaching the determination of ineligibility;

(d) All correspondence between the applicant and the board about the application or the appeal.

(3) ~~(Default of student loan payments:~~

~~(a) Copies of notices to the board showing the name and other identification information of the individual claimed to be in default on student loan payments;~~

~~(b) Copies of identification information corresponding to the person who is certified/licensed by the board that relate to the identity of the individual in default;~~

~~(c) All documents received by the board from or on behalf of the licensee relating to rebutting such identification;~~

~~(d) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state-guaranteed student loan or service-conditional scholarship; or~~

~~(e) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.~~

(4)) Determination of compliance with previously issued board order:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

AMENDATORY SECTION (Amending WSR 97-17-051, filed 8/15/97, effective 9/15/97)

WAC 308-17-180 Application of brief adjudicative proceedings. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482 for the categories of matters set forth below. Brief adjudicative proceedings will be limited to a determination of one or more of the following issues:

(1) A determination whether an applicant for a license meets the minimum criteria for a license to practice as a private investigator in this state and the department proposes to deny the application;

(2) A determination whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department;

(3) A determination whether an education course or curriculum meets the criteria for approval when approval by the department is required or authorized by statute or rule; and

(4) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal(~~(; and~~

~~(5) A determination whether a license holder has been certified by a lending agency and reported for nonpayment or default on a federally or state guaranteed student loan or service conditional scholarship)).~~

AMENDATORY SECTION (Amending WSR 97-17-051, filed 8/15/97, effective 9/15/97)

WAC 308-17-185 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal license or for approval of an education course or curriculum shall consist of:

(a) The application for the license, renewal, or approval and all associated documents;

(b) All documents relied upon by the program in proposing to deny the application, renewal, or approval; and

(c) All correspondence between the applicant for license, renewal, or approval and the program regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

~~((3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state guaranteed student loan or service conditional scholarship shall consist of:~~

~~(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed student loan or service conditional scholarship; or~~

~~(b) A written release, if any issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.))~~

AMENDATORY SECTION (Amending WSR 97-17-050, filed 8/15/97, effective 9/15/97)

WAC 308-18-180 Application of brief adjudicative proceedings. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request for the categories of matters set forth below or at the discretion of the director pursuant to RCW 34.05.482. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter is limited solely to one or more of the following issues:

(1) A determination whether an applicant for a license meets the minimum criteria for a license to practice as a security guard in this state and the department proposes to deny the application;

(2) A determination whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department;

(3) A determination whether an education course or curriculum meets the criteria for approval when approval by the department is required or authorized by statute or rule; and

(4) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for renewal(~~(; and~~

~~(5) A determination whether a license holder has been certified by a lending agency and reported for nonpayment or default on a federally or state guaranteed student loan or service conditional scholarship)).~~

AMENDATORY SECTION (Amending WSR 97-17-050, filed 8/15/97, effective 9/15/97)

WAC 308-18-185 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal license or for approval of an education course or curriculum shall consist of:

(a) The application for the license, renewal, or approval and all associated documents;

(b) All documents relied upon by the program in proposing to deny the application, renewal, or approval; and

(c) All correspondence between the applicant for license, renewal, or approval and the program regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

~~((3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state guaranteed student loan or service conditional scholarship shall consist of:~~

~~(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed student loan or service conditional scholarship; or~~

~~(b) A written release, if any issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.)~~

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-400 Brief adjudicative proceeding. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth below. Brief adjudicative proceedings will be limited to a determination of one or more of the following issues:

(1) Whether an applicant for a license meets the minimum criteria for a license to practice as a bail bond recovery agent, bail bond agency, qualified agent, branch office or bail bond agent in this state and the department proposes to deny the application;

(2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department;

(3) Whether an education course or curriculum meets the criteria for approval when approval by the department is required or authorized by statute or rule; and

(4) Whether a license holder requesting renewal has submitted all required information and whether a license holder meets minimum criteria for renewal(~~and~~

~~(5) Whether a license holder has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state guaranteed educational loan or service conditional scholarship)).~~

AMENDATORY SECTION (Amending WSR 05-08-027, filed 3/30/05, effective 4/30/05)

WAC 308-19-410 Records used in a brief adjudicative proceeding. (1) The preliminary record with respect to an application for an original or renewal license or for approval of an education course or curriculum shall consist of:

(a) The application for the license, renewal, or approval and all associated documents;

(b) All documents relied upon by the department in proposing to deny the license, renewal, or approval; and

(c) All correspondence between the applicant for license, renewal, or approval and the department regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the department regarding compliance with the final order or agreement; and

(d) All documents relied upon by the department showing that the license holder has failed to comply with the previously issued final order or agreement.

~~((3) The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state guaranteed educational loan or service conditional scholarship shall consist of:~~

~~(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed educational loan or service conditional scholarship; or~~

~~(b) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.)~~

AMENDATORY SECTION (Amending WSR 07-17-145, filed 8/21/07, effective 9/21/07)

WAC 308-29-090 Brief adjudicative proceedings—When they can be used. (1) The board adopts RCW 34.05.-482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the board. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profes-

sion for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(c) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(d) Whether an applicant meets minimum requirements for an initial or renewal application;

(e) Whether an applicant or licensee failed to cooperate in an investigation by the board;

(f) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

~~(g) ((Whether an applicant or licensee has defaulted on education loans;~~

~~(h))~~ (h) Whether an applicant or licensee has violated the terms of a final order issued by the board;

~~((i))~~ (i) Whether a licensee has committed recordkeeping violations;

~~((j))~~ (j) Whether a licensee has committed trust account violations;

~~((k))~~ (k) Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising; or

~~((l))~~ (l) Whether a person has engaged in unlicensed practice.

(3) In addition to the situations enumerated in subsection (1) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

AMENDATORY SECTION (Amending WSR 05-23-150, filed 11/22/05, effective 12/23/05)

WAC 308-48-810 Brief adjudicative proceedings—When they can be used. (1) The board adopts RCW 34.05.-482 through 34.05.494 for the administration of brief adjudicative proceedings conducted at the discretion of the board. Brief adjudicative proceedings can be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act. Brief adjudicative proceedings can also be used whenever the statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of any statute or rule that specifically governs disciplinary actions within a profes-

sion for which the applicant seeks a license or from which the licensee holds a license.

(2) Brief adjudicative proceedings may be used to determine the following issues, including, but not limited to:

(a) Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;

(b) Whether an applicant is eligible to sit for a professional licensing examination;

(c) Whether an applicant or licensee has satisfied financial security requirements by providing adequate proof of surety bonds or other proof of financial security, as required by law;

(d) Whether a sanction proposed by the board is appropriate based on the stipulated facts;

(e) Whether an applicant meets minimum requirements for an initial or renewal application;

(f) Whether an applicant has failed the professional licensing examination;

(g) Whether a licensee has sufficient continuing education credits when the licensee submits a renewal application;

(h) Whether an applicant or licensee failed to cooperate in an investigation by the department;

(i) Whether an applicant or licensee was convicted of a crime that should disqualify the applicant or licensee from holding the specific license sought or held;

~~(j) ((Whether an applicant or licensee has defaulted on educational loans;~~

~~(k))~~ (k) Whether an applicant or licensee has violated the terms of a final order issued by the director or director's designee;

~~((l))~~ (l) Whether a licensee has committed recordkeeping violations;

~~((m))~~ (m) Whether a licensee has committed trust account violations;

~~((n))~~ (n) Whether an applicant or licensee has engaged in false, deceptive, or misleading advertising;

~~((o))~~ (o) Whether a person has engaged in unlicensed practice; or

~~((p))~~ (p) Whether an education course or curriculum meets the criteria for approval when approval by the board is required or authorized by statute or rule.

(3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.

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

WAC 308-124-310 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal license, for approval of an education course or curriculum, or for the proper issuance of a cease and desist order shall consist of:

(a) The application for the license, renewal, or approval and all associated documents; or the cease and desist order and all associated documents;

(b) All documents relied upon by the program in proposing to deny the license, renewal, or approval; or all documents relied upon by the program in issuing a cease and desist order; and

(c) All correspondence between the applicant for license, renewal, or approval and the program regarding the application; or all correspondence between the respondent and the program regarding the issuance of the cease and desist order.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the license holder and the program regarding compliance with the final order or agreement; and

(d) All documents relied upon by the program showing that the license holder has failed to comply with the previously issued final order or agreement.

~~(3) ((The preliminary record with respect to the determination of nonpayment or default by the license holder on a federally or state guaranteed education loan or service conditional scholarship shall consist of:~~

~~(a) Certification and report by the lending agency that the identified person is in default or nonpayment on a federally or state guaranteed education loan or service conditional scholarship; or~~

~~(b) A written release, if any, issued by the lending agency stating that the identified person is making payment on the loan in accordance with a repayment agreement approved by the lending agency.~~

~~(4))~~ The preliminary record with respect to all other issues subject to a brief adjudicative hearing shall consist of:

(a) All documents relied upon by the program in proposing disciplinary action as provided under RCW 18.235.110; and

(b) All correspondence between the license holder and the program regarding alleged violations.

WSR 18-21-032

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 5, 2018, 4:36 p.m., effective November 5, 2018]

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

Citation of Rules Affected by this Order: Amending chapter 172-139 WAC.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 42.56.070.

Adopted under notice filed as WSR 18-13-082 on June 18, 2018.

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

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: October 5, 2018.

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

WAC 172-139-005 Purpose. This chapter establishes standards for the conduct of commercial activities on Eastern Washington University property by ~~((external))~~ persons or ~~((organizations))~~ entities. This includes property and facilities that are owned, operated, or otherwise controlled by Eastern Washington University.

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

WAC 172-139-010 Commercial activities. Eastern Washington University facilities shall not be used by any person or entity other than the university for commercial solicitation, advertising, or promotional activities except:

(1) By special permission granted by the vice president for business and finance or designee if a contract, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in commercial activity;

(2) Regular advertising, promotions, or sponsorship activities carried on, by, or in any university media, *The Easterner*, or at intercollegiate events;

(3) In designated areas of the Pence Union Building as set forth in WAC 172-139-020; or

(4) When the activities clearly serve educational objectives. Examples of acceptable activities include the display of books of interest to the academic community, the display or demonstration of technical or research equipment, or other commercial activities that relate to educational objectives. In all cases, such commercial activities must be conducted under the sponsorship or at the request of a university department or of a vice president or authorized designee. Approved commercial activities shall not interfere with or operate to the detriment of the conduct of university affairs or the free flow of pedestrian or vehicular traffic.

AMENDATORY SECTION (Amending WSR 10-04-072, filed 2/1/10, effective 3/4/10)

WAC 172-139-020 Commercial activities in the Pence Union Building. ~~((Exceptions to WAC 172-139-010 are granted for the Pence Union Building (PUB) subject to the following provisions:~~

~~(1) Any commercial activity conducted under this section shall not duplicate services provided by the university.~~

~~(2) Vendors, organizations, or individuals)) Commercial advertising and activities are permitted in the limited areas identified by the university in the Pence Union Building (PUB). Individuals, corporations, or entities seeking to engage in commercial activities or advertising within the PUB must obtain approval from the director of the student union building prior to conducting any commercial activity.~~

~~((3)) The university shall charge vendors for use of PUB facilities.~~

WSR 18-21-033

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 5, 2018, 4:36 p.m., effective November 5, 2018]

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

Citation of Rules Affected by this Order: New chapter 172-135 WAC.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 42.56.070.

Adopted under notice filed as WSR 18-12-079 on June 4, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 0, Repealed 0.

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

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

Date Adopted: October 5, 2018.

Joseph Fuxa

Labor Relations Manager

Chapter 172-135 WAC

MANDATORY MEDICAL LEAVE OF ABSENCE AND RETURN

NEW SECTION

WAC 172-135-010 Purpose. Eastern Washington University is concerned about the health, welfare, and safety of all of its students. To promote an educational environment where all students can be successful, it is necessary for the university to engage with students whose ability to function successfully or safely as students is compromised. In such circumstances, the university may encourage a student to take voluntary leave. However, when a student's behavior renders the student unable to effectively function in the residential or educational community without harming him/herself, others, or unduly disrupting the university community, the dean of students may, after a careful and collaborative review, place a student on mandatory medical leave of absence in accordance with the procedures set forth in this chapter.

This process is only considered in rare situations when other options have been utilized and considered. A mandatory leave of absence is not the preferred option when addressing students' health, welfare, and safety. Any assessment or action taken under this policy will be based on legitimate safety concerns and not based on speculation, stereotypes, or generalizations about individuals with disabilities.

NEW SECTION

WAC 172-135-020 Definitions. "Dean" refers to the dean of students or designee.

"Director of CAPS" refers to the director of counseling and psychological services or designee.

"Essential function requirements for a student" are those tasks and responsibilities an individual student is required to perform, with or without reasonable accommodation, in order to remain enrolled at the university. These functions are all related to and consistent with educational necessity. The primary foci of the essential function requirements is the ability to learn, retain information, exhibit self-mastery, and demonstrate knowledge pertaining to academic and personal success. The essential functions for general enrollment include:

(a) Mental/psychological requirements:

(i) Communicating effectively, both verbally and non-verbally, and receiving communication effectively;

(ii) Managing and maintaining control over emotions;

(iii) Concentrating on tasks;

(iv) Remembering information and details;

(v) Making appropriate decisions; and

(vi) Adjusting to changing environments that include maintaining emotional health and a demeanor suitable for an academic environment.

(b) Performance requirements:

(i) Meeting academic/administrative deadlines, completing tasks as assigned;

(ii) Attending and participating in classes and required meetings with university faculty and staff;

(iii) Managing stressors associated with studying and, if relevant, residing in a university community.

(c) Interpersonal and intrapersonal requirements:

(i) Maintaining organization related to academics, health, and well-being, including appropriate hygiene and dress;

(ii) Adhering to university policies, including the student conduct code and academic integrity policies;

(iii) Demonstrating appropriate interactions with others including faculty, staff and fellow students;

(iv) Self-evaluating, identifying, and articulating needs and being able to identify and utilize resources in order to meet those needs.

(d) Other requirements: Additional requirements may be required for some university programs, activities, housing options, majors, and courses.

"Service" means to send notice via email to the student's university email account and via certified letter to the student's last known address. Alternatively, it may be hand delivered to the student.

"Student conduct code" refers to the regulations contained in the student conduct code, chapter 172-121 WAC.

"University" means Eastern Washington University.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

NEW SECTION

WAC 172-135-030 Risk of health, danger, or disruption. (1) Upon notification of a serious health or safety concern involving a student, the dean will make an individualized assessment of whether a student should be placed on a mandatory medical leave of absence. The dean may require a student to take a medical leave of absence if all of the following elements are met:

(a) A student has a physical, emotional, or psychological condition;

(b) As a result of such condition:

(i) Is not meeting the essential function requirements for a student as set forth in WAC 172-135-020 Definitions;

(ii) Is engaging in, or is threatening to engage in, behavior that poses a significant risk of causing substantial harm to the health, safety, or welfare of others or actual risk to his or her own health, safety or welfare, based on an individualized assessment of current medical knowledge or the best available objective evidence, to ascertain: The nature, duration and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk; or

(iii) Is so severely disruptive as to directly and substantially deny or limit another's ability to work, study, participate in, or benefit from the university's programs or activities.

(c) There are no reasonable accommodations that would permit the student to continue participating in the university community without taking a leave of absence or the student has rejected all reasonable accommodations offered by the university and cannot meet the essential function requirements for a student.

(2) In determining whether a student should be placed on a mandatory medical leave of absence, the dean should consult with the director of CAPS, and, where possible, other

persons who can provide relevant information about a student's condition and recent behaviors. The dean should consider whether the student could be provided with any reasonable accommodations that would allow the student to perform the essential function requirements of a student and whether there are other conditions that could be imposed on the student to address the health and safety concerns.

(3) While the dean is gathering all of the relevant information, the dean may issue interim conditions on the student's attendance, campus participation, or ability to reside on campus. The dean may require a student to timely provide documentation from a treating medical provider that the student is able to perform the essential function requirements for a student before lifting the interim conditions. The dean will respect the student's confidentiality and will only require a release of medical information for access to the student's medical and mental health records as is reasonably necessary to complete the dean's individualized assessment. Before requesting such a release, absent exigent circumstances, the dean or designee will explain the individualized assessment process and appeal rights to the student in a mode of communication accessible to the student.

(4) Prior to the dean requiring a student to take a medical leave of absence, the student shall be provided, where reasonably possible, with an opportunity to present information about his or her circumstances and/or treatment, where reasonably possible, to the dean. The dean will discuss with the student the option of pursuing a voluntary withdrawal in lieu of proceeding with the process for a mandatory medical leave of absence. The student waives his or her opportunity to provide information to the dean if he or she is unwilling or unable to meet with the dean in a timely manner, or is unable or unwilling to provide written documentation or a release to the dean.

NEW SECTION

WAC 172-135-040 Written notification and conditions of leave. (1) Notice: The dean shall issue a written notification of the mandatory medical leave of absence. The written notice shall include:

(a) Effective date of the leave;

(b) Reasons for requiring the leave;

(c) Conditions during the leave of absence, if any;

(d) Conditions for reenrollment, if any;

(e) A university point of contact during the absence; and

(f) Information about the appeals process.

(2) Service: The notice shall be served on the student.

(3) Conditions: If the dean issues a mandatory medical leave of absence, the dean may also impose conditions on the student during the mandatory leave as well as conditions for returning to the university after the mandatory leave. The goal of such conditions is to prepare the student for a successful return to the university. Such conditions may include, but are not limited to:

(a) Restrictions on access to university property;

(b) Restrictions on participation in university programs or activities;

(c) Release of treatment records;

(d) Mandatory medical or psychological assessment of student to address the identified health or safety risks;

(e) Compliance with treatment recommendations;

(f) Documentation of ability to meet the essential functions of a student prior to returning; and

(g) Consultation and assessment with the dean or designee prior to being able to register for classes and the end of the leave period.

(4) Length: The length of the mandatory medical leave of absence will be determined on a case-by-case basis and identified in the notice given to the student. A student placed on a mandatory leave of absence must normally remain out of school for the remainder of the academic year.

(5) Appeal: The notice of mandatory medical leave of absence is subject to the appeal procedures set forth in this chapter.

NEW SECTION

WAC 172-135-050 Financial aid, tuition, and grades.

A student placed on a mandatory medical leave of absence will automatically be granted an exceptional circumstances withdrawal for medical purposes from the university for the quarter in which the student is removed in accordance with EWU Policy 303-30. The student will receive a "W" for any courses in which he or she is currently enrolled at the time of the notice of mandatory medical leave. Tuition and fee payments for that quarter will be reversed/refunded. Housing and dining charges will be prorated to the effective date of the student's leave.

NEW SECTION

WAC 172-135-060 Returning from a mandatory medical leave of absence. A student requesting to return to the university after a mandatory leave of absence must notify the dean of his/her intention to return or reenroll approximately two months in advance of the anticipated return. The student must then meet with the dean or dean's designee. The dean will determine the student's readiness to return to assure the health, safety, and well-being of the student and the entire campus community. The dean will conduct an individualized review of the student's records to determine his or her readiness to return. The dean may request documentation to support the student's return including, but not limited to, medical evaluations, treatment plans, release of medical records, personal statements, and evidence of the ability to meet academic and conduct requirements. A returning student must provide medical documentation that he/she is able to perform the essential functions of a student, with or without an accommodation. The dean will provide the student with a written determination of whether or not the student may return, and any conditions imposed on such return. If the dean determines a student is not ready to return, the dean may issue a new notice of mandatory leave of absence. The new notice is subject to the appeal process set forth in this chapter.

NEW SECTION

WAC 172-135-070 Appeal. (1) Filing: A student may appeal the dean's decision to impose a mandatory medical

leave of absence. The appeal must be submitted in writing to the vice president for student affairs within twenty-one calendar days from service of the dean's decision. The appeal shall be in writing and shall include:

(a) Student's name;

(b) Basis for disagreeing with the dean's determination, including any supporting documentation; and

(c) What remedy the student is seeking.

(2) Appeal authority: The vice president will forward the appeal to the students of concern board. The students of concern board shall consist of the director of CAPS (or other designated mental health professional), a faculty member, and the director of disability support services or designee.

(3) Appeal period: During the appeal period, the dean's imposition of mandatory medical leave of absence remains in effect until terminated, in writing, by the students of concern board or the vice president.

NEW SECTION

WAC 172-135-080 Appeal hearing. (1) Upon receipt of a timely appeal by the student, the vice president shall convene the students of concern board and notify the student of the date, time, and location of the appeal hearing in writing. The notice will include information about how to request accommodations or interpreters. The notice must be served on the student at least seven calendar days prior to the hearing. The vice president may coordinate with the student to facilitate scheduling, but is not required to do so. The vice president shall serve as the presiding officer for the students of concern board. The appeal hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW.

(2) Evidence.

(a) Types of evidence: The students of concern board shall be provided with the documentation reviewed by the dean that formed the basis of the mandatory medical leave of absence notice. The student may provide the board with additional documentation for the board to consider, may testify before the board, and may present witnesses to the board. Evidence, including hearsay evidence, is admissible if in the judgment of the board it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(b) Review of evidence: The student has the right to view all material presented to the board.

(c) Oath: Any testimony of persons before the board shall be made under oath or affirmation.

(d) Witnesses: The student may present witnesses at the board meeting. The presiding officer and board may also ask other witnesses and professionals to attend the hearing and provide the board with additional information beyond what was contained in the written documentation provided to the board. If the student wishes to call a witness, the student is responsible for ensuring the witness is available and present at the time of the hearing.

(e) Exclusion: As the hearing will cover sensitive material, the presiding officer may exclude anyone from the hearing room other than the student, the student's advisor, the presiding officer, and the board.

(f) Accommodations: The student should inform the vice president of any possible need for an interpreter or any accommodation requests at least three days prior to the hearing.

(g) Questioning: The student and the board may ask questions of the witnesses, except the presiding officer may preclude any questions that are inappropriate, irrelevant, immaterial, or unduly repetitious. The presiding officer should explain to the student the reasons for rejecting any questions and will maintain a record of the questions submitted and the determinations made.

(3) Advisor: A student may be assisted by one advisor of his or her choice.

(4) Hearing on the record: A student may waive the opportunity for an in-person hearing and request the board conduct the hearing based solely on written documentation. In such a case, the student may submit written documentation of any additional evidence the student wishes the board to consider in addition to the materials provided by the dean.

(5) Records: The presiding officer shall keep a record of all materials submitted to and reviewed by the board. The presiding officer shall make and keep a recording of the hearing and subsequent transcript, if any. Records shall be kept for seven years and shall be kept confidential to the extent provided by law.

(6) Deliberations and decision: Following the appeal hearing, the board shall meet in private and, within seven business days, determine by majority vote whether to:

- (a) Affirm the dean's decision;
- (b) Affirm the dean's decision but alter the conditions imposed; or
- (c) Reverse the dean's decision and allow the student to remain enrolled with or without conditions.

(7) Service: The board's decision shall be in writing and shall set forth the reasons for the board's decision. A copy of the decision shall be served on the student and a copy provided to the vice president.

(8) Final decision: The board's decision is final and no further appeals may be made under these regulations. Judicial review of the university's decision may be available under chapter 34.05 RCW.

NEW SECTION

WAC 172-135-090 Relationship to the student conduct code and other policies. (1) A mandatory medical leave of absence is an administrative decision and is not a disciplinary action. A student may still be held responsible for his or her conduct if the conduct constituted a violation of the student conduct code.

(2) A student who is placed on mandatory leave remains responsible for adhering to and complying with all university regulations, policies, and procedures. Students on probation for disciplinary or academic reasons will resume their probationary status upon their return for the duration of the assigned probationary period.

WSR 18-21-034 PERMANENT RULES BOARD OF ACCOUNTANCY

[Filed October 8, 2018, 8:30 a.m., effective November 8, 2018]

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

Purpose: Rule making is needed to amend the board's contact information in the following sections due to recent changes: WAC 4-30-024 to correct board's web site URL address and WAC 4-30-062 to correct the board's customer service email address.

Citation of Rules Affected by this Order: Amending WAC 4-30-024 and 4-30-062.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 18-16-089 on July 31, 2018.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 8, 2018.

Charles E. Satterlund, CPA
Executive Director

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

WAC 4-30-024 Public records. All public records of the agency are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the office of the Washington State Board of Accountancy at 711 Capitol Way S., Suite 400, Olympia, Washington, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) **Records index.** An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the agency's office.

(3) **Organization of records.** The agency maintains its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the agency's office. A variety of records are also avail-

able on the agency's web site at (www.epaboard.wa.gov) www.acb.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request in writing by letter, fax, or email addressed to the public records officer. **Written requests must include the following information:**

- Date of the request;
- Name of the requestor;
- Address of the requestor and other contact information, including telephone number and any email address;
- Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should make that preference clear in the request. Copies will be made by the agency's public records officer or designee.

(e) When fulfilling public records requests the agency will perform its public records responsibilities in the most expeditious manner consistent with the agency's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the agency's anticipated installment delivery timetable.

(h) In certain instances the agency may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within fifteen days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the fifteen-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations:

In order to obtain a list of individuals under the provisions of RCW 42.56.070(9), educational organizations and

professional associations must apply for and receive recognition by the board before requests will be honored. The requesting organization must provide sufficient information to satisfy the approving authority that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's web site or upon request for your use.

AMENDATORY SECTION (Amending WSR 16-10-019, filed 4/22/16, effective 5/23/16)

WAC 4-30-062 How do I apply to take the CPA examination? (1) Application process and due dates: Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within sixty days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all of the following are provided:

- Complete application information and requested documents;
- Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all of the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS), the NTS will be valid for one taking of the examination within the six months following the date of the NTS.

Notice of a denial of your application, or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content and grading:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The examination will consist of the following four sections: Auditing and attestation; financial, accounting and reporting; regulation; and business environment and concepts. The board may accept the advisory grading services of the American Institute of Certified Public Accountants.

(5) **Examination process:**

(a) **Conditions for examinations held prior to January 1, 2004:** Contact a customer service representative at (customerservice@epaboard.wa.gov) customerservice@acb.wa.gov or by phone at 360-753-2586.

(b) **For examinations taken after December 31, 2003:** The board uses all parts of the uniform CPA examination and

the advisory grading services of the American Institute of Certified Public Accountants.

(i) To satisfy the examination requirement for a license you must have achieved a score of seventy-five on all four sections of the examination within a rolling eighteen-month period.

(ii) You may take the required four sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for eighteen months from the actual date you successfully passed any particular section of the examination.

(iii) You must pass all four sections of the examination within a rolling eighteen-month period, which begins on the date that the first section(s) is passed. A section is considered passed on the date that you took the exam section and not the date that your grade is released.

(iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).

(v) In the event you do not pass all four sections of the examination within the rolling eighteen-month period, credit for any section(s) passed prior to the eighteen-month period will expire and you must retake any expired section.

WSR 18-21-040

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 8, 2018, 9:17 a.m., effective November 8, 2018]

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

Purpose: WAC 246-815-155 Suicide prevention training for dental hygienists, the department of health adopted a new section of rule establishing a one-time suicide prevention continuing education requirement for dental hygienists, consistent with the directives of E2SHB 1612 (chapter 262, Laws of 2017), codified in RCW 43.70.442. The adopted rule requires dental hygienists to take a one-time training in suicide assessment that includes screening and referral.

Citation of Rules Affected by this Order: New WAC 246-815-155.

Statutory Authority for Adoption: E2SHB 1612 (chapter 262, Laws of 2017), codified in RCW 43.70.442.

Adopted under notice filed as WSR 18-12-115 on June 6, 2018.

A final cost-benefit analysis is available by contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, TTY 360-833-6388 or 711, email bruce.bronoske@doh.wa.gov, web site www.doh.wa.gov.

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

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

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

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

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

Date Adopted: October 5, 2018.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-815-155 Dental hygienist suicide prevention education. Effective August 1, 2020, a licensed dental hygienist must complete a department-approved one-time training that is at least three hours in length for suicide assessment that includes screening and referral.

(1) This training must be completed by the end of the first full continuing education reporting period after August 1, 2020, or during the first full continuing education reporting period after initial licensure, whichever is later.

(2) Training approved by the department for this requirement must be on the department's model list as authorized in chapter 246-12 WAC, Part 14.

(3) Training completed between July 23, 2017, and August 1, 2020, that meets the requirements of this section, is accepted as meeting the one-time training requirement of this section.

(4) The hours spent completing the training in suicide assessment under this section count toward meeting applicable continuing education requirements for dental hygiene license renewal.

WSR 18-21-042

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 8, 2018, 10:06 a.m., effective November 8, 2018]

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

Purpose: This new section allows for ambulance transportation for involuntary substance use disorder treatment.

Citation of Rules Affected by this Order: New WAC 182-546-4600.

Statutory Authority for Adoption: ESHB [E3SHB] 1713, chapter 29, Laws of 2016 1st sp. sess., RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-13-022 on June 8, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
Original WAC 182-546-4600 (1)(c)		
Proposed	"Designated crisis responder (DCR)" means a mental health professional appointed by the behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.	RCW 70.96A.140 was repealed.
Adopted	"Designated crisis responder (DCR)" means a mental health professional appointed by the behavioral health organization (BHO) to perform the duties described in chapter 71.05 RCW.	
Original WAC 182-546-4600 (1)(h)(iii)		
Proposed	... is certified as a secure withdrawal management and stabilization facility by the department of social and health services and the department of health (DOH).	The department of social and health services (DSHS) no longer certifies facilities. The department of health (DOH) is responsible for certification.
Adopted	... is certified as a secure withdrawal management and stabilization facility by the department of social and health services and the department of health (DOH).	
Original WAC 182-546-4600(5)		
Proposed	Involuntary Treatment Act (ITA) (HCA 42-003)	Typographical error in the form number.
Adopted	Involuntary Treatment Act (ITA) (HCA 42-00 <u>0</u> 3)	

Proposed/ Adopted	WAC Subsection	Reason
Original WAC 182-546-4600(6)		
Proposed	The SUD program, administered by DSHS, establishes payment for SUD-related transportation services when the transportation provider complies with DSHS requirements for drivers, driver training, vehicle and equipment standards and maintenance. Providers must clearly identify ITA transportation on the claim when billing the agency.	The agency is now responsible for establishing payment for SUD-related transportation services.
Adopted	The SUD program, administered by DSHS, agency establishes payment for SUD-related transportation services when the transportation provider complies with the agency's requirements for drivers, driver training, vehicle and equipment standards and maintenance. Providers must clearly identify ITA transportation on the claim when billing the agency.	

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

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

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

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

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

Date Adopted: October 8, 2018.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-546-4600 Ambulance transportation—Involuntary substance use disorder treatment—Ricky Garcia Act. (1) Definitions. For the purposes of this section, the following definitions and those found in chapter 182-500 WAC apply:

(a) **"Behavioral health organization (BHO)"** - See WAC 182-500-0015.

(b) **"Chemical dependency professional"** means a person certified as a chemical dependency professional by the department of health (DOH) under chapter 18.205 RCW.

(c) **"Designated crisis responder (DCR)"** means a mental health professional appointed by the behavioral health organization (BHO) to perform the duties described in chapter 71.05 RCW.

(d) **"Detention"** or **"detain"** means the lawful confinement of a person, under chapter 71.05 RCW.

(e) **"Gravely disabled"** means a condition in which a person, as a result of a mental disorder, or as the result of the use of alcohol or other psychoactive chemicals:

(i) Is in danger of serious physical harm as a result of being unable to provide for personal health or safety; or

(ii) Shows repeated and escalating loss of cognitive control over personal actions and is not receiving care essential for personal health or safety.

(f) **"Less restrictive alternative treatment"** means a program of individualized treatment in a less restrictive setting than inpatient treatment and that includes the services described in RCW 71.05.585.

(g) **"Nearest and most appropriate destination"** means the nearest facility able and willing to accept the involuntarily detained person for treatment, not the closest facility based solely on driving distance.

(h) **"Secure detoxification facility"** means a facility operated by either a public or private agency that:

(i) Provides for intoxicated people:

(A) Evaluation and assessment by certified chemical dependency professionals;

(B) Acute or subacute detoxification services;

(C) Discharge assistance by certified chemical dependency professionals, including assistance with transitions to appropriate voluntary or involuntary inpatient services, or to less-restrictive alternatives appropriate for the client;

(ii) Includes security measures sufficient to protect the patients, staff, and community; and

(iii) Is certified as a secure withdrawal management and stabilization facility by the department of health (DOH).

(2) For a client involuntarily detained for substance use disorder (SUD) treatment, the agency covers transportation services under the ITA when the client has been assessed by a DCR and found to be one of the following:

(a) A danger to self;

(b) A danger to others;

(c) At substantial risk of inflicting physical harm upon the property of others; or

(d) Gravely disabled as a result of SUD.

(3) The agency pays for transportation under this section only when the transportation is:

(a) From one of the following locations:

(i) The site of the initial detention;

(ii) A local emergency room department;

(iii) A court hearing; or

(iv) A secure detoxification facility or crisis response center.

(b) To one of the following locations:

(i) A less restrictive alternative setting, except when ambulance transportation to a client's home is not covered;

(ii) A local emergency room department;

(iii) A court hearing; or

(iv) A secure detoxification facility or crisis response center.

(c) Provided by an ambulance transportation provider or law enforcement. The ambulance transportation provider must have an active core provider agreement (CPA) with the agency.

(d) To the nearest and most appropriate destination. The reason for a diversion to a more distant facility must be clearly documented in the client's file.

(4) The DCR authorizes the treatment destination based on the client's legal status.

(5) A copy of the agency's authorization of ambulance/secure transportation services under the Involuntary Treatment Act (ITA) form (HCA 42-0003) must be completed and signed by the DCR and kept in the client's file.

(6) The agency establishes payment for SUD-related transportation services when the transportation provider complies with the agency's requirements for drivers, driver training, vehicle and equipment standards and maintenance. Providers must clearly identify ITA transportation on the claim when billing the agency.

WSR 18-21-044

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed October 8, 2018, 10:17 a.m., effective November 8, 2018]

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

Purpose: Chapter 246-847 WAC, Occupational therapy, the occupational therapy practice board (board) adopted amendments to rule to clarify and modernize existing rules. The adopted amendments update WAC 246-847-080 Examinations, 246-847-135 Standards of supervision, and 246-847-150 Supervised fieldwork for occupational therapy assistant, in order to complement changes recently made to the occupational therapy chapter. The adopted rules add requirements for a jurisprudence exam as part of the application process, and revise language to more accurately reflect current national guidelines regarding timelines for accomplishing fieldwork and more clarification on proper conduct during supervision.

Citation of Rules Affected by this Order: Amending WAC 246-847-080, 246-847-135, and 246-847-150.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 18-12-113 on June 6, 2018.

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4883, fax 360-236-2901, TTY 360-833-6388 or 711, email kathy.weed@doh.wa.gov, web site doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: July 20, 2018.

Sheryl Zylstra, OT
Chair

AMENDATORY SECTION (Amending WSR 06-24-137, filed 12/6/06, effective 1/6/07)

WAC 246-847-080 Examinations. (1) The occupational therapy practice board recognizes the examination administered by the National Board for Certification in Occupational Therapy or its ((successor/predecessor)) predecessor organization ((shall be)) as the official examination for licensure as an occupational therapist or as an occupational therapy assistant.

(2) To be eligible for a license((;)) an applicant((s)) must:
(a) Attain a passing score on the examination determined by the National Board for Certification in Occupational Therapy or its ((successor/predecessor)) predecessor organization; and

(b) Successfully pass the department's occupational therapy jurisprudence examination with a passing score of one hundred percent.

AMENDATORY SECTION (Amending WSR 07-20-076, filed 10/1/07, effective 11/1/07)

WAC 246-847-135 Standards of supervision. The following are the standards for supervision of occupational therapy assistants, limited permit holders, and occupational therapy aides:

(1) A licensed occupational therapy assistant((s)) must be ((supervised through)) in regular consultation ((by)), as defined by WAC 246-847-010, with an occupational therapist licensed in the state of Washington. Regular consultation must be documented and the documentation must be kept in a location determined by the supervising occupational therapist or occupational therapy assistant.

(2)((~~a~~)) A limited permit holder:

(a) Who is waiting to take the examination for licensure must work in association with an occupational therapist licensed in the state of Washington with a minimum of one year of experience. "In association with" ((shall)) includes consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of all notes by the supervising occupational therapist.

(b) ((Limited permit holders who have)) Who has failed the examination must be directly supervised by an occupational therapist licensed in the state of Washington with a minimum of one year of experience. Direct supervision must include consultation regarding evaluation, intervention, progress, reevaluation and discharge planning of each assigned patient at appropriate intervals and documented by cosignature of all notes by the supervising occupational therapist.

(3) An occupational therapy aide((s)) must be ((professionally)) supervised and trained by an occupational therapist or an occupational therapy assistant licensed in the state of Washington. Professional supervision must include documented supervision and training.

(a) The occupational therapist or occupational therapy assistant shall ((train)) provide professional supervision as defined in WAC 246-847-010 to the occupational therapy aide on client and nonclient related tasks ((at least once a month)).

(b) When performing client related tasks, the occupational therapist or occupational therapy assistant must ensure the occupational therapy aide is trained and competent in performing the task on the specific client.

(c) The documentation must be maintained in a location determined by the supervising occupational therapist or occupational therapy assistant.

~~((4) Definitions can be found in WAC 246-847-010.))~~

AMENDATORY SECTION (Amending WSR 91-05-027, filed 2/12/91, effective 3/15/91)

WAC 246-847-150 Supervised fieldwork experience—Occupational therapy assistants. ((²))Supervised fieldwork experience((²)) as defined in RCW 18.59.050 (1)(c)(ii) ((shall)) means, for an occupational therapy assistant, a minimum two months, or eight weeks, of full-time equivalency of Level II fieldwork. The Level II fieldwork must be conducted in settings approved by the applicant's academic or training program. Level II fieldwork is to provide an in-depth experience in delivering occupational therapy services to clients and to provide opportunities for supervised practice of occupational therapy assistant entry-level roles. The minimum two months, or eight weeks, of full-time equivalency supervised fieldwork experience required by RCW 18.59.050 (1)(c)(ii) ((shall)) does not include Level I fieldwork experience as defined by the ((American)) accreditation council for occupational therapy ((Association)) education.

~~((The supervised fieldwork experience shall consist of a minimum of two one-month sustained fieldwork placements not less than forty full-time workdays. "Full-time workdays" is as required by the fieldwork setting.))~~

WSR 18-21-048

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 8, 2018, 11:58 a.m., effective November 8, 2018]

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

Purpose: Chapter 246-814 WAC, Access to dental care for children, the department of health is adopting rule revisions that clarify and modernize standards regarding the provision of dental cleaning and sealants to at-risk children in school-based and school-linked settings by dental hygienists and dental assistants.

Citation of Rules Affected by this Order: New WAC 246-814-015; and amending WAC 246-814-010, 246-814-020, 246-814-030, and 246-814-040.

Statutory Authority for Adoption: RCW 18.29.210, 18.29.220, 18.29.226.

Adopted under notice filed as WSR 18-12-036 on May 29, 2018.

A final cost-benefit analysis is available by contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504, phone 360-236-4843, fax 360-236-2901, TTY 360-833-6388 or 711, email bruce.bronoske@doh.wa.gov, web site www.doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: October 5, 2018.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-21-128, filed 10/23/02, effective 11/23/02)

WAC 246-814-010 Purpose. The purpose of this chapter is to implement RCW 18.29.220 and 18.32.226. These laws are intended to improve access to dental care for low-income, rural, and other at-risk children by enhancing the authority of dental hygienists and dental assistants to provide dental sealant and fluoride varnish treatments in school-based and school-linked programs. The department ~~((of health))~~ encourages partnerships within geographical regions and among participants in the oral health care community in implementing this law.

NEW SECTION

WAC 246-814-015 Definitions. The definitions of this section apply throughout this chapter unless the context clearly indicates otherwise:

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

(2) "School-based program" means a program that is conducted entirely in the school setting.

(3) "School-linked program" means a program that may be conducted in both the school and clinical settings associated with the school.

AMENDATORY SECTION (Amending WSR 02-21-128, filed 10/23/02, effective 11/23/02)

WAC 246-814-020 Practices authorized. (1) **Dental hygienists.** Solely for purposes of providing services under this chapter, dental hygienists holding endorsements under this chapter may assess by determining the need for (i.e., the absence of gross carious lesions and sealants) and acceptability of dental sealant ~~((and/or))~~ or fluoride varnish treatment for children in school-based and school-linked programs ~~((and)).~~ Dental hygienists may apply dental sealants and fluoride varnish treatments and may remove deposits and stains from the surfaces of teeth, without the supervision of a licensed dentist. This determination does not include or involve diagnosing conditions or constitute a dental examination.

(2) **Dental assistants.** A dental assistant is currently defined ~~((by the Dental Quality Assurance Commission in WAC 246-817-510 as an unlicensed person working under the close supervision of a licensed dentist))~~ in RCW 18.260.010 as a person who is registered by the dental quality assurance commission to provide supportive services to a licensed dentist to the extent provided in chapter 18.260 RCW and under the close supervision of a dentist. Solely for purposes of this chapter, authorized dental assistants may apply dental sealants and fluoride varnish treatments to children in school-based and school-linked programs under the *general* supervision of a Washington state licensed dentist, as described in this chapter.

(a) *Close supervision* requires the ~~((licensed))~~ supervising dentist to first determine the need for and acceptability of dental sealant and fluoride varnish treatments, refer the treatment and the dentist ~~((must be))~~ is continuously on-site and physically present in the treatment facility when the treatment is provided.

(b) *General supervision* requires the ~~((licensed))~~ supervising dentist to first determine the need for and acceptability of dental sealant and fluoride varnish treatments, refer the treatment and the dentist does not have to be in the treatment facility when the treatment is provided.

(3) Dental assistants and their supervising dentists, as well as dental hygienists shall coordinate with local public health jurisdictions and local oral health coalitions prior to providing services under this chapter, consistent with RCW 18.29.220 and 18.32.226.

AMENDATORY SECTION (Amending WSR 02-21-128, filed 10/23/02, effective 11/23/02)

WAC 246-814-030 Application process and documentation of training required to qualify for endorsement. (1) The department (~~(of health)~~) has issued endorsements to all dental hygienists holding valid licenses on or before April 19, 2001, the effective date of RCW 18.29.220.

(2) Dental hygienists licensed after April 19, 2001, must obtain an endorsement to provide services under this chapter. Applicants must meet the additional requirements in RCW 18.29.220 and must submit the following to the department:

- (a) Application for endorsement;
- (b) Fee;
- (c) Information of having a valid Washington state dental hygiene license for reference; and
- (d) Proof of the completion of training that has incorporated the Washington state department of health sealant/fluoride varnish program guidelines as described in WAC 246-814-040(3).

(3) Dental assistants employed by a Washington state licensed dentist on or before April 19, 2001, are not required to obtain an endorsement but may voluntarily do so without having to meet the additional requirements in RCW 18.32.226.

(4) Dental assistants employed by a Washington state licensed dentist for two hundred hours after April 19, 2001, must obtain an endorsement to provide services under this chapter. Applicants must meet the additional requirements in RCW 18.32.226 and must submit the following to the department:

- (a) Application for endorsement;
- (b) Fee;
- (c) Proof of two hundred hours of employment as a dental assistant by a Washington state licensed dentist that has included theoretical and clinical training in the application of dental sealants and fluoride varnish treatments, verified by a declaration provided by the licensed dentist who provided the training; and

(d) Proof of completion of training that has incorporated the Washington state department of health sealant/fluoride varnish program guidelines as described in WAC 246-814-040(3).

(5) Dental assistants and their supervising dentists, as well as dental hygienists should use the Washington state department of health sealant/fluoride varnish guidelines described in WAC 246-814-040 and other protocols that may be in place for the geographic region when coordinating with local public health jurisdictions. ~~((To assist the local public health jurisdictions and the practitioners in coordinating these services, a "letter of understanding" is recommended and would provide a means to address mutual concerns. It may include, but is not limited to:~~

- ~~(a) Data collection requirements;~~
- ~~(b) Delineation of responsibilities of the treatment providers and the local public health jurisdictions;~~
- ~~(c) Quality assurance mechanisms; and~~
- ~~(d) Communication with schools being served.))~~

(6) Dental assistants and their supervising dentists, as well as dental hygienists shall coordinate with ~~((the))~~ established local oral health coalitions by participating in oral

health coalition meetings that may be held in the geographical region.

AMENDATORY SECTION (Amending WSR 02-21-128, filed 10/23/02, effective 11/23/02)

WAC 246-814-040 Training and the provision of services. (1) The "Washington state department of health sealant/fluoride varnish program guidelines" (sealant/fluoride varnish program guidelines) have been developed, maintained and distributed by the department (~~(of health)~~) in partnership with the oral health community and health care practitioners. To obtain copies of the (~~("guidelines")~~) sealant/fluoride varnish program guidelines contact the department (~~(of health)~~).

(2) The (~~(Washington state department of health)~~) sealant/fluoride varnish program guidelines are designed to assist the local public health jurisdictions and oral health care communities in the planning, implementation, and evaluation of school-based dental sealant and fluoride varnish programs. Every school-based dental sealant and fluoride varnish program should design their program to provide, at minimum, for the following:

- (a) Assessing and targeting the population.
- (b) Establishing community capacity and infrastructure.
- (c) Determining staffing needs and training.
- (d) Securing equipment and supplies.
- (e) Developing policies, procedures and data collection forms.
- (f) Scheduling schools/sites.
- (g) Preparing sites for implementation.
- (h) Providing services.
- (i) Evaluating the process and outcomes.

(3) The (~~(Washington state department of health)~~) sealant/fluoride varnish program guidelines also provides the training required for dental hygienists and dental assistants providing services under this chapter. Applicants for endorsement must obtain training as contained in these specific guidelines, which can be met through any one of the following methods:

(a) Graduation from a dental assisting, dental hygiene or dental educational program, accredited by the (~~(American Dental Association))~~ commission on dental accreditation (CODA), which has incorporated the (~~(Washington state department of health)~~) sealant/fluoride varnish program guidelines.

(b) Continuing education courses which teach the (~~(Washington state department of health)~~) sealant/fluoride varnish program guidelines.

(c) Individual training provided by a Washington licensed dentist, which has incorporated the (~~(Washington state department of health)~~) sealant/fluoride varnish program guidelines.

WSR 18-21-055
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed October 9, 2018, 10:02 a.m., effective November 9, 2018]

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

Purpose: In 2015, the Washington state legislature amended Washington's procurement code to provide enterprise services additional authority, within the context of debarment, to correct behavior through fines in lieu of debarment. See chapter 44, Laws of 2015 (SHB 1447 amends RCW 39.26.200, which passed the House 96-1 and passed the Senate 49-0). The legislature, however, required enterprise services to establish the fining process by rule.

These rules are necessary to implement the rule-making requirements of RCW 39.26.200 (2015) (chapter 44, Laws of 2015, as amended by SHB 1447). SHB 1447 allows the department of enterprise services to debar or impose civil fines. Civil fines must use debarment process.

Citation of Rules Affected by this Order: New WAC 200-305-005 Purpose and 200-305-025 Causes for fine in lieu of debarment; and amending WAC 200-305-010 Definitions, 200-305-020 Causes for debarment, 200-305-030 Aggravating and mitigating factors, 200-305-040 Referring a person for debarment or fine in lieu of debarment, 200-305-050 Investigation, 200-305-060 Notice of recommended debarment or fine in lieu of debarment, 200-305-070 Request for a hearing on recommended debarment or fine in lieu of debarment, 200-305-080 Hearing on recommended debarment or recommended fine in lieu of debarment, 200-305-090 Final decision, 200-305-100 Effect of a debarment order on the contractor and affiliate, 200-305-110 Effect of a debarment order on state agencies, and 200-305-130 Service and delivery.

Statutory Authority for Adoption: RCW 43.19.011 Director—Powers and duties.

Other Authority: RCW 39.26.200 (2015) (chapter 44, Laws of 2015, as amended by SHB 1447).

Adopted under notice filed as WSR 18-08-019 on March 23, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 11, Repealed 0.

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

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

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

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

Date Adopted: October 3, 2018.

Jack Zeigler
 Policy and Rules Manager

NEW SECTION

WAC 200-305-005 Purpose. The purpose of this chapter is to provide rules for the department of enterprise services to implement the provisions of RCW 39.26.200, which authorize the department either to fine or to debar contractors. Fines in lieu of debarment provide a cost-effective, efficient, progressive enforcement mechanism to utilize state resources to police certain causes that otherwise would result in debarment and help ensure a vibrant, open, competitive procurement marketplace for bidders and the state of Washington.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-010 Definitions. The definitions set forth in chapter 39.26 RCW and in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Affiliate" means a person in a business relationship who either directly or indirectly controls or has the power to control the other or a third party who controls or has the power to control both. Factors used to determine control include:

- (a) Interlocking management or ownership;
- (b) Identity of interests among family members;
- (c) Shared facilities and equipment;
- (d) Common use of employees; or
- (e) A business entity organized following the debarment or proposed debarment of a person which has the same or similar management, ownership, or ((principal)) employees as the person that was debarred or proposed for debarment.

(2) ("~~Agency~~") means ~~any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, institutions of higher education as defined in RCW 28B.10.016, and correctional and other types of state institutions.~~

(3) "~~Bid~~" means ~~an offer, proposal, or quote for goods or services in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.~~

(4) "~~Bidder~~" means ~~an individual or entity who submits a bid, quotation, or proposal in response to a solicitation issued for such goods or services by the department or an agency of Washington state government.~~

(5) "~~Contractor~~" means ~~an individual or entity awarded a contract with an agency to perform a service or provide goods.~~

(6) "~~Conviction~~" means:

- (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or
- (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.

~~((7)) (3) "Covered transaction" means submitting a bid, having a bid considered, entering into a state contract, or subcontracting on a state contract.~~

~~((8) "Debar" means to prohibit a contractor, individual, or other entity from submitting a bid, having a bid considered, or entering into a state contract during a specified period of time as set forth in a debarment order.~~

~~(9)) (4) "Debarring official" means the director of the department of enterprise services or the director's designee, who shall exercise the authority to debar or fine in lieu of debarment.~~

~~((10) "Department" means the department of enterprise services.~~

~~(11) "Director" means the director of the department of enterprise services.~~

~~(12) "Person" means any individual, corporation, partnership, association, unit of government, or legal entity, however organized.~~

~~(13) "Principal" means:~~

~~(a) An officer, director, owner, partner, principal investigator, or other person within a bidder or contractor with management or supervisory responsibilities related to a covered transaction; or~~

~~(b) A consultant or other person, whether or not employed by the bidder or contractor, who:~~

~~(i) Is in a position to handle state funds;~~

~~(ii) Is in a position to influence or control the use of those funds; or~~

~~(iii) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.~~

~~(14)) (5) "Fine in lieu of debarment" means an alternative to debarment, for certain causes that otherwise could result in debarment, but for which a monetary penalty, under the circumstances, may be more appropriate than debarment.~~

~~(6) "Investigating official" means a person appointed to investigate the merits of a debarment referral.~~

~~(7) "Service" or "service of process" means, for any delivery required under this chapter ((means)), personal delivery, delivery by US postal mail service, electronic mail delivery, or delivery by other reasonable commercially acceptable means of delivery.~~

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-020 Causes for debarment. The director may debar a contractor based on a finding of one or more of the causes specified in RCW 39.26.200(2). A contractor or affiliate also may be debarred for failure to timely pay a fine in lieu of debarment as provided in WAC 200-305-025. A debarment may include any affiliate of the contractor if specifically named and given notice of the proposed debarment pursuant to this chapter. ~~((The director may also debar a contractor or affiliate for any other cause the director determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations.))~~

NEW SECTION

WAC 200-305-025 Causes for fine in lieu of debarment. The director may fine a contractor in lieu of debarment based on a finding of one or more of the causes specified in RCW 39.26.200 (2)(e) or (f).

(1) The director shall decide whether to order debarment or a fine in lieu of debarment. Such decision shall rest with the sound discretion of the director but be informed by the aggravating and mitigating factors set forth in this chapter.

(2) A fine in lieu of debarment shall be set at an amount to:

(a) Negate any economic gain to the contractor from the violation; and

(b) Recover the cost to the state from the contractor's violation.

(3) In the event that a fine in lieu of debarment is ordered and the contractor does not timely pay such fine in lieu of debarment as set forth in the order, the fine in lieu of debarment shall be deemed, without further action, to be a debarment order for a period of three years. Notwithstanding any provision to the contrary, because the fine in lieu of debarment was subject to review, there shall be no further review of a debarment order that is the result of a fine in lieu of debarment that is not timely paid.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-030 Aggravating and mitigating factors. The following are the mitigating and aggravating factors that the ~~((reviewing))~~ investigating official and debarring official may consider in determining whether to debar and the length of the debarment period, or to fine in lieu of debarment.

(1) The actual or potential harm or impact that resulted or may result from the wrongdoing.

(2) The frequency of incidents and/or duration of the wrongdoing.

(3) Whether there is a pattern or prior history of wrongdoing.

(4) Whether the contractor or affiliate has been excluded or disqualified by an agency of the federal government or has not been allowed to participate in state or local contracts or assistance agreements on a basis of conduct similar to one or more of the causes for debarment specified in this rule.

(5) Whether the contractor or affiliate has entered into an administrative agreement with a federal agency or a state or local government that is not government-wide but is based on conduct similar to one or more of the causes for debarment specified in this rule.

(6) Whether the contractor or affiliate has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the cause for debarment.

(7) Whether the contractor or affiliate has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.

(8) Whether the contractor or affiliate has cooperated fully with the government agencies during the investigation

and any court or administrative action. In determining the extent of cooperation, the ~~((reviewing))~~ investigating official or debarment official may consider when the cooperation began and whether the contractor or affiliate disclosed all known pertinent information.

(9) The kind of positions held by the individuals involved in the wrongdoing.

(10) Whether the contractor or affiliate took appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(11) Whether the contractor or affiliate brought the activity cited as a basis for the debarment to the attention of the appropriate government agency in a timely manner.

(12) Whether the contractor or affiliate has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the ~~((reviewing))~~ investigating official or debarment official.

(13) Whether the contractor or affiliate had effective standards of conduct and internal control systems in place at the time the wrongdoing occurred.

(14) Whether the contractor or affiliate has taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the cause for debarment.

(15) Other factors appropriate to the circumstances of a particular case.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-040 Referring a person for debarment or fine in lieu of debarment. (1) Any person may file a referral for debarment or fine in lieu of debarment with the department. The referral must be in writing. The referring party may complete the department's debarment referral form. The referral ~~((should))~~ must include the following information:

(a) The name and contact information of the person submitting the referral;

(b) The specific facts supporting the request for debarment or fine in lieu of debarment, including the dates and locations for all events upon which the referral is made;

(c) The cause or causes specified in RCW 39.26.200(2) upon which debarment or fine in lieu of debarment may be based that the referring party believes are supported by the facts presented; and

(d) The name of the contractor and any affiliates the referring party believes should be subject to debarment or fine in lieu of debarment.

~~(2) ((The person submitting the referral should provide additional information if requested by the department.~~

~~(3))~~ (3) The department will make an initial assessment of the ~~((submittal))~~ referral. If the department determines that the facts as presented, if true, support a debarment or fine in lieu of debarment, the department will conduct ~~((a review))~~ an investigation to substantiate the allegations. Otherwise, the department will reject the referral.

~~((4))~~ (3) The department will notify the referring party in writing and state whether the referral will be ~~((reviewed))~~ investigated or rejected.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-050 ~~((Review))~~ Investigation. (1) If the department accepts a debarment referral and conducts ~~((a review))~~ an investigation, the department will notify the contractor and affiliates in writing.

(2) The notice must:

(a) Provide a complete copy of the debarment referral;

(b) State the applicable cause(s) for debarment or fine in lieu of debarment, including the applicable statutory or administrative code provisions, and the factual allegations supporting each cause in terms sufficient to put the contractor and affiliates on notice of the specific reasons for the ~~((review))~~ investigation;

~~((b) Identify the statutory and administrative code provisions addressing debarment;))~~

(c) Request a written response to the allegations including any documents that support the response, and state that failure to respond will result in the department making a decision without the recipient's input; and

(d) State the effects of a debarment order or fine in lieu of debarment order.

(3) At the conclusion of the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official will issue a report that includes the following information:

(a) Facts found by the ~~((reviewing))~~ investigating official;

(b) Whether the facts support debarment or a fine in lieu of debarment; and

(c) ~~((Either))~~ A recommendation ((that)). The recommendation shall state whether the referral should be dismissed with no further action taken or ((that)) whether a debarment order or fine in lieu of debarment should be issued, including the duration of the debarment or the amount of the fine in lieu of debarment.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-060 Notice of recommended debarment or fine in lieu of debarment. (1) If, based on the ~~((review))~~ investigation, the ~~((reviewing))~~ investigating official determines that the facts support debarment or a fine in lieu of debarment the ~~((reviewing))~~ investigating official shall notify the affected contractor and affiliates. The ~~((reviewing))~~ investigating official shall cause service of the notice of recommended debarment or fine in lieu of debarment on the affected contractor and affiliates. The notice shall include the following information:

(a) The effective date ((when the)) for any recommended debarment ((takes effect)) or fine in lieu of debarment;

(b) Each cause for the recommended debarment or fine in lieu of debarment and the facts that the ((reviewing)) investigating official found that support each cause;

(c) The period of the recommended debarment or the amount of the fine in lieu of debarment and the deadline for payment of such fine in lieu of debarment;

(d) Notice that, in the case of a fine in lieu of debarment, if such fine is not timely paid, the fact that such failure will cause the fine in lieu of debarment to be converted to a debar-

ment, without further action or process, and state the period of the recommended debarment in such event;

(e) How the recommended debarment or fine in lieu of debarment will impact either the contractor or affiliates or both;

~~((e))~~ (f) The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debaring official may issue a final, unappealable debarment order or fine in lieu of debarment order.

(2) Either the contractor or affiliates or both, as applicable, may request a hearing in accordance with WAC 200-305-070 to dispute the recommended debarment or recommended fine in lieu of debarment or the recommended debarment period or the recommended amount of the fine in lieu of debarment. ~~((The notice shall state that if no hearing is requested within thirty days of the date of issuance of the notice, the debaring official shall issue a final, unappealable debarment order; and~~

~~(f))~~

(3) Where a hearing is requested, the recommended debarment order or fine in lieu of debarment order will not go into effect until the resolution of the hearing in accordance with WAC 200-305-080.

~~((2) In the event either an affected contractor or affiliate or both does not))~~ (4) If no one requests a hearing, the ~~((reviewing))~~ investigating official will provide the report and recommendation to the debaring official, who may issue the recommendation as a final debarment order or fine in lieu of debarment order. The order shall include the effective date and term of the debarment order or fine in lieu of debarment order. If the debaring official elects to impose a sanction that is more severe than the recommendation of the investigating official, a new notice will be provided and an opportunity to request a hearing under WAC 200-305-070 will be provided before the order becomes effective.

(5) A fine in lieu of debarment order shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-070 Request for a hearing on recommended debarment or fine in lieu of debarment. Either the contractor, or affiliate or both may request a hearing ~~((or))~~ to contest the recommended debarment or fine in lieu of debarment. The request must be ~~((filed))~~ served with the director within thirty days after the date the ~~((reviewing))~~ investigating official ~~((issued))~~ served the notice of recommended debarment or recommended fine in lieu of debarment on the contractor and affiliates. The person requesting the hearing must also serve a copy of the request on the ~~((reviewing))~~ investigating official.

The request for hearing must be in writing and must specify:

(1) The name of the person requesting the hearing and the person's contact information; and

(2) The ~~((items))~~ facts ~~((or))~~, conclusions, penalties or other matters in the notice of recommended debarment or the notice of recommended fine in lieu of debarment that ~~((the requestor contests))~~ are contested.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-080 Hearing on recommended debarment or recommended fine in lieu of debarment. (1) The director may hear the ~~((appeal))~~ contested matter personally or may delegate the authority to hold the hearing and draft a proposed decision to another person or to an administrative law judge pursuant to chapter 34.12 RCW. The ~~((reviewing))~~ investigating official, on behalf of the department, shall be the petitioner in the hearing, and the contractor and affiliates shall be the respondents.

(2) The ~~((reviewing))~~ investigating official shall have the burden of proving the basis for the cause for debarment and the debarment period or fine in lieu of debarment and fine amount as set forth in the notice for recommended debarment or the notice for recommended fine in lieu of debarment.

(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 1-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision in writing that includes findings of fact, conclusions of law, and, if appropriate, the debarment period or fine amount. The director shall cause service of the final decision on all parties.

(5) If the director's delegate or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and, if appropriate, the debarment period or fine amount. The proposed decision ~~((shall))~~ also shall include instructions on how to ~~((file))~~ serve objections and written arguments or briefs with the debaring official. Objections and written arguments and briefs must be ~~((filed))~~ served within twenty ~~((20))~~ days from the date of receipt of the proposed decision.

(6) The parties ~~((shall agree))~~ may stipulate to the method of service, as defined in WAC 200-305-010(14) for the proposed decision. Absent agreement or stipulation, the department will serve the final order by United States mail, with service complete on the date of mailing.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-090 Final decision. (1) The debaring official shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.05 RCW and any objections, written arguments and briefs timely filed by the parties. The debaring official may:

- (a) Allow the parties to present oral arguments;
- (b) Allow the parties to submit additional information if circumstances so warrant; or
- (c) Remand the matter to the delegate or administrative law judge for further proceedings;

(2) The debaring official shall issue a final decision that adopts in whole or in part, modifies or rejects the proposed decision.

(a) If the decision is to issue a debarment order, the debarment becomes effective on the date specified in the

debarment order ~~((, but in no event will the debarment order go into effect sooner than five (5) days from the date issued))~~.

(b) If the decision is to issue a fine in lieu of debarment, the fine becomes due and effective on the date specified in the order.

(3) The debarring official shall cause service of the final decision on all parties. Either the contractor or affiliate or both may file a petition for review of the final decision to superior court. If neither the contractor nor affiliate appeals within the period set by RCW 34.05.542, the debarring official's decision is conclusive and binding on all parties. The appeal must be filed within ~~((30))~~ thirty days from service of the final decision.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-100 Effect of a debarment order on the contractor and affiliate. The effects of a debarment order on the contractor and affiliate are:

(1) A debarred contractor ~~(and, if applicable, affiliate)~~ is ineligible to ~~((be a participant in any covered transaction or act as a principal of a person participating))~~ participate, directly or indirectly, in any covered transaction ((as defined in WAC 200-305-010(7)).

(2) Debarment constitutes debarment of all divisions or other organizational elements of the debarred person, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.

(3) A person's debarment shall be effective in every agency, unless the director states in writing the compelling reasons justifying continued business dealings between an agency and the debarred person.

(4) A fine in lieu of debarment shall not constitute a debarment order.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-110 Effect of a debarment order on state agencies. The effects of a debarment order on state agencies are:

(1) Agencies shall not permit debarred persons to participate in covered transactions, unless the debarring official determines in writing that there is a compelling reason to do so.

(2) If the period of debarment expires or is terminated prior to award, ~~((the))~~ a contracting officer may, but is not required to, consider a debarred ~~((persons))~~ person's bid.

(3) Notwithstanding debarment, agencies may continue contracts or subcontracts in existence at the time the person was debarred unless the debarring official determines otherwise.

(4) Agencies shall not add new work, exercise options, or otherwise extend the duration of current contracts or orders for debarred persons, unless the debarring official makes a written determination of the compelling reasons for doing so.

AMENDATORY SECTION (Amending WSR 13-09-069, filed 4/17/13, effective 5/18/13)

WAC 200-305-130 Service and delivery ~~((to the department))~~. (1) Any notice, objection or information that is required or allowed by these rules may be served or delivered to the department as follows:

(a) By courier delivery:

Department of Enterprise Services
1500 Jefferson Street S.E.
Olympia, WA 98504-1466
Attn: Office of the Director

~~((2))~~ (b) Or, mailed, by certified mail, return receipt requested to:

Department of Enterprise Services
Office of the Director
1500 Jefferson Street S.E.
MS: 41466
Olympia, WA 98504-1466

~~((3))~~ (c) Or, electronically mailed to department of enterprise services at the following email address: director@des.wa.gov.

(d) Service is complete upon receipt by the department.

(2) Any notice, objection or information that is required or allowed by these rules may be served by the department by U.S. mail or by any alternative means agreed to by the parties. Unless otherwise agreed, service is complete upon mailing to the contractor's address as registered with the Washington secretary of state.

WSR 18-21-058

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 9, 2018, 11:46 a.m., effective November 9, 2018]

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

Purpose: The agency is revising this rule to clarify that the agency covers vaccines according to the current schedule published by the Centers for Disease Control and Prevention (CDC) and vaccines outside the schedule that are medically necessary.

Citation of Rules Affected by this Order: Amending WAC 182-531-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 18-17-007 on August 1, 2018.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/Adopted	WAC Subsection	Reason
	Original WAC 182-531-0100	Scope of coverage for physician-related and health care professional services—General and administrative.

Proposed/ Adopted	WAC Subsection	Reason
Proposed	Subsection (4) (aa): Vaccines for adults, adolescents, and children in the United States administered according to the current schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;	Clarifies the type of schedule and aligns with the department of health immunization references in rule.
Adopted	Subsection (4) (aa): Vaccines for adults, adolescents, and children in the United States administered according to the current <u>advisory committee on immunization practices (ACIP) recommended immunization</u> schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;	

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

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

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

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

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

Date Adopted: October 9, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-041, filed 1/12/15, effective 2/12/15)

WAC 182-531-0100 Scope of coverage for physician-related and health care professional services—General and administrative. (1) The medicaid agency covers health care services, equipment, and supplies listed in this chapter, according to agency rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's Washington apple health program. Refer to WAC 182-501-0060 and 182-501-0065; and

(b) Medically necessary as defined in WAC 182-500-0070.

(2) The agency evaluates a request for a service that is in a covered category under the provisions of WAC 182-501-0165.

(3) The agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions as described in WAC 182-501-0169.

(4) The agency covers the following physician-related services and health care professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

(a) Alcohol and substance misuse counseling (refer to WAC 182-531-1710);

(b) Allergen immunotherapy services;

(c) Anesthesia services;

(d) Dialysis and end stage renal disease services (refer to chapter 182-540 WAC);

(e) Emergency physician services;

(f) ENT (ear, nose, and throat) related services;

(g) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 182-534-0100);

(h) Habilitative services (refer to WAC 182-545-400);

(i) Reproductive health services (refer to chapter 182-532 WAC);

(j) Hospital inpatient services (refer to chapter 182-550 WAC);

(k) Maternity care, delivery, and newborn care services (refer to chapter 182-533 WAC);

(l) Office visits;

(m) Vision-related services (refer to chapter 182-544 WAC for vision hardware for clients twenty years of age and younger);

(n) Osteopathic treatment services;

(o) Pathology and laboratory services;

(p) Physiatry and other rehabilitation services (refer to chapter 182-550 WAC);

(q) Foot care and podiatry services (refer to WAC 182-531-1300);

(r) Primary care services;

(s) Psychiatric services;

(t) Psychotherapy services (refer to WAC 182-531-1400);

(u) Pulmonary and respiratory services;

(v) Radiology services;

(w) Surgical services;

(x) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects

(e.g., congenital or as a result of illness or physical trauma), or for mastectomy reconstruction for post cancer treatment;

(y) Telemedicine (refer to WAC 182-531-1730);

(z) Tobacco cessation counseling (refer to WAC 182-531-1720);

(aa) Vaccines for adults, adolescents, and children in the United States administered according to the current advisory committee on immunization practices (ACIP) recommended immunization schedule published by the Centers for Disease Control and Prevention (CDC). Vaccines outside the regular schedule may be covered if determined to be medically necessary;

(bb) Other outpatient physician services.

(5) The agency covers physical examinations for Washington apple health clients only when the physical examination is for one or more of the following:

(a) A screening exam covered by the EPSDT program (see WAC 182-534-0100);

(b) An annual exam for clients of the division of developmental disabilities; or

(c) A screening pap smear, mammogram, or prostate exam.

(6) By providing covered services to a client eligible for Washington apple health, a provider who meets the requirements in WAC 182-502-0005(3) accepts the agency's rules and fees which includes federal and state law and regulations, billing instructions, and provider notices.

WSR 18-21-059

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-285—Filed October 9, 2018, 3:45 p.m., effective November 9, 2018]

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

Purpose: The department seeks to make additional amendments to the rules that include a \$5 fee for catch record cards that was previously approved by the legislature in ESSB 6127 during the 2018 legislative session. The proposed changes to the current rules are necessary to make the rules consistent with request legislation passed in 2018 and recommendations made by the Pacific Fishery Management Council. The proposed modification to WAC 220-310-020 (6)(a) would facilitate online catch reporting for species in addition to Puget Sound crab, which already has this capability. This would be a more convenient catch reporting method for anglers and could help increase compliance with catch reporting requirements.

Citation of Rules Affected by this Order: Amending WAC 220-220-020 Recreational license, 220-220-200 Valid catch record card, 220-310-010 Description of catch record cards and required information, and 220-310-020 Catch record cards.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 18-17-179 on August 22, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: October 5, 2018.

Brad Smith
Commission Chair

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-220-020 Recreational license. A recreational license is ~~((a license document or))~~ a valid internet or telephone ~~((authorization))~~ transaction number issued by the department ~~((The license document is invalid unless the personal identification information on the license has been completed and the licensee has signed the license except that a temporary fishing license is issued either as a license document requiring personal identification information or as a stamp, which is invalid unless the two consecutive days for which it is valid are entered, in permanent ink, on the stamp))~~ or a valid license.

With the exception of razor clam licenses and one-day charter boat or guide operator stamp licenses, to be valid, a license must be signed by the licensee, must contain the licensee's personal identification information, and, if a catch record card is required, must be accompanied by a valid catch record card.

To be valid, a razor clam license must be signed by the licensee.

When a catch record card is not required for use with a one-day charter boat or guide operator stamp license, the stamp license is valid only if the issue date is written in ink on the stamp and the stamp is signed by the licensee. When a catch record card is required for use with a one-day charter boat or guide operator stamp license, the license is valid only if the issue date is written in ink on the stamp, the stamp is affixed to the catch record card, the catch record card is signed by the licensee, and the catch record card contains the licensee's completed personal identification information.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-220-200 Valid catch record card. For a catch record card ((shall be invalid unless)) to be valid:

(1) The angler ~~((has))~~ must have in physical possession the appropriate ~~((recreational))~~ license and catch record card

for the area in which the angler is participating, if a license and/or a catch record card is required.

(2) The catch record card (~~(number is written in ink in the appropriate space on the back of the recreational license, if a license is required, and)~~ must contain the personal information (~~(has been entered on the catch record card as)~~ required under WAC ~~((220-310-020, or, if an automated license is issued, the catch record card has attached to it a validation sticker containing the name and license number))~~ 220-310-010.)

(3) The license issuance date (~~(is)~~ must be legible and not altered, and the license (~~(has not been)~~ must not be mutilated.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-310-010 Description of catch record cards and required information. (1) The department shall prepare and distribute a catch record card for the following:

- (a) Anadromous salmon (salmon);
- (b) Dungeness crab taken from Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5-13;
- (c) Halibut;
- (d) Steelhead; and
- (e) Sturgeon.

(2) Each catch record card shall contain space for the following information (~~(, which must be recorded prior to the catch record card being separated from the underlying copy of the catch record card))~~:

- (a) Name of fisher;
- (b) Home address, or mailing address for a catch record card issued with a one-day charter boat or guide operator stamp license;
- (c) City, state, and zip code;
- (d) Date of issuance;
- (e) (~~(Or, for automated licenses))~~ When the catch record card is issued with a one-day charter boat or guide operator stamp license, the catch record card shall contain space for ((the appropriate validation sticker)) that stamp.

(3) Each catch record card shall contain space for the following information:

- (a) Month of catch;
- (b) Day of catch;
- (c) (~~(Catch record card area, river code, or stream: Location of catch;))~~ Location of catch by Marine Area, River, or Lake Code;
- (d) A species code for salmon and sturgeon and a marked or unmarked space for salmon;
- (e) A space for designating the type of vessel from which halibut was taken, either charter ("c") or (~~(personal/kicker (k) boat)~~ private ("p"));
- (f) A space for the length of sturgeon;
- (g) For Dungeness crab:
- (i) The type of crab fishery as described on the Dungeness crab catch record card;
- (ii) The total crab retained by fishery type;
- (iii) A tally mark for each crab retained.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-310-020 Catch record cards. It is unlawful for any person to fail to comply with the catch record requirements as provided for in this section:

(1) An angler must obtain and have in his or her personal possession a valid and appropriate Puget Sound Dungeness crab catch record card as described in WAC 220-310-010 to fish for or possess for personal use any Dungeness crab in Catch Record Card Area 4 east of the Bonilla-Tatoosh Line, and in Catch Record Card Areas 5-13.

(2) An angler must obtain and have in his or her personal possession a valid and appropriate catch record card as described in WAC 220-310-010 to fish for or possess for personal use any anadromous salmon, sturgeon, halibut, or steelhead except a catch record card is not required for:

(a) Commercially caught salmon retained for personal use, as provided in WAC 220-354-030, and commercially caught sturgeon retained for personal use, as provided in WAC 220-353-110; and

(b) Landlocked steelhead or for salmon in waters designated as "landlocked salmon rules apply" in WAC 220-312-010 through 220-312-060.

(3) Unless the catch record card is issued by the automated licensing system, anglers must completely, accurately, and legibly complete all personal identification information in ink on the catch record card ((before detaching the card from its underlying copy or, for automated licenses, affixing the appropriate validation sticker to the catch record card to validate a catch record card)). A catch record card remains valid as long as there is one or more unfilled spaces available for the species being fished for, except:

(a) A catch record card remains valid for catch-and-release sturgeon fishing when the sturgeon portion of the card is full in the mainstem Columbia River downstream from where the river forms the common boundary between Oregon and Washington.

(b) It is unlawful to use a second or subsequent catch record card to retain halibut, sturgeon, or wild steelhead after the first card is full.

(4) The fee for a catch record card for halibut is five dollars when purchased with an annual saltwater fishing license, an annual combination fishing license, or an annual fish Washington license. There is no charge for a catch record card for halibut with a temporary combination fishing license that is valid for one to three consecutive days, or with a one-day charter boat or guide operator stamp license, or with a youth license.

(5) Immediately upon catching and possessing a salmon, steelhead, sturgeon or halibut, anglers must enter, in ink, in the appropriate space on the card, the place, date of catch, and species (catch type). For sturgeon, anglers also must record the length of the fish; for halibut, anglers also must record the vessel type; and for salmon, anglers also must indicate whether or not the fish was marked by having a clipped adipose fin(~~(s)~~).

~~((5))~~ (6) Immediately upon retaining a Puget Sound Dungeness crab aboard a vessel or on the shore, fishers must enter, in ink, in the appropriate space on the Puget Sound Dungeness crab catch record card, the place and date of

catch, the fishery type, and a tally mark for each Dungeness crab retained from each catch record card area fished. At the end of the fishing day, the fisher must enter the total number of crab tally marks for each fishery type.

~~((6))~~ (7)(a) Every person issued a catch record card must, by April 30 of the year after they used the card, return the card to the department of fish and wildlife or report the card information at the designated internet site by dates indicated on the card. People issued a Puget Sound Dungeness crab catch record card must return the card to the Washington department of fish and wildlife or report the card information at the designated internet site by the dates indicated on the card.

(b) Failure to return a Dungeness crab catch record card or to report the Dungeness crab catch record card information at the designated internet site by the dates indicated on the card will result in a ten-dollar administrative fee. The administrative fee will be collected from anglers when they acquire a subsequent Puget Sound Dungeness crab endorsement.

~~((7))~~ (8) Any person possessing a catch record card must show the card to any law enforcement officer or authorized department employee who asks to inspect the card.

~~((8))~~ (9) A catch record card must not be transferred, borrowed, altered, or loaned to another person, except as authorized under RCW 77.32.565.

WSR 18-21-064

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 9, 2018, 5:02 p.m., effective November 9, 2018]

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

Purpose: Chapter 16-470 WAC, Quarantine—Agricultural pests, this rule-making order amends chapter 16-470 WAC by expanding the apple maggot quarantine area to include portions of Okanogan County, specifically within the Methow Valley north of Gold Creek.

Citation of Rules Affected by this Order: Amending WAC 16-470-105.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-12-111 on June 6, 2018.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 9, 2018.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 16-24-027, filed 11/30/16, effective 1/1/17)

WAC 16-470-105 Area under order for apple maggot—Pest free area—Quarantine areas. (1) A pest free area for apple maggot is declared for the following portions of Washington state:

(a) Counties of Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, ~~((Okanogan,))~~ Pend Oreille, Stevens, Walla Walla, and Whitman.

(b) The portion of Kittitas County designated as follows: Beginning at the point where Interstate Highway No. 90 crosses longitude 120°31' W; thence southerly to the Kittitas-Yakima County line; thence easterly along the county line to the Columbia River; thence northerly along the Columbia River to Interstate Highway No. 90; thence westerly along Interstate Highway No. 90 to the point of beginning.

(c) Yakima County, except for the area designated in subsection (2)(c) of this section.

(d) Chelan County, except for the area designated in subsection (2)(d) of this section.

(e) Lincoln County, except for the area designated in subsection (2)(e) of this section.

(f) Okanogan County, except for the area designated in subsection (2)(f) of this section.

(2) A quarantine for apple maggot is declared for the following portions of Washington state:

(a) Counties of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Snohomish, Spokane, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom.

(b) Kittitas County, except for the area designated in subsection (1)(b) of this section.

(c) The portion of Yakima County designated as follows: Beginning at the northeastern corner of Yakima County on the west bank of the Columbia River; thence southerly along the Columbia River to the Yakima-Benton County line; thence southerly along the county line to latitude N46°30'; thence west to longitude W120°20'; thence north to latitude N46°30.48'; thence west to longitude W120°25'; thence north to latitude N46°31.47'; thence west to longitude W120°28'; thence north to latitude N46°32'; thence west to longitude W120°36'; thence south to latitude N46°30'; thence west to longitude W120°48'; thence southerly to the Klickitat-Yakima County line; thence westerly along the county line to the Yakima-Skamania County line; thence northerly along the county line to the Lewis-Yakima County line; thence easterly and northerly along the county line to the Pierce-Yakima County line; thence northerly and easterly along the county line to the Kittitas-Yakima County line; thence easterly and southerly along the county line to the west bank of the Columbia River and the point of beginning.

(d) The portion of Chelan County designated as follows: Beginning at the point where the northern boundary of the

county crosses longitude W120°43.02' following the longitudinal line due south to the fork of Highway 207 and Chiwawa Loop Road; thence south following the eastern edge of Highway 207 which becomes Beaver Valley Road and then Chumstick Highway; thence southeast along the eastern edge of Highway 2 to the point where the northern ridgeline of Boundary Butte drops to meet Highway 2; thence southerly, following the ridgeline of Boundary Butte gaining in elevation into the Stuart Range to the highest point of McClellan Peak; thence due south from McClellan Peak to the southern boundary of the county; thence following the county line west, then north, and then east to the beginning point.

(e) The portion of Lincoln County designated as follows: Beginning at longitude W118°20'0" on the Lincoln-Adams County line; thence northerly to State Highway Route 28 (SR 28); thence northerly and easterly along SR 28 to latitude N47°37'38.6"; thence easterly to the Lincoln-Spokane County line; thence south to the Lincoln-Whitman County line; thence west along the Lincoln County line to longitude W118°20'0" and the point of beginning.

(f) The portion of Okanogan County designated as follows: Beginning at the northern corner of the Okanogan-Whatcom County line; thence southerly to the Okanogan-Skagit County line; thence southerly and easterly along the Okanogan-Chelan County line; thence easterly to latitude N48°12'05.4"; thence northerly to longitude W119°53'05.9"; and thence westerly along the Okanogan County-Canada border to the beginning point.

(3) A quarantine for apple maggot is declared for all states or foreign countries where apple maggot is established. The area under quarantine includes, but is not limited to, the states of Idaho, Oregon, Utah, and California, and, in the eastern United States, all states and districts east of and including North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, and any other areas where apple maggot is established.

WSR 18-21-070
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 11, 2018, 10:44 a.m., effective November 11, 2018]

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

Purpose: Amends WAC 181-77-003, 181-77-005, 181-77-014, 181-77-015, 181-77-031, 181-77-041, 181-77-068, 181-77-071, 181-77-081 and 181-77-120, this revision follows a year long review of certification regulations for career and technical education (CTE) programs and educators. The amendments align renewal requirements for all CTE certificates with the standards for renewing basic education certificates. The amendments also address limited certificates, merging two limited certificates into one that contains the requirements for both.

Citation of Rules Affected by this Order: WAC 181-77-003, 181-77-005, 181-77-014, 181-77-015, 181-77-031, 181-77-041, 181-77-068, 181-77-071, 181-77-081, and 181-77-120.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-17-065 on August 9, 2018.

Changes Other than Editing from Proposed to Adopted Version: Minor edits and clarification language.

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

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 10, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 28, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 17-07-018, filed 3/7/17, effective 4/7/17)

WAC 181-77-003 Definitions. The following definitions shall apply to terms used in this chapter:

(1) "Approved program for training career and technical education teachers and career and technical education counselors" shall be defined as any program approved by the professional educator standards board which complies with chapter 181-77A WAC.

(2) "Career and technical education educator training" shall mean those career and technical education programs, courses, seminars and workshops offered for the purpose of career and technical education certification in compliance with chapter 181-85 WAC.

(3) "General safety" shall mean course work approved by the professional educator standards board and/or its designee that is designed to provide skill and knowledge common to all career and technical education instructors in safety.

(4) "Specific safety requirements" shall mean completion of course work approved by the professional educator standards board and/or its designee which is designed to provide the career and technical education instructor with the specific skill and knowledge of safety for the occupation he or she is to teach.

(5) "Learning period" shall mean the amount of time required prior to becoming gainfully employed at the ((~~jour~~~~neyman~~~~or~~~~equivalent~~)) journey level in the occupation being taught. In any case, this shall be no less than one year.

(6) "Management experience" shall mean work as a supervisor (~~foreman~~) or manager in the occupational area in which the person will instruct.

(7) "Occupational experience" shall mean paid or unpaid volunteer work experience in the career field to be taught.

(8) "One year of occupational experience" shall equal two thousand hours of employment.

(9) "Professional education" shall mean those programs, courses, seminars and workshops that are designed to improve teaching ability.

(10) "Professional experience" shall mean employment in career and technical education in the discipline and/or specialty for which the application has been submitted.

(11) "Quarter hours or the equivalent" shall mean one quarter credit, two-thirds semester credit, ten clock hours or one hundred hours of occupational experience.

(12) "Technical education/upgrading" shall mean those career and technical education programs, courses, seminars and workshops which are designed to improve the skills and/or knowledge in the discipline in which the application is being made.

(13) "Professional growth plan" is as described in WAC 181-79A-030.

AMENDATORY SECTION (Amending WSR 10-23-074, filed 11/15/10, effective 12/16/10)

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) Family and consumer sciences education;
- (d) Technology education;
- (e) Trade and industrial;
- (f) Health occupations;
- (g) Career choices;
- (h) Coordinator for worksite learning; or
- (i) ~~(New and emerging fields;~~
- ~~(j))~~ Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold a baccalaureate degree or higher in a math-related area such as engineering from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

(D) Pass the mathematics subject knowledge test approved by the professional educator standards board; and

(E) Document a minimum of one year teaching experience in technology education or skilled and technical science courses.

(ii) Science applied, biology applied, chemistry applied, physics applied, or earth and space science applied. To add these categories, the candidate shall:

(A) Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold a baccalaureate degree or higher in a science-related area such as engineering or in a medical field from ~~((a regionally))~~ an accredited college or university pursuant to WAC 181-79A-030~~((5))~~;

(C) Be fully contracted as a teacher or long-term substitute by a Washington public school;

(D) Pass the appropriate science, biology, chemistry, physics, or earth and space science subject knowledge test approved by the professional educator standards board; and

(E) Document a minimum of one year teaching experience in agriculture education, health occupations, or skilled and technical science courses.

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

AMENDATORY SECTION (Amending WSR 17-07-018, filed 3/7/17, effective 4/7/17)

WAC 181-77-014 Requirements for limited certification. ~~((1) Probationary certificate. The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district and verification of CTE program enrollment or completion if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial career and technical education certificate.~~

~~The candidate for a probationary certificate must have substantially completed requirements for the initial career and technical education certificate as set forth in WAC 181-77-031 or 181-77-041.~~

~~(a) Such a certificate may be issued upon recommendation by the employing school district.~~

~~(b) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by the local school district career and technical education program advisory committee, to which the candidate is assigned. The plan shall provide for orientation, prior to the commencement of the teaching assignment, in the following:~~

- ~~(i) Issues related to legal liability;~~
- ~~(ii) The responsibilities of professional career and technical education educators; and~~
- ~~(iii) The lines of authority in the employing school district and/or building.~~

Within the first sixty working days, the plan shall establish procedures for the career and technical education instructor to develop competencies in the following:

- (iv) Career and technical education methods; and
- (v) General and specific safety.

If the candidate does not have access to the required course work within the first ninety working days, the local school district career and technical education advisory committee responsible may authorize the completion of the course work at a later date. The required course work shall be completed prior to the second year of employment.

(vi) The plan shall develop procedures and timelines for the career and technical education instructor to meet the requirements for the initial career and technical education certificate.

(vii) Provided, That candidates for probationary certificates as a coordinator of worksite learning shall successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program and hold a valid probationary career and technical education teacher certificate.

(2) Conditional career and technical education certificate. Notwithstanding other requirements prescribed in this chapter for eligibility for career and technical education certification in the state of Washington, the one-year)) Conditional career and technical education certificate.

(1) **Intent:** The intent of the conditional career and technical education certificate is to fill teacher positions given specific circumstances where no regularly certificated career and technical education instructor is available.

(2) **Role:** The certificate is valid only for the teaching areas specified on the certificate.

(3) Request requirements:

(a) The conditional career and technical education certificate may be issued under specific circumstances set forth below for limited service(:

(a)), The issuance of the conditional career and technical education certificate may be issued only ((under unique and special circumstances where no regularly certificated career and technical education instructor is available and is limited)) to:

(i) Persons ((highly)) qualified and experienced in the knowledge and occupational skills of the career and technical education program to be certified; or

(ii) Persons who meet the occupational experience requirements for career and technical education certification; or

(iii) Persons enrolled in a career and technical education preparation program as verified by an approved career and technical education program provider; or

(iv) Persons who will be employed in new and emerging occupations as identified by the professional educator standards board and/or its designee.

(b) The certificate is issued to individuals who are screened by the local career and technical education administrator and school district superintendent or designee. The local career and technical education administrator or superintendent will verify that the following criteria have been met when requesting the conditional career and technical education certificate:

(i) No person with career and technical education certification in the field is available as verified by the local career and technical education administrator or superintendent; and

(ii) The individual is being certified for a limited assignment and responsibility in a specified career and technical education program area; and

(iii) Personnel so certificated will be oriented and prepared for the specific assignment and will be apprised of any legal liability, the lines of authority and the duration of the assignment; and

(iv) The career and technical education administrator and local program advisory committee will indicate the basis on which he/she has determined that the individual is competent for the assignment; and

(v) A written ((work and/or educational experience)) training plan ((as specified in WAC 181-77-014 (1)(b))) is on file with the employing district. The career and technical education administrator and the candidate will mutually develop this plan. The plan must be approved by the local school district career and technical education program advisory committee to which the candidate is assigned. The plan will provide for the career and technical education instructor to develop competencies in the following:

(A) Issues related to legal liability;

(B) The responsibilities of career and technical education educators;

(C) The lines of authority in the employing school district and/or building;

(D) Career and technical education methods, including those described in RCW 28A.700.010, WAC 181-77-041 (1)(b), and 181-77A-165;

(E) General and specific safety.

(4) **Minimum requirements:** The career and technical education teacher will complete fifty continuing education credit hours subsequent to the issuance of the certificate, and prior to the reissuance of the certificate. The district will verify that this continuing education credit hour requirement has been met prior to the reissuance of the certificate. The continuing education credit hours must relate to the areas listed in subsection (3)(b)(v) of this section. This continuing education credit hour requirement may be completed through credit hours earned while enrolled in a program.

((=)) **(5) Validity:** The certificate is valid for ((one school)) two years or less, and only for the teaching area specified on the certificate. The certificate may be reissued on district application and evidence that requirements continue to be met.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-015 Certificate validity and renewal.

(1) The initial certificate is valid for ((four)) five years and may be renewed ((two times)) in accordance with WAC 181-77-031 or 181-77-041.

(2) The initial renewal certificate is valid for ((three)) five years and may be renewed ((one time)) in accordance with WAC 181-77-031 ((2)(a)) or 181-77-041 ((2)(a)).

(3) The continuing certificate is valid for five years and may be renewed (~~(every five years)~~) in accordance with WAC 181-77-031(4) or 181-77-041(4).

AMENDATORY SECTION (Amending WSR 18-08-007, filed 3/22/18, effective 4/22/18)

WAC 181-77-031 Requirements for candidates seeking career and technical education certification who have completed approved college/university programs in a career and technical education endorsement area. Candidates shall complete the following requirements in addition to those set forth in WAC 181-79A-150, 181-79A-155, 181-82-322, and chapter 181-78A WAC.

(1) Initial.

(a) Candidates for the initial certificate shall hold a baccalaureate degree from (~~(a regionally)~~) an accredited college or university which includes a minimum of forty-five quarter hours of study in the specific career and technical education subject area for which certification is sought.

(b) Candidates for the initial certificate shall demonstrate competency in one or more of the career and technical education areas: Agriculture education, business and marketing education, family and consumer sciences education, and technology education, as listed in WAC 181-77-005.

(c) Candidates for the initial certificate shall complete a state approved career and technical education teacher training program through (~~(a regionally)~~) an accredited college or university which shall include completion of student teaching in the relevant career and technical education subject area.

(d) Candidates for the initial certificate shall provide documentation of one year of paid occupational experience (two thousand hours) in the specific career and technical education field for which certification is sought. If all or part of the two thousand hours is more than six years old, candidates must complete an additional three hundred hours of recent (occurring in the last two years) occupational experience. The candidate must also apply for the residency teacher certificate or add the subject area to their basic education certificate in their subject area, take and pass the content knowledge test(s) for subject area, be issued the residency teacher certificate before the CTE initial can be issued.

(e) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete (~~(three quarter hours of credit or thirty clock hours of career and technical education educator training)~~) one hundred continuing education credit hours in the subject area certified to teach since the initial certificate was issued, or (~~(renewed)~~) four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least (~~(nine)~~) fifteen quarter hours or (~~(ninety)~~) one hundred fifty clock hours of career and technical education educator training in the career and technical education subject area to be certified completed subsequent to the conferral of the baccalaureate degree.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject area certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal. Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate (~~(was issued one of the following)~~):

(a) (~~(Six)~~) Ten quarter hours or (~~(sixty)~~) one hundred clock hours of career and technical education educator training(~~(~~

~~(b) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;~~

~~(c) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience;~~

~~(d))~~, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional

growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6);

~~((e) Provided, as)~~ (c) Per RCW 28A.410.278(2), in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

AMENDATORY SECTION (Amending WSR 18-08-007, filed 3/22/18, effective 4/22/18)

WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience. Candidates for certification who have not completed approved programs set forth in chapter 181-78A WAC shall complete the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or whose primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years. Candidates may use up to four thousand hours of teaching experience in the specialty area they are experienced in and the remaining two thousand hours must be from industry experience (nonteaching). For STEM, candidate may use all six thousand hours of teaching experience in science, technology, engineering and/or math in lieu of industry experience. For biomedical and biotechnology, candidates may use all six thousand hours of teaching experience in biology in lieu of industry experience.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, the American sign language performance inter-

view, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete ~~((three))~~ ten quarter hours of credit or ~~((thirty))~~ one hundred clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed, or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least ~~((nine))~~ one of the following:

(i) Fifteen quarter hours or ~~((ninety))~~ one hundred fifty clock hours of career and technical education educator training in the career and technical education subject matter to be certified completed subsequent to the issuance of the initial certificate; or

(ii) Hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer (i.e., school district(s) or skills center(s)).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued (~~(one of the following)~~):

(i) (~~((Six))~~) Ten quarter hours or (~~((sixty))~~) one hundred clock hours of career and technical education educator training(~~(;~~

~~(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;~~

~~(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.)), or four professional growth plans as defined in WAC 181-79A-030. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.~~

(ii) Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

(iii) Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

(iv) An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) Continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to career and technical education endorsement areas. This STEM continuing education requirement for certificate renewal is as described in WAC 181-85-075(6).

(c) (~~(Provided, as)~~) Per RCW 28A.410.278(2) in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

(d) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410.-271.

AMENDATORY SECTION (Amending WSR 17-13-060, filed 6/15/17, effective 7/16/17)

WAC 181-77-068 Requirements for coordinator of worksite learning initial or continuing certificates. To obtain a coordinator of worksite learning certificate, a candidate must:

(1) Possess a valid (~~(probationary))~~ limited, initial or continuing career and technical education teaching certificate; Provided that if the individual holds a limited certificate they must be enrolled in an approved program; and

(2) Successfully demonstrate competencies related to coordination techniques as verified by a professional education standards board approved program.

AMENDATORY SECTION (Amending WSR 17-22-136, filed 11/1/17, effective 12/2/17)

WAC 181-77-071 Initial certification of career and technical education administrative personnel. (1)(a) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one or more of the following:

~~((a))~~ (i) Currently holds a valid residency, continuing or professional administrator certificate; or

~~((b))~~ (ii) Completion of three years of experience as a certificated career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist; and

~~((c))~~ (b) In addition, the candidate must meet one or more of the following:

(i) Completion of the state authorized career and technical education administrator internship program; or

~~((d))~~ (ii) Completion of a state approved college program for career and technical education administration.

~~((e))~~ (c) The initial career and technical education administrator certificate is valid for (~~(four))~~ five years (~~(and may be renewed two times))~~).

(2) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least (~~((six))~~) ten quarter hours of college credit or (~~((sixty))~~) one hundred continuing education credit hours or four professional growth plans in five years since the initial certificate was issued or renewed is required. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the

previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for ~~((three))~~ five years and may be renewed ~~((one time))~~.

(3) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required; or, the individual may hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

~~((c) Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:~~

~~(i) In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and~~

~~(ii) The completion of requirements listed in subsection (1)(c) or (d) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate;))~~

(4) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of ~~((fifteen))~~ ten quarter credits of college credit course work or the equivalent of one hundred ~~((fifty))~~ continuing education credit hours in career and technical education, or supervisory or managerial subjects, or four professional growth plans, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

(5) Per RCW 28A.410.278(2) in-service training, continuing education, or professional growth plans shall incorporate professional development on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of continuing or professional level certificates. This continuing education requirement related to the teacher and principal evaluation system is as described in WAC 181-85-075(7).

~~((5))~~ (6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection ~~((3))~~ (4) of this section.

AMENDATORY SECTION (Amending WSR 16-23-064, filed 11/14/16, effective 12/15/16)

WAC 181-77-081 Requirements for certification of career guidance specialist. Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one or more of the following:

(i) Completion of three years of experience as a certified career and technical education administrator, career and technical education instructor, or career and technical education counselor, at the initial or continuing certificate level; or

(ii) Hold a valid educational staff associate - Counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of three years (six thousand hours) of full-time paid occupational experience of which two years shall have been in the last six years, dealing with employment, personnel or with placement and evaluation of workers, or experience providing career guidance, employment or career counseling services.

(b) Such a certificate may be issued upon recommendation by the employing school district according to the following:

(i) The candidate shall have developed a ~~((professional growth))~~ written training plan in cooperation with the career and technical education administrator. The plan must be

approved by a district career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the ~~((professional growth))~~ written training plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for ~~((four))~~ five years ~~((and may be renewed two times))~~.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved program provider or state approved continuing education provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical/legal issues;

(viii) Technology;

(ix) History and philosophy of career and technical education.

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least ~~((six))~~ ten quarter hours of college credit ~~((or sixty))~~, one hundred clock hours, or four professional growth plans since the initial certificate was issued or renewed. ~~((Provided,))~~ At least two quarter credits or fifteen clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals

completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(b) The initial renewal certificate is valid for ~~((three))~~ five years ~~((and may be renewed one time))~~.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours of college credit or one hundred fifty clock hours completed subsequent to the issuance of the initial certificate; or hold a valid national board certificate issued by the National Board for Professional Teaching Standards in any certificate area.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years full time equivalency (FTE) as a career guidance specialist with an authorized employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of ~~((fifteen))~~ ten quarter hours of college credit ~~((or))~~, the equivalent of one hundred ~~((fifty))~~ clock hours, or four professional growth plans prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. ~~((Provided,))~~ At least four quarter credits or thirty clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

Application for renewals shall not be submitted earlier than twelve months prior to the expiration date of the current certificate.

Expired certificates may be renewed with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application, or by completing four professional growth plans. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred clock hours.

An expired certificate may be renewed by presenting evidence to the superintendent of public instruction of completing the continuing education credit hours or professional growth plan requirement within the five years prior to the date of the renewal application.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board shall

be eligible for the probationary certificate and must meet the requirements for earning the initial certificate.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing career guidance specialist certificate by the expiration date of the original certificate held, and will be considered to have met the requirements to obtain a continuing career guidance specialist certificate in subsection (4) of this section.

(c) Upon issuance of the probationary initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-77-120 Out-of-state candidates. Out-of-state applicants shall be eligible for Washington career and technical education certificates if they meet the standards in chapter 181-77 WAC or as follows: ~~((Provided, That))~~ Candidates who apply for a career and technical education certificate who have not successfully completed course work or an in-service program including a minimum of ten clock hours of instruction on issues of abuse, must complete such course work or in-service program as a condition of the issuance of a career and technical education certificate. The content of the course work or in-service program ~~((shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention))~~ is as described in WAC 181-79A-030.

(1) Initial certificate. The initial certificate shall be issued by the superintendent of public instruction to a candidate who has two thousand hours of paid occupational experience and who meets one of the following:

(a) Qualifies under provisions of the interstate compact;

(b) Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter and has completed a state-approved preparation program at ~~((a regionally))~~ an accredited college or university in the professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4)~~((-))~~;

(c) Holds an appropriate career and technical education certificate issued by another state and had practiced at the P-12 level in that respective role outside the state of Washington for three years and has completed competency-based teacher training.

(2) Continuing certificate. The continuing certificate shall be issued on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.

WSR 18-21-072
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed October 11, 2018, 11:14 a.m., effective November 11, 2018]

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

Purpose: Amends WAC 181-79A-140, 181-79A-231, 181-79A-232, and 181-79A-270 to clarify and reduce confusion about the use of limited certificates for educators. Reduces the number of types of limited certificates. Removes long term substitute from those defined as limited.

Citation of Rules Affected by this Order: New WAC 181-79A-232; repealing WAC 181-79A-270; and amending WAC 181-79A-140, and 181-79A-231.

Statutory Authority for Adoption: RCW 28A.410.220.

Adopted under notice filed as WSR 18-17-091 on August 14, 2018.

Changes Other than Editing from Proposed to Adopted Version: Clarifying edit.

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

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0 [1], Amended 4 [2], Repealed 0 [1].

Number of Sections Adopted using Negotiated Rule Making: New 0 [1], Amended 4 [2], Repealed 0 [1]; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 28, 2018.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-02-025, filed 12/28/11, effective 1/28/12)

WAC 181-79A-140 Types of certificates. ~~((Six))~~ The following types of certificates shall be issued:

(1) Teacher. The teacher certificate ~~((, including teacher exchange permits as provided in WAC 181-79A-270;))~~ authorizes service as a classroom teacher.

(2) Career and technical education. The career and technical education certificate authorizes service in career and technical education programs in accordance with ~~((the provisions of))~~ chapter 181-77 WAC.

(3) First people's language/culture. The first peoples' language, culture, and oral tribal traditions teacher certificate authorizes service ~~((as defined under))~~ in accordance with WAC 181-78A-700((8)).

(4) Administrator.

(a) The administrator certificate for principal authorizes services as a building administrator or assistant principal.

(b) The administrator certificates for superintendent or program administrator will be issued to persons who meet professional educator standards board certification standards for service in the roles of superintendent or program administrator.

(5) Educational staff associate. The educational staff associate certificate authorizes service in the roles of school speech pathologists or audiologists, school counselors, school nurses, school occupational therapists, school physical therapists, school psychologists, and school social workers: ~~((Provided, That))~~ Nothing within chapter 181-79A WAC authorizes professional practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure statutes and rules and regulations ~~((promulgated))~~ adopted by the appropriate licensure board or agency.

(6) Limited certificates. The following limited certificates are issued to individuals ~~((under specific circumstances set forth))~~ in accordance with WAC 181-79A-231:

(a) Conditional certificate.

~~(b) ((Substitute certificate.~~

~~(c) Emergency certificate.~~

~~(d))~~ Emergency substitute certificate.

~~((e) Nonimmigrant alien exchange teacher.~~

~~(f))~~ (c) Intern substitute teacher certificate.

~~((g))~~ (d) Transitional certificate.

~~((h) Provisional alternative administrative certificate.))~~

(7) Substitute certificate. The substitute certificate is issued to individuals in accordance with WAC 181-79A-232.

AMENDATORY SECTION (Amending WSR 17-23-176, filed 11/21/17, effective 12/22/17)

WAC 181-79A-231 Limited certificates. ~~((Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:~~

~~(1) Conditional certificate.~~

~~(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.~~

~~(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness require-~~

~~ments of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:~~

~~(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or~~

~~(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.~~

~~(e) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:~~

~~(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or~~

~~(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or~~

~~(iii) The applicant possesses a state of Washington license for a registered nurse. Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (c)(iii) of this subsection; or~~

~~(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech language pathologists or audiologist certificate.~~

~~(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college/university.~~

~~(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.~~

~~(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.~~

~~(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:~~

~~(i) The district or educational service district superintendent or approved private school administrator has indicated~~

the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(c) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet dis-

trict needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators who hold or have held a regular state of Washington certificates: Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(e) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for the roles of principal, teacher, school counselor, school psychologist, school speech language pathologist or audiologist and school social worker may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold a bachelor's degree and are enrolled in a state approved preparation program for the role, if it is a role for which state approved programs are required, in accordance with Washington requirements for certification and shall be the best qualified of the candidates for the position as verified by the employing school district: Provided, That a qualified person who holds regular certification for the requested role is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That an emergency certificate issued with a special education endorsement may be reissued once for one school year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program: Provided further, That a candidate for emergency certification as a principal holds a master's degree and has substantially completed the state approved preparation program: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in a state approved school psychologist preparation program, shall have completed all course work for the required master's degree, and shall be participating in the required internship: Provided further, That a candidate for emergency certification as a school speech language pathologist or audiologist shall be enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification, and may be renewed one time if the candidate has substantially completed the required master's degree program.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school

district or approved private school once the list of otherwise qualified substitutes has been exhausted:

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) ~~Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.~~

(6) ~~Intern substitute teacher certificate.~~

(a) ~~School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.~~

(b) ~~The supervising college or university must approve the candidate for the intern substitute teacher certificate.~~

(c) ~~Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.~~

(d) ~~The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.~~

(7) ~~Transitional certificate.~~

(a) ~~An individual whose continuing certificate has expired according to WAC 181-85-040 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete requirements for continuing certificate reinstatement within two years of the date the holder was issued the transitional certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.~~

(b) ~~No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.~~

(c) ~~School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.~~

(d) ~~The transitional certificate is not renewable and may not be reissued.) All applicants for limited certificates must meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2).~~

Nothing within chapter 181-79A WAC authorizes practice by an educational staff associate which is otherwise prohibited or restricted by any other law, including licensure

statutes and rules and regulations adopted by the appropriate licensure board or agency.

(1) **Conditional certificate.**

(a) **Intent.** The intent of the conditional certificate is to assist school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals.

(b) **Roles.**

(i) **Teacher roles.** The conditional certificate may be issued to teachers in all endorsement areas. Specific minimum requirements defined in this section apply to the following:

(A) **Special education teachers;**

(B) **Nonimmigrant exchange teachers;**

(C) **Traffic safety education teachers.**

(ii) **Education staff associate roles.** The conditional certificate may be issued in the following education staff associate roles:

(A) **School counselor;**

(B) **School nurse;**

(C) **School psychologist;**

(D) **School social worker;**

(E) **School speech language pathologist or audiologist.**

(iii) **Administrator role.** The conditional certificate may be issued in the following administrator role: **Principal.**

(c) **Request requirements.**

(i) **When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that one or more of the following criteria have been met:**

(A) **The individual has extensive experience, unusual distinction, or exceptional talent in the subject matter to be taught or in the certificate role; or**

(B) **No person with regular certification in the area is available; or**

(C) **The individual holds a bachelor's degree or higher from an accredited college or university; or**

(D) **The individual is enrolled in an educator preparation program specific to the certificate role for which they are applying; or**

(E) **The individual will serve as a nonimmigrant exchange teacher and meets the specific minimum requirements defined in this section; or**

(F) **The individual will serve as a traffic safety education teacher and meets the specific minimum requirements defined in this section; or**

(G) **Circumstances warrant.**

(ii) **When requesting the conditional certificate, the district, the educational service district, or the approved private school will verify that all of the following criteria have been met:**

(A) **The district, educational service district, or approved private school has determined that the individual is competent for the assignment; and**

(B) **After specific inclusion on the agenda and a formal vote, the school board or educational service district board has authorized the conditional certificate; and**

(C) The individual is being certificated for a specific assignment and responsibility in a specified activity/field; and

(D) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities; and

(E) The individual will not be serving in a paraeducator role; and

(F) The individual will be oriented and prepared for the assignment. In addition, prior to service, the individual will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment; and

(G) The individual will be assigned a mentor within twenty working days from the commencement of the assignment; and

(H) A written plan of support will be developed within twenty working days from the commencement of the assignment.

(d) Minimum requirements.

(i) Individuals must complete fifty continuing education credit hours subsequent to the issuance of the certificate, and prior to the reissuance of the certificate. Holders of conditional certificates in the role of nonimmigrant exchange teacher are not required to complete fifty continuing education credit hours.

(ii) Special education teacher. The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from an accredited college or university.

The issuance of a conditional certificate to a special education teacher is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education.

An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(iii) Traffic safety education teacher. The applicant qualifies to instruct in the traffic safety program pursuant to WAC 392-153-021. Written plans of support and mentors are not required for holders of conditional certificates in the role of traffic safety education teacher.

(iv) Nonimmigrant exchange. A conditional certificate in the role of teacher may be issued to an individual admitted to the United States for the purpose of serving as an exchange teacher.

The individual must be eligible to serve as a teacher in the elementary or secondary schools in their country of nationality or last residence.

(v) School counselor. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for the role, in accordance with Washington requirements for certification.

(vi) School nurse. The applicant possesses a state of Washington license for a registered nurse. Applicants who meet the requirements for the initial school nurse certificate will not be issued a conditional school nurse certificate.

(vii) School psychologist. The applicant must hold a bachelor's degree or higher from an accredited college or university, and be enrolled in a state-approved preparation program for school psychologists, in accordance with Washington requirements for certification.

In addition, the candidate shall have completed all course work for the required master's degree, and shall be participating in the required internship.

(viii) School social worker. The applicant must hold a bachelor's degree or higher from an accredited college or university. The applicant must be enrolled in a master's degree program in social work or social welfare.

(ix) School speech language pathologist or audiologist. The applicant has completed a bachelor's degree or higher from an accredited college or university.

(x) Principal. The applicant holds a bachelor's degree from an accredited college or university.

The candidate for conditional certification as a principal shall be enrolled in a program resulting in the issuance of a residency principal certificate, in accordance with Washington requirements for certification.

(e) Validity. The conditional certificate is valid for two years or less, and is only valid for the activity or role specified on the certificate.

The reissuance of the special education conditional certificate will have a validity period of three years or less.

(f) Reissuance.

(i) The conditional certificate may be reissued upon application by the employing local school district, approved private school, or educational service district, provided all conditions for the first issuance of the certificate are met.

(ii) The requesting school district, approved private school, or educational service district will verify that the fifty continuing education credit hours earned as a requirement for reissuance of the certificate are designed to support the individual's professional growth, and enhance the individual's knowledge or skills to better assist students in meeting state learning goals.

(iii) Nonimmigrant exchange. The conditional certificate in the role of teacher may be reissued while the individual is being sponsored by a school district in an exchange and visiting teacher program.

(iv) Special education teacher. Conditional certificates in special education may only be reissued once. The reissuance of the special education conditional certificate will have a validity period of three years or less. The special education conditional certificate may only be reissued upon verification by the preparation program provider that the individual is completing satisfactory progress in a residency teacher certificate program leading to a special education endorsement.

(v) School speech language pathologist or audiologist. Conditional certificates as a school speech language pathologist or audiologist may be reissued twice.

The conditional certification as a school speech language pathologist or audiologist may be reissued if the candidate is enrolled in a master's degree program resulting in issuance of an initial ESA certificate in accordance with Washington requirements for certification.

The school speech language pathologist or audiologist conditional certificate may be reissued a second time upon

verification by the degree provider that the individual is completing satisfactory progress in a master's degree program resulting in issuance of an initial school speech language pathologist or audiologist certificate in accordance with Washington requirements for certification.

(2) Transitional certificate.

(a) **Intent.** The transitional certificate provides flexibility for school districts in employing an individual whose continuing certificate has lapsed or expired.

(b) **Roles.** The transitional certificate may be issued in roles of teacher, education staff associate, and administrator for continuing certificates.

(c) Request requirements.

(i) The transitional certificate is issued upon request by a school district, approved private school, or educational service district for an individual whose continuing certificate has lapsed or expired according to WAC 181-85-040.

(ii) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of support for the holder to complete the necessary continuing certificate renewal requirements under WAC 181-85-130.

(d) Minimum requirements.

(i) The holder of the transitional certificate must complete the requirements for continuing certificate renewal within two years of the date the holder was issued the transitional certificate.

(ii) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(e) **Validity.** The transitional certificate is valid until two years from the date the holder was issued the certificate. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(f) **Reissuance.** The transitional certificate is not renewable and may not be reissued.

(3) Emergency substitute certificate.

(a) **Intent.** The intent of the emergency substitute certificate is to assist school districts, approved private schools, and educational service districts with flexibility in meeting educator workforce needs.

(b) Roles.

(i) The emergency substitute certificate may be issued in the role of teacher.

(ii) To ensure that related services personnel deliver special education services in their respective discipline or profession, the emergency substitute certificate may not be issued for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(iii) Holders of the emergency substitute certificate may serve in the local school district, approved private school, or educational service district which requested the certificate.

(iv) Holders of the emergency substitute certificate may serve as substitutes if the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes under WAC 181-79A-232.

(c) Request requirements.

(i) The emergency substitute certificate is issued upon request by a school district, approved private school, or educational service district.

(ii) If the local school district, approved private school, or educational service district has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, emergency substitute certificates may be issued to persons not fully qualified as substitutes under WAC 181-79A-232.

(d) **Validity.** Emergency substitute certificates shall be valid for two years or less.

(e) **Reissuance.** The emergency substitute certificate may be reissued upon application by the employing local school district, approved private school, or educational service district.

(4) Intern substitute certificate.

(a) **Intent.** The intent of the intern substitute certificate is to provide the intern the opportunity to serve as a substitute when the cooperating teacher is absent. This provides the intern with experience while allowing for consistency in instruction for the students.

(b) **Roles.** The intern substitute certificate may be issued to student teachers or intern teachers.

(c) Request requirements.

(i) School districts, educational service districts, and approved private schools may request intern substitute teacher certificates for individuals enrolled in student teaching and internships to serve as substitute teachers in the absence of the cooperating teacher.

(ii) The supervising preparation program provider must approve the candidate for the intern substitute teacher certificate.

(d) **Minimum requirements.** The holder of the intern substitute certificate may be called at the discretion of the school district, education service district, or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher or intern.

(e) **Validity.** The intern substitute teacher certificate is valid for one year or less.

(f) **Reissuance.** The intern substitute certificate may be reissued upon application by the local school district, approved private school, or educational service district, and approved by the educator preparation program provider.

NEW SECTION

WAC 181-79A-232 Substitute certificate. (1) Substitute certificate.

(a) **Intent.** The intent of the substitute certificate is to provide a district, educational service district, or approved private school with hiring flexibility during the absence of an educator.

(b) Roles.

(i) This certificate may be issued in the role of teacher, educational staff associate, or administrator.

(ii) Educational staff associates may only substitute in the specific role of their certificate.

(iii) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment.

(iv) If a district, educational service district, or approved private school employs a teacher holding a substitute certificate in any one assignment for more than thirty working days, then the district, educational service district, or approved private school must within twenty working days develop a plan of professional learning for the individual that is appropriate to the assignment, designed to support their professional growth, and enhance instructional knowledge and skills to meet district needs and assist students in meeting the state learning goals.

(c) **Minimum requirements.** The substitute certificate may be issued to:

(i) Teachers, educational staff associates, or administrators who hold or have held a regular state of Washington educator certificate; or

(ii) Persons who have completed state approved educator preparation programs for their role, if it is a role for which state-approved programs are required, and a bachelor's degree or higher at an accredited college or university as required for the initial or residency certificate for their role in chapter 181-79A WAC; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257; or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(d) **Request requirements.** The individual educator applies for the substitute certificate.

(e) **Validity.** The substitute certificate is valid for life.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-79A-270 Teacher, principal, and educational staff associate exchange permits.

WSR 18-21-115
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 17, 2018, 11:30 a.m., effective November 17, 2018]

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

Purpose: Rule revisions to chapter 314-29 WAC implement HB 2517, which passed during the 2018 legislative session. The rules provide direction regarding schedules of penalties for licensed alcohol manufacturers who participate in ancillary activities. The rules also provide clarifying and technical updates.

Citation of Rules Affected by this Order: Amending WAC 314-29-003, 314-29-010, 314-29-015, 314-29-020, and 314-29-040.

Statutory Authority for Adoption: RCW 66.08.030, chapter 66.24 RCW.

Adopted under notice filed as WSR 18-17-043 on August 8, 2018.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

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

Date Adopted: October 17, 2018.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

WAC 314-29-003 Purpose. The purpose of chapter 314-29 WAC is to outline what a liquor licensee or a mandatory alcohol server training permit holder can expect if a licensee or permit holder receives an administrative violation notice alleging a violation of a liquor (~~control~~) and cannabis board statute or regulation.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation? (1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect. After twenty days and up to thirty days from the date of the administrative violation notice, and if the violation includes a monetary penalty, the licensee may pay a twenty-five percent fee in addition to the recommended penalty in lieu of suspension.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a

request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-015 What are the penalties if a liquor license holder violates a liquor law or rule? (1) The purpose of WAC 314-29-015 through 314-29-040 is to outline what penalty a liquor licensee can expect if a licensee or employee violates a liquor (~~control~~) and cannabis board law or rule (the penalty guidelines for mandatory alcohol server training permit holders are in WAC 314-17-100 through 314-17-110). WAC rules listed in the categories provide reference areas, and may not be all inclusive. For purposes of this section, ancillary activities are defined as activities an alcohol manufacturer participates in and include all activities, licenses, and privileges involving the public, such as serving samples, operating a tasting room, conducting retail sales, serving alcohol under a restaurant license, or serving alcohol with a special occasion license.

(2) Penalties for violations by liquor licensees or employees are broken down into (~~four~~) five categories:

(a) Group One—Public safety violations, WAC 314-29-020.

(b) Group Two—Regulatory violations, WAC 314-29-025.

(c) Group Three—License violations, WAC 314-29-030.

(d) Group Four—Nonretail violations involving the manufacture, supply, and/or distribution of liquor by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-29-035.

(e) Group Five—Public safety violations for sports entertainment facility licenses, WAC 314-29-038.

(3) For the purposes of chapter 314-29 WAC, a two year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor (~~control~~) and cannabis board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension during a settlement conference as outlined in WAC 314-29-010(3).

(a) Mitigating circumstances	(b) Aggravating circumstances
<p>Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Having a signed acknowledgment of the business' alcohol policy on file for each employee; • Having an employee training plan that includes annual training on liquor laws. 	<p>Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of a liquor license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.</p> <p>Examples include:</p> <ul style="list-style-type: none"> • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor (control) and cannabis board officer, or when people have sustained injuries; • Not checking to ensure employees are of legal age or have appropriate work permits.

(c) In addition to the examples in (a) and (b) of this subsection, the liquor (~~(control)~~) and cannabis board will provide and maintain a list of business practices for reference as examples where business policies and/or practices may influence mitigating and/or aggravating circumstances. The established list will not be all inclusive for determining mitigating and/or aggravating circumstances, and may be modified by the liquor (~~(control)~~) and cannabis board. The list shall be accessible to all stakeholders and the general public via the internet.

(5) Ancillary activity violations:

(a) When a violation or violations are part of ancillary activities, all ancillary activities including those at the manufacturing facility or associated locations involving the public will be subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038. When violations are part of ancillary activities, the manufacturing license will not be suspended, revoked, or canceled.

(b) When a violation or violations are not part of ancillary activities, the manufacturing license is subject to the schedules of penalties outlined in WAC 314-29-020 through 314-29-038 and will extend to all retail activities, associated facilities, privileges, endorsements, and permits.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

WAC 314-29-020 Group 1 violations against public safety. (1) Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor (~~(control)~~) and cannabis board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Violations involving minors: Sale or service to minor: Sale or service of alcohol to a person under 21 years of age. Minor frequenting a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Sale or service to apparently intoxicated person: Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Conduct violations: Disorderly conduct by licensee or employee, or permitting on premises. Licensee and/or employee intoxicated on the licensed premises and/or drinking on duty.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Criminal conduct: Permitting or engaging in criminal conduct. WAC 314-11-015				
Lewd conduct: Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
Condition of suspension violation: Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

AMENDATORY SECTION (Amending WSR 03-09-015, filed 4/4/03, effective 5/5/03)

WAC 314-29-040 Information about liquor license suspensions. (1) On the date a liquor license suspension goes into effect, a liquor (~~control agent~~) and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor (~~control~~) and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable liquor laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor (~~control~~) and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

(a) A retail liquor licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.

(b) A nonretail licensee may operate his/her business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.

(c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current

stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.

**WSR 18-21-116
PERMANENT RULES
OFFICE OF THE**

INSURANCE COMMISSIONER

[Filed October 17, 2018, 11:59 a.m., effective November 17, 2018]

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

Purpose: This permanent rule on short-term limited duration (STLD) medical plans clarifies the insurance commissioner's process and standards relative to the filing and sale of STLD medical plans in Washington state. It will restore in large part federal rules previously in place from 2016 to date that limited the duration of STLD health insurance to three months. It establishes minimum standards for coverage offered through STLD medical plans, establishes requirements related to consumer disclosure, provides for prior approval of STLD medical plan forms and rates, and defines the circumstances under which those medical plans can be canceled or rescinded.

Citation of Rules Affected by this Order: New WAC 284-43-8000, 284-43-8010, 284-43-8020, and 284-43-8030.

Statutory Authority for Adoption: RCW 48.43.005(26), 48.02.060, 48.44.050, 48.46.200.

Adopted under notice filed as WSR 18-17-166 on August 21, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-43-8030 addresses STLD medical plan

cancellation and rescission. The language of the proposed rule required that when an STLD medical plan is being canceled or rescinded for a reason authorized under the proposed rule, other than nonpayment of premium, the carrier must notify the member in writing twenty days prior to the cancellation or rescission date or the expiration date of the STLD medical plan, whichever occurs first. Commenters noted that a twenty day notice period may not be practical because such a notice period could go beyond the expiration date of the coverage, rendering it meaningless. The permanent rule provides an exception to the twenty day standard. Under the rule, a carrier may provide notice less than twenty days prior to the cancellation or rescission date if the remaining duration of the STLD medical plan would make it impossible for the carrier to provide notice twenty days prior to the cancellation or rescission date. In such a case, notice must be provided no later than ten days prior to the cancellation or rescission rate [date] or the expiration date of the STLD medical plan, whichever occurs first.

A final cost-benefit analysis is available by contacting Candice Myrum, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7056, fax 360-586-3109, email candicem@oic.wa.gov, web site www.insurance.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: October 17, 2018.

Mike Kreidler
Insurance Commissioner

SUBCHAPTER L

SHORT-TERM LIMITED DURATION MEDICAL PLANS

NEW SECTION

WAC 284-43-8000 Definition of short-term limited duration medical plan. (1) "Short-term limited duration medical plan" means a policy, contract or agreement offered or issued by a health carrier with an effective date on or after January 1, 2019, that:

(a) Provides comprehensive major medical coverage, that includes, at a minimum, the following benefits:

(i) Hospital, surgical and medical expense coverage, to an aggregate maximum of not less than one million dollars

and copayment or coinsurance by the covered person not to exceed fifty percent of covered charges;

(ii) The coverage for hospital services must include:

(A) Inpatient services and other miscellaneous services associated with admission to a hospital for diagnosis and treatment of a covered condition. "Miscellaneous services" includes medically necessary services delivered in a hospital setting, including professional services, anesthesia, facility fees, supplies, imaging, laboratory, pharmacy services and prescription drugs, treatments, therapy, or other services delivered on an inpatient basis;

(B) Outpatient services, including medically necessary services ordered by the member's attending health care practitioner and rendered on an ambulatory basis for diagnosis and treatment of a covered condition, including office and clinic visits, diagnostic imaging, laboratory services, radiation therapy, physical/speech/occupational therapy, and hemodialysis; and

(C) An extension of the medical plan term while hospitalized. If a member is hospitalized as an inpatient on the expiration date of the medical plan, the member's coverage under the medical plan will continue for purposes of that covered medical condition without payment of additional premium. The coverage will continue until the date the member is discharged from the hospital or until the date on which the applicable benefit maximums are reached, whichever occurs first.

(iii) The coverage for surgical services for diagnosis and treatment of a covered condition must include inpatient and outpatient surgical services at a hospital, ambulatory surgical facility, surgical suite or provider's office. "Surgical services" includes medically necessary services delivered in a hospital, ambulatory surgical facility, surgical suite or provider's office related to provision of a surgical service, including professional services, anesthesiology, facility fees, supplies, laboratory, pharmacy services and prescription drugs related to, or required as a result of, the surgical procedure; and

(iv) The coverage for medical services for diagnosis and treatment of a covered condition must include office visits.

(b) Limits the look-back period for any preexisting medical condition, illness or injury to no more than twenty-four months prior to the date of application for the medical plan, if coverage of preexisting conditions is excluded. For purposes of this section, "preexisting medical condition" means a condition for which medical advice, diagnosis, care or treatment was received or recommended; and

(c) Has an expiration date specified in the contract (taking into account any extensions that may be elected by the member with or without the carrier's consent) that is not more than three months after the original effective date of the policy, contract or agreement.

(2) Any carrier offering a short-term limited duration medical plan must offer at least one such plan with a deductible stated on a per person basis of two thousand dollars or less.

(3) A short-term limited duration medical plan cannot be issued if it would result in a person being covered by a short-term limited duration medical plan for more than three months in any twelve-month period.

(4) A carrier must not issue a short-term limited duration medical plan during an annual open enrollment period, as defined in WAC 284-43-1080, for coverage beginning in the upcoming year.

(5) Short-term limited duration medical plan has the same meaning as short-term limited duration insurance, as used in 26 C.F.R. 54.9801-2, 29 C.F.R. 2590.701-2 and 45 C.F.R. 144.103, except that:

(a) The duration of a short-term limited duration medical plan cannot exceed three months;

(b) A short-term limited duration medical plan cannot be renewed or extended, except as provided in subsection (1)(a)(ii)(C) of this section; and

(c) A short-term limited duration medical plan cannot be issued if it would result in a person being covered by a short-term limited duration medical plan for more than three months in any twelve-month period.

NEW SECTION

WAC 284-43-8010 Standard disclosure form for short-term limited duration medical plans. (1) All carriers offering or issuing a short-term limited duration medical plan with an effective date on or after January 1, 2019, must issue a standard disclosure form for each short-term limited duration medical plan in the same format and with the same content as the disclosure form included in this section. The standard disclosure form must be displayed prominently in the medical plan contract and in any application materials provided in connection with enrollment in such coverage, and must be provided as a distinct, separate document to the person upon initial receipt of the medical plan application.

(2) Every carrier must have a mechanism in place to verify delivery of the standard disclosure form to the applicant and obtain the applicant's acknowledgment of receipt of the form. The carrier must retain each acknowledged disclosure form for five years. The forms must be available for review by the commissioner upon request.

(3) The type size and font of the standard disclosure form must be easily read and be no smaller than fourteen point.

(4) The standard disclosure form must not be used until it has been filed with and approved by the commissioner.

(5) The standard disclosure form must include, at a minimum, the following information and must be presented in the following format:

(Carrier's name and address)
**IMPORTANT INFORMATION
ABOUT THE LIMITS OF THE
COVERAGE
YOU ARE BEING OFFERED**

Save this document! It may be important to you in the future.

CAUTION:
This plan may not cover pre-existing conditions, including any medical or mental health condition you've been treated for in the past.
It provides limited benefits and does *not* include benefits required by the Affordable Care Act.

It's temporary and may not cover your costs for most hospital or other medical services, or some essential health benefits.
Read carefully what the plan does and doesn't cover before you sign up.

Before enrolling, check to see if you can buy a health plan through Washington State's Exchange, at www.wahealthplanfinder.org or 1-855-923-4633. If so, you may get help lowering your premium. Health plans sold through the Exchange provide more coverage and protections. If you missed the annual open enrollment period, see if you qualify for a special enrollment period here: www.insurance.wa.gov/when-can-i-buy-individual-health-plan

This medical plan is not a Medicare supplement plan.

This medical plan is not required to comply with certain federal market requirements for health insurance, principally those contained in the Affordable Care Act. Be sure to check your medical plan carefully to make sure you are aware of any exclusions or limitations regarding coverage of preexisting conditions or health benefits (such as hospitalization, emergency services, maternity care, preventive care, prescription drugs, and mental health and substance use disorder services). Your medical plan might also have lifetime and/or annual dollar limits on health benefits.

This disclosure form is not a complete description of this medical plan. To understand what is and isn't covered, please read your plan. The plan will include information about your rights and the company's responsibilities.

Short-Term Limited Duration Medical Plan Disclosure

Below is a summary of the key benefits provided by this short-term limited duration medical plan:

Type of coverage: Short-term limited duration medical plan

How long does coverage last? *(Provide the number of days or months of coverage)*

Does this policy cover pre-existing conditions? *("Yes" or "No, it limits/excludes coverage for medical or behavioral health conditions for which medical advice, diagnosis, care or treatment was received by or recommended to you, including taking prescription medication, in the 24 months prior to the date you apply for coverage under the plan. See policy for details.")*

Who is NOT eligible for coverage? *(List all excluded categories, e.g. over a certain age, Medicare/Medicaid eligible, pregnant women, those with certain preexisting conditions, etc.)*

Can the policy be renewed? No

What benefits are covered and what is the financial responsibility of the member? *(For each benefit listed below, if not covered, list "Not covered". If covered, list applicable cost-sharing, including whether or not the deductible applies, the member's percentage of coinsurance, copayment, any quantitative treatment limitations and any cap on the amount the policy will pay for the service.*

Examples include: "Covered after deductible, \$45 copay plus 20% coinsurance, limited to only \$1,000 of coverage"; "Covered without deductible, \$50 copay, limited to 30 visits total or per year"; "Covered after deductible, limited to treatment of involuntary complications of pregnancy")

- **Deductible:** \$ _____ (If there is more than one deductible, list each deductible with a description of the services to which it applies.)
- **Plan coinsurance (amount member must pay per service)** _____% (Must be expressed in terms of the percentage to be paid by the member. If coinsurance applies up to a maximum amount, provide that information here. Example: "This policy has a 50% coinsurance up to \$10,000, after which benefits are paid at 100%.")
- **The maximum amount a member will pay out-of-pocket for cost-sharing for the term of the plan:** \$ _____ (If there is no out-of-pocket maximum, clearly state that there is no limit on the amount a member will have to pay for out-of-pocket cost-sharing. If there is an out of pocket maximum, clearly state which member payments are applied to this maximum, such as deductibles, copayments and coinsurance.)
- **The maximum dollar amount this plan will pay:** \$ _____ (Also include lifetime limit, if applicable. Example: "\$1 Million under this plan; lifetime limit of \$2 Million")
- **Emergency Room Services:**
- **Ambulance Services:**
- **Inpatient Hospital Services:**
- **Outpatient Hospital Services:**
- **Services at an Urgent Care Facility:**
- **Primary Care Visit to Treat an Injury or Illness:**
- **Specialist Visit:**
- **Physical therapy, speech therapy, occupational therapy:**
- **Mental Health Outpatient Services**
- **Mental Health Inpatient Services**
- **Substance Use Disorder Outpatient Services:**
- **Substance Use Disorder Inpatient Services;**
- **Imaging (CT/PET Scans, MRIs):**
- **Laboratory testing and services:**
- **Durable medical equipment:**
- **Preventive Care/Screening/Immunization:**
- **Prescription drugs:**
- **Skilled Nursing Facility:**
- **Services in an Ambulatory Surgical Center:**

Does the policy exclude, eliminate, restrict, reduce, limit, or delay coverage for any benefits NOT listed above? ("No" or if "Yes", include details)

Does the policy require that the member use a specific network of health care providers or pharmacies? ("No" or if "Yes", include details)

Can a member be charged additional costs for covered services, in addition to their coinsurance or copays? (If members can be balance billed for any covered service, answer "Yes" and explain when this would occur. You must answer "Yes" for plan designs that do not use a provider net-

work, or that use in-network facilities where not all services may be provided by in-network providers. If other situations apply, include any further explanation about when balance billing is possible.)

If this coverage expires or you lose eligibility for this coverage, you might have to wait until an open enrollment period to get other health insurance coverage. This coverage is **not** considered comprehensive and would not qualify you for a special enrollment period.

Open enrollment for individual health plans begins November 1 each year for coverage that begins January 1 of the upcoming year.

You will need to complete and confirm all medical information you provide when applying for this plan. Your producer (also referred to as insurance agent) is not allowed to fill out any of this information for you.

Consumer acknowledgment:

I confirm that I have reviewed the content of this disclosure form and that I understand the limitations of this short-term limited-duration medical plan.

Consumer signature/name: _____

Date: _____

This notice has important information about this short-term limited duration medical plan. If you, or someone you're helping, has questions about this document or complaints about this medical plan and how it was sold to you, call the Washington State Office of the Insurance Commissioner at 1-800-562-6900. If you need help speaking to us in your preferred language, we will find an interpreter for you at no cost.

NEW SECTION

WAC 284-43-8020 Commissioner's approval required. (1) A short-term limited duration medical plan form, application form, or disclosure form must not be issued, delivered, or used unless it has been filed with and approved in writing by the commissioner.

(2) Rates, or modification of rates, for short-term limited duration medical plans must not be used until filed with and approved in writing by the commissioner.

(3) The commissioner may disapprove any forms or rates if the benefit provided therein is unreasonable in relation to the premium charged. The commissioner's order disapproving any form or rate shall state the grounds therefor.

(4) A form or rate must not knowingly be issued, delivered, or used if the commissioner's approval does not then exist.

(5) The commissioner may withdraw any approval at any time for cause. The commissioner's withdrawal of a previous approval shall state the grounds therefor.

NEW SECTION

WAC 284-43-8030 Short-term limited duration medical plan cancellation and rescission. (1) As used in this section:

(a) "Rescission" or "rescind" means the undoing or retroactive cancellation of a short-term limited duration medical plan. Rescission returns the carrier and member to the same positions as if the medical plan had never existed.

(b) "Cancellation" or "cancel" means termination of a short-term limited duration medical plan before the end of the coverage period under the plan.

(2) A short-term limited duration medical plan cannot be rescinded by the carrier during the coverage period except for a member's committing fraudulent acts as to the carrier or a member's intentional nondisclosure regarding his or her coverage under a short-term limited duration medical plan during the twelve-month period prior to the date of application. If the plan is rescinded, the carrier must refund to the member all payments made by or on behalf of the member prior to the rescission date or the expiration date of the short-term limited duration medical plan.

(3) A short-term limited duration medical plan cannot be canceled by the carrier during the coverage period except for the following:

(a) Nonpayment of premium;
 (b) Violation of published policies of the carrier approved by the insurance commissioner;
 (c) A member's committing fraudulent acts as to the carrier;

(d) A member's material breach of the medical plan; or
 (e) Change or implementation of federal or state laws that no longer permit the continued offering of the coverage.

(4) No oral or written misrepresentation or warranty made in the process of applying for a short-term limited duration medical plan, by the person applying for coverage or on his or her behalf, will be deemed material or allows the carrier to cancel or rescind the medical plan, unless the misrepresentation or warranty is made with actual intent to deceive.

(5) In any application for a short-term limited duration medical plan made in writing by a person or on his or her behalf, all statements in the application by the person applying for coverage or on his or her behalf are, in the absence of fraud, deemed representations and not warranties. The falsity of any statement shall not bar the right to recovery under the contract unless the false statement was made with actual intent to deceive.

(6) Nothing in this section shall be construed to provide the member with any benefits they would not otherwise be entitled to under their short-term limited duration medical plan.

(7)(a) When cancellation is for nonpayment of premium, the carrier must notify the member in writing ten days prior to the cancellation date that his or her short-term limited duration medical plan will be canceled, unless payment is made prior to the cancellation date.

(b) When cancellation or rescission is for any other reason allowed under this section, the carrier must notify the member in writing twenty days prior to the cancellation or rescission date or the expiration date of the short-term limited duration medical plan, whichever occurs first. A carrier may provide notice less than twenty days prior to the cancellation or rescission date only if the remaining duration of the short-term limited duration medical plan would make it impossible for the carrier to provide notice twenty days prior to the can-

cellation or rescission date. In such case, notice must be provided no later than ten days prior to the cancellation or rescission date or the expiration date of the short-term limited duration medical plan, whichever occurs first. The notice must specifically state the reason(s) for the cancellation or rescission.

(c) The written communications required by this subsection must be phrased in simple language that is readily understood.

WSR 18-21-117
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2018-05—Filed October 17, 2018,
 12:08 p.m., effective November 17, 2018]

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

Purpose: Remove outdated reference to 1992 convention blank.

Citation of Rules Affected by this Order: Amending WAC 284-13-160.

Statutory Authority for Adoption: RCW 48.02.060 and 48.13.171.

Adopted under notice filed as WSR 18-16-031 on July 24, 2018.

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

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

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

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

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

Date Adopted: October 17, 2018.

Mike Kreidler
 Insurance Commissioner

AMENDATORY SECTION (Amending WSR 93-19-004, filed 9/1/93, effective 10/2/93)

WAC 284-13-160 Definition of "earned surplus." (1) As used in RCW 48.08.030(1), "earned surplus" means that part of surplus that represents net earnings, gains, or profits, after deduction of all losses, that have not been distributed to share holders as dividends or transferred to stated capital or capital surplus or lawfully applied to other purposes. It does not include unrealized appreciation of assets, unrealized capital gains, or reevaluation of assets.

Secretary

(2) Earned surplus can be determined from the annual statement. ~~((On the 1992 convention blank,))~~

(a) For stock life companies, earned surplus is unassigned funds ~~((page 3, line 34))~~ less any unrealized gains included in that figure; and

(b) For property and casualty stock companies, earned surplus is unassigned funds ~~((page 3, line 25B))~~, less any unrealized gains included in that figure. ~~((On convention blanks for other years, the determination is adjusted to allow for changes in the form.))~~

WSR 18-21-123
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed October 18, 2018, 10:17 a.m., effective January 1, 2019]

Effective Date of Rule: January 1, 2019.

Purpose: WAC 246-907-030 Pharmaceutical licensing fees and renewal cycle, 246-907-0301 Pharmacy assistant licensing periods—Fees and renewal cycle, and 246-907-0302 Hospital pharmacy associated clinics fees and renewal cycle, the adopted rules increase application and renewal fees for many of the pharmacy profession and pharmaceutical firm credentials to generate additional revenue to recover from the current budget deficit and align program revenue and expenditures. The adopted fees also include a few fee decreases to simplify the fee schedule, and changes to fees for duplicate credentials, verification of credentials, and late renewal penalties to align them with standards for all health professions. In addition, the adopted rules repeal WAC 246-907-0301, pharmacy assistant fees, and moves them to WAC 246-907-030 with the other pharmacy professions.

Citation of Rules Affected by this Order: Repealing WAC 246-907-0301; and amending WAC 246-907-030 and 246-907-0302.

Statutory Authority for Adoption: RCW 43.70.250.

Other Authority: RCW 43.70.280, chapters 18.64 and 18.64A RCW.

Adopted under notice filed as WSR 18-16-075 on July 30, 2018.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: October 16, 2018.

John Wiesman, DrPH, MPH

AMENDATORY SECTION (Amending WSR 16-18-087, filed 9/6/16, effective 10/7/16)

WAC 246-907-030 Pharmaceutical licensing ~~((periods and fees—))~~ fees and renewal cycle. (1) Pharmacist, pharmacy technician, ~~((and))~~ pharmacy intern ~~((licenses)),~~ and pharmacy assistant credentials must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) Pharmacy location ~~((, controlled substance registration (pharmacy))~~ credentials, controlled ((Substances Act)) substance researcher registration, ((pharmacy technician utilization, and shopkeepers differential hours licenses)) drug dog handler K9 registration, and other Controlled Substances Act registrations will expire on June 1st of each year.

(3) All other ~~((licenses))~~ credentials, including health care entity ~~((licenses, registrations, permits, or certifications)),~~ will expire on October 1st of each year, except the shopkeeper endorsement which expires annually associated with a business license issued by the department of revenue.

(4) The following nonrefundable fees will be charged for pharmacy ~~((location))~~ professionals:

((Title of fee	Fee
Original pharmacy fee	\$370.00
Original pharmacy technician utilization fee	65.00
Renewal pharmacy fee	405.00
Renewal pharmacy technician utilization fee	75.00
Penalty pharmacy fee	205.00

(5) The following nonrefundable fees will be charged for vendor:

Original fee	75.00
Renewal fee	75.00
Penalty fee	50.00

(6) The following nonrefundable fees will be charged for pharmacist:

Original license fee	145.00
Renewal fee, active and inactive license	190.00
Renewal fee, retired license	25.00
Penalty fee	100.00
Expired license reissuance (active and inactive)	90.00
Reciprocity fee	335.00
Certification of license status to other states	30.00
Retired license	25.00
Temporary permit	65.00

(7) The following nonrefundable fees will be charged for shopkeeper:

Original fee	40.00
Renewal fee	40.00
Penalty fee	40.00
Shopkeeper – With differential hours:	
Original fee	35.00
Renewal fee	35.00
Penalty fee	35.00

(8) The following nonrefundable fees will be charged for drug manufacturer:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(9) The following nonrefundable fees will be charged for drug wholesaler – Full line:

Original fee	590.00
Renewal fee	590.00
Penalty fee	295.00

(10) The following nonrefundable fees will be charged for drug wholesaler – OTC only:

Original fee	330.00
Renewal fee	330.00
Penalty fee	165.00

(11) The following nonrefundable fees will be charged for drug wholesaler – Export:

Original fee	590.00
Renewal fee	590.00
Penalty	295.00

(12) The following nonrefundable fees will be charged for drug wholesaler – Export nonprofit humanitarian organization:

Original fee	25.00
Renewal fee	25.00
Penalty	25.00

(13) The following nonrefundable fees will be charged for pharmacy technician:

Original fee	60.00
Renewal fee	50.00
Penalty fee	50.00
Expired license reissuance	50.00

(14) The following nonrefundable fees will be charged for pharmacy intern:

Original registration fee	30.00
Renewal registration fee	30.00

(15) The following nonrefundable fees will be charged for Controlled Substances Act (CSA):

Registrations-	
Dispensing registration fee (i.e., pharmacies and health care entities)	-80.00
Dispensing renewal fee (i.e., pharmacies and health care entities)	-65.00
Distributors registration fee (i.e., wholesalers)	115.00
Distributors renewal fee (i.e., wholesalers)	115.00
Manufacturers registration fee	115.00
Manufacturers renewal fee	115.00
Sodium pentobarbital for animal euthanization registration fee	-40.00
Sodium pentobarbital for animal euthanization renewal fee	-40.00
Researchers registration fee	400.00
Researchers renewal fee	400.00
Other CSA registrations	-40.00

(16) The following nonrefundable fees will be charged for legend drug sample – Distributor:

Registration fees	
Original fee	365.00
Renewal fee	265.00
Penalty fee	135.00

(17) The following nonrefundable fees will be charged for poison manufacturer/seller – License fees:

Original fee	40.00
Renewal fee	40.00

(18) The following nonrefundable fees will be charged for facility inspection fee:

	200.00
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(19) The following nonrefundable fees will be charged for precursor control permit:

Original fee	65.00
Renewal fee	65.00

(20) The following nonrefundable fees will be charged for license reissue:

Reissue fee	30.00
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(21) The following nonrefundable fees will be charged for health care entity:

Original fee	365.00
Renewal	265.00
Penalty	135.00))

(a) All pharmacy professionals:

<u>Title of fee</u>	<u>Fee</u>
<u>Verification of credential</u>	<u>\$25.00</u>
<u>Duplicate credential</u>	<u>10.00</u>

(b) Pharmacist:

<u>Original credential</u>	<u>\$200.00</u>
<u>Renewal</u>	<u>265.00</u>
<u>Late renewal penalty</u>	<u>135.00</u>
<u>Expired credential reissuance</u>	<u>265.00</u>
<u>Inactive credential renewal</u>	<u>265.00</u>
<u>Retired credential application</u>	<u>25.00</u>
<u>Retired credential renewal</u>	<u>25.00</u>
<u>Temporary permit</u>	<u>100.00</u>
<u>Reciprocity</u>	<u>465.00</u>

(c) Pharmacy technician:

<u>Original credential</u>	<u>\$70.00</u>
<u>Renewal</u>	<u>70.00</u>
<u>Late renewal penalty</u>	<u>50.00</u>
<u>Expired credential reissuance</u>	<u>70.00</u>

(d) Pharmacy intern:

<u>Original credential</u>	<u>\$45.00</u>
<u>Renewal</u>	<u>45.00</u>
<u>Late renewal penalty</u>	<u>45.00</u>
<u>Verification of internship hours</u>	<u>25.00</u>
<u>Expired credential reissuance</u>	<u>45.00</u>

(e) Pharmacy assistant:

<u>Original credential</u>	<u>\$35.00</u>
<u>Renewal</u>	<u>35.00</u>
<u>Late renewal penalty</u>	<u>35.00</u>
<u>Expired credential reissuance</u>	<u>35.00</u>

(5) The following nonrefundable fees will be charged for pharmaceutical firms:

(a) All pharmaceutical firms:

<u>Verification of credential</u>	<u>\$25.00</u>
<u>Duplicate credential</u>	<u>10.00</u>
<u>Facility inspection</u>	<u>400.00</u>

(b) Pharmacy (includes hospital pharmacies):

Pharmacy credential (for hospital pharmacy associated clinics, see WAC 246-907-0302)

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>
<u>Late renewal penalty</u>	<u>270.00</u>

Pharmacy technician utilization

<u>Original utilization</u>	<u>100.00</u>
<u>Renewal</u>	<u>100.00</u>

Controlled substances authority

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

With differential hours

<u>Original credential</u>	<u>55.00</u>
<u>Renewal</u>	<u>55.00</u>

(c) Nonresident pharmacy:

Pharmacy credential

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>
<u>Late renewal penalty</u>	<u>270.00</u>

Controlled substances authority

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

(d) Controlled substance researcher:

<u>Original credential</u>	<u>\$400.00</u>
<u>Renewal</u>	<u>400.00</u>

(e) Other controlled substances act registrations (i.e., analytical laboratories, school laboratories):

<u>Original credential</u>	<u>\$360.00</u>
<u>Renewal</u>	<u>360.00</u>

(f) Drug dog handler K9 registration:

<u>Original credential</u>	<u>\$55.00</u>
<u>Renewal</u>	<u>55.00</u>

(g) Health care entity:

Health care entity credential

<u>Original credential</u>	<u>\$540.00</u>
<u>Renewal</u>	<u>540.00</u>
<u>Late renewal penalty</u>	<u>270.00</u>

Controlled substances authority

<u>Original credential</u>	<u>150.00</u>
<u>Renewal</u>	<u>150.00</u>

(h) Drug manufacturer:

Manufacturer credential

<u>Original credential</u>	\$825.00
<u>Renewal</u>	825.00
<u>Late renewal penalty</u>	300.00

Controlled substances authority

<u>Original credential</u>	150.00
<u>Renewal</u>	150.00

(i) Drug wholesaler - Full line:

Wholesaler credential

<u>Original credential</u>	\$825.00
<u>Renewal</u>	825.00
<u>Late renewal penalty</u>	300.00

Controlled substances authority

<u>Original credential</u>	150.00
<u>Renewal</u>	150.00

(j) Drug wholesaler - Export:

Wholesaler credential

<u>Original credential</u>	\$825.00
<u>Renewal</u>	825.00
<u>Late renewal penalty</u>	300.00

(k) Drug wholesaler - OTC only:

<u>Original credential</u>	\$465.00
<u>Renewal</u>	465.00
<u>Late renewal penalty</u>	235.00

(l) Drug wholesaler - Export nonprofit humanitarian organization:

Wholesaler credential

<u>Original credential</u>	\$25.00
<u>Renewal</u>	25.00
<u>Late renewal penalty</u>	25.00

(m) Legend drug sample distributor:

Distributor credential

<u>Original credential</u>	\$540.00
<u>Renewal</u>	540.00
<u>Late renewal penalty</u>	270.00

Controlled substances authority

<u>Original credential</u>	150.00
<u>Renewal</u>	150.00

(n) Poison manufacturer/seller:

<u>Original credential</u>	\$55.00
<u>Renewal</u>	55.00
<u>Late renewal penalty</u>	50.00

(o) Precursor chemicals:

<u>Original credential</u>	\$55.00
<u>Renewal</u>	55.00
<u>Late renewal penalty</u>	50.00

(p) Itinerant vendor:

<u>Original credential</u>	\$55.00
<u>Renewal</u>	55.00
<u>Late renewal penalty</u>	50.00

(q) Sodium pentobarbital for animal euthanization:

<u>Original credential</u>	\$55.00
<u>Renewal</u>	55.00
<u>Late renewal penalty</u>	50.00

(r) Shopkeeper:

<u>Original credential</u>	\$55.00
<u>Renewal</u>	55.00

AMENDATORY SECTION (Amending WSR 16-18-069, filed 9/2/16, effective 9/8/16)

WAC 246-907-0302 Hospital pharmacy associated clinics (~~licensing periods and fees~~) fees and renewal cycle. (1) Parent hospital pharmacy licenses with one or more hospital pharmacy associated clinics (HPAC) expire on June 1st of each year.

(2) A parent hospital pharmacy must submit fees for HPACs in addition to fees set in WAC 246-907-030(4). HPAC fees are due annually, except as provided under subsection (3)(d) of this section.

(3) A parent hospital pharmacy must submit the following nonrefundable fees based on category and number of HPACs as defined in WAC 246-873A-020(3) added to the parent hospital pharmacy license.

(a) **Category 1 HPAC.** A parent hospital pharmacy must submit the Category 1 HPAC fee according to the number of Category 1 HPACs under the parent hospital pharmacy license.

HPAC tier	Number of Category 1 HPACs under parent hospital pharmacy license	Total annual fee
A	1-10	\$((640.00)) 895.00
B	11-50	\$((1,600.00)) 2,240.00

HPAC tier	Number of Category 1 HPACs under parent hospital pharmacy license	Total annual fee
C	51-100	\$ ((2,240.00)) <u>3,125.00</u>
D	Over 100	\$ ((2,880.00)) <u>4,025.00</u>

(b) **Category 2 HPAC.** A parent hospital pharmacy must submit the Category 2 HPAC fee for each Category 2 HPAC under the parent hospital pharmacy license.

Category 2 HPAC fee	\$ ((540.00)) <u>755.00</u>
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(c) The department charges a processing fee of fifty-five dollars for an amended license to change the number of HPACs.

(d) If at any time a parent hospital pharmacy submits an addendum increasing the number of HPACs on the parent hospital pharmacy license, which changes the applicable HPAC tier to a higher fee amount, the parent hospital pharmacy shall submit the difference in fees with the addendum.

(e) The department will not refund fees when a tier reduction occurs between renewal periods.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-907-0301 Pharmacy assistant licensing periods and fees—Fees and renewal cycle.

**WSR 18-21-140
PERMANENT RULES
DEPARTMENT OF HEALTH**

[Filed October 19, 2018, 2:12 p.m., effective various dates]

Effective Date of Rule: WAC 246-915A-990 will become effective January 1, 2019; and WAC 246-915-990 and 246-915-99005 will become effective February 1, 2019.

Purpose: WAC 246-915-990 Physical therapist fees and renewal cycle, 246-915-99005 Physical therapist assistant fees and renewal cycle, and 246-915A-990 Physical therapist and physical therapist assistant compact privilege fees and renewal cycle, the adopted rules increase renewal fees for physical therapists and physical therapist assistants, make adjustments to duplicate credential and late renewal fees to generate sufficient revenue to align program revenue with expenditures and avoid the projected deficit next biennium. The adopted rules also add a new section to add fees to implement the physical therapy licensure compact (compact).

Citation of Rules Affected by this Order: New WAC 256-915A-990; and amending WAC 246-915-990 and 246-915-99005.

Statutory Authority for Adoption: RCW 18.74.510, 43.70.250, and 43.70.320.

Adopted under notice filed as WSR 18-16-077 on July 30, 2018.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: October 18, 2018.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-915-990 Physical (~~(therapy)~~) therapist fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Original application	
Application	\$65.00
Active license renewal	
License renewal	((50.00)) <u>75.00</u>
Late renewal penalty	50.00
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	((15.00)) <u>10.00</u>
Verification of license	25.00

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

WAC 246-915-99005 Physical therapist assistant fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for physical therapist assistant:

Title of Fee	Fee
Original application	
Application	\$60.00
Active license renewal	
License renewal	((45.00)) <u>70.00</u>
Late renewal penalty	((45.00)) <u>50.00</u>
Expired license reissuance	50.00
Inactive license renewal	
License renewal	35.00
Expired license reissuance	50.00
Duplicate license	((15.00)) <u>10.00</u>
Verification of license	25.00

Chapter 246-915A WAC

PHYSICAL THERAPY LICENSURE COMPACT

NEW SECTION

WAC 246-915A-990 Physical therapist and physical therapist assistant compact privilege fees and renewal cycle. (1) The compact privilege must be renewed no later than the expiration date of the home state license. The compact privilege holder must comply with all physical therapy licensure compact eligibility requirements in this chapter to maintain the compact privilege.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application	\$45.00
Renewal	45.00
Late renewal penalty	45.00

WSR 18-21-141

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 19, 2018, 2:36 p.m., effective November 19, 2018]

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

Purpose: Chapter 246-815 WAC, Dental hygienists, the department of health is adopting rule changes that update, streamline, and modernize the rules pertaining to dental hygiene.

Citation of Rules Affected by this Order: New WAC 246-815-010, 246-815-164, 246-815-166 and 246-815-265; repealing WAC 246-815-031, 246-815-115, 246-815-120, 246-815-170, 246-815-180, 246-815-190, 246-815-200, 246-815-210, 246-815-220, 246-815-230 and 246-815-240; and amending WAC 246-815-020, 246-815-030, 246-815-050,

246-815-100, 246-815-110, 246-815-130, 246-815-140, 246-815-160, and 246-815-990.

Statutory Authority for Adoption: RCW 18.29.210.

Other Authority: Chapter 18.29 RCW, RCW 43.70.280.

Adopted under notice filed as WSR 18-12-074 on June 1, 2018.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-815-130(4) changed from "... the applicant will be eligible to complete approved clinical examinations" to "... an applicant for a dental hygienist license will be eligible to complete approved clinical examinations." The addition of "a dental hygienist" clarifies which applicant is eligible to complete the approved examinations.

A final cost-benefit analysis is available by contacting Bruce Bronoske, Jr., P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4843, fax 360-236-2901, TTY 360-833-6388 or 711, email bruce.bronoske@doh.wa.gov, web site www.doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 9, Repealed 11.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 9, Repealed 11.

Date Adopted: October 18, 2018.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-815-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Clinical record" means the portion of the patient record that contains information regarding the patient exam, dental hygiene care plan, treatment discussion, treatment performed, patient progress, progress notes, referrals, studies, tests, imaging of any type and any other information related to the dental hygiene care or treatment of the patient.

(2) "Committee" means the dental hygiene examining committee.

(3) "Dental hygienist" means an individual licensed under chapter 18.29 RCW and this chapter.

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

(5) "Financial record" means the portion of the patient record that contains information regarding the financial aspects of a patient's treatment including, but not limited to, billing, treatment plan costs, payment agreements, payments, insurance information or payment discussions held with a

patient, insurance company or person responsible for account payments.

(6) "Group home" means a licensed facility that provides its residents with twenty-four hour supervision. Depending on the size, a group home may be licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

(7) "Home health agency" has the same meaning as in chapter 70.126 RCW.

(8) "Hospital" has the same meaning as in RCW 70.41-020.

(9) "Notation" means a condensed or summarized written record.

(10) "Nursing home" has the same meaning as in RCW 18.51.010(3).

(11) "Patient record" is the entire record of the patient maintained by a practitioner that includes all clinical and financial information related to the patient.

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

AMENDATORY SECTION (Amending WSR 15-15-144, filed 7/20/15, effective 8/20/15)

WAC 246-815-020 Dental hygiene licensure—((Initial)) Eligibility and application requirements. ((+)) An applicant for a dental hygiene license shall submit to the department the following:

((+)) (1) An initial application on forms provided by the department;

((+)) (2) The fee required under WAC 246-815-990;

((+)) (3) Proof of successful completion of the Washington state dental hygiene drug and law jurisprudence exam as required by the department; ((and (d)))

(4) Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8(:

(2) An applicant for a dental hygiene license shall also: ((a) Have));

(5) Official transcripts verifying successful completion of ((a) an approved dental hygiene education program ((approved by the secretary under WAC 246-815-030 sent directly from the dental hygiene program to the department)) and proof of successful completion of any applicable expanded education programs approved under WAC 246-815-030. Official transcripts must be sent directly to the department by the dental hygiene education program(s). No other proof of successful completion is acceptable;

((+)) (6) Official verification of passing the National Board Dental Hygiene written examination((- Results)), as offered by the American Dental Association. Official verification must be sent directly to the department from the American Dental Association Department of Testing Services; and

((+)) (7) Official verification of passing the dental hygiene examinations as required in WAC 246-815-050. ((Results)) Official verification must be sent directly to the department from the testing agency.

AMENDATORY SECTION (Amending WSR 07-22-109, filed 11/6/07, effective 12/7/07)

WAC 246-815-030 ((Education)) Dental hygiene and expanded functions education program requirements for licensure ((applicants)). (1) To be eligible for initial dental hygiene licensure, the applicant must have successfully completed a dental hygiene education program approved by the secretary ((of the department of health)). The secretary ((adopts the standards of the American Dental Association)) accepts dental hygiene programs that are accredited by the Commission on Dental Accreditation ((("CODA")) (CODA) relevant to the accreditation of dental hygiene schools((, in effect through June 2007. In implementing the adopted standards, the secretary approves those dental hygiene education programs that are currently accredited and received initial "CODA" accreditation on or before June 30, 2007;)). Provided, that the accredited education program's curriculum includes didactic and clinical competency in:

(a) ((Didactic and clinical competency in)) The administration of injections of local anesthetic;

(b) ((Didactic and clinical competency in)) The administration of nitrous oxide analgesia;

(c) ((Didactic and clinical competency in)) The placement of restorations into cavities prepared by a dentist; and

(d) ((Didactic and clinical competency in)) The carving, contouring, and adjusting contacts and occlusions of restorations.

(2) Dental hygiene expanded functions education programs approved by the secretary ((of the department of health pursuant to the American Dental Association Commission on Dental Accreditation)) consistent with CODA standards whose curriculum does not include the didactic and clinical competency ((enumerated in)) as required under subsection (1)(a) through (d) of this section will be accepted if the applicant has successfully completed an expanded functions education program(s) approved ((pursuant to WAC 246-815-110, 246-815-120, and)) under WAC 246-815-130.

((3) A form will be provided in the department of health licensure application packages for the purpose of education verification.

(4) The standards of the American Dental Association Commission on Dental Accreditation relevant to the accreditation of dental hygiene schools are available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678, 312-440-2500, <http://www.ada.org/>.)

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

WAC 246-815-050 Dental hygiene clinical examination. (1) ((The dental hygiene examination will consist of both written and practical tests approved by the committee, as described in this section.)) An applicant seeking licensure in Washington by examination must successfully complete ((a) (b) (c) (d) (e) (f)) the following:

(a) ((The)) A dental hygiene ((national board examination.

(b) The Washington drug and law examination.

(c) clinical examination approved by the committee.

(i) The Western Regional Examining Board (WREB) dental hygiene ~~((practical))~~ clinical examinations ~~((from))~~ effective May 8, 1992~~((:));~~

(ii) The Central Regional Dental Testing Services, Incorporated (CRDTS) dental hygiene clinical examinations effective 2003; and

(iii) The Commission on Dental Competency Assessments (CDCA) clinical examination effective January 1, 2000, through August 21, 2009, or after March 16, 2018.

(b) In lieu of the WREB, CRDTS, or CDCA examination (or any of their subparts), the secretary may accept a substantially equivalent examination (or substantially equivalent examination subparts).

(2) The dental hygiene applicant must complete dental hygiene practical examinations which consist of the following competencies:

~~((i))~~ (a) Patient evaluation clinical competency including an extra-oral and intra-oral examination;

~~((ii))~~ (b) Prophylaxis clinical competency;

~~((iii))~~ (c) Local anesthesia written and clinical competency; and

~~((iv))~~ (d) Restorative clinical competency.

~~((d))~~ In lieu of the WREB examination (or any of its subparts), the secretary may accept a substantially equivalent examination (or substantially equivalent subparts).

(2) The committee may, at its discretion, give a test in any other phase of dental hygiene. Candidates will receive information concerning each examination.

(3) The applicant will comply with all written instructions provided by the department of health.

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

WAC 246-815-100 Licensure by interstate endorsement of credentials. ~~((A license to practice as a dental hygienist in Washington may be issued pursuant to RCW 18.29.045 provided the applicant meets the following requirements:))~~ An individual may be eligible for a Washington state dental hygiene license if the applicant:

(1) ~~((The applicant))~~ Has successfully completed a dental hygiene education program ~~((which is approved by the secretary of the department of health pursuant to))~~ in compliance with the requirements listed in WAC 246-815-030.

(2) ~~((The applicant has been issued))~~ Holds a valid, current, nonlimited license ~~((by successful completion of a dental hygiene examination))~~ in another state.

(3) Has been currently engaged in clinical practice at any time within the previous year as a dental hygienist in another state or in the discharge of official duties in the United States Armed Services, Coast Guard, Public Health Services, United States Department of Veteran Affairs, or Bureau of Indian Affairs. Verification of licensure must be obtained from the state of licensure, and any fees for verification required by the state of licensure must be paid by the applicant.

(4) Has successfully completed a dental hygiene examination where the other state's ~~((current))~~ licensing standards ~~((must be))~~ are substantively equivalent to the licensing standards in the state of Washington. The other state's examina-

tion must have included the following portions and ~~((minimum level))~~ standards of competency ~~((standards)).~~

(a) Written tests - The written tests ~~((include: (i)))~~ mean the National Board of Dental Hygiene examination as required in WAC 246-815-020.

~~((ii))~~ A state written test covering the current dental hygiene subjects that are tested for Washington state.

(b) Practical tests - All portions ~~((shall))~~ must be graded anonymously by calibrated practicing dental hygienists or dental hygienists and dentists. ~~((The calibration process shall consist of training sessions which include components to evaluate and confirm each examiners ability to uniformly detect known errors on pregraded patients and/or dento-forms.))~~ Examiners will be calibrated to the ~~((established standard of minimum level))~~ standards of competency. The examination must have equivalent patient selection criteria for the patient evaluation, prophylaxis and anesthesia portions. ~~((The Western Regional Examining Board (WREB) practical tests.))~~ In lieu of the WREB or CRDTS practical tests, the secretary may accept substantially equivalent tests. The practical tests include:

(i) Patient evaluation clinical competency including an extra-oral and intra-oral examination;

(ii) Prophylaxis clinical competency;

(iii) Anesthesia clinical competency; and

(iv) Restorative clinical competency.

~~((3))~~ The applicant holds a valid current license, and has been currently engaged in clinical practice at any time within the previous year as a dental hygienist in another state or in the discharge of official duties in the United States Armed Services, Coast Guard, Public Health Services, Veterans' Bureau, or Bureau of Indian Affairs. Verification of licensure must be obtained from the state of licensure, and any fees for verification required by the state of licensure must be paid by the applicant.

~~((4))~~ The applicant has not engaged in unprofessional conduct as defined in the Uniform Disciplinary Act in RCW 18.130.180 or is not an impaired practitioner under RCW 18.130.170 in the Uniform Disciplinary Act. (c) If the secretary finds that another state's licensing standards are substantively equivalent except for portion(s) of the examination, the applicant may take that portion(s) to qualify for interstate endorsement. The applicant must successfully complete the portion(s) of the exam to qualify for interstate endorsement.

(5) ~~((Applicants must complete))~~ Has completed seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.

(6) ~~((The applicant demonstrates to the secretary knowledge of Washington law pertaining to the practice of dental hygiene))~~ Has passed the Washington state drug and law jurisprudence examination.

(7) ~~((The applicant completes the required))~~ Submits a completed application ~~((materials and pays the required application fee. Applications for licensure by interstate endorsement are available from the department of health dental hygiene program))~~ on forms provided by the department.

(8) ~~((If the secretary of the department of health finds that the other state's licensing standards are substantively equivalent except for a portion(s) of the examination, the~~

applicant may take that portion(s) to qualify for interstate endorsement. That portion(s) of the exam must be successfully completed to qualify for interstate endorsement and an additional examination fee as well as the licensure by interstate endorsement fee shall be required.) Pays fees as required in WAC 246-815-990.

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

WAC 246-815-110 Application procedures for approval of non-CODA accredited dental hygiene expanded functions education programs. (1) ~~((The representative of the education program must complete the required application materials and pay the required nonrefundable fee.~~

~~(2) Applications for approval of dental hygiene expanded functions education programs are available from the department of health, dental hygiene program.~~

~~(3) The application shall include but is not limited to a self study guide which reflects WAC 246-815-120 and 246-815-130.~~

~~(4) The application may include) An applicant for approval of a non-CODA accredited dental hygiene expanded functions education program shall submit to the department:~~

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

~~(b) Fees as required in WAC 246-815-990; and~~

~~(c) A self-study guide which reflects requirements in WAC 246-815-130.~~

~~(2) The department may conduct a site visit and evaluation at the discretion of the secretary ((of the department of health)) prior to approval.~~

~~((5)) (3) An approved dental hygiene expanded function education program shall report in writing all modifications of the approved program to the department ((of health and shall be required to pay the nonrefundable evaluation fee if the secretary of the department determines that the modification(s) substantially affects an area included in WAC 246-815-120)) at least sixty days prior to modification.~~

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-815-130 Curriculum requirements for expanded functions dental hygiene education programs approval. (1) Curriculum for expanded function dental hygiene education programs approved by the secretary ~~((of the department of health shall))~~ must include didactic and clinical competency in:

(a) ~~((Instruction in))~~ The administration ~~((of injections))~~ of a local anesthetic(-

~~(i) The basic curriculum shall require didactic and clinical competency.~~

~~(ii) Demonstration of clinical proficiency in each of the following functions:~~

~~Infiltration: ASA, MSA, Nasopalatine, greater palatine.~~

~~Block: Long buccal, mental, inferior alveolar and PSA)), which must include infiltration, field block and block dental~~

~~injection techniques for anesthesia of maxillary and mandibular periodontium and teeth.~~

~~(b) ((Instruction in)) The administration of nitrous oxide analgesia. ((The basic curriculum shall require didactic and clinical competency.))~~

~~(c) ((Instruction in)) Restorative dentistry ((and specifically)), including how to place restorations into a cavity prepared by the dentist and thereafter carve, contour, and adjust contacts and occlusion of the restoration. ((The basic curriculum shall require didactic and clinical competency.))~~

~~(2) ((Representatives of)) An expanded function dental hygiene education programs may apply for approval of one or more of ~~((1)(a)-(c) above))~~ the expanded functions identified in subsection (1)(a) through (c) of this section. Approval of the specific expanded function(s) educational program will be based on the applicable curriculum listed in ~~((1)(a)-(c) above.~~~~

~~(3) It shall be the responsibility of the approved expanded functions education program to evaluate the students curriculum needs on an individual basis for successful completion of their approved program.)) subsection (1) of this section.~~

~~(3) The expanded functions education program must submit a completed application on forms provided by the department and pay fees required under WAC 246-815-990.~~

~~(4) Upon successful completion of approved expanded functions education program, an applicant for a dental hygienist license will be eligible to complete approved clinical examinations required under WAC 246-815-050 in order to meet initial licensure eligibility requirements under WAC 246-815-020.~~

AMENDATORY SECTION (Amending WSR 15-15-144, filed 7/20/15, effective 8/20/15)

WAC 246-815-140 Continuing education and renewal requirements for dental hygienists. (1) To renew a ~~((license a))~~ dental hygienist license, an individual must:

(a) Complete fifteen clock hours of continuing education each year following the first license renewal;

(b) Maintain a current basic life support (BLS) ~~((and))~~ for health care providers certification; and

(c) Sign a declaration attesting to the completion of the required number of hours as part of the annual renewal requirement.

(2) The department will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the dental hygienist or enhance services provided to patients.

~~((For the purposes of this chapter, acceptable)) (3) Continuing education is defined as any of the following activities:~~

~~(a) Continuing education ((means)) courses offered or authorized by industry recognized local, state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors or types of continuing education courses may include, but are not limited to:~~

~~((a)) (b)(i) The Washington State Dental Association, American Dental Association, National Dental Association,~~

Washington ((State)) Dental Hygienists' Association, American Dental Hygienists' Association, National Dental Hygienists' Association, including the constituent and component/branch societies;

~~((b))~~ Basic life support (BLS)) (ii) BLS for health care providers, advanced cardiac life support (ACLS), Occupational Safety and Health Administration (OSHA)/Washington Industrial Safety and Health Act (WISHA), or emergency related training such as courses offered or authorized by the American Heart Association or the American Cancer Society ~~((s))~~, or any other organizations or agencies;

~~((e))~~ (iii) Self-study through study clubs, books, research materials, or other publications. The required documentation for this activity is a summary of what was learned, not to exceed five hours per year;

~~((d))~~ (iv) Distance learning. Distance learning includes, but is not limited to: Correspondence course, webinar, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/online-learning, or computer broadcasting/webcasting that includes an assessment tool upon completion;

~~((e))~~ (v) A licensee who serves as an educator or who lectures in continuing education programs or courses, that contribute to the professional knowledge of a licensed dental hygienist may accumulate hours for the content preparation of the program or course, not to exceed ten hours per year;

~~((f))~~ (vi) Attendance at a continuing education program with a featured speaker(s);

~~((g))~~ (vii) Courses relating to practice organization and management, medical/dental insurance courses, or retirement, not to exceed five hours per year;

~~((h))~~ (viii) Dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops, not to exceed ten hours per year;

~~((i))~~ (ix) Provision of clinical dental hygiene services in a documented volunteer capacity when preceded by educational/instructional training prior to provision of services, not to exceed five hours per year. Volunteering must be without compensation and under appropriate supervision;

~~((j))~~ (x) A licensee who serves as a public health official or employee, contractor for a state or local health agency, community prevention education expert, or works in a field that relates to prevention activities in public health dentistry, may accumulate hours for the content preparation of providing services, education, or training to the underserved, rural, and at risk populations, not to exceed five hours per year; and

~~((k))~~ (xi) College courses.

~~((3))~~ (4) The department may randomly audit up to twenty-five percent of practitioners for compliance with the requirements in this section after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

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

WAC 246-815-160 Standards of dental hygiene ~~((conduct or))~~ practice. ~~((The purpose of defining standards of dental hygiene conduct or practice is to identify minimum responsibilities of the registered dental hygienist licensed in Washington in health care settings and as provided in the~~

Dental Hygiene Practice Act, chapter 18.29 RCW, and the Uniform Disciplinary Act, chapter 18.130 RCW. The standards provide consumers with information about quality care and provides the secretary guidelines to evaluate safe and effective care. Upon entering the practice of dental hygiene, each individual assumes the responsibility, public trust, and a corresponding obligation to adhere to the standards of dental hygiene practice.

(1) Dental hygiene provision of care:

The dental hygienist shall:

~~(a) Accurately and systematically collect, permanently record, and update data on the general and oral health status of the client.~~

~~(b) Communicate collected data to the appropriate health care professional.~~

~~(c) Take into consideration the dental hygiene assessment, the client treatment goals, appropriate sequencing of procedures, and currently accepted scientific knowledge in developing a dental hygiene plan.~~

~~(i) The dental hygiene plan shall include preventative and therapeutic care to promote and maintain the clients' oral health.~~

~~(ii) Where appropriate, the dental hygiene plan shall be compatible with the treatment plan of other licensed health care professionals.~~

~~(d) Communicate the dental hygiene plan to the client and/or legal guardian.~~

~~The client and/or legal guardian or where appropriate other **health care professionals** are to be informed of the **progress and results** of dental hygiene care and clients' self-care.~~

~~(e) Continually reevaluate client progress related to the attainment of their oral health goals. Implement additional dental hygiene treatment and client self-care as appropriate.~~

(2) Professional responsibilities:

The licensed dental hygienist shall have knowledge of the statutes and regulations governing dental hygiene practice and shall function within the legal scope of dental hygiene practice.) A dental hygienist working under the appropriate supervision of a licensed dentist shall perform the following tasks:

(1) Assessment, which must include:

(a) Documentation of patient history.

(i) Recording current and past dental oral health care; and

(ii) Collection of health history data including the patient's:

(A) Current and past health status;

(B) Pharmacologic considerations;

(C) Additional considerations;

(D) Record vital signs and compare with previous readings; and

(E) Consultation with appropriate health care provider(s) as indicated.

(b) A comprehensive clinical evaluation:

(i) An inspection of the head and neck and oral cavity including an oral cancer screening, evaluation of trauma and a temporomandibular joint (TMJ) assessment;

(ii) Evaluation for further diagnostics including radiographs;

(iii) Comprehensive periodontal evaluation that includes the documentation of:

- (A) Full mouth periodontal charting;
- (I) Probing depths;
- (II) Bleeding points;
- (III) Suppuration;
- (IV) Mucogingival relationship and defects;
- (V) Recession;
- (VI) Attachment level or loss.

(B) Presence, degree and distribution of plaque and calculus;

- (C) Gingival health and disease;
- (D) Bone height and bone loss;
- (E) Mobility and fremitus;
- (F) Presence, location and extent of furcation involvement; and

(G) A comprehensive hard tissue evaluation that includes the charting conditions and oral habits to include:

- (I) Demineralization;
- (II) Caries;
- (III) Defects;
- (IV) Sealants;
- (V) Existing restorations and potential needs;
- (VI) Anomalies;
- (VII) Occlusion;
- (VIII) Fixed and removable prostheses; and
- (IX) Missing teeth.

(c) Risk assessments.

(2) A dental hygiene analysis of assessment findings.

The dental hygienist shall:

(a) Analyze and interpret all assessment data to evaluate clinical findings and formulate the dental hygiene care plan;

(b) Determine patient needs that can be improved through the delivery of dental hygiene care; and

(c) Incorporate the dental hygiene care plan into the overall dental treatment plan.

(3) Dental hygiene care planning. The dental hygienist shall:

(a) Identify, prioritize and sequence dental hygiene intervention;

(b) Coordinate resources to facilitate comprehensive quality care;

(c) Collaborate with the dentist and other health and dental care providers and community-based oral health programs;

(d) Present and document dental hygiene care plan to patient;

(e) Explain treatment rationale, risks, benefits, anticipated outcomes, treatment alternatives, and prognosis; and

(f) Obtain and document informed consent or informed refusal.

(4) Care plan implementation. The dental hygienist shall:

(a) Review and implement the dental hygiene care plan with the patient or caregiver;

(b) Modify the plan as necessary and obtain consent;

(c) Communicate with patient or caregiver appropriate for age, language, culture and learning style; and

(d) Confirm the plan for continuing care.

(5) Dental hygiene evaluation. The dental hygienist shall:

(a) Use measurable assessment criteria to evaluate the outcomes of dental hygiene care;

(b) Communicate to the patient, dentists and other health/dental care providers the outcomes of dental hygiene care; and

(c) Collaborate to determine the need for additional diagnostics, treatment, referral education and continuing care based on treatment outcomes and self-care behaviors.

NEW SECTION

WAC 246-815-164 Patient record content. (1) A dental hygienist who treats patients shall maintain legible, complete, and accurate patient records.

(2) The patient record must contain the clinical records and the financial records.

(3) The clinical record must include at least the following information for each entry:

(a) The signature, initials, or electronic verification of the individual making the entry note;

(b) The identity of who provided treatment if treatment was provided;

(c) The date of each patient record entry;

(d) The physical examination findings documented by subjective complaints, objective findings, an assessment of the patient's condition, and plan;

(e) A dental hygiene treatment plan based on the analysis of assessment findings;

(f) Up-to-date dental hygiene and medical history that may affect dental hygiene treatment;

(g) A complete description of all treatment/procedures administered at each visit;

(h) An accurate record of any medication(s) administered;

(i) Referrals and any communication to and from any health care provider;

(j) Notation of communication to or from the patient or minor patient's parent or guardian, including:

(i) Notation of the informed consent discussion. This is a discussion of potential risk(s) and benefit(s) of proposed treatment, and alternatives to treatment, including no treatment;

(ii) Notation of posttreatment instructions or reference to an instruction pamphlet given to the patient;

(iii) Notation regarding patient complaints or concerns associated with treatment, this includes complaints or concerns obtained in person, by phone call, email, mail, or text; and

(iv) Termination of hygienist-patient relationship.

(4) Clinical record entries must not be erased or deleted from the record.

(a) Mistaken handwritten entries must be corrected with a single line drawn through the incorrect information. New or corrected information must be initialed and dated.

(b) If the record is an electronic record then a record audit trail must be maintained with the record that includes a time and date, history of deletions, and edits and corrections to the electronically signed records.

NEW SECTION

WAC 246-815-166 Patient record retention and accessibility requirements. (1) A dental hygienist working for health care facilities or senior centers under RCW 18.29.056 shall keep readily accessible patient records for at least six years from the date of the last treatment.

(2) A dental hygienist shall respond to a written request from a patient to examine or copy a patient's record within fifteen working days after receipt. A dental hygienist shall comply with chapter 70.02 RCW for all patient record requests.

(3) A dental hygienist shall comply with the Health Insurance Portability and Accountability Act, 45 C.F.R. Part 164.

NEW SECTION

WAC 246-815-265 Service location while working for a health care facility. A dental hygienist working for a health care facility under RCW 18.29.056 is limited to providing treatment to patients, students and residents of the health care facility. The services performed while employed, retained or contracted by the health care facility must be provided in a location affiliated with one of the health care facilities defined in RCW 18.29.056(2).

AMENDATORY SECTION (Amending WSR 08-15-014, filed 7/7/08, effective 7/7/08)

WAC 246-815-990 Dental hygiene fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. ~~((The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.))~~

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
Application examination and reexamination . .	\$100.00
Renewal	50.00
Late renewal penalty	50.00
Expired license reissuance	50.00
Credentialing application	100.00
Limited license application	100.00
Limited license renewal	50.00
Limited license late renewal penalty	50.00
Expired limited license reissuance	50.00
Duplicate license	15.00
((Certification)) <u>Verification</u> of license	25.00

Title of Fee	Fee
Education program evaluation	200.00

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-815-031 Dental hygiene expanded functions education requirement for licensure implementation.
- WAC 246-815-115 Exception application procedures for approval of dental hygiene expanded functions education programs.
- WAC 246-815-120 Standards required for approval of dental hygiene expanded functions education programs.
- WAC 246-815-170 General provisions.
- WAC 246-815-180 Mandatory reporting.
- WAC 246-815-190 Health care institutions.
- WAC 246-815-200 Dental hygienist associations or societies.
- WAC 246-815-210 Health care service contractors and disability insurance carriers.
- WAC 246-815-220 Professional liability carriers.
- WAC 246-815-230 Courts.
- WAC 246-815-240 State and federal agencies.

**WSR 18-21-164
PERMANENT RULES
DEPARTMENT OF LICENSING**

[Filed October 22, 2018, 3:09 p.m., effective November 22, 2018]

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

Citation of Rules Affected by this Order: New WAC 308-20-580.

Statutory Authority for Adoption: E2SHB 1439 section 9, RCW 18.16.030, 43.24.086.

Adopted under notice filed as WSR 18-18-083 on September 4, 2018.

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

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

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

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

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

Date Adopted: October 22, 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 18-21-166
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed October 23, 2018, 8:35 a.m., effective November 23, 2018]

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

Purpose: Updating WAC 458-20-179 to reflect statutory changes from the 2018 legislative session contained in SB 6007 (chapter 146, Laws of 2018) specifically amending WAC 458-20-179 (305)(a) regarding the expiration date for the sales of electricity public utility tax exemption allowed by RCW 82.16.0421.

Citation of Rules Affected by this Order: Amending WAC 458-20-179.

Statutory Authority for Adoption: RCW 82.16.080, 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 18-17-055 on August 9, 2018.

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

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

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

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

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

Date Adopted: October 23, 2018.

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-179 Public utility tax. Introduction.

This rule explains the public utility tax (PUT) imposed by chapter 82.16 RCW. The PUT is a tax for engaging in certain public service and transportation businesses within this state.

The department of revenue (department) has adopted other rules that relate to the application of PUT. Readers may want to refer to rules in the following list:

- (1) WAC 458-20-104 Small business tax relief based on income of business;
- (2) WAC 458-20-121 Sales of heat or steam—Including production by cogeneration;
- (3) WAC 458-20-13501 Timber harvest operations;
- (4) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;
- (5) WAC 458-20-180 Motor carriers;
- (6) WAC 458-20-192 Indians—Indian country;
- (7) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and
- (8) WAC 458-20-251 Sewerage collection and other related activities.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situa-

tions must be determined after a review of all of the facts and circumstances.

Part I - General Information

(101) **Persons subject to the public utility tax.** The PUT is imposed by RCW 82.16.020 on certain public service and transportation businesses including railroad, express, railroad car, water distribution, sewerage collection, light and power, telegraph, gas distribution, motor transportation, urban transportation, log transportation, vessels under sixty-five feet in length operating upon the waters within the state of Washington, and tugboat businesses.

(a) **Hauling by watercraft.** Income from hauling persons or property for hire by watercraft between points in Washington is subject to one of two PUT classifications, depending on the nature of the service. Income from:

- Operating tugboats of any size, and the sale of transportation services by vessels sixty-five feet and over, is subject to tax under the "other public service business" PUT classification.

- The sale of transportation services using vessels under sixty-five feet, other than tugboats, is subject to tax under the "vessels under sixty-five feet" public utility tax classification.

These classifications do not include sightseeing tours, fishing charters, or activities that are in the nature of guided tours where the tour may include some water transportation. Persons engaged in providing tours should refer to WAC 458-20-258, Travel agents and tour operators.

(b) **Other businesses subject to the public utility tax.** The PUT also applies to any other public service business subject to control by the state, or having the powers of eminent domain, or any business declared by the legislature to be of a public service nature, unless the activity is subject to tax under chapter 82.04 RCW, Business and occupation (B&O) tax.

(i) The phrase "subject to control by the state" means control by the utilities and transportation commission or any other state agency required by law to exercise control of a business of a public service nature regarding rates charged or services rendered. Examples of other public service businesses include, but are not limited to: Airplane transportation, boom, dock, ferry, pipeline, toll bridge, water transportation, and wharf businesses. RCW 82.16.010.

(ii) Persons engaged in the same business activities as the businesses described above are subject to the PUT even if they are not publicly recognized as providing that type of service or the amount of income from these activities is not substantial. For example, an industrial manufacturing company that owns and operates a well, and that sells a relatively small amount of water to its wholly owned subsidiary, is subject to the PUT as a water distribution business on its sales of water.

(c) **Are amounts derived from interest and penalties taxable?** Amounts charged to customers as interest or penalties are generally subject to the service and other activities B&O tax. This includes interest charged for failure to timely pay for utility services or for incidental services. Incidental services include for example meter installation or other activities which are performed prior to the customer receiving utility services. Any interest or penalty resulting from the failure to timely pay a local improvement district or utility local

improvement district assessment is not subject to public utility or B&O taxes.

(102) **Tax rates and measure of tax.** The rates of tax for each business activity subject to the PUT are imposed under RCW 82.16.020 and set forth on appropriate lines of the state public utility tax addendum for the excise tax return. The measure of the PUT is the gross income of the business. The term "gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental to that business. No deduction may be taken on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discounts, delivery costs, taxes, or any other expense whatsoever paid or accrued, nor on account of losses. RCW 82.16.010(3).

(103) **Persons subject to public utility tax may also be subject to B&O tax.** The B&O tax does not apply to any business activities for which PUT is specifically imposed, including amounts derived from activities for which a deduction from the PUT is available under RCW 82.16.050. RCW 82.04.310(1). However, many persons engaged in business activities subject to the PUT are also engaged in other business activities subject to B&O tax.

For example, a gas distribution company operating a system for the distribution of natural gas for sale may also make retail sales of gas appliances. The gas distribution company is subject to the PUT on its distribution of natural gas to consumers. It is also subject to retailing B&O tax and must collect and remit retail sales tax on its retail sales of gas appliances. Repairs of customer owned appliances are also a retailing activity subject to retail sales tax.

In distinguishing gross income taxable under the PUT from gross income taxable under the B&O tax, the department is guided by the uniform system of accounts established for the specific type of utility concerned. Because of differences in the uniform systems of accounts established for various types of utility businesses, such guides are not controlling for the purposes of classifying revenue under the Revenue Act.

(104) **Charges for service connections, line extensions, and other similar services.**

(a) For existing customers, amounts derived from services that are incidental to a public utility activity are subject to PUT. Thus, amounts received for the following are subject to PUT:

- (i) Service connection, start-up, and testing fees;
- (ii) Charges for line extensions, repairs, raisings, and/or drops;
- (iii) Meter or pole replacement;
- (iv) Meter reading or load factor charges; and
- (v) Connecting or disconnecting.

(b) For new customers, amounts received for any of the services noted above in Part (104)(a) of this rule are subject to service and other activities B&O tax.

A "new customer" is a customer who previously has not received the utility service at the location. For example, a customer of a water distribution company who currently receives water at a residence and constructs a new residence at a different location is considered a "new customer" with respect to any meter installation services performed at the

new residence, until the customer actually receives water at that location. It is immaterial that this customer may be receiving water at the old residence. The charge for installing the meter for this customer at the new location is subject to service and other activities B&O tax.

(105) **Contributions of equipment or facilities.** Contributions to a utility business in the form of equipment or facilities are not considered income to the utility business, if the contribution is a condition of receiving service.

(a) **Example 1.** An industrial customer purchases and pays sales tax on transformers it installs. The customer then provides the transformers to a public utility district as a condition of receiving future service. The public utility district is not subject to the PUT or B&O tax on the receipt of the transformers. Use tax is not owed by the utility district as the customer paid sales tax at the time of purchase.

(b) **Example 2.** For a water or sewerage collection business, the value of pipe, valves, pumps, or similar items provided by a developer for purposes of servicing the developed area is likewise not subject to PUT or B&O tax.

Part II - Exemptions, Deductions, and Nontaxable Receipts

(201) **Exemptions.** This subsection describes PUT exemptions. Also see subsections in this rule that discuss specific utilities.

(a) **Income exemption.** Persons subject to the PUT are exempt from the payment of the tax if their taxable income from utility activities does not meet a minimum threshold. RCW 82.16.040. For detailed information about this exemption, refer to WAC 458-20-104, Small business tax relief based on income of business.

(b) **Ride sharing.** RCW 82.16.047 exempts amounts received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. For detailed information about this exemption, refer to WAC 458-20-261, Commute trip reduction incentives.

(c) **State route number 16.** RCW 82.16.046 exempts amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW.

(202) **Deductions.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050 provides for limited deductions. This subsection describes a number of those deductions. The deductible amounts should be included in the gross income reported on the state public utility tax addendum for the excise tax return and then deducted on the deduction detail page to determine the amount of taxable income. Deductions taken but not identified on the appropriate deduction detail page may be disallowed. Also see Parts III and IV of this rule, which identify additional deductions available to power and light, gas distribution, and water distribution businesses.

(a) **Cash discounts.** The amount of cash discount actually taken by the purchaser or customer is deductible under RCW 82.16.050(4).

(b) **Credit losses.** The amount of credit losses actually sustained by taxpayers whose regular books of account are kept on an accrual basis is deductible under RCW 82.16.050

(5). For additional information regarding credit losses see WAC 458-20-196, Bad debts.

(c) **Taxes.** Amounts derived by municipally owned or operated public service businesses directly from taxes levied for their support are deductible under RCW 82.16.050(1). However, service charges that are spread on the property tax rolls and collected as taxes are not deductible.

Local improvement district and utility local improvement district assessments, including interest and penalties on such assessments, are not income because they are exercises of the jurisdiction's taxing authority. These assessments may be composed of a share of the costs of capital facilities, installation labor, connection fees, etc.

(d) **Prohibitions imposed by federal law or the state or federal constitutions.** Amounts derived from business that the state is prohibited from taxing under federal law or the state or federal constitutions are deductible under RCW 82.16.050(6).

(e) **Sales of commodities for resale.** Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale within this state, are deductible under RCW 82.16.050(2). This deduction is allowed only with respect to water distribution, gas distribution, or other public service businesses that furnish water, gas, or any other commodity in the performance of a public service business. For example, income from the sale of natural gas by a gas distributing company to natural gas companies located in Washington, who resell the gas to their customers, is deductible from the gas distributing company's gross income.

(f) **Services furnished jointly.** In general, costs of doing business are not deductible under the PUT. However, RCW 82.16.050(3) allows a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT. The services must be furnished jointly by both the taxpayer and another person taxable under the PUT.

Example 1. Manufacturing Company hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett, where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by Manufacturing Company for transportation services furnished jointly by both ABC and XYZ. See WAC 458-20-180 for additional information on motor carriers.

Example 2. Dakota Electricity Generator (DEG) sells electricity to Mod Industrial Firm (MIF). DEG hires Wheeler #1 to transmit the electricity from DEG to MIF. Wheeler #1 subcontracts a portion of the transmission service to Wheeler #2.

- Wheeler #1 and Wheeler #2 are jointly furnishing transmission services to DEG. Assuming all other requirements of the deduction are met, Wheeler #1 may claim a "ser-

vices jointly provided" deduction in the amount paid to Wheeler #2.

• DEG may not claim a "services jointly provided" deduction for the amount DEG paid Wheeler #1. DEG and Wheeler #1 are *not* jointly furnishing a service to MIF. DEG is selling electricity to MIF, and Wheeler #1 is selling transmission services to DEG.

Example 3. City A's water department purchases water from City B's water department. City A sells the water to its customers. City A may not take a deduction for its payment to City B's water department as "services jointly provided." The sale of water by City A to its customers is not a service jointly provided to City A's customers by both City A and City B.

City B, however, may take a deduction under RCW 82.16.050(2) for its sales of water to City A since this is a sale of commodities to a person in the same public service business, for resale within this state.

(203) **Nontaxable amounts.** The following amounts are not considered taxable income.

(a) **Insurance claim amounts.** Amounts received from insurance companies in payment of losses, which are distinguishable from amounts received to settle contract payment disagreements.

(b) **Payment of damages.** Amounts received from individuals and others in payment of damages caused by them to the utility's plant or equipment.

(c) **Amounts from eminent domain proceedings or governmental action.** Amounts received as compensation for compensatory or involuntary taking of facilities of a public utility, by the exercise of eminent domain or governmental action, are considered liquidated damages.

Part III - Light and Power Business

(301) **Light and power business.** Public utility tax is imposed by RCW 82.16.020 on gross income from providing light and power services. Light and power business means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale. RCW 82.16.010.

(302) **Requirements for light and power businesses.** RCW 82.16.090 requires that customer billings issued by light and power businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(303) **Wheeling of electricity.** "Wheeling of electricity" is the activity of delivering or distributing electricity owned by others using power lines and equipment of the person doing the wheeling. Income from wheeling electricity is subject to the PUT.

(304) **Exchanges of electricity by light and power businesses.** There is no specific exemption that applies to an "exchange" of electrical energy or its rights. However,

exchanges of electrical energy between light and power businesses qualify for deduction in computing the PUT as sales of power to another light and power business for resale. RCW 82.16.050(11). An exchange is a transaction that is considered to be a sale and involves a delivery or transfer of energy or its rights by one party to another for which the second party agrees, subject to the terms and conditions of the agreement, to deliver electrical energy at the same or another time. Examples of deductible exchange transactions include, but are not limited to, the following:

(a) The exchange of electric power for electric power between one light and power business and another light and power business;

(b) The transmission of electric power by one light and power business to another light and power business pursuant to the agreement for coordination of operations among power systems of the Pacific Northwest executed as of September 15, 1964;

(c) The acquisition of electric power by the Bonneville Power Administration (BPA) for resale to its Washington customers in the light and power business;

(d) The residential exchange of electric power entered into between a light and power business and the administrator of the BPA pursuant to the Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501, Sec. 5(c), 16 U.S.C. Sec. 839c. In some cases, power is not physically transferred, but the purpose of the residential exchange is for BPA to pay a "subsidy" to the exchanging utilities. These subsidies are considered a nontaxable adjustment (rebate or discount) for purchases of power from BPA.

(305) **Exemptions.** The following exemptions are available for sales of electricity, and are in addition to the general exemptions found in Part II of this rule.

(a) **Sales of electricity to an electrolytic processor.** RCW 82.16.0421 provides an exemption for sales of electricity made by light and power businesses to chlor-alkali electrolytic processing businesses or sodium chlorate electrolytic processing businesses for the electrolytic process. This exemption, which is scheduled to expire June 30, (~~(2019)~~) 2029, applies to sales of electricity made by December 31, (~~(2018)~~) 2028.

The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(i) **Exemption certificate required.** To claim the exemption, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate. RCW 82.16.0421. A certificate can be obtained from the department's web site at: dor.wa.gov.

(ii) **Annual tax performance report requirement.** RCW 82.16.0421 requires taxpayers receiving the benefit of this tax preference to file an annual tax performance report by May 31st of the year following any calendar year in which a taxpayer becomes eligible to claim the tax preference. See RCW 82.32.534 for more information on the annual tax performance report requirement for tax preferences.

(iii) **Qualification requirements.** To qualify all the following requirements must be met:

(A) The electricity used in the electrolytic process must be separately metered from the electricity used for the general operations of the business;

(B) The price charged for the electricity used in the electrolytic process must be reduced by an amount equal to the tax exemption available to the light and power business; and

(C) Disallowance of all or part of the exemption is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business is the amount of the tax exemption disallowed.

(b) **Sales of electricity to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit. The credit is allowed if the contract for sale of electricity to an aluminum smelter specifies that the price charged for the electricity will be reduced by an amount equal to the credit. The exemption does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(c) **BPA credits or funds.** Effective June 10, 2010, through June 30, 2015, RCW 82.04.310 exempted from the B&O tax credits or payments received by persons from the BPA, for the purpose of implementing energy conservation programs or demand-side management programs. This exemption expired June 30, 2015, and credits or payments received on or after July 1, 2015, are subject to the B&O tax under the service and other activities classification.

(306) **Deductions.** The following deductions are available for sales of electricity, and are in addition to the general deductions found in Part II of this rule.

(a) **Sales of electricity for resale or for consumption outside Washington.** Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state of Washington or for consumption outside the state are deductible under RCW 82.16.050(11). These sales of electricity are also not subject to the manufacturing B&O tax. RCW 82.04.310.

(b) **Low density light and power businesses.** RCW 82.16.053 provides a deduction for light and power businesses having seventeen or fewer customers per mile of distribution power lines with retail power rates that exceed the state average power rate. The statute requires the department to determine the state average electric power rate each year and make this rate available to these businesses. This rate and additional information regarding this deduction can be found on the department's web site at: dor.wa.gov.

(c) **Conservation - Electrical energy and gas.** RCW 82.16.055 provides deductions relating to the production or generation of energy from cogeneration or renewable resources, and for measures to improve the efficiency of energy end-use.

(i) **Restrictions.** Use of the deductions is subject to the following restrictions:

(A) They apply only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of

energy end-use on which construction or installation was begun after June 12, 1980, and before January 1, 1990;

(B) The measures or projects must be, at the time they are placed in service, reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end-use which is less than or equal to the incremental system cost per unit of energy delivered to end-use from similarly available conventional energy resources that utilize nuclear energy or fossil fuels and that the gas or electric utility could acquire to meet energy demand in the same time period; and

(C) They may be taken for a period not exceeding thirty years after the project is placed in operation. Any recurring costs determined to be eligible for deduction under this rule will cease to be eligible in whole or part at the time of termination of any energy conservation measure or project that originally authorized the deduction under RCW 82.16.055.

(ii) **What can be deducted.** The following may be deducted from a taxpayer's gross income:

(A) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy produced or generated from cogeneration as defined in RCW 82.08.02565;

(B) Amounts equal to the cost of production at the plant for consumption within the state of Washington of electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat;

(C) Amounts expended to improve consumers' efficiency of energy end-use or to otherwise reduce the use of electrical energy or gas by the consumer;

(D) Amounts received by a utility as a contribution for the installation of service, and later refunded to the customer, are deductible from gross income at the time the amounts are refunded;

(E) Production expenses, eligible fuel costs and book depreciation of capital costs. Eligible fuel costs are all fuels if used for cogeneration or nonfossil fuel costs if not a cogeneration facility.

(307) **Credits.** Credit is available to light and power businesses that make contributions to an electric utility rural economic development revolving fund. The credit is equal to fifty percent of contributions made during a fiscal year to an electric utility rural economic development revolving fund.

(a) Light and power businesses may take a credit up to twenty-five thousand dollars, not to exceed the PUT that would normally be due, against their public utility tax liability each fiscal year for contributions made.

(b) Expenditures from the electric utility rural economic development revolving fund must be made solely on qualifying projects, in a designated qualifying rural area. For additional information see RCW 82.16.0491.

(c) The total amount of credits available statewide on a fiscal year basis for all qualified businesses is three hundred fifty thousand dollars. The department will allow earned credits on a first-come, first-served basis. The right to earn these tax credits expired June 30, 2011. Unused earned cred-

its may be carried forward to subsequent years provided the department has given prior approval.

Part IV - Gas and Water Distribution Businesses

(401) **Gas distribution.** Gross income received for the distribution of gas is taxable under PUT as provided by RCW 82.16.020. Gas distribution business means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural. RCW 82.16.010. See Part II for general exemptions and deductions that may apply to gas distribution.

(402) **Requirements for gas distribution businesses.** RCW 82.16.090 requires that customer billings issued by gas distribution businesses serving more than twenty thousand customers include the following information:

(a) The rates and amounts of taxes paid directly by the customer on products or services rendered by such business; and

(b) The rate, origin, and approximate amount of each tax levied on the revenue of such business which has been added as a component of the amount charged to the customer. This does not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW.

(c) In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(i) **Sales of natural or manufactured gas to aluminum smelters.** RCW 82.16.0498 provides an exemption to be taken in the form of a credit for sales of natural or manufactured gas to aluminum smelters. The credit is allowed if the contract for sale of gas to an aluminum smelter specifies that the price charged for the gas will be reduced by an amount equal to the credit. The credit allowed is the same amount as the utility tax that would otherwise have been due under RCW 82.16.020.

(ii) **Conservation - Energy from gas.** RCW 82.16.055 provides deductions for the production or generation of energy from cogeneration or renewable resources and for measures to improve the efficiency of energy end-use. See subsection (306)(c) of this rule.

(iii) **Compressed natural gas and liquefied natural gas used as transportation fuel.**

(A) Effective July 1, 2015, RCW 82.16.310 provides an exemption for sales by a gas distribution business of natural gas, compressed natural gas, and liquefied natural gas if the:

(I) Compressed natural gas or liquefied natural gas is sold or used as transportation fuel; or

(II) Buyer uses natural gas to manufacture compressed natural gas or liquefied natural gas to be sold or used as transportation fuel.

(B) The buyer must provide and the seller must retain an exemption certificate. See the department's web site at: dor.wa.gov for the "Purchases of Natural Gas for Use as Transportation Fuel" form. RCW 82.16.310.

(C) Although sales of natural gas, compressed natural gas, and liquefied natural gas may be exempt under RCW 82.16.310, the income from such sales may be subject to other taxes such as business and occupation tax and retail sales tax.

(D) For the purpose of this subsection, "transportation fuel" means fuel for the generation of power to propel a

motor vehicle as defined in RCW 46.04.320, a vessel as defined in RCW 88.02.310, or a locomotive or railroad car.

(403) **Water distribution.** PUT is imposed on amounts derived from the distribution of water under RCW 82.16.020. Water distribution business means the business of operating a plant or system for the distribution of water for hire or sale. RCW 82.16.010. In addition to the general exemptions and deductions noted in Part II of this rule, the law provides the following:

(a) **Water distribution by a nonprofit water association.** Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements, related to the water distribution service, by that association are deductible under RCW 82.16.050(12).

(b) **Distribution of irrigation water.** Amounts derived from the distribution of water through an irrigation system, for irrigation purposes, are deductible under RCW 82.16.050(7). The phrase "for irrigation purposes" means water used solely for nourishing plant life. Thus, when a water distribution business supplies potable water and some of the water is segregated and separately supplied solely for the nourishing of plant life as opposed to water supplied for domestic, municipal, or industrial uses, charges for such separately supplied irrigation water may be deducted from gross income subject to PUT.

To meet the "irrigation system" requirement, a water distribution business must demonstrate that its distribution system has turnouts or similar connections for irrigation purposes that are separate from service hookups or similar connections for domestic, industrial, or municipal uses. Under the appropriate circumstances, the use of separate meters and cross-connection or back flow devices may be evidence of such separate connections.

WSR 18-21-167

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 23, 2018, 8:35 a.m., effective November 23, 2018]

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

Purpose: The department is adopting amendments to WAC 16-390-240 USDA audit verification and terminal market inspection fees, that include adopting a fee identical to and not less than the mileage fee related to terminal market inspection adopted by the United States Department of Agriculture, Agricultural Marketing Service (USDA-AMS), as published in "Patch 32 Fees for TMI" of the USDA-AMS SCI Division Inspection Series (dated July 25, 2018; effective August 1, 2018) intended for publication in the to-be-updated USDA General Market Manual. These amendments are necessary to comply with the department's cooperative agreement with USDA-AMS for services the department provides as a "Federal-State Inspection Agency."

Citation of Rules Affected by this Order: Amending WAC 16-390-240.

Statutory Authority for Adoption: RCW 15.17.030, [15.17].140(2), [15.17].150, and [15.17].270.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-17-173 on August 22, 2018.

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

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

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

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

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

Date Adopted: October 23, 2018.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 17-24-077, filed 12/5/17, effective 1/5/18)

WAC 16-390-240 USDA audit verification and terminal market inspection fees. WSDA performs audit and inspection services requested by customers under a "cooperative agreement" with the United States Department of Agriculture's Agricultural Marketing Service (USDA/AMS). Under USDA/AMS rules, WSDA provides these services as a "federal-state inspection agency." Under USDA/AMS regulations and the cooperative agreement, the fees that WSDA charges for these services must be no less than the current USDA/AMS fees for these services. The applicable current USDA/AMS fees were published in the Federal Register at Vol. 82, No. 88, on May 9, 2017, under the "Fruit and Vegetable Fees" table and, for the ~~((overtime and holiday fees))~~ mileage fee related to terminal market inspection, in Patch ~~((#26)) #32~~, dated ~~((September 25, 2017))~~ July 25, 2018, for incorporation in the USDA/AMS "General Market Manual" at Appendix II, "Schedule of User Fees." In conformity with the cooperative agreement, WSDA adopts the same applicable fees for these services as set forth in this section.

(1) The fee for USDA audit verification services is \$108.00 per hour.

(2) Mileage related to audit verification services is charged at the rate established by the Washington state office of financial management at the time the service was performed.

(3) The fee for terminal market inspection services is \$85.00 per hour, \$191.00 per lot for a carlot equivalent of each product, and \$159.00 per lot for one-half carlot equivalent or less of each product. The fee for each additional lot of the same product is \$79.00. The overtime fee for terminal market inspection services is an additional \$27.00 per hour. The fee for terminal market inspection services on a holiday is an additional \$63.00 per hour. The mileage fee related to terminal market inspection services is ~~(((\$1.32))~~ \$1.96 per mile. USDA fees for lots and mileage are regulated by 7

C.F.R. 51.38 and 51.40(~~, respectively, and are current as of October 1, 2017~~)).

WSR 18-21-168

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed October 23, 2018, 9:44 a.m., effective November 23, 2018]

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

Purpose: The original rule did not include a vehicle combination type that is commonly included with this rule description. The purpose of the proposal is to include, "single unit vehicle" with this rule as it was intended.

Citation of Rules Affected by this Order: Amending WAC 468-38-073(4).

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Adopted under notice filed as WSR 18-18-065 on August 31, 2018.

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

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

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

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

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

Date Adopted: October 22, 2018.

Kara Larsen, Director
Risk Management
and Legal Services

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 18-21-181**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed October 24, 2018, 7:33 a.m., effective November 24, 2018]

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

Purpose: The director of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes and board member selection authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.-240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060. These rules set procedures for administrative functions for commodity commissions. Including statutory citations for those commissions established under statutes other than chapters 15.65 and 15.66 RCW clarify the director's responsibilities. Revising procedures for unsigned ballots will streamline and expedite the referendum and voting process.

Citation of Rules Affected by this Order: Amending WAC 16-501-525.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-17-083 on August 14, 2018.

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

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

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

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

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

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

Date Adopted: October 24, 2018.

Derek I. Sandison
Director

Procedural Rules for Administrative Function for Commodity Commissions Advisory Votes, Elections, and Referenda

AMENDATORY SECTION (Amending WSR 05-08-078, filed 4/1/05, effective 5/2/05)

WAC 16-501-525 Unsigned ballot envelopes: Advisory votes, referenda, and board member elections. The director of the department of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes~~((marketing order referenda))~~ and board member selection as ~~((required in chapters 15.65 and 15.66 RCW))~~ authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

(1) The department will mail ballots to those eligible to vote in each election according to the terms of the applicable statute and marketing order. Each voter will be provided an official ballot, instructions for voting, a security envelope and return ballot-mailing envelope with a "Certificate of Eligibility" (certification) printed on the reverse side of the envelope.

(2) After casting ~~((its))~~ a vote in the election, an eligible voter must place the ballot in the security envelope~~((The security envelope is then to be)),~~ which is then placed in the ballot-mailing return envelope with the certification on the reverse side. To validate ~~((its))~~ his or her ballot, the voter is required to complete, sign and date the certification.

(3) In the event a ballot is submitted to the department and the certification is not signed and dated in accordance with the instructions contained on the outside of the ballot-mailing return envelope or the ballot is returned in a different envelope without a certification, the ~~((department shall process the ballot and the ballot mailing return envelope as follows, if the department is able to ascertain the identity of the eligible voter from the envelope:~~

~~((a) The department will not open the ballot mailing return envelope, but will make a copy of the reverse side of the ballot mailing return envelope with the printed certification. The original ballot mailing return envelope will be held by the department.~~

(b) The department will provide the eligible voter with a copy of the ballot mailing return envelope with the certification and require the voter to sign the copy of the certification and mail it back to the department so that it is received not later than the date specified in the correspondence accompanying the certification.

(c) The department shall advise the voter about the correct procedures for completing the unsigned certification and that, in order for the ballot to be counted, the voter must sign and date the copy of the certification, and mail it back to the department so that it does not arrive later than the specified date.

~~(d) The signed certification must be received by the department within fourteen calendar days from the date the copy of the certification was mailed to the voter as evidenced by the United States mail date stamp, for the voter's ballot to be validated.~~

(e) If the department does not receive the signed certification with the requested information within the specified time frame, the original ballot mailing envelope will not be opened nor will the ballot it contains be counted. The unopened ballot mailing envelope will be set aside and retained in accordance with the appropriate records retention schedule.

~~(4) ((A record shall be kept of the date on which the department mailed the copy of the certification to the eligible voter, the date on which the voter signed the certification and the date that the department received the certification. That record will be retained in accordance with applicable records retention schedules for ballots.~~

~~(5))~~ Only validated ballots will be included in a ballot count.

~~((6))~~ (5) This rule applies to referenda, advisory votes, elections, and runoffs required by statute ~~((that are conducted after the effective date of this rule. However, subsections (3) and (4) do not apply in an election once any election ballots have been counted or in a runoff election once any runoff election ballots have been counted.~~

~~(7) This rule does not apply if the recount period specified in the applicable statute has expired).~~

WSR 18-21-182

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 24, 2018, 7:51 a.m., effective November 24, 2018]

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

Purpose: This rule making amends the Washington asparagus commission marketing order by (1) reorganizing definitions; (2) removing the requirement that research is done by Washington State University; (3) establishing a due date on payment of the assessment; (4) establishing a date by which assessments will be determined to be late; (5) adding public disclosure procedures; (6) including additional counties under the marketing order; (7) combining districts 2 and 3 into a single district; (8) designating position 6 as an at-large position; (9) reducing the age requirement of commissioners to twenty-one; and (10) removing term limits.

Citation of Rules Affected by this Order: New WAC 16-557-090, 16-557-095, 16-557-100, 16-557-105, 16-557-110, 16-557-115 and 16-557-120; and amending WAC 16-557-010, 16-557-020, 16-557-030, and 16-557-041.

Statutory Authority for Adoption: RCW 15.65.047 and 42.56.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 18-17-170 on August 22, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 0, Repealed 0.

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

Date Adopted: October 24, 2018.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 98-16-081, filed 8/5/98, effective 9/5/98)

WAC 16-557-010 Definition of terms. For the purpose of this marketing order:

~~((+))~~ "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.

"Affected area" means the entire state of Washington.

"Affected handler" means both affected handler fresh and affected handler processor.

"Affected handler, fresh" means any person who acts as principal or agent or otherwise in selling, marketing, or distributing fresh asparagus not produced by him/her.

"Affected handler, processor" means any person who acts as principal or agent or otherwise in processing, freezing asparagus, and selling, marketing, or distributing said processed or frozen asparagus, not produced by him/her.

"Affected producer" means any person who produces in the state of Washington asparagus in commercial quantities for fresh market, for processing, or for sale to processors.

"Affected unit" means one pound net pay weight of asparagus.

"Asparagus" means and includes all kinds, varieties, and hybrids of "*officinalis*" Linn.

"Asparagus commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-557-020.

"Commercial quantity" means any asparagus produced for market in quantities of three tons (6,000 pounds) or more, in any calendar year.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of agriculture of the state of Washington or his duly appointed representative.

~~((2) "Department" means the department of agriculture of the state of Washington.~~

~~(3) "Act" means the Washington Agricultural Enabling Act of 1961 or chapter 15.65 RCW.~~

(4)) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

"Marketing season" or "fiscal year" means the twelve-month period beginning with January 1st of any year and ending with the last day of December following, both dates being inclusive.

"Person" means any person, firm, association, or corporation.

~~((5) "Affected producer" means any person who produces in the state of Washington asparagus in commercial quantities for fresh market, for processing, or for sale to processors.~~

~~(6) "Commercial quantity" means any asparagus produced for market in quantities of three tons (6,000 pounds) or more, in any calendar year.~~

~~(7) "Affected handler" means both affected handler fresh and affected handler processor.~~

~~(8) "Affected handler, fresh" means any person who acts as principal or agent or otherwise in selling, marketing, or distributing fresh asparagus not produced by him.~~

~~(9) "Affected handler, processor" means any person who acts as principal or agent or otherwise in processing, freezing asparagus, and selling, marketing, or distributing said processed or frozen asparagus, not produced by him.~~

~~(10) "Asparagus commodity board," hereinafter referred to as "board," means the commodity board formed under the provisions of WAC 16-557-020.~~

~~(11) "Asparagus" means and includes all kinds, varieties, and hybrids of "*officinalis*" Linn.~~

~~(12) "Marketing season" or "fiscal year" means the twelve-month period beginning with January 1 of any year and ending with the last day of December following, both dates being inclusive.~~

~~(13) "Producer handler" means any person who acts both as a producer and as a handler with respect to asparagus. A producer handler shall be deemed to be a producer with respect to the asparagus which he produces and a handler with respect to the asparagus which he handles, including those produced by himself.~~

~~(14) "Affected area" means the following counties in the state of Washington: Adams, Benton, Columbia, Franklin, Grant, Kittitas, Klickitat, Walla Walla, and Yakima.~~

(15)) "Promotional hosting" as used in these rules means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of Washington grown asparagus.

"Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade.

~~((16) "Affected unit" means one pound net pay weight of asparagus.~~

~~(17) "Promotional hosting" as used in these rules means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of Washington grown asparagus.~~

~~(18) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.)~~

AMENDATORY SECTION (Amending WSR 01-10-087, filed 5/1/01, effective 6/1/01)

WAC 16-557-020 Asparagus commodity board. (1) Administration. The provisions of this order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership.

(a) The board shall consist of nine members. Six members shall be affected producers elected as provided in this section, one member shall be an affected handler, fresh, elected as provided in this section, one member shall be an affected handler processor, as provided in this section. The director shall appoint one member who is neither an affected producer nor a handler to represent the department and the public.

(b) Effective January 1, 2002, for the purpose of nomination and election of producer members of the board, the affected area shall be that portion of the state of Washington located east of the summit of the Cascade Mountains and shall be divided into three representative districts as follows:

(i) District I shall have two board members, being positions one and two, and shall be Benton, Kittitas, Klickitat, and Yakima counties and counties in western Washington.

(ii) District II shall have three board members, being positions three, four, and five, and shall include the counties of Adams, Columbia, Franklin, ~~(and)~~ Grant, and Walla Walla counties and remaining counties in eastern Washington not in District I.

~~(iii) ((District III shall have one board member, being position six, and shall include the counties of Columbia and Walla Walla.))~~ Position six will become an at large position in the state of Washington.

(3) Board membership qualifications.

(a) The affected producer members of the board shall be practical producers of asparagus and shall be citizens and residents of the state of Washington, ~~((over the age of twenty-five years,))~~ must be at least twenty-one years of age, each of whom is and has been ~~((actively)),~~ either individually or as an officer or an employee of a corporation, firm, partnership, association, or cooperative, actually engaged in producing asparagus within the state of Washington for a period of five years and has, during that time, derived a substantial portion of his income therefrom. ~~((Producer handlers shall be considered to be acting only as handlers for purpose of election and membership on a commodity board.))~~

(b) The affected handler member of the board shall be a practical handler of asparagus and shall be a citizen and resi-

dent of the state of Washington, (~~over the age of twenty-five years and~~) who is and has been, either individually or as an officer or an employee of a corporation, firm, partnership association or cooperative actually engaged in handling asparagus within the state of Washington for a period of five years and has during that period derived a substantial portion of his income therefrom.

(c) The qualifications of members of the board must continue during their term of office.

(4) Term of office.

(a) The term of office, for members of the board shall be three years, and one-third of the membership as nearly as possible shall be elected each year.

(b) Membership positions on the board shall be designated numerically; affected producers shall have positions one through six, affected handler member fresh product, position seven, affected handler member, processor, position eight, and the member appointed by the director, position nine.

~~((c) The term of office for the initial board members shall be as follows:~~

~~Positions one, three, and seven— one year, shall terminate on December 31, 1992;~~

~~Positions two, four, and five— two years, shall terminate on December 31, 1993;~~

~~Positions six and eight— three years, shall terminate on December 31, 1994.~~

~~(d) No elected produce member of the board may serve more than two full consecutive three-year terms.)~~

(5) Nomination and election of board members. For the purpose of nominating candidates for election to board membership, the director shall call separate meetings of affected producers, affected handlers, fresh and affected handler processors. Each year the director shall call for nomination meetings in those districts whose board members' term is about to expire. Such meetings shall be held at least thirty days in advance of the date set by the director for the election of board members. Notice of every such meeting shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such meeting; and, in addition, written notice of every such meeting shall be given to all affected producers within the affected area and all affected handlers according to the list maintained by the director pursuant to RCW 15.65.200 of the act. Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting. Any qualified affected producer or affected handler may be nominated orally for membership on the board at such nomination meeting. Nominations may also be made within five days after any such meeting by written petition filed with the director, signed by not less than five affected producers or affected handlers. At the inception of this order, nominations may be made at the issuance hearing.

If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the vacancy by mail to all affected producers or handlers. Nominating petitions for producers shall be signed by not less than five affected producers of the district from which such a candidate will be elected. Nomination petitions

for handlers, fresh and processed shall be signed by not less than three affected handlers. The final date for filing nominations which shall not be less than twenty days after the notice was mailed.

(6) Election of board members.

(a) Members of the board shall be elected by secret mail ballot within the month of November under the supervision of the director. Affected producer members of the board shall be elected by a majority of the votes cast by the affected producers within the affected district. Each affected producer within the affected district shall be entitled to one vote.

Affected handler, fresh, shall be elected by a majority of the votes cast by the affected handlers, fresh. Affected handler, processor, shall be elected by a majority of the votes cast by the affected handlers, processor.

(b) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) Notice of every election for board membership shall be published in a newspaper of general circulation within the affected area not less than ten days in advance of the date of such election. Not less than ten days prior to every election for board membership, the director shall mail a ballot of the candidates to each affected producer or affected handler entitled to vote whose name appears on the list of such affected producers and affected handler within the affected area maintained by the director in accordance with RCW 15.65.200. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his qualifications. Nonreceipt of a ballot by any affected producer shall not invalidate the election of any board members.

(7) Vacancies prior to election. In the event of a vacancy on the board, the remaining members shall select a qualified person to fill the unexpired term.

(8) Quorum. A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

(9) Board compensation. No member of the board shall receive any salary or other compensation, but each member may receive thirty-five dollars or an amount as provided for in RCW 43.03.230 for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, together with travel expenses at the rates allowed state employees.

(10) Powers and duties of the board. The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director.

(b) To elect a chairman and such other officers as the board deems advisable.

(c) To employ and discharge at its discretion such personnel as the board determines necessary and proper to carry out the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order. Such expenses and costs may be paid by check, draft,

or voucher in such form and in such manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited with the director in order to defray the costs of formulating the order.

(f) To establish an "asparagus board marketing revolving fund" and such fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except for an amount of petty cash for each days' needs, not to exceed fifty dollars, shall be deposited daily.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, paid outs, moneys, and other financial transactions made and done pursuant to this order. Such records, books, and accounts shall be audited subject to procedures and methods lawfully prescribed by the state auditor. Such books and accounts shall be closed as of the last day of each fiscal year. A copy of such audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board shall deem necessary. The premium for such bond or bonds shall be paid by the board from assessments collected. Such bond shall not be necessary if any such board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters.

(k) To adopt rules and regulations of a technical or administrative nature, subject to the provisions of chapter 34.05 RCW (Administrative Procedure Act).

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of the order and the act.

(m) To bring actions or proceedings, upon joining the director as a party, for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon him by the act or the order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders.

(o) To carry out any other grant of authority or duty provided designees and not specifically set forth in this section.

(p) To authorize the members of a commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined by RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected

commodity, and may authorize the expenditure of commission funds for this purpose.

(11) Procedures for board.

(a) The board shall hold regular meetings, at least quarterly, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act).

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The budget shall be presented for discussion at the meeting. In addition to such notice as may be required by chapter 42.30 RCW, notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer, and handler and by regular news service.

(c) In accordance with RCW 42.30.080, the board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the members: Provided, That the notice of any special meeting may be waived by a waiver thereof by each member of the board.

AMENDATORY SECTION (Amending WSR 91-09-003, filed 4/4/91, effective 5/5/91)

WAC 16-557-030 Marketing order purposes. The order is to promote the general welfare of the state, to enable producers of asparagus to help themselves establish orderly, fair, sound, efficient, unhampered marketing; facilitate cultural and harvesting improvements, and regulate unfair trade practices within the industry. To carry out the purposes of the order, the board may provide for a program in one or more of the following areas:

(1) Establish plans and conduct programs for advertising, sales, promotion, and/or other programs for maintaining present markets and/or creating new or larger markets for asparagus. Such programs shall be directed toward increasing the sale of asparagus without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of asparagus nor disparage the quality, value, sale, or use of any other agricultural commodity.

(2) Provide for research in the production, processing, and/or marketing of asparagus and expend the necessary funds for such purposes. ~~((Insofar as practicable, such research shall be carried on by Washington State University, but if in the judgment of the board, said university does not have the facilities for a particular project or if some other research agency has better facilities therefor, the project may be carried out by other research agencies selected by the board.))~~

(3) Investigate and take necessary action to prevent unfair trade practices as set forth in RCW 15.65.340 and to correct where possible, trade practices which hinder marketing of Washington asparagus.

(4) Prohibit making or publishing false or misleading advertising. Such regulation may authorize uniform trade practices applicable to all similarly situated handlers and/or other persons.

AMENDATORY SECTION (Amending WSR 91-09-003, filed 4/4/91, effective 5/5/91)

WAC 16-557-041 Time—Place—Method for payment and collection of assessments. Effective with the growing season of 1991, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-557-040:

(1) All first handlers of asparagus for resale or for processing shall withhold the amount of the assessment from their remittance to growers and transmit same to the commission. All such assessments accumulated will be due and payable to the commission (~~within thirty days of collection~~) by the end of August. With the submission of the assessments, a report listing the name, address, pounds handled or purchased, and amount deducted or collected for each producer shall be submitted to the commission on forms provided by the commission.

(2) All growers selling asparagus other than to first handlers for resale or processing, whether selling direct or through brokers, and including all sales at retail, shall pay the assessment directly to the commission, within thirty days of sale of such product.

(3) Any assessments not paid (~~after the above deadlines~~) by September 30th shall be accompanied by an administrative fee of 10% as provided in RCW 15.65.440 of the act.

NEW SECTION

WAC 16-557-090 Public records officer. The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

NEW SECTION

WAC 16-557-095 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at Washington Asparagus Commission, 2621 Ringold Road, Eltopia, WA 99330. The written request should include:

- (a) The name of the person requesting the record and the person's contact information;
- (b) The calendar date on which the request is made;
- (c) Sufficient information to readily identify the records being requested.

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

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee.

(3) Public records may not be marked or altered in any manner during inspection.

(4) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 16-557-100 Response to public records request. (1) The public records officer shall respond to public records requests within five business days by:

- (a) Providing the record;
- (b) Providing a link or address for a record available on the internet under RCW 42.56.520;
- (c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or
- (d) Denying the public records request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld or to any redactions in records produced.

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

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

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

NEW SECTION

WAC 16-557-105 Fees—Inspection and copying. (1) No fee shall be charged for the inspection of public records.

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

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

asparagus commission within fifteen days of receipt. The commission may require that all charges be paid in advance of release of the copies of the records.

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

NEW SECTION

WAC 16-557-110 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 16.67 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.65 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(4) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

NEW SECTION

WAC 16-557-115 Review of denials of public records requests. (1) Any person who objects to the denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within ten business days following receipt of the written request for review of the original denial.

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

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

NEW SECTION

WAC 16-557-120 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 18-21-191

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 24, 2018, 9:31 a.m., effective November 24, 2018]

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

Purpose: This rule-making order amends chapter 16-250 WAC, Commercial feed rules and chapter 16-252 WAC, Commercial feed rules—Pet food and specialty pet food, by adopting 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.

Citation of Rules Affected by this Order: New WAC 16-250-002, 16-250-004, 16-250-006, 16-250-008, 16-250-012, 16-250-014, 16-250-036, 16-250-044, 16-250-064, 16-250-078, 16-250-082, 16-250-094, 16-250-136, 16-250-148, 16-250-152, 16-250-164, 16-250-166, 16-250-178, 16-250-182, 16-250-194, 16-252-002, 16-252-004, 16-252-006, 16-252-008, 16-252-012, 16-252-024, 16-252-036, 16-252-044, 16-252-064, 16-252-094, 16-252-106, 16-252-118, 16-252-121, 16-252-122, 16-252-136, 16-252-148, 16-252-164, 16-252-178, 16-252-182 and 16-252-194; and repealing WAC 16-250-005, 16-250-007, 16-250-010, 16-250-015, 16-250-018, 16-250-020, 16-250-028, 16-250-030, 16-250-035, 16-250-040, 16-250-042, 16-250-045, 16-250-050, 16-250-051, 16-250-052, 16-250-053, 16-250-054, 16-250-055, 16-250-056, 16-250-057, 16-250-058, 16-250-059, 16-250-060, 16-250-063, 16-250-065, 16-250-067, 16-250-068, 16-250-069, 16-250-070, 16-250-071, 16-250-072, 16-250-073, 16-250-074, 16-250-075, 16-250-076, 16-250-080, 16-250-090, 16-250-095, 16-250-100, 16-250-110, 16-250-120, 16-250-140, 16-250-150, 16-250-155, 16-250-160, 16-250-170, 16-250-180, 16-252-005, 16-252-007, 16-252-010, 16-252-015, 16-252-025, 16-252-040, 16-252-042, 16-252-051, 16-252-061, 16-252-062, 16-252-065, 16-252-069, 16-252-070, 16-252-071, 16-252-072, 16-252-073, 16-252-074, 16-252-075, 16-252-076, 16-252-080, 16-252-090, 16-252-095, 16-252-100, 16-252-110, 16-252-120, 16-252-140, 16-252-150, 16-252-155, 16-252-165, 16-252-170, and 16-252-180.

Statutory Authority for Adoption: RCW 15.53.9012, 15.53.9013, 15.53.9016, and chapter 34.05 RCW.

Adopted under notice filed as WSR 18-18-098 on September 5, 2018.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 14, Amended 0, Repealed 0; or

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

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

Number of Sections Adopted on the Agency's own Initiative: New 40, Amended 0, Repealed 78.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 40, Amended 0, Repealed 78.

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

Date Adopted: October 24, 2018.

Derek I. Sandison
Director

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 Ingredient." 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 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; • 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).

(iii) 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

Sheep	
Classes	
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; • 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:

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); 	

Rabbit Complete Feeds and Supplements
Nutrients
<ul style="list-style-type: none"> • 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 non-protein 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 ___ percent 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.aaeco.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 16-250-058	Guarantees for all duck and goose commercial feed except customer-formula feed.
WAC 16-250-007	The Code of Federal Regulation.	WAC 16-250-059	Guarantees for all fish commercial feed except customer-formula feed and specialty pet food.
WAC 16-250-010	Commercial feed terms and definitions.	WAC 16-250-060	Guarantees for all rabbit commercial feed except customer-formula feed.
WAC 16-250-015	Feed ingredient names and definitions.	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 16-250-018	Customer-formula feed labeling required.	WAC 16-250-065	Guarantees for grain mixture commercial feeds, except customer-formula feed.
WAC 16-250-020	Label information and recordkeeping requirements for customer-formula feed.	WAC 16-250-067	Guarantees for commercial feed sold primarily for sugar content.
WAC 16-250-028	Commercial feed labeling required except customer-formula feed.	WAC 16-250-068	Guarantees for vitamin/mineral premix and base mix commercial feed.
WAC 16-250-030	Recordkeeping requirements and label information required on all commercial feed labels except customer-formula feed.	WAC 16-250-069	Expression of guarantees—Expressed as is.
WAC 16-250-035	Format required for all commercial feed labels except customer-formula feed.	WAC 16-250-070	Expression of guarantees—Sliding-scale method prohibited.
WAC 16-250-040	Product or brand name label information required for all commercial feeds except customer-formula feed.	WAC 16-250-071	Expression of guarantees—Protein, amino acids, fat, and fiber.
WAC 16-250-042	Label information required when a drug is used in commercial feed.	WAC 16-250-072	Expression of guarantees—Minerals.
WAC 16-250-045	Purpose of feed statement requirements for commercial feed, except grain mixture feeds.	WAC 16-250-073	Expression of guarantees—Minimum vitamin content.
WAC 16-250-050	Guarantee requirements that apply to WAC 16-250-052 through 16-250-065.	WAC 16-250-074	Expression of guarantees—Drugs.
WAC 16-250-051	Exemptions from the guarantees required in WAC 16-250-052 through 16-250-063.	WAC 16-250-075	Expression of guarantees and special requirements—Commercial feeds containing any added nonprotein nitrogen.
WAC 16-250-052	Guarantees for all swine commercial feed except customer-formula feed.	WAC 16-250-076	Expression of guarantees—Microorganisms and enzymes.
WAC 16-250-053	Guarantees for all poultry commercial feed (broilers, layers and turkeys) except customer-formula feed.	WAC 16-250-080	Substantiating nutritional suitability of commercial feed except for customer-formula feed.
WAC 16-250-054	Guarantees for all beef cattle commercial feed except customer-formula feed.	WAC 16-250-090	Feed ingredient statement terms and recordkeeping requirements.
WAC 16-250-055	Guarantees for all dairy cattle commercial feed except customer-formula feed.	WAC 16-250-095	Drug and feed additive requirements.
WAC 16-250-056	Guarantees for all equine commercial feed except customer-formula feed.	WAC 16-250-100	Directions for use and precautionary statement requirements.
WAC 16-250-057	Guarantees for all goat and sheep commercial feed except customer-formula feed.	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: $ME \text{ (kcal/kg)} = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$, 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 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. 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.aafco.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 16-252-005 Commercial feed regulated by this chapter.
- WAC 16-252-007 The Code of Federal Regulation.
- WAC 16-252-010 Commercial feed terms and definitions.
- WAC 16-252-015 Feed ingredient names and definitions.
- WAC 16-252-025 Label information and recordkeeping requirements.
- WAC 16-252-040 Product or brand name label information required.
- WAC 16-252-042 Additional label information required when a drug is used.
- WAC 16-252-051 Exemptions from the guarantees required in WAC 16-252-061 and 16-252-062.

- WAC 16-252-061 Guarantees for pet food.
- WAC 16-252-062 Guarantees for specialty pet food.
- WAC 16-252-065 Guarantees for grain mixture specialty pet food, with or without molasses.
- WAC 16-252-069 Expression of guarantees—Expressed as is.
- WAC 16-252-070 Expression of guarantees—Sliding-scale method prohibited.
- WAC 16-252-071 Expression of guarantees—Protein, amino acids, fat, and fiber in specialty pet food.
- WAC 16-252-072 Expression of guarantees—Minerals in specialty pet food.
- WAC 16-252-073 Expression of guarantees—Minimum vitamin content in specialty pet food.
- WAC 16-252-074 Expression of guarantees—Pet food and specialty pet food containing drugs.
- WAC 16-252-075 Expression of guarantees and special requirements—Pet food and specialty pet food containing any added nonprotein nitrogen.
- WAC 16-252-076 Expression of guarantees—Microorganisms and enzymes.
- WAC 16-252-080 Substantiating nutritional suitability.
- WAC 16-252-090 Ingredient statement terms.
- WAC 16-252-095 Drug and feed additive requirements.
- WAC 16-252-100 "Directions for use" and "precautionary statement" requirements.
- WAC 16-252-110 Screenings.
- WAC 16-252-120 Adulteration of pet food and specialty pet food.
- WAC 16-252-140 Use of artificial coloring.
- WAC 16-252-150 Reusing bags, totes, and containers.
- WAC 16-252-155 Tonnage fee required.
- WAC 16-252-165 Registration requirements.
- WAC 16-252-170 Label submission requirements.
- WAC 16-252-180 Good manufacturing practices adopted.