WSR 18-23-017
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS

[Filed November 9, 2018, 12:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-07-024.

Title of Rule and Other Identifying Information: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC. The amendments would update various provisions of the investment adviser rules, including the rules regarding examination and registration requirements, advertising, custody, advisory contracts, performance compensation arrangements, books and records, and unethical business practices. The amendments would add new rule sections or subsections addressing physical and cybersecurity policies and procedures, code of ethics, business continuity and succession plans, and policies and procedures regarding the misuse of material nonpublic information.

Hearing Location(s): On January 9, 2019, at 10:00 a.m., at the Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: Jill Vallely, P.O. Box 9033, Olympia, WA 98507, email jill.vallely@dfi.wa.gov, fax 360-704-7035, by January 8, 2019.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, phone 360-902-8760, fax 360-902-0524, TTY 360-664-8126, email carolyn.hawkey@dfi.wa.gov, by January 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the rules in chapter 460-24A WAC in order to address changes in federal law and updates to NASAA model rules, and to implement necessary protections for the investing public who may use the services of investment advisers. The proposed rules would make the following changes:

- Amend the definitions at WAC 460-24A-005 to alphabetize the section; add definitions for "assignment," "chief compliance officer," and "supervised person"; and revise the definitions of "advertisement," "custody," "CRD," "IARD," "qualified custodian," and "qualifying private fund";
- Revise WAC 460-24A-040 to clarify that additional combinations of terms may be deemed similar to "financial planner" and "investment counselor" for the purposes of RCW 21.20.040(4);
- Revise WAC 460-24A-047, 460-24A-060, and 460-24A-205 to specify that certain application materials must be filed by email or through a state electronic filing system to be developed in the future;
- Revise the examination requirements at WAC 460-24A-050 to incorporate FINRA's new securities industry essentials exam;
- Revise the registration requirements at WAC 460-24A-050 and 460-24A-205 to require investment advisers to file a complete list of all custodians of the adviser's separately managed accounts;
- Revise the renewal application provisions at WAC 460-24A-057 to specify that the deadline for renewal applications is the deadline set by FINRA;
- Revise the private fund adviser exemption at WAC 460-24A-071 and the venture capital fund adviser exemption at WAC 460-24A-072 to remove a reference to disqualification under Rule 505 and replace it with a reference to disqualification under Rule 506;
- Revise the advertising rule at WAC 460-24A-100 to specify that it applies to written client communications, and to codify Securities Act Interpretive Statement 21;
- Revise the custody requirements at WAC 460-24A-105 to prohibit advisers from making recommendations of independent representatives to clients;
- Revise the additional custody requirements at WAC 460-24A-106 to add additional information to be disclosed on the fee invoice;
- Revise the compliance policies and procedures rule at WAC 460-24A-120 to clarify the role of the chief compliance officer;
- Add new WAC 460-24A-122 regarding policies and procedures to prevent the misuse of material nonpublic information consistent with federal rules;
- Add new WAC 460-24A-126 to adopt the NASAA Model Rule on Business Continuity and Succession Planning;
- Revise the advisory contracts rule at WAC 460-24A-130 consistent with current agency practices;
- Create new WAC 460-24A-135 to codify Securities Act Policy Statement 21;
- Revise the brochure rule at WAC 460-24A-145 to reflect current SEC rules and guidance;
- Revise the performance fee rule at WAC 460-24A-150 to update the definition of "qualified client" and revise the requirements for the compensation formula;
- Add new WAC 460-24A-190 to remind advisers of the requirement under RCW 74.34.220 to train employees regarding the financial exploitation of vulnerable adults;
- Add a new subsection at WAC 460-24A-200 (1)(aa) to require a code of ethics;
- Add a new subsection at WAC 460-24A-200 (1)(bb) to require physical and cybersecurity policies and procedures;
- Revise the books and records requirements at WAC 460-24A-200 to require advisers to retain documentation of client authorization for nondiscretionary transactions; to require advisers to attempt to update client profile information annually; and to clarify recordkeeping requirements;
- Revise the unethical business practices rule at WAC 460-24A-220 to add additional items;
- Make plain English updates, such as eliminating the use of the word "shall" in the chapter; and
- Make additional updates, amendments, and clarifications.

Reasons Supporting Proposal: The proposed amendments should be adopted in order to reflect changes in federal law which impact the state regulation of investment advisers.

The amendments will incorporate provisions from updated NASAA model rules which will help create uniformity among the states. In addition, the securities division believes the amendments should be adopted because they will provide necessary protections for members of the investing public who use the services of investment advisers or invest in pooled investment vehicles managed by investment advisers.

Statutory Authority for Adoption: RCW 21.20.005, 21.20.020, 21.20.030, 21.20.040, 21.20.050, 21.20.060, 21.20.070, 21.20.080, 21.20.090, 21.20.100, 21.20.330, 21.20.340, 21.20.450, 21.20.702.

Statute Being Implemented: Chapter 21.20 RCW.

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

Name of Proponent: DFI, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; Implementation: Joanne Jones, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760; and Enforcement: Bill Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, 360-902-8760.

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

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

Introduction: DFI, securities division has prepared this SBEIS in support of proposed amendments to the rules pertaining to investment advisers in chapter 460-24A WAC.

The securities division conducts periodic reviews of the investment adviser rules in chapter 460-24A WAC. Since the securities division last amended the rules in 2014, the financial industry and the laws regulating investment advisers have continued to develop. In addition, in the course of our examination, licensing, and enforcement activities, the securities division has identified certain rules the revision of which would increase investor protection, reduce the potential for fraud, or enhance the clarity of the rules. Accordingly, the proposed rule amendments incorporate updates to federal law and to NASAA model rules. The proposed amendments also codify several interpretive statements and policy statements previously promulgated by the securities division. Finally, the proposed amendments revise the rules to reflect the securities division's current licensing procedures and practices. We describe the proposed rule amendments in greater detail within this SBEIS.

Throughout the rule-making process, the securities division has involved its registered investment advisers, exempt reporting advisers, and noticed filed investment advisers. The securities division took into consideration the comments and feedback received, and where appropriate the securities division revised the initial draft of the rules. The securities division finds that the proposed rule amendments should be adopted in order to better protect the clients and prospective clients of investment advisers in Washington.

Procedural Background: On March 9, 2018, the Washington securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office stating that the division was considering possible amendments to the investment adviser rules in chapter 460-24A WAC. The securities division subsequently prepared a draft of amendments to its investment adviser rules and distributed the draft to interested persons in a mailing on or about June 20, 2018. The securities division also posted the draft on its web site. At the same time, the securities division conducted a survey of state-registered investment advisers, exempt reporting advisers, and notice-filed federal-registered investment advisers to determine the costs associated with the rule amendments.

Following the survey and the distribution of the initial draft, the securities division revised the draft amendments in response to feedback received from investment advisers and interested persons. The securities division now intends to proceed with the rule making to amend chapter 460-24A WAC by formally proposing the draft amendments in a CR-102 filing with the code reviser.

Summary of Proposed Rule Amendments: The proposed rule amendments would amend thirty rule sections under chapter 460-24A WAC and create four new sections.

The amendments would update the rules to add new definitions; to alphabetize the definitions section; to provide for electronic filing and electronic records storage; to revise the examination requirements to incorporate the new securities industry essentials exam; to require the filing of a list of custodians for separately managed accounts; to revise the advertising rule; to codify Interpretive Statement 21; to expand the information that advisers must disclose on fee invoices; to revise the compliance policies and procedures rule; to create a separate rule section relating to policies and procedures regarding the misuse of nonpublic information; to adopt the NASAA Model Rule Regarding Business Continuity and Succession Planning as a separate rule; to codify Policy Statement 21; to revise the advisory contract rule; to update the definition of "qualified client" consistent with the federal definition; to revise the compensation formula in the performance fee rule; to revise the books and records rule to require updates to client profiles and documentation of client authorization for nondiscretionary transactions; to adopt a requirement to maintain a code of ethics; to adopt a requirement to maintain cybersecurity policies and procedures; and make other clarifications, updates, or corrections. Many of these changes would make Washington's rules consistent with current federal law and NASAA model rules. We describe the proposed amendments in greater detail below:

Definitions: The proposed rule amendments would make various updates to the definitions rule at WAC 460-24A-005. First, the proposed amendments alphabetize the definitions section for ease of use. Next, the proposed amendments add definitions for "assignment," "chief compliance officer," and "supervised person" consistent with the United States Securities and Exchange Commission (SEC) definitions. Our rules currently use these terms, but we have not previously defined them. In addition, the proposed rules would move the definition of "advertisement" from its current location in WAC 460-24A-100 to the definitions section.

The amendments would revise the definition of "advertisement" to include a business card among the items identified as advertisements. In addition, the amendments would revise the definition of "qualifying private fund" for clarity by incorporating the language from the definition of "private fund" in Section 202 (a)(29) of the Investment Advisers Act of 1940 and the definition "qualifying private fund" from SEC Rule 203(m)-1 adopted thereunder. The current definition merely refers to SEC Rule 203(m)-1. Finally, the proposed amendments would make minor clarifications to the definitions of "CRD," "custody," "IARD," and "qualified custodian."

Terms Deemed Similar to "Financial Planner" and "Investment Counselor": The rule amendments would revise WAC 460-24A-040, which sets forth terms deemed similar to "financial planner" and "investment counselor," in order to add language to clarify that any combination of terms similar to the terms in WAC 460-24A-040 may be deemed similar to "financial planner" and "investment counselor" if such terms are used to imply that the person is in the business of providing investment advisory or financial planning services. The securities division proposes this change in order to clarify that the list of similar terms in WAC 460-24A-040 is not exclusive.

Electronic Filing: The rule amendments would revise WAC 460-24A-047, 460-24A-060, and 460-24A-205 to provide that any application materials or other required documents (such as annual balance sheets) which cannot be filed on IARD must be filed with the securities division by email, or through a state electronic filing system to be developed in the future. The securities division proposes this change to eliminate paper filings.

Examination Requirements: The rule amendments would revise the examination requirements in WAC 460-24A-050 in order to incorporate FINRA's new securities industry essentials (SIE) exam. Persons who satisfy the examination requirements by passing the Series 65 would not need to pass the SIE exam. However, persons who satisfy the examination requirements by passing the Series 7 and Series 66, would now need to pass the SIE examination in addition to the other two exams. This requirement would not apply if a person is currently registered as an investment adviser or investment adviser representative, or has been registered within the two-year period prior to the date of application.

List of Custodians: The rule amendments would revise WAC 460-24A-050 and 460-24A-205 in order to require investment advisers who provide supervisory or management services to separately managed accounts to file with the securities division a list of *all* custodians that hold their client funds or securities. The securities division proposes this amendment as this information may be essential to the division in the event of an unexpected business disruption of a state-registered investment adviser.

Section 5.K.(3) of Schedule D of Form ADV Part 1A currently requires investment advisers who provide supervisory or management services to separately managed accounts to disclose the custodians who hold ten percent or more of the adviser's aggregate separately managed account regulatory assets under management. Advisers may satisfy the new requirement to provide a list of custodians by disclosing *all* custodians on Schedule D of Form ADV Part 1A (regardless of the percentage of the adviser's aggregate separately managed account regulatory assets under management held by the custodian), or by separately submitting a complete list of custodians to the securities division.

Renewal of Applications: The proposed rules would revise the renewal provisions in WAC 460-24A-057 to clarify that investment advisers and investment adviser representatives must submit renewal applications on IARD or CRD no later than the renewal application deadline set by FINRA each year. Currently, the rule does not specify a deadline.

Disqualification for Private Fund Adviser and Venture Capital Fund Adviser Exemptions: The proposed rules amend the private fund adviser exemption at WAC 460-24A-071 and the venture capital fund adviser exemption at WAC 460-24A-072 in order to replace references to the disqualification provisions under WAC 460-44A-505 with references to the disqualification provisions under Regulation D Rule 506. After SEC repealed Regulation D Rule 505 in 2017, Washington subsequently repealed its corresponding exemption at WAC 460-44A-505. The rule amendments remove this obsolete reference.

Advertising: The proposed rules would amend the advertising provisions in WAC 460-24A-100 to promote investor protection and to provide guidance to investment advisers regarding advertising and client communications. This rule section identifies certain practices in advertising by investment advisers that constitute fraudulent or misleading practices under RCW 21.20.020. The amendments would clarify that the fraudulent or misleading practices described in the rule are also considered fraudulent or misleading practices in the context of written client communications (even if such communications do not otherwise meet the definition of an advertisement). The amendments would codify securities division Interpretive Statement 21 but modify the interpretive statement consistent with current SEC guidance regarding the use of past performance information in advertising by investment advisers. The proposed rules would relocate the definition of "advertisement" from WAC 460-24A-100 to the definitions at WAC 460-24A-005.

Finally, the amendments would specify that advertisements and written client communications must do the following:

- Contain the full legal name of the adviser;
- Provide a citation for any data or information referenced from outside sources;
- Refrain from including information inconsistent with the information provided on Form ADV or Form U4;
- Refrain from using the acronyms IA, IAR, and RIA unless the terms are defined; and
- Refrain from using senior designations in a manner inconsistent with chapter 460-25A WAC.

Custody: The proposed rules would amend WAC 460-24A-105, which specifies the requirements for investment advisers who have custody. WAC 460-24A-105 contains a provision that states that a client may designate an independent representative to receive the client's account statements for him or her. Due to potential conflicts of interest, the proposed rules state that an investment adviser may not recom-

mend a person to serve as an independent representative for a client.

Additional Custody Requirements: The proposed rules would amend WAC 460-24A-106, which establishes additional custody requirements for investment advisers who directly deduct fees from client accounts. The securities division proposes to amend this rule in order ensure that essential information is provided to investors regarding fees.

The proposed amendments would require the client fee invoice to include the following additional information:

- The fee calculation;
- The name(s) of the custodian; and
- For advisers who charge performance fees:
  - The client's cumulative net investment gain or loss; and
  - The amount of cumulative net investment gain above which the adviser will receive performance compensation (high-water mark).

Compliance Policies and Procedures: The proposed rules would amend the compliance policies and procedures rule at WAC 460-24A-120 in order to clarify the role of the chief compliance officer. Currently, WAC 460-24A-120(3) states that chief compliance officer must administer the compliance policies and procedures required to be adopted pursuant to WAC 460-24A-120(1). The amendments would clarify that the chief compliance officer must also administer the adviser's policies and procedures adopted with respect to material nonpublic information pursuant to WAC 460-24A-122; proxy voting pursuant to WAC 460-24A-125; business continuity and succession plans pursuant to WAC 460-24A-126; supervision pursuant to WAC 460-24A-200 (1)(t); code of ethics pursuant to WAC 460-24A-200 (1)(aa); and physical and cybersecurity pursuant to WAC 460-24A-200 (1)(bb).

Material Nonpublic Information Policies and Procedures: The proposed rules would create new WAC 460-24A-122, which would require investment advisers to adopt written policies and procedures designed to prevent the misuse of material nonpublic information by the investment adviser or any associated person of the adviser. Currently, WAC 460-24A-220(17) states that it is an unethical practice for an adviser to fail to establish, maintain, or enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Adviser's Act of 1940. The creation of a separate rule would highlight the existing requirement and more closely mirror the federal requirement.

Business Continuity and Succession Plan: The proposed rules would create new WAC 460-24A-126, which would require investment advisers to adopt a written business continuity and succession plan. Currently, the recordkeeping rule at WAC 460-24A-[200] (1)(y) requires an adviser to keep records relating to a business continuity plan. The new rule conforms to the NASAA Model Rule on Business Continuity and Succession Planning adopted by NASAA in 2015.

Advisory Contracts: The proposed rules would revise the investment advisory contract rule at WAC 460-24A-130 in order to make clarifications and to reflect the standards applied by our licensing unit during its review of advisory contracts. The proposed rules specify that an adviser must have a written advisory agreement with each client, and the agreement must include the full legal name of the investment adviser. In addition, the proposed rules add that the advisory contract must include the following statements:

- The adviser may not assign a contract through implied or negative consent;
- The adviser will deliver the brochure forty-eight hours before the client signs the advisory agreement, or alternately provide that the client has a right to terminate the contract within five business days;
- The adviser must obtain the consent of the client to revise material terms of the contract;
- The adviser owes the client a fiduciary duty; and if the investment adviser manages a pooled investment vehicle, each investor in the pooled investment vehicle is a client; and
- The contract may not waive the adviser's compliance with any rule adopted under the Securities Act of Washington.

Dissemination of Advisory Fee Billing Information for Advisers Who Do Not Directly Deduct Fees: The proposed rules would create new WAC 460-24A-135, which codifies Securities Act Policy Statement 21. This policy statement specifies that advisers who do not directly deduct fees (and are therefore not subject to the fee invoice requirements in WAC 460-24A-106) must deliver written billing information to clients. The rule clarifies that fee invoices that comply with WAC 460-24A-106 would satisfy the requirement for written billing information. The proposed rule modifies Policy Statement 21 slightly by requiring additional information to be disclosed on the fee invoice consistent with information required by the proposed amendments to WAC 460-24A-106.

Brochure Rule: The proposed rules would amend the investment adviser brochure rule at WAC 460-24A-145 to reflect current SEC rules and guidance. Consistent with SEC Rule 204-3 (b)(4), the amendments address when the adviser must provide other-than-annual delivery of the brochure. The amendments further specify that if the adviser delivers the brochure by means of a passive delivery system, such as a web site or portal, the adviser must notify clients by email when the brochure becomes available on the system.

Performance Compensation Arrangements: The proposed rules would amend the performance fee rule at WAC 460-24A-150. Consistent with the current federal definition of "qualified client," the proposed amendments update the definition to raise the net worth requirement for a natural person from $2 million to $2.1 million.

In addition, in the interest of investor protection, the proposed amendments would revise the provisions at WAC 460-24A-150(3) concerning the performance compensation formula as follows:

- The amendments remove the requirement that prohibited the adviser from calculating performance fees for a period of less than one year. The amendments substitute a requirement that the adviser not calculate the fee more frequently than once per quarter;

- The amendments add a statement to the effect that when a client invests mid-period in a pooled investment vehicle managed by the adviser, the adviser may apply the compensation formula to that client for the partial period; and
- The amendments add a requirement for a high-water mark.

Books and Records: The rule making would amend the books and records rule at WAC 460-24A-200 as follows:

- Remove the requirement that the adviser retain "original" records of written client communications and instead specify that the adviser must retain "physical or electronic" records;
- Add a requirement that the adviser retain documentation of the client's authorization for each nondiscretionary transaction;
- Specify the type of client profile information the adviser must maintain in order to determine suitability, and state that the adviser must make a reasonable effort to update this information annually;
- Specify that the adviser retain written fee billing information and a written record of the services provided to clients during the billing period;
- Clarify that the adviser must provide state examiners access to electronic records and data;
- Add a requirement to maintain a code of ethics (discussed below); and
- Add a requirement to maintain physical and cybersecurity policies and procedures (discussed below).

Code of Ethics: The proposed rules would create a new subsection at WAC 460-24A-200 (1)(aa) which would require investment advisers to adopt a written code of ethics that establishes standards of business conduct which reflect the fiduciary obligations of the investment adviser and its supervised persons. This requirement promotes investor protection and is consistent with the code of ethics required of federal advisers at SEC Rule 204A-1.

Physical and Cybersecurity Policies and Procedures: The proposed rules would create a new subsection at WAC 460-24A-200 (1)(bb) to require investment advisers to maintain written cybersecurity policies and procedures that are reasonably designed to ensure the security and integrity of the adviser's physical and electronic records. Currently, all investment advisers must maintain compliance policies and procedures pursuant to WAC 460-24A-120, and must maintain policies and procedures regarding misuse of material nonpublic information pursuant to WAC 460-24A-220(17). Advisers also owe a fiduciary duty to clients. The creation of a separate rule for physical and cybersecurity policies in the recordkeeping rule would highlight the need for advisers to address cybersecurity in the conduct of their advisory business.

Additional Provisions: In addition to the changes discussed above, the rule making would:

- Revise the unethical business practices in WAC 460-24A-220 to add that it is an unethical practice to access a client's account using the client's own unique identifying information (such as username and password);
- Revise the unethical business practices in WAC 460-24A-220 to add that it is an unethical practice to fail to provide advisory fee billing information pursuant to the proposed new requirement in WAC 460-24A-135;
- Revise the unethical business practices in WAC 460-24A-220 to add that it is an unethical business practice to fail to establish, maintain, and enforce policies and procedures pursuant to WAC 460-24A-120, 460-24A-122, 460-24A-125, 460-24A-126, 460-24A-200 (1)(t), (1)(aa), and (1)(bb);
- Add new WAC 460-24A-190 to remind advisers of the existing requirement under RCW 74.34.220 to provide training to employees concerning financial exploitation of vulnerable adults. In addition, the rule making would add a corresponding unethical business practice to WAC 460-24A-220 for failure to provide this training;
- Revise chapter 460-24A WAC to make plain English changes and promote clarity and uniformity. For instance, the amendments eliminate the use of "shall" in the rules. The amendments also revise the rules to use consistent terminology throughout and to use active voice when feasible; and
- Make additional updates, amendments, and clarifications.

Need for Economic Impact Statement: RCW 19.85.030 provides that an agency must prepare an SBEIS if the agency proposes rules that would impose more-than-minor costs on businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll. The securities division determined that a small business economic impact may be required for this rule making.

Survey of Investment Advisers: In order to gather the information to prepare an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared a small business economic impact survey to survey its state registered investment advisers, exempt reporting advisers, and a representative sample of federal registered advisers that are notice filed in the state of Washington.

At the time of the survey, the securities division had seven hundred fifty-four state registered investment advisers, forty-one exempt reporting advisers, and one thousand nine hundred fifty-two federal registered notice-filed advisers. In general, investment advisers doing business in Washington with assets under management of less than $100 million must register with the state. Investment advisers in Washington with assets under management of $100 million or more must register with SEC and make a notice filing with the securities division. Investment advisers that are exempt pursuant to WAC 460-24A-071 or 460-24A-072 must file as exempt reporting advisers.

The securities division prepared an online survey designed to determine the economic impact of the proposed amendments on small businesses. On or about June 20, 2018, the securities division sent an email containing a link to the online survey to all Washington-registered investment advisers, all exempt reporting advisers filed in Washington, and

approximately ten percent of the federal-registered investment advisers notice filed in Washington. The securities division selected the ten percent sample of notice-filed advisers by focusing on advisers who had a place of business in Washington and an email address available on IARD. If a state-registered investment adviser did not have an email address available on IARD, the securities division sent a letter by regular mail. Both the letter and the emails explained the reasons for conducting the survey, requested that recipients complete the survey by following the link provided, and provided a link to the draft rule amendments.

The online survey consisted of twenty-two questions. Each question in the survey focused on a proposed rule amendment and provided a background statement briefly explaining the amendment. The survey asked whether proposed changes to a rule section would cause increased costs. The survey then requested information on the additional costs of complying with each rule change in the categories of professional services, equipment, supplies, labor, and administrative costs. Each question also allowed a free-form response for survey takers to explain any additional costs. The survey also gathered data on the number of employees each investment adviser had, and questioned whether the rule making as a whole would cause a loss of revenue or the loss or addition of any jobs.

The survey period lasted from June 20, 2018, until July 15, 2018. The securities division received one hundred seven unique responses, although some respondents did not complete all of the questions in the survey. The securities division received responses or partial responses from ninety-four state registered investment advisers, one exempt reporting adviser, and twelve federal registered advisers notice filed in Washington. All the respondents are small businesses as defined by RCW 19.85.020(3) of the Regulatory Fairness Act because each respondent has less than fifty employees. We discuss the results of the survey below.

REQUIRED ELEMENTS OF SBEIS: **A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.**

The proposed rule amendments would make a variety of changes to the existing investment adviser rules, some of which would create new recordkeeping, reporting, or compliance requirements for licensees. Registered investment advisers already maintain certain records required of investment advisers under WAC 460-24A-200. As they do currently, investment advisers registered in Washington would need to demonstrate compliance with the amended rules by providing required records during periodic examinations of the investment adviser by the securities division.

The rule making creates certain new recordkeeping and compliance requirements. Compliance with the proposed rules would require the following: Revising and executing advisory contracts to meet new requirements; drafting and adopting cybersecurity policies and procedures; drafting and adopting a code of ethics; revising compliance policies and procedures; revising fee invoices (if applicable); reviewing advertising for compliance; revising business continuity plans; maintaining written documentation of client authorization for nondiscretionary transactions; and making a reasonable attempt to update client profiles annually.

As a result of the rule amendments, investment advisers may incur expenses relating to the need to review existing procedures, documents, and agreements to ensure compliance with the new rules. Though not required to do so by the proposed rules, investment advisers may choose to hire professionals to assist them in complying with the new rules. Investment advisers may hire legal or other professionals to create or revise advisory agreements, cybersecurity policies and procedures, a code of ethics, compliance policies and procedures, fee invoices, and other documents and agreements used in the investment adviser's business. Investment advisers may also consult professionals for advice on establishing systems or methods to ensure compliance, particularly with respect to cybersecurity. Investment advisers may need to establish new procedures with respect to updating client profile information and documenting client authorization for nondiscretionary transactions.

In addition, the proposed rule making may have an economic impact on investment advisers in the form of increased equipment, supplies, labor, and administrative costs. These costs may relate to postage and other mailing costs, copying expenses, computer or software expenses, and expenses associated with recordkeeping and record retention. The rule making may cause investment advisers to hire additional employees or outside consultants to ensure compliance, or to devote additional employee time to compliance tasks that otherwise would have been spent on noncompliance matters.

The securities division surveyed investment advisers to determine if the new requirements would add costs to their business, and if so, how much. The survey provided a summary of the rule changes by section, and asked first whether the proposed changes to each section would create any additional costs for the investment adviser. The following chart provides the responses from the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs.

Whether Rule Changes Would Create Additional Costs		
Rule Provision	**Yes**	**No**
Electronic Filing: WAC 460-24A-047, 460-24A-060, 460-24A-205	18%	81%
Examination Requirements: WAC 460-24A-050	5%	95%
List of Custodians: WAC 460-24A-050, 460-24A-205	16%	86%
Advertising: WAC 460-24A-100	27%	73%
Custody Requirements: WAC 460-24A-105	3%	97%
Additional Custody Requirements: WAC 460-24A-106	25%	75%

Whether Rule Changes Would Create Additional Costs		
Rule Provision	**Yes**	**No**
Compliance Policies and Procedures: WAC 460-24A-120	20%	80%
Material Nonpublic Information: WAC 460-24A-122	18%	82%
Business Continuity and Succession: WAC 460-24A-126	35%	65%
Advisory Contracts: WAC 460-24A-130	25%	75%
Advisory Fee Billing Information: WAC 460-24A-135	9%	91%
Brochure Rule: WAC 460-24A-145	14%	86%
Performance Compensation: WAC 460-24A-150	4%	96%

Whether Rule Changes Would Create Additional Costs		
Rule Provision	**Yes**	**No**
Books and Records: WAC 460-24A-200	38%	62%
Code of Ethics: WAC 460-24A-200 (1)(aa)	22%	78%
Cybersecurity: WAC 460-24A-200 (1)(bb)	33%	67%

Where the survey takers indicated that the rule changes in a particular section would create additional costs, the survey requested information regarding the amount of increased costs of professional services, equipment, supplies, labor, and administrative costs attributable to each section of the rules. Each survey taker provided information regarding its number of employees, which allowed the securities division to calculate the average cost per employee for each investment adviser. These costs per employee were then averaged together.

The following chart provides the average cost increase per employee for each rule change for *all* survey respondents.

Average Cost Increase (All Respondents)					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Electronic Filing: WAC 460-24A-047, 460-24A-060, 460-24A-205					
	$325.10	$167.71	$45.00	$447.67	$97.79
Examination Requirements: WAC 460-24A-050					
	$24.18	$ -	$1.37	$17.86	$7.69
List of Custodians: WAC 460-24A-050, 460-24A-205					
	$76.85	$ -	$2.17	$39.33	$56.92
Advertising: WAC 460-24A-100					
	$278.24	$ -	$1.12	$84.14	$136.34
Custody Requirements: WAC 460-24A-105					
	$23.42	$ -	$1.16	$14.45	$0.83
Additional Custody Requirements: WAC 460-24A-106					
	$309.17	$ -	$8.99	$91.92	$255.51
Compliance Policies and Procedures: WAC 460-24A-120					
	$148.91	$ -	$ -	$55.00	$19.74
Material Nonpublic Information: WAC 460-24A-122					
	$67.50	$ -	$0.06	$14.80	$75.09
Business Continuity and Succession: WAC 460-24A-126					
	$226.85	$11.63	$5.81	$140.76	$56.30

Average Cost Increase (All Respondents)					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Advisory Contract: WAC 460-24A-130					
	$187.60	$ -	$1.00	$101.42	$103.14
Advisory Fee Billing Information: WAC 460-24A-135					
	$6.29	$ -	$ -	$3.65	$32.06
Brochure Rule: WAC 460-24A-145					
	$21.48	$ -	$ -	$20.63	$35.85
Performance Compensation: WAC 460-24A-150					
	$5.88	$ -	$ -	$ -	$ -
Books and Records: WAC 460-24A-200					
	$343.95	$ -	$1.79	$280.28	$224.02
Code of Ethics: WAC 460-24A-200 (1)(aa)					
	$67.73	$ -	$ -	$45.93	$64.83
Cybersecurity: WAC 460-24A-200 (1)(bb)					
	$143.20	$58.62	$ -	$107.89	$104.50

The following chart provides the average cost increase per employee only for those investment advisers who indicated that a particular rule change would create additional costs.

Average Additional Costs (Respondents With Increased Costs Only)					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Electronic Filing: WAC 460-24A-047, 460-24A-060, 460-24A-205					
	$1,835.35	$4,025.00	$1,440.00	$2,685.08	$670.58
Examination Requirements: WAC 460-24A-050					
	$1,100.00	$ -	$125.00	$812.50	$350.00
List of Custodians: WAC 460-24A-050, 460-24A-205					
	$785.56	$ -	$100.00	$301.55	$56.92
Advertising: WAC 460-24A-100					
	$1,650.87	$ -	$100.00	$680.79	$1,011.20
Custody Requirements: WAC 460-24A-105					
	$402.86	$ -	$100.00	$414.29	$35.71
Additional Custody Requirements: WAC 460-24A-106					
	$1,965.41	$ -	$800.00	$818.07	$2,067.27
Material Nonpublic Information: WAC 460-24A-122					
	$494.98	$ -	$5.00	$325.63	$600.73

Average Additional Costs (Respondents With Increased Costs Only)					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Compliance Policies and Procedures: WAC 460-24A-120					
	$1,042.36	$ -	$ -	$770.00	$331.67
Business Continuity and Succession: WAC 460-24A-126					
	$975.44	S1,000.00	$500.00	$756.56	$484.17
Advisory Contract: WAC 460-24A-130					
	$1,138.98	$ -	$42.50	$783.70	$1,252.38
Advisory Fee Billing Information: WAC 460-24A-135					
	$133.75	$ -	$ -	$155.00	$681.25
Brochure Rule: WAC 460-24A-145					
	$307.94	$ -	$ -	$295.71	$440.48
Performance Compensation: WAC 460-24A-150					
	$500.00	$ -	$ -	$ -	$ -
Books and Records: WAC 460-24A-200					
	$1,605.08	$ -	$50.00	$1,307.98	$1,254.52
Code of Ethics: WAC 460-24A-200 (1)(aa)					
	$582.50	$ -	$ -	$564.29	$619.44
Cybersecurity: WAC 460-24A-200 (1)(bb)					
	$778.65	$1,020.00	$ -	$722.05	$699.36

Analysis of Increased Costs: The survey results indicated that certain rule changes would create greater costs than others. These were the rule amendments regarding electronic filing, examination requirements, advertising, additional custody requirements, compliance policies and procedures, business continuity plans, advisory contracts, books and records, cybersecurity policies and procedures, and code of ethics. We describe the survey results in further detail below.

Electronic Filing - WAC 460-24A-047, 460-24A-060, 460-24A-205: The survey results indicated that approximately eighteen percent of survey respondents believed that the proposed amendments to WAC 460-24A-047, 460-24A-060, and 460-24A-205 to require the electronic filing of certain documents would increase costs. These costs would include an average of $325.01 per employee for professional services, $167.71 for equipment, $447.67 for labor, and $97.79 for administrative costs. Of the eighteen percent of survey respondents who indicated that the rule amendments would increase costs, those costs include an average cost increase per employee of $1,835.35 for professional services, $4,025.00 for equipment, $1,440.00 for supplies, $2,685.08 for labor, and $670.58 for increased administrative costs.

The proposed amendments specify that if an adviser cannot file a required document electronically through IARD or CRD, the adviser must file it with the securities division by email or through a state electronic filing system to be deployed in the future. The securities division proposed these rule changes in order to eliminate paper filings. The securities division currently accepts the filing of supplemental materials by email, and the proposed rule amendments merely formalize the practice. In our experience, most filers prefer to submit documents in electronic format rather than by postal mail.

In addition, we believe paper filings are inefficient both for filers and for the securities division in terms of the expenses related to mailing, copying, and scanning physical documents. To that end, the securities division is currently developing an online filing system for the submission of annual financial statements. The proposed rule amendments would enable the securities division to require online filings through the system when it is operational. The securities division would not charge a fee to make filings through the online system. However, investment advisers may expend time learning how to navigate a new online filing system and updating their internal procedures.

To the securities division's surprise, advisers anticipated relatively high cost increases as a result of the proposed rule amendments. We found this especially surprising because investment advisers already file most application materials (such as Form ADV) electronically through IARD. The survey question regarding the electronic filing amendment was the first substantive question of the survey. Based on the free-form answer responses for this question, it appears that several respondents provided comments related to other rule subsections. For instance, several comments in response to this question expressed concern regarding the cost of complying with the new requirement for cybersecurity policies and procedures. In addition, several comments referred to the expense of hiring compliance consultants. While advisers may retain compliance consultants to implement certain of the proposed rule amendments, we do not believe the need for a compliance consultant reasonably relates to the electronic filing provisions. Therefore, we conclude that some survey respondents may have provided in response to this question information regarding the economic impact of the rule making as a whole. The securities division reasonably believes that the proposed amendments to facilitate electronic filing would not significantly increase expenses for advisers. Rather, we anticipate that advisers may save costs in postage, office supplies, and administrative time.

Advertising - WAC 460-24A-100: The survey results indicated that approximately twenty-seven percent of the survey respondents believed that the proposed amendments to the advertising rule at WAC 460-24A-100 would result in increased expenses. These expenses would include an average of $278.24 per employee for professional services, $84.14 per employee for labor, and $136.34 per employee for increased administrative expenses. Of the twenty-seven percent of who anticipated that the amendments would increase costs, those costs included an average per employee of $1,650.87 for professional services, $680.79 for labor, and $1,011.20 for administrative costs.

As a result of the amendments to WAC 460-24A-100, advisers may incur expenses associated with reviewing and revising existing advertising materials, revising compliance manuals regarding advertising practices and procedures, and training employees regarding policies relating to advertising and written client communications. While not required, advisers may enlist the services of outside compliance consultants to complete these tasks.

Survey respondents generally expressed concern about the application of the advertising rule to written client communications such as emails. They opined that the amount of disclosure required was excessive and would result in additional time spent on compliance. Specifically, survey respondents indicated that it would be burdensome to require the adviser to provide citations to outside sources referenced in client emails. They also expressed concern that the rule might apply to account statements provided by the custodian. Survey respondents also commented that the amendments as drafted appeared to prohibit the provision of a client's personal performance results on a quarterly basis without extensive disclosures. We speculate that the uncertainty survey respondents expressed regarding the application of the rule amendments likely influenced their view that the amendments would tend to increase costs.

Additional Custody Requirements for Advisers Who Deduct Fees - WAC 460-24A-106: The proposed amendments would revise WAC 460-24A-106 to require the disclosure of additional information on the client fee invoice, including the fee calculation, the name of the custodians, and information pertinent to the calculation of performance fees. According to the survey, twenty-five percent of respondents believed that proposed amendments to the additional custody requirements at WAC 460-24A-106 for advisers who directly deduct fees would increase costs. The survey found that there would be an average cost increase for all respondents of $309.17 per employee for professional services, $91.92 per employee for labor, and $255.51 per employee in increased administrative costs. For the twenty-five percent of survey respondents who expected an increase in costs, the costs per employee included $1,965.41 for professional services, $800.00 for supplies, $818.07 for labor, and $2,067.27 in increased administrative costs.

In order to comply with the rule amendments, advisers may incur expenses to engage outside service providers to revise their fee invoices, to modify software, to purchase additional software licenses, and to conduct administrative tasks related to the proposed fee invoice requirements. Survey respondents indicated that the proposed rule change would necessitate working with software vendors and/or custodians to provide compliant fee invoices, and paying the associated fees for such professional services. Several respondents indicated that their current software does not allow the addition of the names of the custodian, and questioned how to comply with the proposed requirements.

Compliance Procedures and Policies - WAC 460-24A-120: The survey results indicated that approximately twenty percent of survey respondents believed that the amendments to compliance policies and procedures rule at WAC 460-24A-120 would result in increased expenses. The survey found that the average cost increases included $148.91 per employee for professional services, $55.00 per employee for labor, and $19.74 per employee in increased administrative costs. For the twenty percent of survey respondents who anticipated that the new rule would create additional costs, there was an average increase of $1,042.36 per employee for professional services, $770.00 per employee for labor, and $331.67 per employee in increased administrative costs per employee.

In order to comply with the proposed rule amendments, investment advisers may incur labor and administrative expenses as a result of reviewing and revising their compliance policies and procedures. In addition, advisers may incur costs if they retain professional service providers to update their policies. Advisers may also incur expenses by providing training to employees regarding their revised policies, or by updating their compliance manuals or internal procedures.

Material Nonpublic Information Policies and Procedures - WAC 460-24A-122: The survey results indicated that approximately eighteen percent of survey respondents believed that the adoption of new WAC 460-24A-122 would result in increased expenses. The new section would require investment advisers to adopt written policies and procedures

designed to prevent the misuse of material nonpublic information by the investment adviser or any associated person of the adviser. The survey found that the average cost increases included $65.20 per employee in professional services, $14.80 per employee in labor, and $74.01 in increased administrative costs per employee. For the eighteen percent of survey respondents who expected that the new rule would create additional costs, those costs included an average cost increase of $498.98 for professional services, $325.63 for labor, and $600.73 in increased administrative costs per employee.

Though the rule making would create a new section addressing the requirement for policies and procedures regarding the misuse of material nonpublic information, advisers effectively must meet this requirement now. Currently, WAC 460-24A-220(17) states that it is an unethical practice for an adviser to fail to establish, maintain, or enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Adviser's Act of 1940. In the view of the securities division, the new rule would not change the substance of this existing requirement. Regardless, as a result of the rule making, advisers may elect to undertake a review of their existing policies and procedures to ensure compliance. Advisers may choose to use the professional services of attorneys or consultants to complete this task. Advisers may also determine that it is necessary to train employees regarding compliance with these policies and procedures, thereby incurring additional labor and administrative expenses.

Business Continuity and Succession Plan - WAC 460-24A-126: The proposed rules create new WAC 460-24A-126 that adopts the NASAA Model Rule on Business Continuity and Succession Planning. The survey results indicated that approximately twenty percent of survey respondents believed that the adoption of WAC 460-24A-126 would result in increased expenses. The survey found that the average cost increases included $226.85 per employee for professional services, $140.76 per employee for labor, and $56.30 per employee in increased administrative costs. For the twenty percent of survey respondents who indicated that the new rule would create additional costs, there was an average increase of $975.44 per employee for professional services, $1,000 per employee for equipment, $500.00 per employee for supplies, $756.56 per employee for labor, and $487.17 per employee in increased administrative costs.

Currently, the recordkeeping rule at WAC 460-24A-[200] (1)(y) requires an adviser to keep records relating to a business continuity plan, but this existing rule provides little guidance regarding the contents of the business continuity plan. Advisers would need to conduct a review of their existing business continuity and succession plans in order to ensure compliance with the provisions of the NASAA Model Rule on Business Continuity and Succession Planning. Advisers may need to update their business continuity plans, and may elect to hire attorneys or consultants to assist with this. However, we anticipate that many advisers already have a business continuity plan that satisfies the requirements of the proposed rule.

Advisory Contracts - WAC 460-24A-130: The survey results indicated that twenty-five percent of survey respondents believed that the proposed amendments to the advisory contract rule at WAC 460-24A-130 would increase expenses. The survey found that the average cost increases included $187.60 per employee for professional services, $101.42 per employee for labor, and $103.14 per employee in increased administrative expenses. Of the twenty-five percent of survey respondents who anticipated that the rule amendments would increase their costs, those costs included an average cost increase of $1,138.98 per employee for professional services, $783.70 per employee for labor, and $1,252.38 per employee in increased administrative expenses.

Advisers may choose to use the professional services of an attorney or consultant to ensure that their advisory contracts comply with the rule. There may also be administrative, copying, and recordkeeping expenses associated with any revision to advisory contracts. However, we note that the majority of the proposed amendments to WAC 460-24A-130 merely formalize the requirements the securities division routinely imposes on advisory contracts during the investment adviser licensing process. Therefore, the advisory contracts of most Washington registered advisers currently meet these requirements. In addition, we note that the amendments would only apply to new or amended contracts entered into by the adviser after the date of the rule adoption.

Books and Records - WAC 460-24A-200: The survey results indicated that thirty-eight percent of the survey respondents believed that the revisions to the books and records rule at WAC 460-24A-200 would increase costs. This survey question did not include the proposed subsections of WAC 460-24A-200 regarding cybersecurity policies and procedures or code of ethics, as we surveyed those provisions separately. The survey indicated that the expenses associated with the amendments to WAC 460-24A-200 would include an average of $343.94 per employee for professional services, $280.28 per employee for labor, and $224.02 per employee for administrative costs. Of the thirty-eight percent of survey respondents who indicated the rule changes would increase their costs, the average cost increases per employee were $1,605.08 for professional services, $1,307.98 for labor, and $1,254.52 for increased administrative costs.

The proposed amendments to the books and records rule would increase the number of records that investment advisers must keep. As a result, advisers may incur additional expenses related to record retention. Advisers may need to devote additional employee time to managing and storing these additional records. Advisers may also incur expenses in developing new recordkeeping procedures and practices with respect to client profile information and client authorization for nondiscretionary transactions. Advisers may also incur expenses if they elect to revise their compliance policies to reflect new recordkeeping procedures. However, we note that many investment advisers currently maintain the records that satisfy the proposed amendments.

Code of Ethics - WAC 460-24A-200 (1)(aa): The rule making would add a new provision at WAC 460-24A-200 (1)(aa) to require investment advisers to adopt a written code of ethics that establishes standards of business conduct which

reflect the fiduciary obligations of the investment adviser and its supervised persons. The survey results indicated that approximately twenty-two percent of survey respondents believed that the adoption of code of ethics requirement would result in increased expenses. The survey found that the average cost increases included $66.95 per employee for professional services, $45.40 per employee for labor, and $64.08 per employee in increased administrative costs. For the twenty percent of survey respondents who indicated that the new rule would create additional costs, those costs included an average cost increase of $582.50 per employee for professional services, $564.20 per employee for labor, and $619.44 per employee in increased administrative expenses.

Adopting a code of ethics requirement promotes investor protection and uniformity with SEC Rule 204A-1. While some state-registered advisers already maintain a code of ethics, we anticipate that most state-registered advisers would adopt one for the first time as a result of the rule making. Currently, state advisers must review transactions of their supervised persons pursuant to WAC 460-24A-200 (1)(l) and (m). These existing recordkeeping requirements resemble many of the requirements of SEC Rule 204A-1. However, we note that a code of ethics must contain provisions governing adviser conduct. As a result, advisers would likely incur expenses in the drafting and implementation of the code of ethics. Advisers may elect to retain professional service providers to create the code of ethics. Advisers may also incur expenses relating to recordkeeping requirements, the training of employees, and the revision of existing compliance policies and procedures.

Cybersecurity Policies and Procedures - WAC 460-24A-200 (1)(bb): The rule making would add a new provision at WAC 460-24A-200 (1)(bb) to require investment advisers to adopt policies and procedures regarding physical and cybersecurity. The survey results indicated that approximately thirty-three percent of survey respondents believed that the requirement for cybersecurity policies and procedures would result in increased expenses. The survey found that the average cost increases included $143.20 per employee for professional services, $58.62 per employee for equipment, $107.89 per employee for labor, and $104.50 per employee in increased administrative costs. For the thirty-three percent of survey respondents who indicated that the new requirement would create additional costs, there was an average increase of $778.65 per employee for professional services, $1,020.00 per employee for equipment, $722.05 per employee for labor, and $699.36 per employee in increased administrative costs.

Advisers must maintain physical and cybersecurity of client records, data, and sensitive personal information in order to fulfill their fiduciary duties to clients. Advisers are currently subject to WAC 460-24A-220(17), which states that it is an unethical practice to fail to maintain, establish, and enforce policies and procedures designed to prevent the misuse of material nonpublic information. In addition, pursuant to WAC 460-24A-120, advisers must maintain compliance policies and procedures to prevent the violation of securities laws. For these reasons, most advisers in Washington have implemented at least some cybersecurity protections and procedures. In addition, some advisers may have established policies relating to cybersecurity.

Advisers who do not have formal cybersecurity policies and procedures would likely incur expenses in order to comply with the new requirement. In order to comply, advisers may engage outside cybersecurity experts or IT consultants to assist them in implementing and maintaining reasonable cybersecurity measures. Advisers would likely need to assess the cybersecurity risks specific to the adviser's business. Advisers may need to purchase additional equipment, such as secure hard drives, encryption software, and the like, in order to implement security measures. Advisers may need to subscribe to services that provide electronic file backup, anti-virus programs, or a security alarm system. Advisers may incur expenses in training employees regarding cybersecurity practices. Advisers may also incur expenses in providing training on the use of newly acquired software, hardware, or subscription services. Finally, advisers may incur expenses if they choose to hire attorneys or compliance consultants to assist in the drafting of cybersecurity policies and procedures.

Whether compliance with the proposed rule will cause businesses to lose sales or revenue: The proposed rules may result in investment advisers losing sales or revenue. The securities division's survey revealed that seventeen percent of respondents believed that compliance with the rule changes would result in lost sales or revenue. In contrast, eighty-three percent of respondents did not believe the rule changes would cause lost sales or revenue. The seventeen percent who believed the changes would lead to lost sale or revenue estimated they would lose $9,641.86 in revenue per employee.

The survey requested a free-form answer regarding which specific provisions in the proposed rules would cause lost sales or revenue. Most of the answers did not directly address the potential cause of lost sales or revenue, but instead focused on the increased costs created by the proposed rule amendments. At least two survey respondents mentioned that increased time spent on compliance matters would leave less time for advising clients. Presumably, this could lead to a decrease in revenue as a result of providing advice to fewer clients. Additionally, advisers may lose revenue if they limit the type of services they provide due to the costs of compliance.

An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule: The securities division surveyed its state registered investment advisers, exempt reporting advisers, and federal notice-filed investment advisers to determine whether the proposed rule making could result in the addition or elimination [of] any jobs.

Approximately six percent of survey takers anticipated that the rule making would cause them to eliminate jobs. These respondents variously commented that the rule changes might cause them to eliminate one job, forego pay increases, or go out of business entirely. Approximately ninety-four percent of survey takers did not anticipate that they would need to eliminate any jobs.

Approximately seven percent of respondents indicated that the rule changes would cause them to add jobs. One respondent commented that an additional employee may be needed to assist with compliance matters. Approximately

ninety-three percent of survey takers did not anticipate adding any jobs.

Based on the survey results, the securities division estimates that the average investment adviser will neither add nor eliminate any jobs as a result of the rule amendments.

A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate: RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. The survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

We note, however, that all the investment advisers who responded to the survey qualified as small businesses under RCW 19.85.020(3) of the Regulatory Fairness Act. Many of the smallest businesses have only one employee, which magnifies any expenses calculated on a per-employee basis, especially with respect [to] the expenses incurred in creating new policies and procedures. The largest advisers typically offer more complicated products and services, have been in business longer, and may employ in-house compliance persons. As a result, many of the largest businesses in the survey group may already have adopted cybersecurity policies and procedures, code of ethics, and business continuity plans that meet the requirements of the proposed rule amendments. Consequently, they may see less of an increase in professional services, labor, and administrative costs than smaller advisers. In any event, all advisers, large and small, provide investment advice to members of the public. It is imperative that we regulate investment advisers effectively in order to protect the public from financial fraud.

The following chart compares the average cost increase associated with the proposed changes to the rule provision for both the largest ten percent of businesses required to comply and small businesses. Small businesses are defined as fifty or fewer employees. The largest ten percent of business[es] were likewise determined by the number of employees.

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Electronic Filing: WAC 460-24A-047, 460-24A-060, 460-24A-205					
Small Businesses	$323.03	$167.71	$45.00	$444.49	$96.38
Largest 10%	$21.16	$ -	$ -	$33.86	$15.08
Examination Requirements: WAC 460-24A-050					
Small Businesses	$23.66	$ -	$1.34	$17.47	$7.53
Largest 10%	$ -	$ -	$1.00	$ -	$ -
List of Custodians: WAC 460-24A-050, 460-24A-205					
Small Businesses	$76.85	$ -	$1.09	$37.00	$53.51
Largest 10%	$ -	$ -	$12.50	$26.79	$39.29
Advertising: WAC 460-24A-100					
Small Businesses	$271.28	$ -	$1.12	$78.66	$134.87
Largest 10%	$77.38	$ -	$ -	$61.01	$16.37
Custody Requirements: WAC 460-24A-105					
Small Businesses	$15.78	$ -	$1.16	$10.71	$0.42
Largest 10%	$82.14	$ -	$ -	$40.18	$4.46
Additional Custody Requirements: WAC 460-24A-106					
Small Businesses	$304.14	$ -	$8.89	$89.31	$252.67
Largest 10%	$17.86	$ -	$ -	$17.86	$ -
Compliance Policies and Procedures: WAC 460-24A-120					
Small Businesses	$148.91	$ -	$ -	$55.00	$19.74
Largest 10%	$ -	$ -	$ -	$ -	$ -
Material Nonpublic Information: WAC 460-24A-122					
Small Businesses	$65.30	$ -	$0.06	$14.80	$74.01

Average Cost Increase - Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	**Prof'l Services**	**Equipment**	**Supplies**	**Labor**	**Admin**
Largest 10%	$25.30	$ -	$ -	$ -	$11.90
Business Continuity and Succession Plan: WAC 460-24A-126					
Small Businesses	$224.77	$11.63	$5.81	$138.68	$56.30
Largest 10%	$ 22.32	$ -	$ -	$22.32	$ -
Advisory Contract: WAC 460-24A-130					
Small Businesses	$183.56	$ -	$1.00	$99.74	$103.14
Largest 10%	$42.86	$ -	$ -	$17.86	$ -
Advisory Fee Billing Information: WAC 460-24A-135					
Small Businesses	$6.29	$ -	$ -	$3.65	$32.06
Largest 10%	$ -	$ -	$ -	$ -	$ -
Brochure Rule: WAC 460-24A-145					
Small Businesses	$17.33	$ -	$ -	$16.48	$35.85
Largest 10%	$44.64	$ -	$ -	$44.64	$ -
Performance Compensation: WAC 460-24A-150					
Small Businesses	$5.88	$ -	$ -	$ -	$ -
Largest 10%	$ -	$ -	$ -	$ -	$ -
Books and Records: WAC 460-24A-200					
Small Businesses	$333.66	$ -	$1.19	$265.82	$221.64
Largest 10%	$108.04	$ -	$6.25	$151.79	$25.00
Code of Ethics: WAC 460-24A-200 (1)(aa)					
Small Businesses	$66.95	$ -	$ -	$45.40	$64.08
Largest 10%	$ -	$ -	$ -	$ -	$ -
Cybersecurity: WAC 460-24A-200 (1)(bb)					
Small Businesses	$141.57	$52.27	$ -	$95.30	$102.18
Largest 10%	$ -	$62.50	$ -	$125.00	$12.50

Comparison of lost sales or revenue: The largest ten percent of businesses indicated in their survey responses that they would not lose any revenue. The small businesses estimated that they would lose an average of $813.25 in revenue per employee, with fourteen small businesses reporting that they expected to lose revenue because of the rule changes.

Comparison of addition or elimination of jobs: Approximately seven percent of respondents indicated that the rule changes would cause them to add jobs. These represented six small businesses plus two businesses that were in the ten percent of the largest businesses. Approximately six percent of respondents indicated that the rule changes would cause them to eliminate jobs. These responses represented three small businesses and one business that was in the largest ten percent of businesses.

Steps taken by the department under RCW 19.85.030(2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps:

Investor Protection Purpose: In drafting the rule amendments, the securities division attempted to balance the business concerns of registered investment advisers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. While the proposed rule changes may increase costs to licensees, the securities division believes the increased investor protection outweighs the cost increase to licensees. In addition, we note that certain rule proposals create uniformity with federal law and NASAA model rules.

As a result of feedback received from affected businesses, the securities division made certain clarifications to the initial draft of the rule amendments in order to reduce the cost of compliance for small businesses. These changes are detailed below. In addition, the securities division outlines below additional mitigation steps it intends to take to reduce the burden of compliance. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

Reducing, modifying, or eliminating substantive regulatory requirements: The securities division received several comments in its economic impact survey which indicated that the proposed amendments to the advertising rule at WAC 460-24A-100 would be burdensome and increase costs. Among the changes to the advertising rule, the securities division codified Interpretive Statement 21, which concerns the use of past performance information in advertise-

ments. This policy has been in existence since 1999. However, commenters expressed concern that its addition to the advertising rule would impact the presentation of actual client performance information in written client communications such as account statements. In addition, commenters also expressed concern regarding the scope of material market or economic conditions that advisers must disclose along with any past performance data. Commenters also expressed that the disclosure requirements the rule imposed for written client communications were burdensome and unworkable.

In response to these concerns, the securities division revised the proposed amendments to the advertising rule in order to clarify the rule consistent with current SEC guidance regarding advertising by investment advisers. Further, the securities division revised the proposed rule amendments to clarify that the disclosure requirements apply only to the presentation of outside performance data, and not to the actual performance of the client's account in an account statement provided by a qualified custodian. In addition, the securities division intends to prepare a frequently asked question (FAQ) addressing compliance questions regarding the advertising rule. Among other items, the FAQ will clarify that documents supplied to clients directly from the custodian, such as account statements, do not have to meet the disclosure requirements for past performance information.

The securities division also received feedback in the survey requesting guidance on how to create cybersecurity policies and procedures and a code of ethics. Commenters requested that the securities division provide a template that satisfied the new requirements. The securities division intends to issue an FAQ that highlights existing resources available to assist advisers in developing their policies and procedures. The FAQ will highlight available resources such as the NASAA cybersecurity checklist for investment advisers.

Simplifying, reducing, or eliminating recordkeeping and reporting requirements: The securities division received several comments regarding revisions to the books and records requirements. For instance, the proposed revisions to WAC 460-24A-200 (1)(r) require the adviser to update or attempt to update the client's suitability profile on an annual basis. Commenters expressed concern regarding the cost of updating client profiles annually, including the expense of conducting a mailing to request updated information. Commenters also questioned what type of documentation would satisfy the new requirement in WAC 460-24A-200 (1)(dd) to maintain records of the client's written authorization for each nondiscretionary transaction. In response to these concerns, the securities division intends to prepare an FAQ addressing recordkeeping matters. In the FAQ, the securities division will suggest that the use of email and other electronic means may reduce the costs associated with obtaining information to update client profiles. In addition, the FAQ will note that a reasonable attempt to update the profile annually will suffice to satisfy the requirement. The adviser can still satisfy the requirement even if a client fails to respond.

Finally, as a potential offset to cost increases attributable to the proposed rule amendments, we note that the securities division proposed amendments to WAC 460-24A-047, 460-24A-060, and 460-24A-205 to mandate electronic filing of documents with the securities division. We also amended WAC 460-24A-200 (1)(g) to eliminate the requirement to maintain original records (as opposed to electronic copies) of client communications. We believe these changes will decrease costs and increase efficiencies, which may help offset cost increases elsewhere.

Delaying compliance timetables: The securities division will allow investment advisers adequate time to adjust to the rule changes through existing processes. In particular, the securities division understands that the creation or revision of policies and procedures takes time, and may require input from outside attorneys or compliance consultants.

Through the exam and deficiency letter process, the securities division will allow reasonable time for investment advisers to fix any deficiencies related to the new rules that the exam staff identifies during examinations of investment advisers that occur in the period immediately following enactment of the rules. The securities division will also continue to provide technical assistance visits to newly registered investment advisers to provide feedback on recordkeeping and other compliance matters.

Other mitigation techniques: The securities division will develop an FAQ publication for distribution upon the adoption of the rule amendments. The securities division intends to provide guidance through the FAQ to explain how to comply with the rule amendments. The securities division has determined that in many cases, the nature of the compliance envisioned by the securities division is less burdensome than that imagined by the investment advisers taking the small business economic impact survey.

The securities division intends to address the following topics in the FAQ:

- The securities division will provide additional guidance regarding the information that must now be included on fee invoices pursuant to WAC 460-24A-106 and 460-24A-135, and may develop a sample fee invoice. The FAQ will clarify that the fee invoice must only include the name of the custodian if there is more than one custodian.
- The securities division will provide links to existing resources regarding the development of cybersecurity policies and procedures. These resources may assist advisers in conducting a cybersecurity risk assessment and drafting cybersecurity policies and procedures.
- The securities division will provide links to a model code of ethics that will satisfy the code of ethics requirement in WAC 460-24A-200 (1)(aa). This may assist advisers in preparing their own code of ethics.
- The securities division will provide additional guidance regarding the scope of the revised advertising rule at WAC 460-24A-100.
- The securities division will provide guidance on compliance with the revised books and records requirements at WAC 460-24A-200. The FAQ will address the annual update to the client profile and the type of documentation required for client authorizations of nondiscretionary transactions.

In addition to the assistance provided in the anticipated FAQ, the securities division may conduct informational ses-

sions for investment advisers to provide an overview of the rule changes.

How the department will involve small business in rule development: Since the beginning of the rule-making process, the securities division has involved its registered investment advisers and interested persons in the rule-making process.

On March 9, 2018, the securities division filed a preproposal statement of inquiry (CR-101) concerning the possible amendment of the investment adviser rules. The securities division distributed the CR-101 notice to its interested persons list for securities registration matters and to all state registered advisers. This group of recipients included many small businesses and those that advise small businesses.

The CR-101 notice invited interested persons to participate in the rule-making process by submitting comments to the securities division. The securities division took the feedback received into account when preparing the initial draft of the rule amendments. Once a draft was prepared, it was distributed to the interested persons list on or about June 20, 2018, and posted on the securities division's web site.

The securities division next prepared a survey to determine the economic impact of the proposed rule making on investment advisers. The survey, along with a copy of the draft rule amendments, was sent to all state registered investment advisers and a representative sample of federal notice-filed investment advisers. Based on the results received, the securities division made changes to its proposed draft as detailed above, and undertook to provide an FAQ. The securities division will continue to seek the feedback of interested parties as the rule-making process continues.

A list of the industries that will be required to comply with the rule: Investment advisers doing business in Washington will be required to comply with the amended rules.

A copy of the statement may be obtained by contacting Jill Vallely, P.O. Box 9033, Olympia, WA 98507, phone 360-902-8760, fax 360-704-7035, TTY 360-664-8126, email jill.vallely@dfi.wa.gov.

November 9, 2018
Charles Clark
Deputy Director

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-005 Definitions. For purposes of this chapter:

(1) **"Advertisement"** means any business card, notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell;

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(c) Any other investment advisory service with regard to securities.

(2) **"Assignment"** means any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract will be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, will be only a minority of the members and will have only a minority interest in the business. An "assignment" does not include a transaction which does not result in a change of actual control or management of the investment adviser.

(3) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers, broker-dealer representatives, and investment adviser representatives.

(4) **"Chief compliance officer"** means a supervised person with the authority and resources to develop and enforce the investment adviser's policies and procedures. The individual designated to serve as chief compliance officer must be registered as an investment adviser representative and must have the background and skills appropriate for fulfilling the responsibilities of the position.

(5) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

(6) **"Custody"** means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them. An investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(a) "Custody" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or per-

mitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian; ((~~and~~))

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities; or

(iv) Any arrangement where the investment adviser requires the payment of advisory fees six months or more in advance and in excess of five hundred dollars per client.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently as set forth in WAC 460-24A-200.

(((~~2~~))) (7) **"Discretionary authority"** means the authority, directly or indirectly, to:

(a) Determine what securities or other property will be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property will be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

(8) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78o.

(9) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in Rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c), as amended effective March 8, 2005.

(10) **"Independent party"** means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) ((~~Shall~~)) Must not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

(((~~3~~))) (11) **"Independent representative"** means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

(((~~4~~))) (12) **"Investment Adviser Registration Depository"** or **"IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and submission of filings by exempt reporting advisers.

(13) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.

(14) **"Qualified custodian"** means the following independent institutions or entities:

(a) A bank, including a trust company, as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

(((~~(5) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c).~~

~~(6) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.~~

~~(7) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:~~

~~(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and~~

~~(b) A person who:~~

~~(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;~~

~~(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;~~

~~(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or~~

~~(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.~~

~~(8) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.~~

~~(9)~~)) (15) **"Qualifying private fund"** means a private fund that ((~~meets the definition of a qualifying private fund in Securities and Exchange Commission Rule 203 (m)-1, 17 C.F.R. 275.203 (m)-1, other than a private fund that qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(1).~~

~~(10) **"Discretionary authority"** means the authority, directly or indirectly, to:~~

~~(a) Determine what securities or other property shall be purchased or sold by or on behalf of a client;~~

~~(b) Make decisions as to what securities or other property shall be purchased or sold by or for the benefit of a client even though some other person may have responsibility for such investment decisions; or~~

~~(c) Make decisions as to what investment advisers to retain on behalf of a client.~~

~~(11) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o.~~

~~(12) **"Central Registration Depository"** or **"CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers and broker-dealer representatives.~~

~~(13) **"Investment Adviser Registration Depository"** or **"IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and investment adviser representatives and submission of filings by exempt reporting advisers~~)):

(a) Qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(7) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(7);

(b) Is not registered under section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8; and

(c) Has not elected to be treated as a business development company pursuant to section 54 of Investment Company Act of 1940, 15 U.S.C. 80a-53.

(16) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(17) **"Supervised person"** means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser. The definition includes investment adviser representatives, employees, independent contractors, or other associated persons and supervised personnel, or other persons acting on behalf of the investment adviser.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-030 Use of the term "investment counsel" is prohibited. If you are an investment adviser or investment adviser representative, you ((~~shall~~)) must not use the title "investment counsel" in the conduct of your business nor represent that you are an "investment counsel" nor use the term "investment counsel" as descriptive of your business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-035 ((~~Definition of "client" of an investment adviser.~~)) Counting of clients for registration purposes. (1) **General.** You may ((~~deem~~)) count each of the following ((~~to be~~)) as a single client of an investment adviser for purposes of the registration requirement in RCW 21.20.040(3):

(a) A natural person; and

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries;

(b)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subsection (1)(a)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and

(ii) Two or more legal organizations referred to in subsection (1)(b)(i) of this section that have identical owners.

(2) **Special rules.** For purposes of this section:

(a) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(b) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(c) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;

(d) You are not required to count as a client any person for whom you provide investment advisory services without compensation;

(e) If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;

(f) You may not rely on subsection (1)(b)(i) of this section with respect to any company that would be an investment company under section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a), but for the exception from that definition by either section 3 (c)(1) or 3 (c)(7) of such act, 15 U.S.C. 80a-3 (c)(1) or (7); and

(g) For purposes of (e) of this subsection, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-040 Use of certain terms deemed similar to "financial planner" or "investment counselor." (1) For the purposes of RCW 21.20.040(4), use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW 21.20.040(4), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

(a) Financial consultant;

(b) Investment consultant;

(c) Money manager;

(d) Investment manager;

(e) Investment planner;

(f) Chartered financial consultant or its abbreviation ChFC; ((~~or~~))

(g) ((~~The~~)) Certified financial planner or its abbreviation CFP®; or

(h) Any combination of terms similar to the above if used in a manner that implies to the general public that the individual or entity using the terms is in the business of providing investment advisory or financial planning services.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-045 Holding out as a financial planner. If you use a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2), you will not be considered to be holding yourself out as a financial planner for purposes of RCW 21.20.005 and 21.20.040 under the following circumstances:

(1) You are not in the business of providing advice relating to the purchase or sale of securities, and would not, but for your use of such a term, be an investment adviser required to register pursuant to RCW 21.20.040; and

(2) You do not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and

(3) You deliver to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:

(a) You are not registered as an investment adviser or investment adviser representative in the state of Washington;

(b) You are not authorized to provide financial planning or investment advisory services and do not provide such services; and

(c) A brief description of your business which description ((~~shall~~)) must include a statement of the kind of products offered or services provided (e.g., you are in the business of selling securities and insurance products) and of the basis on which you are compensated for the products sold or services provided; and

(4) You have each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) You retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as you continue to receive compensation from such customers, but in no case for less than three years from date of execution of the acknowledgment; and

(6) If you received compensation from the customer on more than one occasion, you need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case you must give the customer updated disclosure before receiving further compensation from the customer.

AMENDATORY SECTION (Amending WSR 14-13-068 and 14-10-040, filed 6/12/14 and 4/29/14)

WAC 460-24A-047 Electronic filing ((~~with designated entity~~)). (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository (IARD) and the Central Registration Depository (CRD) operated by Financial Industry Regulatory Authority (FINRA) to receive and store filings and collect related fees from investment advisers, federal covered advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD and CRD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this

chapter, ((~~shall~~)) must be filed electronically with and transmitted to IARD or CRD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD or CRD, a duly authorized officer of the applicant or the applicant him or herself, as required, ((~~shall~~)) must affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD or CRD. Submission of a filing in this manner ((~~shall~~)) will constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD or CRD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD or CRD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, ((~~the electronic filing of~~)) you are not required to file any particular document ((~~and the collection of related~~)) or pay processing fees ((~~shall not be required~~)) using the IARD or CRD system until such time as IARD or CRD provides for receipt of such filings and fees and thirty days' notice is provided by the director. Any documents or fees required to be filed with the director that are not permitted to be filed with or cannot be accepted electronically by IARD ((~~shall~~)) or CRD must be filed directly with the director. The director may establish a proprietary online filing system for the purpose of accepting such filings electronically.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD or CRD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD or CRD no later than seven business days after the filing was due.

(iii) Effective date - Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least twenty business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser. Any applications received by the director will be granted or denied within ten business days after the filing of Form ADV-H.

(iii) Effective date - Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropriate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD or CRD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD or CRD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-050 Registration and examination requirements. (1) **Examination requirements.** If you are applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040, you ((~~shall~~)) must provide the director with proof that you have obtained a passing score ((~~on~~)) within the two-year period immediately preceding the date of your application on the following examinations:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); ((~~or~~))

(b) If you apply prior to October 1, 2018, the General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination); or

(c) If you apply on or after October 1, 2018, the Securities Industry Essentials Examination (SIE examination), the

General Securities Representative Examination (Series 7 examination), and the Uniform Combined State Law Examination (Series 66 examination).

(2) **Exceptions from examination requirements.**

(a) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on January 1, 2000, and there has been no period longer than two years since that date in which you were not registered as an investment adviser or investment adviser representative, the director will not require you ((~~shall not be required~~)) to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations if you are found to have violated the Securities Act of Washington, chapter 21.20 RCW, or the Uniform Securities Act.

(b) ((~~Any person who has been~~)) If you were registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application ((~~shall~~)), the director will not ((~~be required~~)) require you to comply with the examination requirement set forth in subsection (1) of this section provided that ((~~the person~~)) you previously met the examination requirement in subsection (1) of this section.

(c) ((~~An applicant who has taken and~~)) If you passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date ((~~the~~)) you filed your application ((~~is filed~~)) with the director ((~~shall not be required~~)), the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) again.

(d) If you are an applicant who is an agent for a broker-dealer/investment adviser and ((~~who is not required by the agent's~~)) your home jurisdiction does not require you to make a separate filing on CRD as an investment adviser representative ((~~but who has~~)), and you previously met the examination requirement in subsection (1) of this section ((~~necessary to provide advisory services on behalf of the broker-dealer/investment adviser, shall not be required~~)), the director will not require you to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(e) If you passed the General Securities Representative Examination (Series 7 examination) prior to October 1, 2018, the director will not require you to take and pass the Securities Industry Essentials Examination (SIE examination) if:

(i) You are currently registered as an investment adviser or investment adviser representative in at least one state that requires the registration of investment advisers or investment adviser representatives; or

(ii) You were registered in a state that requires the registration of investment advisers or investment adviser representatives within the two-year period immediately preceding the date you filed your application for registration as an investment adviser or investment adviser representative with the director.

(f) If you passed the Securities Industry Essentials Examination (SIE examination) within the four-year period immediately preceding the date you filed your application with the director for registration as an investment adviser or investment adviser representative, the director will not require you to take and pass the SIE examination again.

(3) **Examination waivers.** You are not required to take the examinations set forth in subsection (1) of this section if you currently hold one of the following professional designations and are in good standing with the certifying organization:

(a) Certified Financial Planner (CFP®) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the CFA Institute;

(e) Chartered Investment Counselor (CIC) granted by the Investment Adviser Association; or

(f) Such other professional designation as the director may by order recognize.

(4) If you are applying for registration as an investment adviser and you are any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. The person taking the exam on behalf of the entity must be a person who is or will be registered as an investment adviser representative of the investment adviser. If the person that took the examination ceases to be a person of authority in the entity, then you must notify the director of a substitute person of authority who has registered with the director as an investment adviser representative.

(5) **Registration requirements.**

(a) To apply for initial registration as an investment adviser, you must file the following in the manner specified:

(i) You must file the following through IARD or CRD:

(A) A completed Form ADV ((~~with IARD along with the following:~~

~~(i)~~));

(B) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) ((~~above~~)) of this section;

(((~~ii) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than ninety days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary;~~

~~(iii) A copy of the surety bond required by WAC 460-24A-170, if applicable;~~

~~(iv)~~)) (C) The application fee specified in RCW 21.20.340; ((~~and~~

~~(v)~~))

(D) A completed Form BR; and

(E) Such other documents as the director may require that are accepted for filing through IARD or CRD.

(ii) You must file the following directly with the director by email or through a proprietary electronic filing system

established by the director for the purpose of accepting such filings:

(A) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is a date more than ninety days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary. The financial statements must be prepared in accordance with generally accepted accounting principles in the United States;

(B) A copy of the surety bond required by WAC 460-24A-170, if applicable; and

(C) If you advise one or more pooled investment vehicles, then you must also submit to the director as part of your application, copies of the following documents:

(I) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;

(II) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;

(III) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;

(IV) Subscription agreement for each pooled investment vehicle;

(V) Limited partnership agreement or other operating agreement for each pooled investment vehicle; and

(D) If you provide supervisory or management services to securities portfolios, then you must submit a list of the custodians that hold the client funds or securities that you supervise or manage. You may satisfy this requirement by disclosing these custodians in Schedule D to Form ADV Part 1A, regardless of the percentage of your regulatory assets under management held with the custodian;

(E) Such other documents as the director may require in order to complete the application.

(b) To apply for initial registration as an investment adviser representative, you ((~~shall~~)) must file a completed Form U4 with ((~~IARD~~)) CRD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

(((~~(c) If you advise one or more pooled investment vehicles, then you must also submit to the division as part of your application, copies of the following documents:~~

~~(i) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;~~

~~(ii) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;~~

~~(iii) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;~~

~~(iv) Subscription agreement for each pooled investment vehicle;~~

~~(v) Operating agreement for each pooled investment vehicle; and~~

~~(vi) Such other documents as the director may require in order to complete the application.~~))

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

WAC 460-24A-055 Effective date of ((~~license~~)) registration. All investment adviser and investment adviser representative ((~~licenses shall~~)) registrations will be effective ((~~until~~)) beginning on the date the director approves the application in IARD or CRD. All registrations will expire on December 31st of the year of issuance ((~~at which time the license shall be renewed, or if not renewed, shall be deemed~~)). If the investment adviser or investment adviser representative does not renew its registration by December 31st, the director will deem the registration delinquent.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees. (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative by filing the following with IARD or CRD no later than the renewal application deadline set by FINRA:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form U4, unless:

(i) The Form U4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) **Delinquency fees.** For any renewal application received by IARD or CRD after the expiration date set forth in WAC 460-24A-055, but on or before March 1st of the following year, the ((~~licensee shall~~)) registrant must pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers ((~~shall be~~)) is one hundred dollars. The delinquency fee for investment adviser representatives ((~~shall be~~)) is fifty dollars.

((~~No~~)) The director will not accept renewal applications ((~~will be accepted~~)) after March 1st. After March 1st, an investment adviser or investment adviser representative ((~~may apply for reregistration~~)) must reapply for initial registration by complying with WAC 460-24A-050.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-060 Financial reporting requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities ((~~or you require payment of advisory fees six months or more in advance and in excess of five hundred dollars per client~~)), you must file with the director an audited balance sheet as of

the end of your fiscal year. You must file the audited balance sheet in electronic format by email or through a proprietary electronic filing system to be established by the director for the purposes of accepting such filings. Each balance sheet filed pursuant to this subsection must be:

(a) Prepared in conformity with generally accepted accounting principles (GAAP) in the United States and audited in accordance with generally accepted auditing standards (GAAS) in the United States by an independent certified public accountant; and

(b) Accompanied by an audit opinion of the accountant on the audit of the balance sheet.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 ((~~(1)~~)) (6)(a)(iii) and you have notified the director on Form ADV that you will comply with the ((~~safekeeping~~)) requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member or other comparable position).

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040 and are not subject to the financial statement reporting requirements in subsection (1) or (2) of this section, you must file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles in the United States and represented by you or the person who prepared the statement as true and accurate, as of the end of your fiscal year.

(4) The financial statements required by this section must be filed with the director within one hundred twenty days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within one hundred twenty days following the end of each pooled investment vehicle's fiscal year.

(5) If you are an investment adviser that has its principal place of business in a state other than this state, you must file only such reports with the director as required by the state in which you maintain your principal place of business, provided that you are ((~~licensed~~)) registered in such state and are in compliance with such state's financial reporting requirements.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-070 Notice filing requirements for federal covered advisers. (1) **Notice filing.** If you are a federal covered adviser, you must file the notice filing required pursuant to RCW 21.20.050 with IARD on a completed Form ADV. The notice filing ((~~shall~~)) will be deemed filed when the fee required by RCW 21.20.340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) **Form ADV Part 2.** The director will accept a copy of Part 2 of Form ADV as filed electronically with IARD.

(3) **Renewal.** If you are a federal covered adviser, you must file the annual renewal of your notice filing with IARD. The renewal ((~~shall~~)) will be deemed filed when the fee required by RCW 21.20.340 is filed with and accepted by IARD on behalf of the state.

(4) **Updates and amendments.** If you are a federal covered adviser, you must file any amendments to your Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) **Hardship exemption.** If you are a federal covered adviser that, because you have received a hardship exemption from the Securities and Exchange Commission (SEC), are not required to file your Form ADV with the SEC through IARD you ((~~shall~~)) will, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-071 Registration exemption for investment advisers to private funds. (1) **Exemption for private fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are a private fund adviser as defined in WAC 460-24A-005 and you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in ((~~WAC 460-44A-505 (2)(d)~~)) Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective September 23, 2013; and

(b) You file with the ((~~division~~)) director each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as amended effective September 19, 2011.

(2) **Federal covered investment advisers.** If you are a private fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report ((~~shall~~)) will be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section ((~~shall~~)) will

not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the ((~~securities administrator~~)) director determines that it is not necessary under the circumstances that an exemption be denied.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds. (1) **Exemption for venture capital fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Securities and Exchange Commission Rule 203 (l)-1 ((~~adopted thereunder~~)), 17 C.F.R. 275.203 (l)-1, as adopted effective July 21, 2011, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in ((~~WAC 460-44A-505 (2)(d)~~)) Securities and Exchange Commission Rule 506(d), 17 C.F.R. Sec. 230.506(d), as amended effective September 23, 2013; and

(b) You file with the ((~~division~~)) director each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4, as adopted effective September 19, 2011.

(2) **Federal covered investment advisers.** If you are a venture capital fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report ((~~shall~~)) will be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section ((~~shall~~)) will not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the ((~~securities administrator~~)) director determines that it is not necessary under the circumstances that an exemption be denied.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-100 Advertisements and written client communications by investment advisers. ((~~(1)~~)) If you are an investment adviser, federal covered adviser, or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you, directly or indirectly, to publish, circulate or distribute any advertisement or written client communication (including advertisements and written communications directed to prospective clients) if the advertisement or written client communication:

((~~(a) Which~~)) (1) Refers, directly or indirectly, to any testimonial of any kind concerning you or concerning any advice, analysis, report or other service rendered by you; ((~~or~~

~~(b) Which~~))

(2) Refers, directly or indirectly, to any past specific recommendations you made which were or would have been profitable to any person: Provided, however, That this clause ((~~(b)~~)) under this subsection (2) does not prohibit you from setting out or offering to furnish a list of all recommendations you made within the immediately preceding period of not less than one year if such advertisement or written client communication, and such list if it is furnished separately:

((~~(i)~~)) (a) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date; and

((~~(ii)~~)) (b) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"((~~; or~~

~~(c) Which~~)).

(3) Represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement or written client communication the limitations thereof and the difficulties with respect to its use; ((~~or~~

~~(d) Which~~))

(4) Contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; ((~~or~~

~~(e) Which~~))

(5) Contains past performance data, unless the advertisement or written client communication is accurate and dis-

closes all material facts necessary to ensure that the advertisement or written client communication is not misleading. An advertisement or written client communication containing past performance data must adhere to the following standards:

(a) The advertisement or written client communication must disclose the following:

(i) The effect of material market or economic conditions on portrayed results;

(ii) The effect on performance of fees, commissions, or other client paid expenses;

(iii) The effect of dividends and earnings on the results portrayed;

(iv) The potential for both profit and loss;

(v) Any material conditions, objectives, or investment strategies used to obtain the performance result; and

(vi) Any additional information reasonably necessary to ensure that the data is not misleading;

(b) The advertisement or written client communication must include the most recently available results computed using an appropriate time frame;

(c) Where the performance results are only for a selected group of clients, the advertisement or written communication must disclose the basis on which an objective selection was made; and

(d) This subsection (5) does not apply to client-specific account past performance data in an account statement that an unaffiliated qualified custodian generates and sends directly to the client;

(6) Compares past performance results to an index or other portfolio, unless the comparison index or other portfolio is a relevant comparison and the advertisement or written client communication includes full disclosure of the material facts regarding the comparison;

(7) Contains "backtested" or "hypothetical model" performance figures. Backtesting involves developing a strategy or model then applying the strategy or model to past historical performance. Hypothetical modeling involves creating a hypothetical portfolio and then monitoring it based upon forward-looking strategies and measuring it as if it constitutes a real portfolio;

(8) Fails to include the full legal name of the investment adviser;

(9) Includes information inconsistent with the information disclosed by an investment adviser on Form ADV or by an investment adviser representative on Form U4;

(10) Uses the acronyms "IA," "IAR," or "RIA" unless they are defined;

(11) Uses senior-specific certifications or professional designations in a manner inconsistent with chapter 460-25A WAC;

(12) Fails to provide a citation or attribution for any data or other information presented from outside sources; or

(13) Contains any omission or untrue statement of a material fact, or which is otherwise false or misleading.

((~~(2) For the purposes of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:~~

~~(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or~~

~~(c) Any other investment advisory service with regard to securities.~~))

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-105 Requirements for an investment adviser that has custody or possession of client funds or securities. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it ((~~shall~~)) will constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you to have custody of client funds or securities unless:

(1) **You notify the director.** You notify the director promptly on Form ADV that you have or may have custody;

(2) **A qualified custodian maintains your clients' funds and securities.**

(a) A qualified custodian maintains your clients' funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under either your name as agent or trustee for the clients or, in the case of a pooled investment vehicle that you manage, in the name of the pooled investment vehicle; and

(b) You maintain a separate record for each such account which shows the name and address of the qualified custodian where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account;

(3) **You notify clients of the identity of the qualified custodian.** If you open an account with a qualified custodian on your client's behalf, either under the client's name, under your name as agent, or under the name of a pooled investment vehicle, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If both you and the qualified custodian send account statements to a client to which you are required to provide this notice, you must include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from you;

(4) **Either you or a qualified custodian sends account statements to your clients.** You or a qualified custodian sends your clients account statements subject to the following requirements:

(a) **Requirements if qualified custodian sends account statements.** If you do not send account statements to your

clients, you have a reasonable basis for believing, after due inquiry, that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which the qualified custodian maintains funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(b) **Requirements if you send account statements.** If the qualified custodian does not send account statements to your clients:

(i) You send account statements, at least quarterly, to each of your clients for whom you have custody of funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of becoming subject to this subsection, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(A) File a certificate on Form ADV-E with the director within one hundred twenty days of the time chosen by the independent certified public accountant to conduct the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

(B) Notify the director within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

(C) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(5) **A client may designate an independent representative to receive account statements.** A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (3) and (4) of this section. You must not recommend persons to serve as independent representatives;

(6) **Investment advisers acting as qualified custodians.** If you are an investment adviser that maintains, or if you have custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with the advisory services you provide to clients:

(a) You must enter into an agreement with an independent certified public accountant to conduct an examination to verify client funds and securities as otherwise provided in subsection (4)(b)(ii) of this section. The independent certified public accountant you retain must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(b) You must obtain, or receive from your related person, within six months of becoming subject to this subsection (6) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant subject to the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including safeguarding of funds and securities held by either you or a related person on behalf of your clients;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody as defined in WAC 460-24A-005((~~(1)~~)) (6) because you have the authority to directly deduct fees from client accounts, you must comply with the ((~~safekeeping~~)) requirements in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the fee calculation itself, the amount of assets under management the fee is based on, ((~~and~~)) the time period covered by the fee, and if you charge performance compensation, the client's cumulative net investment gain (or loss), and the amount of

cumulative net investment gain above which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(c) **You must notify the director that you will comply with these ((~~safekeeping~~)) requirements.** You must notify the director on Form ADV that you will comply with the ((~~safekeeping~~)) requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody as defined in WAC 460-24A-005(((~~(1)~~))) (6) solely because you have the authority to have fees directly deducted from client accounts and you comply with the ((~~safekeeping~~)) requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody as defined in WAC 460-24A-005(((~~(1)~~))) (6) solely because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), ((~~the safekeeping~~)) requirements in WAC 460-24A-105, and subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (((~~(1)~~))) (6)(a)(iii), you must, in addition to complying with the ((~~safekeeping~~)) requirements set forth in WAC 460-24A-105, either:

(a) **Engage an independent party to authorize withdrawals from the pooled account.**

(i) You must enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) **Provide audited financial statements of the pooled investment vehicle to all limited partners or members.**

(i) You must cause the financial statements of the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards. The financial statements must be prepared in accordance with generally accepted accounting principles in the Unites States;

(ii) You must distribute the audited financial statements to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within one hundred twenty days of the end of the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you;

(iii) You must distribute, upon liquidation, the fund's final audited financial statements prepared in accordance with generally accepted accounting principles in the United States to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of the pooled investment vehicle. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the ((~~safekeeping~~)) requirements in (b)(i) and (ii) of this subsection;

(2) **You must deliver account statements to each limited partner (or member or other beneficial owner).** If you are an investment adviser registered or required to be registered under RCW 21.20.040 and you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(a) and (b)(i):

(i) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing net asset value of the fund at the end of the quarter based on the fund's governing documents;

(ii) A listing of the fund's long and short positions, including cash equivalent positions, on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(3) **If you engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC 460-24A-005 (((~~(1)~~))) (6)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(4) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 (((~~(1)~~))) (6)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-108 Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust. If you are an investment adviser registered or required to be registered under RCW 21.20.040 that acts as an investment adviser to a trust and the trust has retained you or one of your representatives, employees, directors, or owners as trustee, you must comply with the following requirements:

(1) **You must send invoices to the qualified custodian and a person connected to the trust at the same time.** You must send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at the same time that you send any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(2) **You must have an agreement with a qualified custodian that contains certain terms.** You must enter into a written agreement with a qualified custodian that complies with the following requirements:

(a) **The agreement must restrict payments to you or persons related to you.** The agreement must specify that the qualified custodian will neither deliver trust securities nor transmit any funds to you or one of your representatives, employees, directors, or owners, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to you, provided that:

(i) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(ii) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(iii) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to you and the amount of trustees' fees paid to the trustee.

(b) **The agreement must restrict the transfer of funds or securities.** Except as otherwise set forth in subsection (1)(b)(i) of this section, the agreement must specify that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be you or one of your representatives, employees, directors, or owners), who you have duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The agreement must further specify that the direction to transfer funds or securities, or both, can only be made to the following:

(i) To a trust company, bank trust department or brokerage firm independent from you for the account of the trust to which the assets relate;

(ii) To the named grantors or to the named beneficiaries of the trust;

(iii) To a third person independent from you in payment of the fees or charges of the third person including, but not limited to:

(A) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(B) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(iv) To third persons independent from you for any other purpose legitimately associated with the management of the trust; or

(v) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(3) **You must notify the director that you will comply with these ((~~safekeeping~~)) requirements.** You must notify the director on Form ADV that you will comply with the ((~~safekeeping~~)) requirements set forth in this section.

(4) **You are not required to comply with the net worth and bonding requirements for an investment adviser that has custody if you comply with these ((~~safekeeping~~)) requirements.** If you have custody solely as defined in WAC 460-24A-005 ((~~(1)~~)) (6)(a)(iii) because you are the trustee of a trust and you comply with the ((~~safekeeping~~)) requirements in WAC 460-24A-105 and this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-109 Exceptions from custody requirements. Exceptions from the custody requirements for investment advisers that are registered or required to be registered under RCW 21.20.040 are available in the following circumstances:

(1)(a) **You are not required to engage a qualified custodian to hold certain privately offered securities.** You are not required to comply with WAC 460-24A-105(2) with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered investment company.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of your relative.** You are not required to comply with the ((~~safekeeping~~)) requirements of WAC 460-24A-105 through 460-24A-108 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, employees, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is your parent, a grandparent, a spouse or domestic partner, a sibling, a child, ((~~or~~)) a grandchild, an aunt, an uncle, a niece, a nephew, or a first cousin. These relationships ((~~shall~~)) include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through 460-24A-108 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-110 Agency cross transactions. (1) For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

(2) If you are an investment adviser or investment adviser representative, it ((~~shall be~~)) is unlawful for you to effect an agency cross transaction for an advisory client under RCW 21.20.020(2) unless you satisfy these conditions:

(a) You obtain the written consent of the advisory client prospectively authorizing you to effect agency cross transactions for such client;

(b) Before obtaining such written consent from the client, you make full written disclosure to the client that, with respect to agency cross transactions, you will act as broker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(c) At or before the completion of each agency cross transaction, you or any other person relying on this rule sends the client a written confirmation. You must include the following in the written confirmation:

(i) A statement of the nature of the transaction;

(ii) The date the transaction took place;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

(iv) The source and amount of any other remuneration the investment adviser received or will receive in connection

with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(3) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying:

(a) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

(b) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period.

(4) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection (2)(a) of this section at any time by providing written notice to the investment adviser.

(5) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

(6) Nothing in this rule ((~~shall~~)) will be construed to relieve an investment adviser or investment adviser representative from acting in the best interest of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor ((~~shall~~)) will it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act of Washington, chapter 21.20 RCW, and the rules and regulations thereunder.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-120 Compliance procedures and practices. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, and have more than one employee, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you:

(1) **Policies and procedures.** ((~~Adopt and implement~~)) Establish, maintain, and enforce written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and the federal securities laws;

(2) **Annual review of policies and procedures.** Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; ((~~and~~))

(3) **Chief compliance officer.** Designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section and under WAC 460-24A-122, 460-24A-125, 460-24A-126, 460-24A-200 (1)(t), (aa), and (bb); and

(4) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

NEW SECTION

WAC 460-24A-122 Material nonpublic information policies and procedures. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by you or any person associated with you;

(2) You must review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of its implementation; and

(3) You must tailor the policies and procedures required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-125 Proxy voting. If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to have or to exercise voting authority with respect to client securities, unless you:

(1) ((~~Adopt and implement~~)) Establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(2) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(3) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

NEW SECTION

WAC 460-24A-126 Business continuity and succession plan. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you comply with the following requirements:

(1) You must establish, maintain, and enforce written procedures relating to a business continuity and succession

plan. The business continuity and succession plan must provide for at least the following:

(a) The protection, backup, and recovery of books and records;

(b) Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians), and regulators including, but not limited to, providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities;

(c) Office relocation in the event of temporary or permanent loss of a principal place of business;

(d) Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel; and

(e) Otherwise minimizing service disruption and client harm that could result from a sudden, significant business interruption.

(2) You must review, no less frequently than annually, the adequacy of the business continuity and succession plan established pursuant to this section and the effectiveness of its implementation.

(3) You must tailor the business continuity and succession plan required by this section to the facts and circumstances of your business model, taking into account the size of your firm, the type(s) of services you provide, and the number of locations that you have.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-130 Contents of investment advisory contract. If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 and 21.20.030 for you to provide investment advice unless you have a written investment advisory contract with the person you are advising. Further, it is unlawful under RCW 21.20.020 and 21.20.030 for you to enter into, extend, or renew any investment advisory contract unless ((~~it~~)) the contract provides in writing:

(1) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to you and any limits on such authority. The contract must describe these items with specificity;

(2) A statement that you will make no direct or indirect assignment or transfer of the contract ((~~may be made by you~~)) without the written consent of the client or other party to the contract. You may not assign a contract through implied or negative consent;

(3) A statement that you ((~~shall~~)) will not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client except as permitted under WAC 460-24A-150;

(4) A statement that if you are a partnership, you ((~~shall~~)) must notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change;

(5) A statement that if you are an investment adviser who has custody as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee, ((~~that~~)) the contract gives you the authority to deduct your advisory fees from the account held with the qualified custodian;

(6) The nature and extent to which you are granted proxy voting authority with respect to client securities;

(7) The terms for termination of the contract;

(8) The nature and extent to which you may deliver electronically the documents specified in WAC 460-24A-145, account statements, fee invoices, and other documents and the extent and manner in which a client may opt out of receiving documents electronically; ((~~and~~))

(9) A statement that you must deliver the brochure required by WAC 460-24A-150 to an advisory client or prospective advisory client not less than forty-eight hours prior to entering into any investment advisory contract with such client or prospective client. Alternately, if you will provide the brochure at the time of entering into any such contract, the investment advisory contract must provide that the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract;

(10) A statement that the investment adviser must obtain the client's written consent in order to revise any material terms of the investment advisory contract;

(11) The full legal name of the investment adviser, the contact information for the investment adviser, and an indication of the preferred method for clients to contact the investment adviser;

(12) A statement that the investment adviser owes the client a fiduciary duty; and if the investment adviser manages a pooled investment vehicle, a statement that each investor in the pooled investment vehicle is a client of the investment adviser; and

(13) For clients residing in Washington, the advisory contract ((~~shall~~)) must not waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder.

NEW SECTION

WAC 460-24A-135 Dissemination of advisory fee billing information for advisers who do not directly deduct fees. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you deliver written billing information to your advisory clients each time you charge an advisory fee. The written billing information must include the fee(s) charged, the formula used to calculate the fee(s), the fee calculation itself, the amount of assets under management the fee is based on, and the time period covered by the fee(s). If you charge performance compensation, the written billing information must also include the client's cumulative net investment gain (or loss) and the amount of cumulative net investment gain over which you will receive performance compensation. You must include the name of the custodian(s) on the fee invoice.

(2) The provision of invoices in accordance with WAC 460-24A-106 (1)(b) will satisfy the requirements of this section.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-145 Investment adviser brochure rule. (1) **General requirements.** Unless otherwise provided in this rule, if you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you ((~~shall~~)) must, in accordance with the provisions of this section, deliver to each advisory client and prospective advisory client:

(a) A brochure which may be a copy of Part 2A of your Form ADV or written documents containing the information required by Part 2A of Form ADV. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2;

(b) A copy of your Part 2B brochure supplement for each individual:

(i) Providing investment advice and having direct contact with clients in this state; or

(ii) Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of your Part 2A Appendix 1 wrap fee brochure if you sponsor or participate in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(e) Such other information as the director may require.

(2) **Delivery.**

(a) **Initial delivery.** Except as provided in (c) of this subsection, you ((~~shall~~)) must deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than forty-eight hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) **Annual delivery.** Except as provided in (((~~c~~))) (d) of this subsection, if there have been any material changes that have taken place since the last summary and brochure delivery to your clients, you must:

(i) Deliver within one hundred twenty days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

(ii) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. You must mail or deliver any materials requested by the client pursuant to such an offer within seven days of the receipt of the request.

(c) **Other-than-annual delivery.** If the instructions to Form ADV require you to file an other-than-annual amendment, and if the amendment adds disclosure of an event or materially revises information already disclosed about an event in response to Item 9 of Part 2A of Form ADV, or Item 3 of Part 2B of Form ADV, you must promptly deliver the following to each client:

(i) The amended brochure or brochure supplement, along with a statement describing the material change in disciplinary information; or

(ii) A statement describing the material change in disciplinary information and an offer to deliver the amended brochure.

(d) **Exception for certain clients.** You are not required to deliver the materials set forth in (1) of this section to:

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that act.

(3) **Electronic delivery.** You may deliver the materials required by this section electronically if you:

(a) In the case of an initial delivery to a potential client, obtain a verification that readable copies of the materials were received by the client;

(b) In the case of deliveries other than initial deliveries, obtain each client's prior consent to provide the materials electronically;

(c) In the case of deliveries through a passive delivery system such as a web site or portal, you notify the client when the materials become available on the system;

(d) Prepare the electronically delivered materials in the format prescribed in (((~~a~~))) subsection (1) of this ((~~subsection~~)) section and the instructions to Form ADV Part 2;

(((~~d~~))) (e) Deliver the materials in a format that can be retained by the client in either electronic or paper form; and

(((~~e~~))) (f) Establish procedures to supervise personnel transmitting the materials and prevent violations of this rule.

(4) **Delivery to limited partners.** If you are the adviser to a limited partnership, a limited liability company, or a trust, then you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) **Omission of inapplicable information.** If you render substantially different types of investment advisory services to different advisory clients, you may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(6) **Other disclosure obligations.** Nothing in this section ((~~shall~~)) relieves you from any obligation to disclose any information to your advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

(7) **Definitions.** For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-150 Performance compensation arrangements. (1) **General.** If you are an investment adviser you may, without violating RCW 21.20.030(1), enter into, extend, or renew an investment advisory contract which provides for compensation to you on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if:

(a) You are an investment adviser who is not registered and is not required to be registered under RCW 21.20.040; or

(b) The client is a "qualified client" as defined in subsection (2) of this section and the conditions of subsections (3) through (8) of this section are met.

(2) **Definitions.** For the purposes of this section:

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least one million dollars under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his or her behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than ((~~two~~)) 2.1 million dollars. For purposes of calculating a natural person's net worth:

(I) The person's primary residence must not be included as an asset;

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2 (a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 (a)(51)(A)) at the time the contract is entered into; or

(iii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least twelve months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3 (c)(1) of such Act (15 U.S.C. 80a-3 (c)(1)).

(d) The term "executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) **Compensation formula.** The compensation paid to you with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(a) In the case of securities for which market quotations are readily available within the meaning of Securities and Exchange Commission Rule 2a-(4)(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), as amended effective February 7, 2014, the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(b) In the case of securities for which market quotations are not readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective February 7, 2014, the formula must include:

(i) The realized capital losses of securities over the period;

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; ((~~and~~))

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this sub-

section) in the client's account ((~~for a period of not less than one year~~)) over a specified period. The formula must not calculate the compensation more frequently than once per calendar quarter. However, if your client invests mid-period in a private fund that you manage, you may apply the compensation formula to that client for the partial period in order to keep the client on the same schedule as the other clients who invest in the private fund; and

(d) The formula must reflect that you will only receive performance compensation on the client's cumulative net investment gain, and only upon the amount of the client's cumulative net investment gain for which you have not previously received a performance fee.

(4) **Client disclosure.** To the extent not otherwise disclosed on Form ADV Part 2, you must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The period which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Securities and Exchange Commission Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), as amended effective February 7, 2014, how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this rule.

(6) **Informed consent.** You or any of your investment adviser representatives that enter into a contract under this rule, must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks.

(7) **Nonexclusive.** Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under RCW 21.20.020 or any other applicable provision of the Securities Act of Washington, chapter 21.20 RCW, or any rule or order thereunder.

(8) **Obligations of independent representative.** Nothing in this section ((~~shall~~)) relieves a client's independent representative from any obligation to the client under applicable law.

(9) **Transition rules.**

(a) **Registered investment advisers.** If you are a registered investment adviser that entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, you will be considered to satisfy the conditions of this section. If a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), however, the conditions of this section in effect at that time will apply with regard to that person or company.

(b) **Registered investment advisers that were previously not registered.** This section ((~~shall~~)) does not apply to an advisory contract entered into when you were not required to register and were not registered. If a natural person or a company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser) when you are registered or required to register, however, the conditions of this section in effect at that time will apply with regard to that person or company.

(c) **Certain transfers of interest.** Solely for purposes of (a) and (b) of this subsection, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause this section to apply to such transferee.

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

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-170 Minimum ((~~financial~~)) net worth requirements for investment advisers. (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, you ((~~shall~~)) must maintain at all times a minimum net worth of $35,000 unless provided otherwise in this chapter. If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, you ((~~shall~~)) must maintain at all times a minimum net worth of $10,000.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody or discretionary authority over client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section you ((~~shall~~)) must maintain a bond in the amount of the net worth deficiency rounded up to the nearest $5,000. Any bond required by this section ((~~shall~~)) must be in the form determined by the director, issued by a company qualified to do business in this state, and

((~~shall~~)) must be subject to the claims of all clients of the investment adviser regardless of the clients' states of residence.

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you ((~~shall~~)) must maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, if you are an investment adviser registered or required to be registered under RCW 21.20.040 you ((~~shall~~)) must, by the close of business on the next business day, notify the director if your net worth is less than the minimum required. After transmitting such notice, you ((~~shall~~)) must file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

(a) A trial balance of all ledger accounts;

(b) A statement of all client funds or securities which are not segregated;

(c) A computation of the aggregate amount of client ledger debit balances; and

(d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" ((~~shall~~)) means an excess of assets over liabilities, as determined by generally accepted accounting principles, but ((~~shall~~)) does not include the following as assets:

(a) Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles in the United States), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; and

(b) In the case of an individual: Primary residence, home furnishings, automobile(s), and any other personal items not readily marketable ((~~in the case of an individual~~));

(c) In the case of a corporation: Advances or loans to stockholders and officers ((~~in the case of a corporation; and~~));

(d) In the case of a partnership: Advances or loans to partners ((~~in the case of a partnership~~)); and

(e) For limited liability companies: Advances or loans to members and managers.

(6) For purposes of this section, if you are an investment adviser you ((~~shall~~)) will not be deemed to be exercising discretion when you place trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(a) You have executed an investment adviser contract exclusively with your client which acknowledges that a third-party trading agreement will be executed to allow you to effect securities transactions for your client in your client's broker-dealer account;

(b) Your contract specifically states that your client does not grant discretionary authority to you and you in fact do not exercise discretion with respect to the account; and

(c) A third-party trading agreement is executed between your client and a broker-dealer which specifically limits your authority in your client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The director may require that a current appraisal be submitted in order to establish the worth of any asset for the purposes of meeting the minimum net worth requirements in subsection (1) of this section or the positive net worth requirement in subsection (3) of this section.

(8) If you are an investment adviser that has its principal place of business in a state other than this state, you ((~~shall~~)) must maintain only such minimum net worth as required by the state in which you maintain your principal place of business, provided you are ((~~licensed~~)) registered in that state and are in compliance with that state's minimum capital requirements.

NEW SECTION

WAC 460-24A-190 Training regarding vulnerable adults. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you provide training concerning financial exploitation of vulnerable adults pursuant to RCW 74.34.220. You must provide the training to your investment adviser representatives and to your employees who have contact with clients and access to account information on a regular basis and as part of their jobs. The training must include recognition of indicators of financial exploitation of a vulnerable adult, the manner in which employees may report suspected financial exploitation to the department of social and health services and law enforcement as permissive reporters, and steps employees may take to prevent suspected financial exploitation of a vulnerable adult as authorized by law or agreements between you and your clients.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-200 Books and records to be maintained by investment advisers. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you ((~~shall~~)) must make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursement records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by you for the purchase or sale of any security, of any instruction received by you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda ((~~shall~~)) must show the terms and conditions of the order, instruction, modification or cancellation; ((~~shall~~)) must identify the person connected with you who recommended the transaction to the client and the person who placed the order; and ((~~shall~~)) must show the account for which entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney ((~~shall~~)) must be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to your business.

(f) All trial balances, financial statements, and internal audit working papers or other supporting financial records relating to your business as an investment adviser. For purposes of this subsection, "financial statements" ((~~shall~~)) means a balance sheet prepared in accordance with generally accepted accounting principles in the United States, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) ((~~Originals~~)) Physical or electronic copies of all written communications received and copies of all written communications sent by you relating to your investment advisory business including, but not limited to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities; and

(iii) The placing or execution of any order to purchase or sell any security: Provided, however, That you ((~~shall~~)) will not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for you: And provided, That if you send any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, you ((~~shall~~)) will not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, you ((~~shall~~)) must retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which you are vested with any discretionary authority over the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to you.

(j) A written copy of each signed agreement entered into by you with any client and all other written agreements otherwise relating to your business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you), and if such communication recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum by you indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which you or any of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record ((~~shall~~)) must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction ((~~shall~~)) will not be construed as an admission that you or your advisory representative has any direct or indirect beneficial ownership in the security. You ((~~shall~~)) must record each transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" ((~~shall~~)) means any of your partners, officers or directors; any employee who participates in any way in the determination of which recommendations ((~~shall~~)) will be made, or whose functions or duties relate to the determination of which recommendation ((~~shall~~)) will be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by you prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" ((~~shall~~)) means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company ((~~shall~~)) will be presumed to control such company.

(iii) You ((~~shall~~)) will not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any ((~~advisory representative~~)) supervised person if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record of every transaction in a security in which you or any of your advisory representatives (as hereinafter defined) has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither you nor any of your advisory representatives has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record ((~~shall~~)) must state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price

at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You ((~~shall~~)) must record a transaction not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) You are "primarily engaged in a business or businesses other than advising investment advisory clients" if, for each of your most recent three fiscal years or for the period of time since organization, whichever is lesser, you derived, on an unconsolidated basis, more than fifty percent of:

(A) Your total sales and revenues; and

(B) Your income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, ((~~shall~~)) means any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" ((~~shall~~)) means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company ((~~shall~~)) will be presumed to control such company.

(iv) You ((~~shall~~)) will not be deemed to have violated the provisions of this subsection (1)(m) because of your failure to record securities transactions of any advisory representative if you establish that you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that you obtained by means of a solicitor to whom you paid a cash fee:

(i) Evidence of a written agreement to which you are a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of your disclosure statement and a written disclosure statement of the solicitor; and

(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206 (4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" ((~~shall~~)) means any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that you circulate or distribute, directly or indirectly, to two or more persons (other than persons connected with you); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts ((~~shall~~)) will be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving you or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client. The written information about the investment advisory client must include, but is not limited to, the client's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the client may disclose to the investment adviser in connection with such recommendation or investment advice. On an annual basis, the investment adviser must make a reasonable effort to confirm or update the written information about each investment advisory client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

(u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to you or your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

(v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you ((~~shall~~)) must keep the following records relating to the inadvertent custody:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with ((~~original~~)) signatures of your appropriate signatory and the investment adviser representative, of each initial Form U4 and each amendment to Disclosure Reporting Pages (DRPs) must be retained by you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

(x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you ((~~shall~~)) must keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity ((~~plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable you to meet your fiduciary obligations to your clients~~)) and succession plan adopted in accordance with WAC 460-24A-126.

(z) Written policies and procedures required to be established pursuant to WAC 460-24A-120, 460-24A-122, and 460-24A-125, and any records required to be created or maintained thereunder.

(aa) A copy of a written code of ethics that establishes standards of business conduct which reflect your fiduciary obligations and those of your supervised persons.

(bb) Written physical and cyber security policies and procedures that are reasonably designed to ensure the security and integrity of your physical and electronic records.

(cc) A copy of the written advisory fee billing information provided clients in accordance with WAC 460-24A-135, and a written record of the services provided to each client during the billing period.

(dd) Documentation of client's authorization for each nondiscretionary securities transaction.

(2)(a) If you are subject to subsection (1) of this section and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section ((~~shall~~)) must include:

(i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

(iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

(iv) Copies of confirmations of all transactions effected by or for the account of any client.

(v) A record for each security in which any client has a position, which record ((~~shall~~)) must show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

(vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you ((~~shall~~)) must also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 ((~~(1)~~)) (6)(a)(iii), you ((~~shall~~)) must also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept ((~~shall~~)) must include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within one hundred twenty days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept ((~~shall~~)) must include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you ((~~shall~~)) must also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section and you render any investment supervisory or management service to any client, you ((~~shall~~)) must, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which you can promptly furnish the name of each client, and the current amount or the interest of the client.

(4) Any books or records required by this section may be maintained by you in such manner that the identity of any client to whom you render investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) If you are subject to subsection (1) of this section, you ((~~shall~~)) must preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section ((~~shall~~)) must be maintained and preserved in an easily accessible place for ((~~a period of not less than five years from the end of the fiscal year during which~~)) at least six years from the date the last entry was made on the record, the first two years in your principal office.

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of you and any of your predecessors, ((~~shall~~)) must be maintained in your principal office and preserved until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section ((~~shall~~)) must be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in your principal office, from the end of the fiscal year during which you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you ((~~shall~~)) must maintain the following records or copies at your business location from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (l), (m), (n), (o), and (q) through (((~~s~~))) (dd), (2), and (3) of this section ((~~shall~~)) must be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number ((~~shall~~)) must be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you ((~~shall~~)) must, before ceasing to conduct or discontinuing business as an investment adviser, arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and ((~~shall~~)) must notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) If you are an investment adviser required to maintain and preserve records pursuant to this section, you must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) If the records that the investment adviser is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary authority" ((~~shall~~)) does not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section, ((~~shall~~)) will be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) If you are an investment adviser registered or required to be registered in this state and have your principal place of business in a state other than this state, you are exempt from the requirements of this section, provided you are ((~~licensed~~)) registered in the state where you have your principal place of business and are in compliance with that state's recordkeeping requirements.

(11) If you are an investment adviser registered or required to be registered under RCW 21.20.040, you must make the records required to be maintained under this section easily accessible for inspection by the director or the director's representatives. In the conduct of an examination authorized by RCW 21.20.100(4), you must honor all requests by the director or the director's representatives to have physical access to all areas of the office that is the subject of the examination. Upon request, you must permit the director or the director's representatives to access, copy, scan, image, and examine all records and electronic data that you are required to retain under this section.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives. (1) If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to your Form ADV. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment;

(b) File an annual updating amendment to the Form ADV with IARD within ninety days after the end of your fiscal year; ((~~and~~))

(c) File with the director by email thirty days prior to use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise. This includes the advisory contracts or offering materials that you intend to use in connection with any newly formed pooled investment vehicles to which you will provide investment advice; and

(d) Promptly file with the director by email any amendment to your list of the custodians that hold the client funds or securities that you supervise or manage. If you disclose this information on Schedule D of Form ADV Part 1A, and you file an amendment to Form ADV pursuant to (a) of this subsection, you will have satisfied this requirement. The director will consider an amendment to be filed promptly if it is filed within thirty days of the event that requires the filing of the amendment.

(2) If you are an investment adviser representative registered or required to be registered pursuant to RCW 21.20.040, you have a continuing obligation to update the information required by Form U4 as changes occur and you must promptly file with IARD any amendments to your Form U4. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-210 Notice of complaint must be filed with director. If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040 who has filed a complaint against any of your partners, officers, directors, agents ((~~licensed~~)) registered in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, you ((~~shall~~)) must send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

AMENDATORY SECTION (Amending WSR 14-13-068, filed 6/12/14, effective 7/13/14)

WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers. If you are an investment adviser, investment adviser representative, or a federal covered adviser, you are a fiduciary and have a duty to act primarily for the benefit of your clients. If you are a federal covered adviser, the provisions of this subsection apply to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) you ((~~shall~~)) must not engage in dishonest or unethical business practices including, but not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suit-

able for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2) Exercising any discretion in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security ((~~shall~~)) must be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser, investment adviser representative, or federal covered adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless you are a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered adviser, or any employee, or person affiliated with the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than you without disclosing that fact. (This prohibition does not apply to a situation where you use published research reports or statistical analyses to render advice or where you order such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; ((~~and~~))

(b) Charging a client an advisory fee for rendering advice when compensation for effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, federal covered investment adviser, or employees or affiliated persons thereof; and

(c) Serving as an officer, director, or similar capacity of any outside company or other entity.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where you have custody or possession of such securities or funds when the action of the investment adviser, federal covered adviser, or investment adviser representative or employee is subject to and does not comply with applicable custody requirements.

(16) Entering into, extending or renewing any investment advisory contract that does not comply with the requirements set forth in WAC 460-24A-130.

(17) Failing to establish, maintain, and enforce written policies and procedures ((~~reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940~~)) pursuant to WAC 460-24A-120, 460-24A-122, 460-24A-125, 460-24A-126, 460-24A-200 (1)(t), (aa), or (bb).

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision ((~~shall~~)) will apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate((~~, in an advisory~~)) or require by contract or otherwise, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or the rules adopted thereunder, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, manipulative or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

(23) Making, in the solicitation of clients, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

(24) Failing to provide advisory fee billing information to advisory clients pursuant to WAC 460-24A-135.

(25) Failing to provide training regarding the financial exploitation of vulnerable adults pursuant to WAC 460-24A-190.

(26) Accessing a client's account by using the client's own unique identifying information (such as username and password).

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices ((~~shall~~)) will be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein ((~~shall~~)) will apply to investment advisers, investment adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

WSR 18-24-014
PROPOSED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed November 27, 2018, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-107.

Title of Rule and Other Identifying Information: Working connections and seasonal child care subsidy programs: New WAC 110-15-0021 Eligibility—Exclusions; amending WAC 110-15-0001 Purpose and intent, 110-15-0003 Definitions, 110-15-0005 Eligibility, 110-15-0012 Verifying consumer's information, 110-15-0020 Eligibility—Special circumstances, 110-15-0030 Consumers' responsibilities, 110-15-0031 Notification of changes, 110-15-0035 DSHS's responsibilities to consumers, 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst, 110-15-0050 Additional requirements for self-employed WCCC consumers, 110-15-0060 Countable income, 110-15-0065 Calculation of income, 110-15-0085 Change in copayment, 110-15-0090 Minimum copayment, 110-15-0095 When WCCC benefits start, 110-15-0106 When provider payments start, 110-15-0107 Denial of benefits—Date of redetermining eligibility, 110-15-0109 Reapplication, 110-15-0110 Termination of and redetermining eligibility for benefits, 110-15-0126 Electronic attendance records, 110-15-0190 WCCC benefit calculations, 110-15-0268 Payment discrepancies—Provider overpayments, 110-15-0271 Payment discrepancies—Consumer, 110-15-0275 Payment discrepancies—Providers, 110-15-3530 Verifying consumers' and providers' information, 110-15-3566 Subsidized child care providers' responsibilities and 110-15-3665 When SCC program subsidies start; and repealing WAC 110-15-0014 Verifying information for a provider's payment, 110-15-0022 Eligibility resources, 110-15-0032 Failure to report changes, 110-15-0055 Receipt of benefits during fourteen-day wait period, and 110-15-0115 Notice of payment changes.

Hearing Location(s): On January 9, 2019, at 1:00, at 1110 Jefferson Street S.E., St. Helens Conference Room, Olympia, WA 98504.

Date of Intended Adoption: February 15, 2019.

Submit Written Comments to: Department of Children, Youth, and Families (DCYF) Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, fax 360-902-7903, submit comments online at https://del.wa.gov/PolicyProposalComment/Detail.aspx, by January 9, 2019.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7903 [360-902-7956], fax 360-902-7903, email dcyfrulescoordinator@dcyf.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Implement the federal requirement of second tier eligibility; (2) improve readability of the chapter by simplifying language and ensuring terms are used consistently throughout the chapter, better clarifying responsibilities of program participants, DCYF, and the department of social and health services (DSHS), and better organizing the chapter to align with the ordered functions of applying for, authorizing, and receiving benefits; and (3) make housekeeping updates after the creation of DCYF and the decodification of chapter 43.215 RCW and Title 170 WAC and recodification to chapter 43.216 RCW and Title 110 WAC.

Reasons Supporting Proposal: (1) In order to promote and support family economic stability, 45 C.F.R. § 98.21(b) requires states, like Washington, who have established family income eligibility at less than eighty-five percent of the state median income to provide flexibility at reapplication to accommodate modest increases in family income that reasonably allows the family to continue accessing child care services without unnecessary disruption. (2) The proposed amendments promote increased compliance by making the rules easier to read and understand. Additionally, stakeholder accessibility is enhanced by the proposed reorganization through the improved ability to locate specific requirements.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.135 through 43.216.143.

Rule is necessary because of federal law, 42 U.S.C. 9858, et seq.

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, Olympia, Washington, 360-688-0911; Implementation and Enforcement: DCYF/DSHS, statewide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rules primarily impact individuals. The proposals that do impact small businesses (child care providers) do not impose new requirements with a cost. They are limited to clarifying time limits for responding to requests for records to support invoices and time limits for correcting underpayments and overpayments.

November 26, 2018
Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0001 Purpose and intent. (1) This chapter establishes the minimum requirements for eligible families to receive subsidized child care benefits through the working connections child care (WCCC) and seasonal child care (SCC) programs ((~~as~~)). This chapter also establishes the minimum requirements for providers that request approval to receive subsidy payments for the care of children who are eligible for WCCC or SCC benefits. WCCC and SCC are administered by DSHS ((~~under~~)) in accordance with applicable state and federal law((~~,~~)) and to the extent of available funds. ((~~WCCC administered through the early childhood education and assistance program (ECEAP) shall follow ECEAP performance standards and contracts. As used in chapter 170-290 WAC, "to the extent of available funds" includes one or more of the following:~~

~~(a) Limiting or closing enrollment;~~

~~(b) Establishing a priority list for new enrollees subject to applicable state and federal law. The priority list includes families participating in early head start-child care partnership slots; families with children with special needs; teen parents; homeless families according to the McKinney-Vento Act; families receiving TANF; TANF families during a sanction; and families that received WCCC/SCC within thirty days of application; or~~

~~(c) Creating and maintaining a waiting list.~~)) Effective July 1, 2019, DCYF will be administering the WCCC and SCC programs.

(2) The purpose of WCCC((~~, as provided in part II of this chapter,~~)) is to:

(a) ((~~Assist~~)) Help eligible ((~~families in obtaining~~)) consumers pay for child care ((~~subsidies for approvable activities that enable them to~~)) so the consumer can work, attend training, or enroll in educational programs; and

(b) ((~~Consider the health and safety of children while they are in care and receiving child care subsidies.~~)) Promote stability, quality, and continuity of care and education programming for children who participate in the WCCC program.

(3) The purpose of SCC((~~, as provided in part III of this chapter,~~)) is to:

(a) ((~~Assist~~)) Help eligible ((~~families who~~)) consumers pay for licensed child care while they are seasonally employed in agriculturally related work ((~~to pay for licensed child care~~)); and

(b) ((~~Consider the health and safety of children while they are in care and receiving child care subsidies.~~)) Promote stability, quality, and continuity of care and education programming for children who participate in the SCC program.

(4) No provision of this section shall be interpreted contrary to RCW ((~~43.215.250~~)) 43.216.295.

(5) Early childhood education and assistance program (ECEAP)-certified providers receiving WCCC funds must follow ECEAP performance standards and contracts.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Able" means being physically and mentally capable of caring for a child in a responsible manner.

"Administrative error" means an error made by DCYF or DSHS through no fault of the consumer or provider.

"Approved activity" means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

"Authorization" means the transaction created by DSHS which allows the provider ((~~the ability~~)) to claim payment during a certification period. The transaction may be adjusted based on the family need.

"Available" means being free to provide care when not participating in an approved activity under WAC ((~~170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055~~)) 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

"Benefit" means a regular payment made by a government agency ((~~to~~)) on behalf of a person ((~~qualified~~)) eligible to receive it.

"Calendar year" means those dates between and including January 1st and December 31st.

"Capacity" means the maximum number of children the licensee is authorized ((~~by the department~~)) to have in care at any given time.

"Collective bargaining agreement" or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

"Consumer" means the person ((~~receiving~~)) eligible to receive:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

"Copayment" means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract((~~, each month~~)).

"Days" means calendar days unless otherwise specified.

((~~**"DEL"** means the department of early learning.~~)) **"DCYF"** means the department of children, youth, and families.

"DSHS" means the department of social and health services.

"Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

"Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the ((~~United States~~)) U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the ((~~United States~~)) U.S. This includes unsubsidized employment, as verified by DSHS, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

"Existing child care provider" means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to himself or herself or another person. See RCW 74.04.004.

"Homeless" means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

"In-home/relative provider" or ((~~**"license-exempt provider,"** referred to in the collective bargaining agreement as~~)) **"family, friends, and neighbors (FFN) provider"** ((~~or **"FFN provider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167~~)) means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

"In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

((~~**"Intentional"** means the likelihood of willfulness or done on purpose.~~

~~**"New child care provider"** means a licensed or certified provider who did not receive a state subsidy payment between July 1, 2015, and June 30, 2016.~~)) **"Living in the household"** means people who either sleep, prepare meals, or use sanitation facilities at a residence with one distinct physical address. This definition excludes recreational vehicles, sections of housing with inaccessible rooms, or separate living quarters with one distinct physical address.

"Lump-sum payment" means a single payment that is not anticipated to continue.

"Night shift" means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"Nonschool age child" means a child who is six years of age or younger and is not enrolled in public or private school.

((~~**"Phase-out period"** means a three month eligibility period a consumer may be eligible for at reapplication when the consumer's household income is greater than two hundred percent of the federal poverty guidelines (FPG) but less than two hundred twenty percent of the FPG.~~)) **"Overpayment"** means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

"Parental control" means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

"Preschool age child" means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

"Private school" means a private school approved by the state under chapter 28A.195 RCW.

"Program violation" means ((~~an act contrary to program rules and regulations and includes~~)) a failure to adhere to program requirements, which results in an overpayment.

"Sanction" means deterrent action imposed by the department to address a program violation finding.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

"School age child" means a child who is between five years of age through twelve years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

"Seasonally available agricultural related work" means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

"Second tier eligibility" means an increased income limit for eligible families who reapply before the end of their current eligibility period.

"Self-employment" means engaging in any legal income generating activity that is taxable under the ((~~United States~~)) U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the ((~~United States~~)) U.S., as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

((~~**"Suspected fraud"** means evidence supporting a finding of fraud. Suspected fraud can result in a criminal investigation by law enforcement.~~)) **"Sign"** means placing a name or legal mark on a document by physically writing or using an electronic signature.

"State median income" means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

"TANF" means temporary assistance for needy families, a cash assistance program administered by DSHS.

"Technical assistance" means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

"To the extent of available funds" means one or more of the following:

(a) Limited or closed enrollment;

(b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or

(c) Subject to a waiting list.

"Unintentional" means not done willfully or on purpose.

"Waiting list" means a list of applicants or reapplicants eligible to receive subsidy benefits ((~~but~~)) when funding ((~~is not~~)) becomes available.

"WCCC" means the working connections child care program, ((~~which is~~)) a child care subsidy program described in part II of this chapter that assists eligible families ((~~in obtaining subsidy~~)) to pay for child care.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0005 Eligibility. (1) **Consumer.** At application and reapplication, to be eligible for WCCC, the ((~~applicant or reapplicant~~)) consumer must:

(a) Have parental control of one or more eligible children;

(b) Live in the state of Washington;

(c) ((~~Be the child's:~~

~~(i) Parent, either biological or adopted;~~

~~(ii) Stepparent;~~

~~(iii) Legal guardian verified by a legal or court document;~~

~~(iv) Adult sibling or step-sibling;~~

~~(v) Nephew or niece;~~

~~(vi) Aunt;~~

~~(vii) Uncle;~~

~~(viii) Grandparent;~~

~~(ix) Any of the relatives in (c)(vi), (vii), or (viii) of this subsection with the prefix "great," such as great-aunt; or~~

~~(x) An approved in loco parentis custodian responsible for exercising day-to-day care and control of the child and who is not related to the child as described above;~~

~~(d) Participate in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or have been approved per WAC 170-290-0055;~~

~~(e) Comply with any~~)) Participate in an approved activity or meet the eligibility special circumstances ((~~that might affect WCCC eligibility under WAC 170-290-0020~~)) requirements under WAC 110-15-0020;

(((~~f~~))) (d) Have countable income at or below two hundred percent of the federal poverty guidelines (FPG) and have resources under one million dollars per WAC ((~~170-290-0022;~~

~~(g) The consumer's eligibility shall end if the consumer's countable income is greater than eighty-five percent of the state median income or if resources exceed one million dollars;~~

~~(h) Complete the WCCC application and DSHS verification process provided in WAC 170-290-0012 regardless of other program benefits or services received;~~

~~(i) Effective March 1, 2018, certify under penalty of perjury, the applicant's or reapplicant's status as:~~

~~(i) Married;~~

~~(ii) Unmarried and living with the parent of any child in the household; or~~

~~(iii) Single parent not living with the parent of any child in the household.~~

~~(j) Meet eligibility requirements for WCCC described in Part II of this chapter.~~)) 110-15-0022; and

(e) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed.

(2) **Children.** To be eligible for WCCC, ((~~the~~)) a child must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

(i) A U.S. citizen;

(ii) A U.S. national;

(iii) A qualified alien; or

(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

(b) ((~~Live~~)) Legally reside in Washington state, ((~~and be:~~

~~(i)~~)) which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005; and

(c) Be less than thirteen years of age on the first day of eligibility; or

(((~~ii~~))) (d) Be less than nineteen years of age, and:

(((~~A~~))) (i) Have a verified special need, according ((~~WAC 170-290-0220~~)) to WAC 110-15-0020; or

(((~~B~~))) (ii) Be under court supervision.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0012 Verifying consumers' information. (1) When a consumer ((~~initially~~)) applies or reapplies

for benefits, DSHS ((~~requires~~)) may require the consumer to provide verification of child care subsidy eligibility if ((~~the department~~)) DSHS is unable to verify it through agency records or systems((~~.~~

~~(2) During the consumer's eligibility period, DSHS will request verification for changes that may affect the consumer's benefit amount or eligibility when the department is unable to verify through agency records or systems if:~~

~~(a) The consumer reports a change;~~

~~(b) DSHS discovers the consumer's circumstances have changed; or~~

~~(c) The information DSHS has is questionable or outdated.~~

~~(3) DSHS notifies the consumer when verification is required.~~

~~(4) DSHS may accept verification to support the consumer's statement of circumstances. The verification the consumer gives DSHS must:~~

~~(a) Clearly relate to what the consumer is trying to provide;~~

~~(b) Be from a reliable source; and~~

~~(c) Be accurate, complete, and consistent.~~

~~(5) When the consumer gives DSHS questionable verification DSHS will:~~

~~(a)~~)). The information and verification provided to DSHS from the consumer must:

(a) Clearly relate to the request made by DSHS;

(b) Be from a reliable source; and

(c) Be accurate and complete.

(d) If DSHS has reasonable cause to believe the information and verification the consumer provides is unreliable, inaccurate, incomplete, or inconsistent, DSHS may:

(i) Ask the consumer to provide ((~~DSHS with more~~)) additional verification ((~~or provide a collateral contact (a "collateral contact" is~~)) that may include a statement from ((~~someone~~)) a person who lives outside of the consumer's residence ((~~that~~)) who knows the consumer's ((~~situation); or~~

~~(b)~~)) circumstances;

(ii) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. Consumer's rights are found in WAC ((~~170-290-0025.~~

~~(6) At the time of application, reapplication, or when changes are reported, DSHS will verify the following:~~

~~(a) The consumer's Washington residency;~~

~~(b) That the consumer has parental control of an eligible child per WAC 170-290-0005;~~

~~(c) The consumer's household composition:~~

~~(i) DSHS will compare the consumer's statement of household composition against records for that consumer under TANF, food assistance, medical assistance, and child support services;~~

~~(ii) If the consumer's statement of household composition is questionable when compared against records for that consumer under TANF, food assistance, medical assistance, and child support services, DSHS may take the action described in subsection (5) of this section; and~~

~~(iii) Effective March 1, 2018, if the consumer is the only parent named on the benefits application and DSHS is unable to verify household composition in agency records under TANF, food assistance, medical assistance, or child support services, then the consumer must:~~

~~(A) Provide the name and address of the other parent, or indicate, under penalty of perjury, that the other parent's identity and address are unknown to the applicant or that providing this information will likely result in serious physical or emotional harm to the consumer or anyone residing with the consumer; and~~

~~(B) Indicate under penalty of perjury whether the parent is present or absent in the household;~~

~~(d) Whether the consumer is participating in an approved activity, including the consumer's income and schedule from the approved activity;~~

~~(e) Whether the consumer complies with applicable eligibility rules in WAC 170-290-0020;~~

~~(f) Other income and countable resources under WAC 170-290-0005;~~

~~(g) If any other parent, as determined in WAC 170-290-0015, is in the household, the same information in (a) through (g) of this subsection is verified for that parent; and~~

~~(h) The citizenship or alien status of a child receiving child care subsidies.~~

~~(7) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.~~

~~(8) DSHS does not pay for~~)) 110-15-0025; or

(iii) Deny the application.

(2) Gross income of consumers with more than ninety days of employment must be employer-verified. If the consumer has less than ninety days of employment, the consumer must provide verification from the employer within sixty days from the approval date.

(3) DSHS may only request verification for changes during the family's eligibility period that reduce a copayment or increase the authorized amount of care, if agency records or systems cannot provide verification.

(4) If DSHS is unable to verify household composition of a single-parent household through agency records, the single-parent consumer must provide the name and address of the child's other parent, or declare, under penalty of perjury:

(a) That the other parent's identity and address are unknown to the consumer; or

(b) That providing this information will likely result in serious physical or emotional harm to the single-parent consumer or another person residing with the single-parent consumer; and

(c) Whether the other parent is present or absent in the household.

(5) DSHS will pay for requested verification that requires payment; however, this does not include payment for a self-employed consumer's state business registration or license, which is a cost of doing business.

(((~~(9) If a consumer does not provide all of the verification requested within thirty days from the application date, DSHS will determine the consumer's eligibility based on the information already available to DSHS. DSHS shall deny the application or reapplication if the available information does not confirm eligibility.~~))

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0020 Eligibility—Special circumstances. (1) ((**~~At application, reapplication and change reporting:~~**

~~(a) A consumer is not eligible for WCCC benefits for the consumer's children when child care is provided at the same location where the consumer works.~~

~~(b)~~)) A legal guardian ((~~under WAC 170-290-0005~~)) or individual acting in loco parentis may ((~~receive~~)) be eligible for WCCC benefits ((~~for~~)) based on participation in approved activities without ((~~the~~)) consideration of the legal guardian's or individual's acting in loco parentis spouse or live-in partner's availability to provide care ((~~being considered unless~~)) if the spouse or live-in partner is ((~~also~~)) not named on the permanent custody order.

(((~~i~~))) (a) Eligibility ((~~for WCCC benefits is~~)) will be determined under subsection (1) of this section based on the following:

(((~~A~~))) (i) The consumer's work or approved activities schedule;

(((~~B~~))) (ii) The child's need for care;

(((~~C~~))) (iii) The child's income ((~~eligibility~~)); and

(((~~D~~))) (iv) Family size based on the number of children under guardianship and needing care.

(((~~ii~~))) (b) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.

~~(((c) An in loco parentis custodian may be eligible for WCCC benefits when he or she cares for an eligible child in the absence of the child's legal guardian or biological, adoptive or stepparents.~~

~~(i) An in loco parentis custodian who is not related to the child as described in WAC 170-290-0005(1) may be eligible for WCCC benefits if he or she:~~

~~(A) Has a written, signed agreement between the parent and the caregiver assuming custodial responsibility; or~~

~~(B) Receives a TANF grant on behalf of the eligible child.~~

~~(ii) Eligibility for WCCC benefits is based on:~~

~~(A) The consumer's work schedule;~~

~~(B) The child's need for care;~~

~~(C) The child's income eligibility; and~~

~~(D) Family size based on number of children under in loco parentis and needing care.~~

~~(iii) The consumer's spouse or live-in partner is not eligible to receive subsidized child care payments as a child care provider for the child.~~))

(2) **At application and reapplication:**

(a) ((~~A consumer may be eligible for WCCC benefits while working in a child care center if the consumer does not provide direct care in the same classroom to the consumer's children during work hours.~~

~~(b) A consumer is not eligible for WCCC benefits while working in a family home child care where the consumer's children are also receiving subsidized child care.~~

~~(c) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care.~~

~~(d)~~)) A consumer may be eligible for WCCC benefits if the consumer is a parent in a two-parent family and one parent is not able or available as defined in WAC ((~~170-290-0003~~)) 110-15-0003 to provide care for the children while the other parent is working or participating in approved activities.

(((~~e~~))) (b) If a consumer claims one parent is not able to care for the children due to a medical condition, the consumer must provide written documentation from an acceptable medical source (((~~see~~)), as defined in WAC 388-449-0010((~~)~~)), that states the:

(i) Reason the parent is not able to care for the children;

(ii) Expected duration and severity of the condition that keeps the parent from caring for the children; and

(iii) Treatment plan if the parent is expected to improve enough to be able to care for the children. The parent must provide evidence from a medical professional showing he or she is cooperating with treatment and is still not able to care for the children.

~~(((f) A consumer is not eligible for WCCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty days in a row.~~))

(3) A consumer may be eligible for WCCC if the consumer is participating in an approved activity needed to remove a sanction penalty or to reopen the consumer's WorkFirst case.

(4) ((~~A child care provider who receives TANF benefits on behalf of a dependent child may not bill the state for subsidized child care for that same child.~~

~~(5) When a consumer's monthly copayment is higher than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005:~~

~~(a) The consumer's eligibility period may continue; and~~

~~(b) DSHS will not authorize payment to the provider until the copayment becomes lower than the state maximum rate including any special needs payments for all of the consumer's children in care under WAC 170-290-0005.~~)) A consumer whose application for TANF has not yet been approved, may be authorized for WCCC benefits for fourteen days pending establishment of an individual responsibility plan (IRP) with an approved activity. The fourteen days counts as part of the twelve-month eligibility period.

(5) A consumer who has an established IRP under WAC 110-15-0040 may be approved for WCCC benefits fourteen days before the start date of the activity. The fourteen days counts as part of the twelve-month eligibility period.

(6) A consumer who is waiting to enter into an approved activity under WAC 110-15-0045 may be approved for WCCC benefits fourteen days before the start date of the activity. The fourteen days counts as part of the twelve-month eligibility period.

NEW SECTION

WAC 110-15-0021 Eligibility—Exclusions. At application and reapplication:

(1) A consumer is not eligible for WCCC benefits for any child who receives care from a licensed family home child care in which the consumer works.

(2) A consumer is not eligible for WCCC benefits for a child who receives care from a child care center in a classroom in which the consumer provides direct care.

(3) A consumer is not eligible for WCCC benefits when the consumer is the only parent in the family and will be away from the home for more than thirty consecutive days.

(4) A consumer who is also an in-home/relative child care provider is not eligible to receive WCCC benefits for the consumer's own children for the same hours the consumer receives WCCC payments to care for other children.

(5) A consumer who is also a child care provider and receives TANF benefits on behalf of a child is not eligible to receive WCCC payments for the same child.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0030 Consumers' responsibilities. When a person applies for or receives WCCC benefits, as a condition of receiving those benefits, the applicant or consumer must((~~, as a condition of receiving those benefits~~)):

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets the requirements of WAC ((~~170-290-0125~~)) 110-15-0125;

(3) Pay the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;

(4) ((~~In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility,~~)) If the consumer or a third-party acting on behalf of the consumer fails to make a copayment when due, the consumer must do one or more of the following:

(a) Pay the child care provider the past ((~~or overdue~~)) due copayments;

(b) ((~~Give~~)) Provide DSHS with a ((~~written~~)) signed copy of a payment agreement between the consumer and child care provider ((~~and consumer to verify that copayment arrangements include one or more of~~)) that includes, but is not limited to, the following information:

(i) ((~~An installment~~)) A description of the agreed payment plan;

(ii) If applicable, a description of any collection agency action that may be taken by the provider if the consumer fails to comply with the agreed payment plan;

(iii) If applicable, a description of in-kind services in lieu of paying the copayment; ((~~or~~)) and

(iv) If applicable, payment forgiveness ((~~of the copayment~~)) from the provider((~~; or~~)).

(c) Provide DSHS proof that the consumer ((~~has~~)) attempted to ((~~pay~~)) make a copayment to ((~~a licensed~~)) the provider ((~~who~~)), but the licensed provider is no longer in business or ((~~a~~)) the license-exempt in-home/relative provider ((~~who is~~)) no longer ((~~providing~~)) provides child care. "Proof" includes, but is not limited to, a return receipt associated with a payment that was mailed to the provider that indicates the mailed payment was signed for ((~~and not responded to~~)) but not picked up, or a returned ((~~document~~)), previously mailed payment that was not ((~~picked up~~)) signed for or accepted;

(5) Pay the provider for child care services when the consumer requests additional child care beyond the current authorization;

(6) Pay the provider for optional child care programs that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(7) Pay the provider the same late fees that are charged to other families, if the consumer ((~~pays~~)) makes a late copayment ((~~late~~)) or picks up the child late;

(8) ((~~Ensure that care is provided in the correct home per WAC 170-290-0130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;~~

~~(9)~~)) Cooperate (provide the information requested) with the child care subsidy audit process. If the consumer does not provide the information requested:

(a) A consumer becomes ineligible for WCCC benefits upon a determination of noncooperation;

(b) The consumer remains ineligible until he or she meets child care subsidy audit requirements;

(c) The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter and cooperates;

(d) Care can begin on or after the date the consumer cooperated and meets WCCC requirements in part II of this chapter.

(((~~10~~))) (9) Provide the information requested by the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it ((~~could~~)) may affect the consumer's benefits;

(((~~11~~))) (10) Document ((~~their~~)) the child's attendance in child care by ((~~having~~)) the consumer or other person authorized by the consumer ((~~to take the child to or from the child care~~)):

(a) Signing the child in on arrival and out at departure, using a full signature and writing the time of arrival and departure, if the provider uses a paper attendance record((~~, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure~~)); or

(b) ((~~Record~~)) Electronically recording the child's attendance ((~~using an electronic system if~~)) as instructed, if an electronic system is used by the provider;

(((~~12) Provide the in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and~~

~~(13)~~)) (11) Ensure that ((~~their~~)) the consumer's children who receive child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

(12) Ensure that care is provided in the correct home as required by WAC 110-16-0015(3) if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

(13) Provide the in-home/relative provider with the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; and

(14) Provide other information and resources as necessary for the consumer's in-home/relative provider to be in compliance with the requirements of chapter 110-16 WAC including, but not limited to, WAC 110-16-0030 and 110-16-0035.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0031 Notification of changes. (1) When a consumer applies for or receives WCCC benefits, he or she must:

(a) ((~~Report to DSHS, within twenty-for hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider;~~

~~(b) Report to DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age or older who lives with the provider when care occurs outside of the child's home;~~

~~(c)~~)) Notify DSHS((,)) within five days((,)) of:

(i) Starting care with a provider; or

(ii) Any change in providers;

(((~~d~~))) (b) Notify DSHS, within ten days, of:

(i) Changes of the address ((~~and~~)) or telephone number of the consumer's in-home/relative provider;

(((~~e) Notify DSHS, within ten days,~~)) (ii) Changes of the consumer's home address or telephone number;

(iii) When the consumer's countable income increases and exceeds eighty-five percent of state median income ((~~as provided in WAC 170-290-0005;~~

~~(f) Notify DSHS, within ten days,~~)); or

(iv) When the consumer's countable resources exceed one million dollars ((~~as provided in WAC 170-290-0005;~~

~~(g) Notify the consumer's provider, within ten days, when DSHS changes the consumer's child care authorization; and~~

~~(h) Notify DSHS, within ten days, when the consumer's home address or telephone number changes~~)).

(2) When a consumer receives WCCC benefits, he or she may notify DSHS when:

(a) The number of child care hours the consumer needs increases;

(b) The household income changes((~~, which~~)) in a way that may lower the consumer's copayment ((~~under WAC 170-290-0085~~));

(c) The household size increases, which may lower the copayment; or

(d) The consumer's legal obligation to pay child support increases, which may lower the copayment.

(3) ((~~Effective dates of changes are as follows:~~

~~(a) Copayment changes are effective as provided in WAC 170-290-0085;~~

~~(b) Changes under subsection (1)(c) and (d) of this section are effective:~~

~~(i) The date of change, if reported within five days; or~~

~~(ii) The date the change was reported, if not reported within five days.~~

~~(c) Changes to consumer information described in WAC 170-290-0012 are effective:~~

~~(i) The date the change was reported, if reported within ten days from the date of change or if received within ten days from the date of request for verification; or~~

~~(ii) The date verification is received, if verification is not received within ten days from the date the change is reported or if not received within ten days from the request of verification.~~)) When a change is timely reported, the effective date of the change will be the date the change occurred. When required changes are timely reported, an overpayment will not be established.

(4) When a change is not timely reported, the effective date of the change will be the date the change was reported. When required changes are not timely reported, an overpayment may be established as provided in WAC 110-15-0271.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0035 DSHS's responsibilities to consumers. DSHS is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC ((~~170-290-0095~~)) 110-15-0095). Under WAC ((~~170-290-0012 (5)(e)(ii)~~)) 110-15-0012, a determination made within thirty days of application using self-attestation of new employment wages is compliant with this subsection even if third-party verification is provided more than thirty days after the date of application;

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC ((~~170-290-0125~~)) 110-15-0125;

(4) ((~~Review a consumer's chosen in-home/relative provider's background check results;~~

~~(5)~~)) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(((~~6~~))) (5) Authorize payment when no adult in a consumer's family (under WAC ((~~170-290-0015~~)) 110-15-0015) is able or available (under WAC ((~~170-290-0003~~)) 110-15-0003) to care for the consumer's children at application and reapplication;

(((~~7~~))) (6) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC ((~~170-290-0120(5)~~)) 110-15-0120(5).

(((~~8~~))) (7) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(((~~9~~))) (8) Provide prompt child care payments to a consumer's child care provider;

(((~~10~~))) (9) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer;

(((~~11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified; and~~

~~(12) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations.~~)) (10) Provide consumers with at least ten days written notice for changes to WCCC eligibility, provider payments, or when DSHS requires a change in child care arrangements.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst. (((~~1~~) ~~**General requirements for employment, self-employment, or Supplemental Nutrition Assistance Program employment and training (SNAP E&T) programs.** An applicant or consumer may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift, when he or she is:~~

~~(a) Employed under WAC 170-290-0003;~~

~~(b) Self-employed under WAC 170-290-0003; or~~)) Applicants and consumers not participating in WorkFirst activities may be eligible for WCCC benefits for approved activities as described below.

(1) Applicants or consumers who are:

(a) Employed;

(b) Self-employed; or

(c) Participating in the Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) program ((~~under chapter 388-444 WAC.~~

(2) ~~**Special requirements for education.**~~

~~(a) An applicant or consumer who is under twenty-two years of age~~)) may be eligible for WCCC benefits for up to a maximum of sixteen hours per day, including travel, study, and sleep time before or after a night shift.

(2) Applicants or consumers participating in approved education activities, including classroom time, labs, online courses, and unpaid internships required by a vocational education program, may be eligible for WCCC benefits as follows:

(a) Attending high school (((~~HS~~))) or participating in a general educational development (GED) program ((~~without a minimum number of employment hours~~)) with no required hours of employment is an approved activity for applicants or consumers under twenty-two years of age. However, the employment requirements and benefits limits of (b) through (e) of this subsection apply to applicants or consumers under twenty years of age who participate in the vocational or other education activities listed in those subsections.

(b) ((~~An applicant or consumer who is~~)) Attending school may be an approved activity for applicants or consumers twenty-two years of age or older((~~:~~

~~(i) May be eligible to receive general education and training benefits under this subsection. The consumer must work either:~~

~~(A)~~)) if, in addition to attending school, including participating in any of the activities in (c) through (e) of this subsection, an applicant or consumer works an average of twenty or more hours per week of unsubsidized employment((~~; or~~

~~(B)~~)) or an average of sixteen or more hours per week in a paid federal or state work study program((~~;~~

~~(ii) Is limited to up to twenty four months of WCCC benefits during the consumer's lifetime for~~)).

(c) When eligibility is based on the approved activity of attending school through participation in:

(((~~A~~))) (i) Adult basic education (ABE);

(((~~B~~))) (ii) English as a second language (ESL); or

(((~~C~~))) (iii) High school/general educational development (GED) completion((~~; and~~

~~(iii) Is~~)).

(d) WCCC benefits are limited to up to ((~~thirty-six months of WCCC benefits~~)) twenty-four months during the consumer's lifetime ((~~for~~)); when eligibility is based on the approved activity of attending school through participation in vocational education, WCCC benefits are limited to up to thirty-six months during the consumer's lifetime. The vocational education program must lead to a degree or certificate in a specific occupation and be offered by the following accredited entities ((~~only~~)):

(((~~A~~))) (i) Public ((~~and~~)) or private technical college or school;

(((~~B~~))) (ii) Community college; or

(((~~C~~))) (iii) Tribal college((~~; and~~

~~(iv) Is~~)).

(e) WCCC benefits for study time for approved classes are limited to ((~~up to~~)) ten hours per week ((~~of WCCC benefits for study time for approved classes. Approved classes include classroom, labs, online class and unpaid internships required by the vocational educational program~~)).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0050 Additional requirements for self-employed WCCC consumers. (1) **Self-employment generally.** To be considered self-employed, a WCCC consumer must:

(a) Earn income directly from the consumer's trade or business, not from wages paid by an employer;

(b) Be responsible to pay the consumer's self-employment Social Security and federal withholding taxes;

(c) Have a work schedule, activities or services that are not controlled in an employee-employer relationship;

(d) Participate directly in the production of goods or services that generate the consumer's income.

(2) **Home-based business.** Child care ((~~may~~)) must not occur in the home of a consumer who operates a home-based business.

(3) **Self-employed consumers receiving TANF.** If a consumer receives TANF and is also self-employed, he or she may be eligible for WCCC benefits ((~~for up to sixteen hours in a twenty-four-hour period.~~)) as determined by the following:

(a) The consumer must have an approved self-employment plan in the consumer's ((~~IRP under WAC 388-310-1700~~)) individual responsibility plan as outlined in chapter 388-310 WAC;

(b) The ((~~amount~~)) number of hours of WCCC benefits a consumer receives for self-employment is equal to the number of hours in the consumer's approved plan; and

(c) Income from self-employment while the consumer is receiving TANF is determined by WAC 388-450-0085.

(4) **Self-employed consumers not receiving TANF.** If a consumer does not receive TANF and requests WCCC benefits for the consumer's self-employment, the consumer may be eligible for WCCC benefits for up to sixteen hours in a twenty-four-hour period.

(a) A consumer who does not receive TANF cash assistance and requests WCCC benefits for self-employment must provide DSHS with the consumer's:

(i) Washington state business license((~~,~~)) or a tribal, county, or city business or occupation license, as applicable;

(ii) Uniform business identification (UBI) number for the state of Washington, or, for self-employment in bordering states, the registration or filing number;

(iii) Completed self-employment plan that is written, signed, dated, and includes, but is not limited to, a description of the self-employment business, proposed days and hours of work activity, including time needed for transportation, and the location of work activity;

(iv) Projected profit and loss statement((~~, if starting~~)) for a new business that has yet reported taxable income; and

(v) ((~~For established businesses, either~~)) Federal self-employment tax or state tax reporting forms for the most current reporting year ((~~or a profit and loss statement~~)) for an established business.

(b) At application and reapplication, the number of WCCC hours a self-employed consumer is eligible to receive during the first six consecutive months of ((~~starting~~)) a new ((~~self-employment~~)) business((~~, the number of hours a consumer is eligible to receive~~)) is based on the consumer's report of how many hours are needed, up to sixteen hours per day. A consumer is eligible to receive ((~~this provision~~)) these starting-business WCCC benefits only once during the consumer's lifetime ((~~and must use the benefit provided by this provision within the consumer's authorization period~~)).

(c) At application and reapplication, DSHS determines the number of care hours the consumer is eligible to receive after receiving WCCC self-employment starting-business benefits ((~~for six consecutive months~~)) as provided in (b) of this subsection by:

(i) Dividing the consumer's ((~~gross~~)) net monthly self-employment income, after allowable expenses or the standard one hundred dollar deduction, by the federal or state minimum wage, whichever is lower, to determine the average monthly hours of care needed by the consumer; and

(ii) Adding the consumer's additional approved employment, education, training, or travel hours to the total approved self-employment hours.

(d) If both parents in a two-parent family are self-employed((~~,~~)) at the same or a different business, each parent must provide a self-employment plan and self-employment income verification. If the requested verification is not provided, ((~~then WAC 170-290-0012~~)) WAC 110-15-0012 applies to determining eligibility.

(e) Self-employment income is calculated by subtracting either a standard one hundred dollar deduction or allowable business expenses from the consumer's gross monthly self-employment income.

The following expenses are not allowable:

(i) Federal, state, and local income taxes;

(ii) Money set aside for retirement purposes;

(iii) Personal work-related expenses (including travel to and from work);

(iv) Net losses from previous periods;

(v) Depreciation; or

(vi) Any amount greater than the payment from a boarder for lodging and meals.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0060 Countable income. DSHS counts income as money an applicant or consumer earns or receives ((~~themselves~~)) him or herself, or on behalf of the child from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) ((~~The following~~)) Child support ((~~payment amounts:~~

~~(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order;~~

~~(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;~~

~~(c) For applicants or consumers who have an informal verbal or written child support agreement, the amount verified by a written agreement signed by the noncustodial parent (NCP);~~

~~(d) For applicants or consumers who cannot provide a written agreement signed by the NCP, the amount received for child support verified by a written statement from the consumer that documents why they cannot provide the statement from the NCP~~)) received.

(3) Supplemental security income (SSI);

(4) ((~~Other~~)) Social Security ((~~payments, such as SSA and SSDI~~)) income;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation, except as required under RCW ((~~43.215.1351~~)) 43.216.137;

(8) Other types of income not listed in WAC ((~~170-290-0070~~)) 110-15-0070;

(9) Taxable income from VISTA ((~~volunteers~~)), AmeriCorps, and Washington Service Corps ((~~((WSC) if the income is taxed:~~

~~(a) Verify if AmeriCorps has child care services available.~~

~~(b) If the consumer is using the AmeriCorps child care services, they are not eligible for WCCC.~~)) programs;

(10) Taxable gross wages from employment or self-employment ((~~as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable~~));

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month the consumer applies or during the consumer's eligibility period, DSHS counts it as a lump sum payment as described in WAC ((~~170-290-0065(2)~~)) 110-15-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0065 Calculation of income. DSHS uses a consumer's countable income when determining income eligibility and copayment. A consumer's countable income is the sum of all anticipated income listed in WAC ((~~170-290-0060~~)) 110-15-0060 minus any child support paid out through a court order, division of child support administrative order, or tribal government order.

(1) To determine a consumer's income, DSHS either:

(a) Calculates an average monthly income by:

(i) Determining the number of months, weeks or pay periods it took the consumer's WCCC household to earn the income; and ((~~(ii)~~)) dividing the income by the same number of months, weeks or pay periods((~~; or~~)).

(ii) If the past wages are no longer reflective of the current income, DSHS may accept the employer's statement of current, anticipated wages for future income determination.

(b) When the consumer begins new employment and has less than three months of wages, DSHS uses the best available estimate of the consumer's WCCC household's current income:

(i) As verified by the consumer's employer; or

(ii) As provided by the consumer through a verbal or written statement documenting the new employment at the time of application, reapplication or change reporting, and wage verification within sixty days of DSHS request.

(2) If a consumer receives a lump sum payment (such as money from the sale of property or back child support payment) in the month of application or during the consumer's WCCC eligibility:

(a) DSHS calculates a monthly amount by dividing the lump sum payment by twelve;

(b) DSHS adds the monthly amount to the consumer's expected average monthly income:

(i) For the month it was received; and

(ii) For the remaining months of the current eligibility period; and

(c) To remain eligible for WCCC the consumer must meet WCCC income guidelines after the lump sum payment is applied.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0085 Change in copayment. (1) A consumer's copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases and causes the copayment to decrease;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of application, reapplication, or when reporting a change in circumstances;

(e) The consumer is no longer eligible for the minimum copayment under WAC ((~~170-290-0090~~)) 110-15-0090;

(f) ((~~DEL~~)) DCYF or DSHS makes a ((~~mass~~)) system-level change in benefits due to a change in law or program funding; or

(g) The consumer is approved for a new eligibility period.

(2) Copayment changes are effective on the first day of the month ((~~immediately following the date the copayment change was made.~~

~~(3) DSHS does not increase~~)) after a change is reported and required verification is received within the required time frame. If the required verification is received after the requested time frame, the new copayment will be effective on the first day of the month that follows the month the verification was received.

(3) A consumer's copayment will not be increased during ((~~the~~)) a current eligibility period ((~~when countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005.~~

~~(4) DSHS does not prorate the copayment~~)).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0090 Minimum copayment. (1) A consumer is eligible for the minimum copayment ((~~is paid~~)) when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) ((~~**First application.** The consumer pays~~)) The minimum copayment ((~~at first application for WCCC when benefits are paid. The consumer pays the minimum copayment:~~

~~(a)~~)) will apply for two months after initial application beginning in the month that DSHS pays ((~~for~~)) WCCC child care ((~~services; and~~

~~(b) The first full calendar month thereafter.~~

~~(3) **Reapplication.** The consumer pays~~)) benefits.

(3) Following the first two months of minimum copayments, the copayment may increase to the amount determined at application.

(4) The minimum copayment may apply for two months at reapplication for WCCC after a break of at least thirty days in the consumer's approved activities, as long as the break in activities occurred within ninety days leading up to the reapplication date. The ((~~consumer pays the~~)) two-month minimum copayment((~~:~~

~~(a) Beginning~~)) will begin in the month that DSHS pays ((~~for~~)) WCCC ((~~services; and~~

~~(b)~~)) child care benefits and continue for the first full calendar month thereafter.

(((~~(4)~~)) (5) The ((~~consumer pays the~~)) minimum copayment applies throughout the eligibility period when ((~~he or she~~)) the consumer is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the minor parent's parent or relative's TANF assistance unit.

(((~~(5) DSHS does not prorate the copayment.~~))

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0095 When WCCC benefits start. (1) WCCC benefits for an eligible consumer ((~~may~~)) begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process ((~~as described under WAC 170-290-0012~~)) within thirty days of the date DSHS received the consumer's application for WCCC benefits((~~, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication~~)); and

(b) The consumer is working or participating in an approved activity ((~~under WAC 170-290-0040, 170-290-0045, 170-290-0050 or 170-290-0055; and~~

~~(c) The consumer needs child care for approved activities within at least thirty days of the date of application for WCCC benefits~~)).

(2) If a consumer fails to ((~~turn in all information~~)) complete the initial application within thirty days from the application date, the consumer must restart the application process((~~, except in the case of new employment or new non-TANF activities. In those cases, under WAC 170-290-0012 and 170-290-0014, the consumer must provide third-party verification within sixty days of DSHS approving the application or reapplication~~)).

(3) The consumer's application date is whichever of the following is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0106 When provider payments start. The provider is eligible to receive payment when both of the following are met:

(1) The consumer has chosen the eligible provider (under WAC ((~~170-290-0125~~)) 110-15-0125) and the provider is caring for the children during an eligibility period; and

(2) DSHS notifies the provider that the consumer is eligible.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0107 Denial of benefits—Date of redetermining eligibility. (1) DSHS sends a ((~~consumer a~~)) denial letter when the consumer has applied for child care and the consumer:

(((~~(1)~~))) (a) Withdraws the request;

(((~~(2)~~))) (b) Is not eligible due to the consumer's:

(((~~(a)~~))) (i) Family composition;

(((~~(b)~~))) (ii) Income; ((~~or~~

~~(c)~~)) (iii) Outstanding unpaid copayment; or

(iv) Approved activity((~~.~~

~~(3)~~)); or

(c) Did not provide information required to determine the consumer's eligibility ((~~according to WAC 170-290-0012~~)) under WAC 110-15-0012 within thirty days((~~;~~

~~(4)~~)).

(2) If a consumer ((~~turns in~~)) provides information or otherwise meets eligibility requirements after DSHS sends the consumer a denial letter, DSHS ((~~determines~~)) will determine when the consumer's benefits may begin ((~~date~~)), as provided in WAC ((~~170-290-0095~~)) 110-15-0095.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0109 Reapplication. (1) ((~~If a consumer wants to receive~~)) To request WCCC benefits be continued uninterrupted ((~~child care benefits for another~~)) beyond the consumer's current eligibility period, the consumer must reapply for WCCC benefits with DSHS on or before the end of the current eligibility period. ((~~To determine if a consumer is eligible, DSHS:~~

~~(a) Requests reapplication information~~))

(2) Determination of the consumer's eligibility to receive uninterrupted WCCC benefits beyond the consumer's current eligibility period will be made pursuant to the eligibility rules contained in this chapter.

(3) A consumer who reapplies on or before the end date of the ((~~consumer's~~)) current WCCC eligibility period((~~; and~~

~~(b) Verifies the requested information for completeness and accuracy.~~

~~(2) A consumer may be eligible for WCCC benefits for a new eligibility period if:~~

~~(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;~~

~~(b) The consumer's provider is eligible for payment under WAC 170-290-0125; and~~

~~(c) The consumer meets all WCCC eligibility requirements.~~

~~(3) Effective October 1, 2016, if a~~)) may receive continued uninterrupted benefits through second tier eligibility if the consumer's household has countable income greater than two hundred percent ((~~of the federal poverty guidelines (FPG)~~)) but less than two hundred twenty percent of the ((~~FPG, the consumer may be eligible for a three-month eligibility period called Income Phase-Out. In determining eligibility for the Income Phase-Out period, the following rules apply:~~

~~(a) All countable income must be~~)) federal poverty guidelines (FPG).

(a) If the countable income is equal to or greater than ((~~two hundred percent of the FPG and less than~~)) two hundred twenty percent ((~~of the FPG. If the countable income is equal to or greater than two hundred twenty percent of the~~)) FPG, ((~~DSHS denies~~)) the reapplication((~~;~~

~~(b) DSHS applies all other eligibility criteria for a reapplication, with the exception of income as described above;~~

~~(c) There is no break between the twelve-month eligibility period and the Income Phase-Out period;~~

~~(d) DSHS calculates the consumer's copayment at two hundred percent of the FPG of countable household income;~~

~~(e) DSHS certifies the consumer for a three-month eligibility period;~~

~~(f) The consumer will need to reapply for a new twelve-month certification period if the consumer's household income falls below two hundred percent of the FPG during or at the end of the three-month Income Phase-Out period; and~~

~~(g) The consumer will not be eligible for a second, back-to-back Income Phase-Out period if the countable income of the consumer's household remains equal to or greater than two hundred percent of the FPG and less than two hundred twenty percent of the FPG at the end of the first three-month Income Phase-Out period.~~

~~(4) If DSHS determines that a consumer is eligible for WCCC benefits based on reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.~~

~~(5) When~~)) will be denied.

(b) The copayment for a second tier eligible consumer will be determined at two hundred percent of the FPG of countable household income.

(4) If a consumer submits a reapplication after the last day of the current eligibility period and meets all WCCC eligibility requirements, the consumer's benefits will begin:

(a) On the date ((~~that~~)) the consumer's reapplication is entered into DSHS's automated system or the date the consumer's reapplication is date-stamped as received ((~~in DSHS's community service office or entered into the DSHS automated system~~)) by DSHS, whichever date is earlier;

(b) When the consumer is working or participating in an approved activity; and

(c) The consumer's child is ((~~being cared for by an eligible WCCC~~)) receiving care from an approved provider.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0110 Termination of and redetermining eligibility for benefits. (1) ((~~DSHS stops~~)) A consumer's eligibility for WCCC benefits ((~~when~~)) is terminated if the consumer ((~~does not~~)) fails to:

(a) Comply with the ((~~copayment~~)) requirements of WAC ((~~170-290-0030 (3) and (4)~~)) 110-15-030;

(b) ((~~Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);~~

~~(c) Enter the approved activity at the end of the fourteen-day wait period;~~

~~(d)~~)) Complete the WorkFirst orientation process when approved for TANF((~~;~~

~~(e) Return the requested income verification of new employment by the sixtieth day as provided in WAC 170-290-0012; or~~

~~(f)~~)); and

(c) Cooperate with the child care subsidy audit process ((~~or with~~)) and investigations involving the DSHS office of fraud and accountability (OFA).

(2) A consumer's eligibility for WCCC benefits is terminated if the consumer:

(a) Has or anticipates countable income at or above eighty-five percent of the state median income (SMI); or

(b) Has resources that exceed one million dollars.

(3) A consumer ((~~may be eligible~~)) whose eligibility for WCCC benefits has been terminated may be eligible to receive WCCC benefits again, beginning on the date ((~~that~~)) the consumer:

(a) Meets all WCCC eligibility requirements;

(b) Complies with the copayment requirements ((~~of WAC 170-290-0030 (3) and (4)~~)) contained in WAC 110-15-0030; and

(c) Cooperates with the child care subsidy audit process ((~~or with~~)) and the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0126 Electronic attendance records. (1) Within ninety days of initial approval to receive WCCC or SCC benefits, providers must ((~~use~~)) adopt the department's electronic attendance recordkeeping system or a department-approved electronic attendance recordkeeping system to record a child's attendance. Ninety days following approval, providers not using an approved electronic attendance system will no longer receive WCCC or SCC payments.

(2) The electronic attendance recordkeeping system must:

(a) Record an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar authentication by the parent or designee when signing the child in and out of the provider's care;

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against alterations of the electronic records;

(c) Produce an authentic, verifiable record for each transaction that complies with all legal and other requirements

regarding the record's structure, content, and time of creation or receipt;

(d) Prove the identity of the sender of the record;

(e) Uniquely identify each record;

(f) Capture an electronic record for each transaction conducted;

(g) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed and managed as a unit;

(h) Retain electronic records in an accessible form for their legal minimum retention period;

(i) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(j) Produce authentic copies of electronic records and supply them in usable formats for business purposes and all public access purposes;

(k) Contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(i) The contents of the electronic record;

(ii) The method used to sign the electronic record, if applicable;

(iii) The person signing the electronic record; and

(iv) The date when the signature was executed.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0190 WCCC benefit calculations. (1) The amount of care a consumer may receive is determined by DSHS at application or reapplication. ((~~The consumer does not need to be in approved activities or a reported activity schedule, except at application or reapplication.~~)) Once the care is authorized, the amount will not be reduced during the eligibility period unless:

(a) The consumer requests the reduction;

(b) The care is for a school-aged child as described in subsection (3) of this section; ((~~and~~)) or

(c) Incorrect information was given at application or reapplication ((~~according to WAC 170-290-0030~~)).

(2) To determine the amount of weekly hours of care needed, DSHS ((~~will~~)) reviews:

(a) The consumer's participation in approved activities ((~~per WAC 170-290-0040, 170-290-0045, 170-290-0050, and 170-290-0055;~~

~~(b)~~)) and the number of hours the child attends school, including home school, ((~~and reduce the amount of care;~~

~~(c)~~)) which will reduce the amount of care needed.

(b) In a two parent household, the days and times ((~~the~~)) approved activities overlap, and only authorize care during those overlapping times((~~;~~

~~(d) The~~)). The consumer is eligible for full-time care if overlapping care totals one hundred ten hours in one month.

(c) DSHS will not consider the schedule of a parent((~~,~~)) in a two parent household((~~,~~)) who is not able to care for the child((~~, as defined in WAC 170-290-0020, and exclude the activity requirements; and~~

~~(e) When a consumer requests and verifies the need for increased care, DSHS will increase the care for the remainder of the eligibility period~~)).

(3) ((~~Determining~~)) Full-time care for a family using licensed providers is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Twenty-three full-day units per month will be authorized ((~~for one hundred ten hours of activity or more each month~~)) when the child needs care five or more hours per day;

(b) Thirty half-day units per month will be authorized ((~~for one hundred ten hours of activity or more each month~~)) when the child needs care less than five hours per day;

(c) ((~~Thirty half-day units per month will be authorized during the school year for a school-aged child who needs care less than five hours per day;~~

~~(d)~~)) Forty-six half-day units per month will be authorized during the months of June, July, and August for a school-aged child who needs five or more hours of care;

((~~(e) Twenty-three full-day units will be authorized during the school year for a school-aged child who needs care five or more hours per day;~~

~~(f)~~)) (d) Supervisor approval is required for additional days of care that exceeds twenty-three full days or thirty half days per month; and

(((~~(g)~~)) (e) Care cannot exceed sixteen hours per day, per child.

(4) ((~~Determining~~)) Full-time care for a family using in-home/relative providers (family, friends and neighbors)((~~,~~)) is authorized when the consumer participates in approved activities at least one hundred ten hours per month:

(a) Two hundred thirty hours of care will be authorized ((~~for one hundred ten hours of activity or more each month~~)) when the child needs care five or more hours per day;

(b) One hundred fifteen hours of care will be authorized ((~~for one hundred ten hours of activity or more each month~~)) when the child needs care less than five hours per day;

(c) One hundred fifteen hours of care will be authorized during the school year for a school-aged child who needs care less than five hours per day and the provider will be authorized for contingency hours each month, up to a maximum of two hundred thirty hours;

(d) Two hundred thirty hours of care will be authorized during the school year for a school-aged child who needs care five or more hours in a day;

(e) Supervisor approval is required for hours of care that exceed two hundred thirty hours per month; and

(f) Care cannot exceed sixteen hours per day, per child.

(5) When determining part-time care for a family using licensed providers and the activity is less than one hundred ten hours per month((~~,~~)):

(a) A full-day unit will be authorized for each day of care that exceeds five hours;

(b) A half-day unit will be authorized for each day of care that is less than five hours; and

(c) A half-day unit will be authorized for each day of care for a school-aged child, not to exceed thirty half days.

(6) When determining part-time care for a family using in-home/relative providers (((~~(family, friend and neighbors).~~))):

(a) Under the provisions of subsection (2) of this section, DSHS will authorize the number of hours of care needed per month when the activity is less than one hundred ten hours per month; and

(b) ((~~When the provider claims contingency hours,~~)) The total number of authorized hours and contingency hours claimed cannot exceed two hundred thirty hours per month.

(7) DSHS determines the allocation of hours or units for families with multiple providers based upon the information received from the parent.

(8) DSHS may authorize more than the state rate and up to the provider's private pay rate if:

(a) The parent is a WorkFirst participant; and

(b) Appropriate child care, at the state rate, is not available within a reasonable distance from the approved activity site. "Appropriate" means licensed or certified child care under WAC ((~~170-290-0125~~)) 110-15-0125, or an approved in-home/relative provider under WAC ((~~170-290-0130~~)) 110-16-0010. "Reasonable distance" is determined by comparing distances other local families must travel to access appropriate child care.

(9) Other fees DSHS may authorize to a provider are:

(a) Registration fees;

(b) Field trip fees;

(c) Nonstandard hours bonus;

(d) Overtime care to a licensed provider who has a written policy to charge all families, when care is expected to exceed ten hours in a day; and

(e) Special needs rates for a child.

(((~~(10) In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits cannot receive those benefits for their own children during the hours in which they provide subsidized child care.~~)))

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0268 Payment discrepancies—Provider overpayments. (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

(a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support ((~~their~~)) the billing. Beginning July 1, 2018, attendance must be recorded using DCYF's electronic attendance system or a DCYF-approved electronic attendance system. Any other format for recording attendance will not be considered valid support for a provider billing and may result in an overpayment;

(c) Bills and receives payment for more than ((~~they are~~)) the provider is eligible to bill;

(d) Routinely provides care in a location other than what was approved at the time of authorization;

(e) With respect to license-exempt in-home/relative providers, ((~~commonly known as "family, friends, and neighbor" providers,~~)) bills the state for more than six children at one time ((~~during~~)) for the same hours of care; or

(f) With respect to licensed or certified providers:

(i) Bills the state for more than the number of children ((~~they have~~)) in ((~~their~~)) the provider's licensed capacity; or

(ii) Is caring for a ((~~WCCC~~)) child receiving WCCC benefits outside ((~~their~~)) the provider's licensed allowable age range without a ((~~DEL-approved~~)) DCYF-approved exception; or

(g) With respect to certified providers caring for children in a state bordering Washington:

(i) Is determined ((~~not~~)) to not be in compliance with ((~~their~~)) the state's licensing regulations; or

(ii) Fails to notify DSHS within ten days of any suspension, revocation, or change to ((~~their~~)) the provider's license.

(2) ((~~DEL~~)) DCYF or DSHS will request documentation from a provider when preparing to establish an overpayment. The provider ((~~has~~)) must provide requested information within twenty-eight consecutive calendar days from the date of the written request ((~~to supply any requested documentation~~)).

(3) A provider ((~~is required to~~)) must repay any payments ((~~which they were~~)) that the provider was not eligible to receive.

(4) ((~~Provider overpayments defined in subsection (1) of this section are deemed as program violations as described in WAC 170-290-0277.~~

~~(5)~~)) A provider ((~~is required to~~)) must repay any overpayment ((~~made through a departmental error~~)), even if the overpayment is the result of a DCYF or DSHS error in issuing payment the provider was not eligible to receive.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0271 Payment discrepancies—Consumer. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits in an amount greater than the consumer was eligible to receive;

(b) ((~~Is determined eligible at application or reapplication based on~~)) Received benefits or services based on the eligibility criteria of the consumer's participation in an approved activity ((~~and used benefits, but never participated in said~~)), but the consumer did not participate in the activity;

(c) Failed to report ((~~changes~~)) information accurately under the requirements of ((~~WAC 170-290-0031 to DSHS~~)) of this chapter, which ((~~result~~)) resulted in an error in determining eligibility, amount of care authorized, or copayment;

(d) ((~~Used a provider who did not meet the eligibility requirements under WAC 170-290-0125;~~

~~(e)~~)) Received benefits for a child who was not eligible ((~~per WAC 170-290-0005, 170-290-0015 or 170-290-0020~~)) under WAC 110-15-0005, 110-15-0015, or 110-15-0020; or

(((~~(f)~~))) (e) Failed to return, by the sixtieth day, the requested income verification of new employment as provided in WAC ((~~170-290-0012~~)) 110-15-0012.

(2) ((~~DEL~~)) DCYF or DSHS may request documentation from a consumer when preparing to establish an overpay-

ment. The consumer has fourteen consecutive calendar days to ((~~supply~~)) provide any requested documentation.

(3) Consumers ((~~are required to~~)) must repay any benefits paid by DSHS that they were not eligible to receive.

(4) ((~~If an~~)) A consumer must repay any overpayment, even if the overpayment ((~~was made through departmental~~)) is a result of a DCYF or DSHS error((~~, the consumer is still required to repay that amount~~)) in issuing payment the consumer was not eligible to receive.

(5) If a consumer is not eligible under WAC ((~~170-290-0030 through 170-290-0032~~)) 110-15-0030 through 110-15-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment((~~, including any absent days~~)).

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-0275 Payment discrepancies—Providers. (1) This section applies to all child care providers.

(2) ((~~For in-home/relative and licensed family home child care providers, disputes regarding underpayments are grievable.~~

~~(3) Payment discrepancies may be corrected based on time frames for payment. Correction of payment discrepancies depends on the following circumstances:~~

~~(a)~~)) Providers must submit a billing invoice for payment within twelve months of the date ((~~of service~~)) child care services are provided. Any invoice submitted more than twelve months from date ((~~of service~~)) child care services are provided will not be processed.

(((~~(b) If the billing invoice for payment is made within the twelve-month period, the time limits for correcting payment errors are~~)) (3) For purposes of correction of a payment error based on a billing invoice that has been submitted as required by subsection (2) of this section, the following time limits apply for the period of child care services for which corrections can be made.

(a) For underpayments:

(i) Two years back from the date payment was issued if the error ((~~is~~)) was based on rates paid by age or region, ((~~unless the error is discovered by a federal audit, in which case the provider has up to twenty-four months after the date of service to ask for a corrected payment~~)) except as provided in (a)(iii) of this subsection; or

(ii) Three years back from the date payment was issued if the error was ((~~for any other reason, including an error discovered~~)) based on any issue other than rates paid by age or region; and

(iii) Three years back from the date payment was issued for any underpayment identified by a federal or state audit((~~, in which case the provider has up to three years after the date of service to ask for a corrected payment~~)).

(b) For overpayments:

(i) Two years back from the date payment was issued if the error was based on rates paid by age or region, except as provided in (b)(iii) of this subsection; and DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within two years of the date the payment was issued; or

(ii) Three years back from the date payment was issued if the error was based on any issue other than rates paid by age or region; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the overpayment was issued; and

(iii) Three years back from the date payment was issued for any overpayment identified by a federal or state audit; DSHS or DCYF must notify the provider of the overpayment by personal service or by certified mail, return receipt requested, within three years of the date the payment was issued.

(4) For in-home/relative and family home child care providers, disputes regarding underpayments may be addressed through the grievance procedure in the collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3530 Verifying consumers' and providers' information. DSHS verifies a consumer's information as provided in WAC ((~~170-290-0012 and 170-290-0014~~)) 110-15-0012.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3566 Subsidized child care providers' responsibilities. Licensed or certified child care providers who accept SCC subsidies must do the following:

(1) Comply with all of the ((~~DEL~~)) DCYF child care licensing or certification requirements as provided in chapters ((~~170-295, 170-296A, or 170-297~~)) 110-300, 110-300A, 110-300B, and 110-305 WAC; and

(2) ((~~Report pending charges or convictions to DSHS as provided in chapter 170-295, 170-296A, or 170-297 WAC;~~

~~(3) Keep complete and accurate daily attendance records for children in their care and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:~~

~~(a) Current attendance records including records from the previous twelve months, must be available immediately for review upon request by DEL.~~

~~(b) Attendance records older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department. Beginning July 1, 2017, or upon ratification of the 2017-19 collective bargaining agreement with SEIU 925, whichever occurs later, the records must be provided within twenty-eight consecutive calendar days of the date of a written request from either department.~~

~~(c) Failure to make attendance records available as provided in this subsection may:~~

~~(i) Result in the immediate suspension of the provider's subsidy payments; and~~

~~(ii) Establish a provider overpayment as provided in WAC 170-290-0268;~~

~~(4) Allow consumers access to their child at all times while the child is in care;~~

~~(5) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;~~

~~(6) Follow billing procedures as described in the most recent version of "*Child Care Subsidies: A Guide for Licensed and Certified Family Home Child Care Providers*"; "*Child Care Subsidies: A Guide for Licensed and Certified Child Care Centers,*" including billing only for actual units of child care under WCCC billing guidelines;~~

~~(7) Not claim a payment in any month in which a child has not attended at least one day in that month;~~

~~(8) Invoice the state no later than one calendar year after the actual date of service;~~

~~(9) Not charge subsidized families for:~~

~~(a) The difference between the provider's customary rate and the maximum allowed state rate;~~

~~(b) Registration fees in excess of what is paid by subsidy program rules;~~

~~(c) Absent days on days in which the child is not scheduled and authorized for care;~~

~~(d) Handling fees to process consumer copayments, child care services payments, or paperwork;~~

~~(e) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or~~

~~(f) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state; and~~

~~(10) For~~)) Comply with WAC 110-15-0034.

(3) Providers who care for children in states bordering Washington, must verify that they are currently complying with their state's licensing regulations, and notify DSHS within ten days of any suspension, revocation, or changes to their license.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3665 When SCC program subsidies start. (1) SCC benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required SCC application and verification process as described under WAC ((~~170-290-0012 and 170-290-0014~~)) 110-15-0012 within thirty days of the date DSHS received the consumer's application for SCC benefits, except in the case of new employment. In that case, under WAC ((~~170-290-0012~~)) 110-15-0012, the consumer must provide third-party verification within sixty days of application or reapplication;

(b) The consumer is working or participating in an approved activity under WAC ((~~170-290-3555~~)) 110-15-3555 at application and reapplication; and

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits.

(2) If a consumer fails to turn in all information within thirty days from the application date, the consumer must restart the application process, except in the case of new employment. In that case, under WAC ((~~170-290-0012~~)) 110-15-0012, the consumer must provide third-party verification within sixty days of application or reapplication.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 110-15-0014	Verifying information for a provider's payment.
WAC 110-15-0022	Eligibility—Resources.
WAC 110-15-0032	Failure to report changes.
WAC 110-15-0055	Receipt of benefits during fourteen-day wait period.
WAC 110-15-0115	Notice of payment changes.

WSR 18-24-020
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed November 27, 2018, 2:27 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions and 246-247-075 Monitoring, testing, and quality assurance, the department of health (DOH) is proposing to make technical corrections to request full delegation of the Radionuclide Air Emissions Program from the United States Environmental Protection Agency (EPA).

Hearing Location(s): On January 9, 2019, at 10:00 a.m., at DOH, Town Center East 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: January 16, 2019.

Submit Written Comments to: Theresa Phillips, DOH, P.O. Box 47820, Olympia, WA 98504-7820, email https://fortress.wa.gov/doh/policyreview, by January 9, 2019.

Assistance for Persons with Disabilities: Contact Theresa Phillips, phone 360-236-3147, TTY 360-833-6388 or 711, email theresa.phillips@doh.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments make technical corrections to align the state rule with the federal rule as required by EPA. The proposal eliminates EPA approval for any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements under WAC 246-247-035(3). EPA has directed Washington state to remove subsection (3) because the straight delegation from EPA to the department will include a federal register notice that will specify which provisions of the National

Emission Standards for Hazardous Air Pollutants (NESHAP) allow for approval of alternatives by the department and which are made by EPA. EPA has also directed the department to add the word "nonfederal" before the word "facility" in WAC 246-247-075(4) to clarify the type of facility the department may allow the use of alternative monitoring procedures.

Reasons Supporting Proposal: The intent of RCW 70.98.050 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70.98.080(5) is to reduce redundant licensing requirements. The proposed rule amendments meet the intent of the statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Statute Being Implemented: RCW 70.98.050 and 70.98.-080.

Rule is necessary because of federal law, 40 C.F.R. Part 61.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 509-946-3798.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards;

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: The proposed changes are necessary for consistency between federal and state rules and as a primary condition for delegation of NESHAP authority from EPA to the department. If Washington does not adopt the proposed changes, the department would not receive full delegation as required by EPA.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

November 21, 2018
Clark Halvorson
Assistant Secretary

AMENDATORY SECTION (Amending WSR 18-12-075, filed 6/1/18, effective 7/2/18)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, 2018, are adopted by reference except as provided in subsection((~~s (2) and (3)~~)) (2) of this section.

((~~These standards apply in addition to other requirements of this chapter.~~))

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

((~~(3) Any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements must be approved by EPA.~~))

AMENDATORY SECTION (Amending WSR 12-01-071, filed 12/19/11, effective 1/19/12)

WAC 246-247-075 Monitoring, testing, and quality assurance. (1) The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-075 for nonfederal emission unit monitoring, testing, or quality assurance, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(2) Equipment and procedures used for the continuous monitoring of radioactive air emissions shall conform, as applicable, to the guidance contained in ANSI N13.1, ANSI N42.18, ANSI N323, ANSI N317, reference methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17 of 40 C.F.R. Part 60, Appendix A, 40 C.F.R. Part 52, Appendix E, and any other methods approved by the department.

(3) The operator of an emission unit with a potential-to-emit of less than 0.1 mrem/yr TEDE to the MEI may estimate those radionuclide emissions, in lieu of monitoring, in accordance with 40 C.F.R. 61 Appendix D, or other procedure approved by the department. The department may require periodic confirmatory measurements (e.g., grab samples) during routine operations to verify the low emissions. Methods to implement periodic confirmatory monitoring shall be approved by the department.

(4) The department may allow a nonfederal facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement.

(5) The following types of facilities shall determine radionuclide emissions in accordance with either a methodology referenced in subsections (1) through (4) of this section or the respective document referenced below:

(a) Nuclear power reactors licensed by the NRC: Offsite Dose Calculation Manual;

(b) Fuel fabrication plants licensed by the NRC: NRC's Regulatory Guide 4.16, dated December 1985;

(c) Uranium mills that are processing material: NRC's Regulatory Guide 4.14, dated April 1980.

(6) Licensed facilities shall conduct and document a quality assurance program. Except for those types of facilities specified in subsection (5) of this section, the quality assurance program shall be compatible with applicable national standards such as ANSI/ASME NQA-1-1988, ANSI/ASME NQA-2-1986, QA/R-2, and QA/R-5.

(7) Those types of facilities specified in subsection (5) of this section shall conduct and document a quality assurance program compatible with either the applicable national standards referenced in subsection (6) of this section or the NRC's Regulatory Guide 4.15, dated February 1979.

(8) Facilities shall monitor nonpoint and fugitive emissions of radioactive material.

(9) The department may conduct an environmental surveillance program to ensure that radiation doses to the public from emission units are in compliance with applicable standards. The department may require the operator of any emission unit to conduct stack sampling, ambient air monitoring, or other testing as necessary to demonstrate compliance with the standards in WAC 246-247-040.

(10) The department may require the owner or operator of an emission unit to make provision, at existing emission unit sampling stations, for the department to take split or collocated samples of the emissions.

(11) The planning for any proposed new construction or significant modification of the emission unit must address accidental releases with a probability of occurrence during the expected life of the emission unit of greater than one percent.

(12) All facilities must be able to demonstrate that appropriate supervisors and workers are adequately trained in the use and maintenance of emission control and monitoring systems, and in the performance of associated test and emergency response procedures.

(13) All facilities must be able to demonstrate the reliability and accuracy of the radioactive air emissions monitoring data.

(14) A facility owner or operator, or any other person may not render inaccurate any monitoring device or method required under chapter 70.98 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

WSR 18-24-026
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed November 28, 2018, 7:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-108.

Title of Rule and Other Identifying Information: WAC 308-108-150, driver training schools, curriculum schedule.

Hearing Location(s): On January 9, 2019, at 2:00 p.m., at the Tumwater Timberland Library, 7023 New Market Street S.W., Tumwater, WA 98501. Hearing to be held in the public meeting room.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: Driver Training School Program, P.O. Box 9027, Olympia, WA 98507, email TSE@dol.wa.gov, fax 360-570-4976, by January 8, 2019.

Assistance for Persons with Disabilities: Contact Driver Training School Program, phone 360-664-6692, fax 360-570-4976, TTY 711, email TSE@dol.wa.gov, by January 8, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Existing language regarding instruction schedule is ambiguous. Amending rules to provide consistency in application of rule.

Reasons Supporting Proposal: Improve compliance and understanding of requirements for our applicants and licensees.

Statutory Authority for Adoption: Chapter 46.82 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Loni Miller, 405 Black Lake Boulevard South, Olympia, WA 98502, 360-664-6692.

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

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

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

Small Business Economic Impact Statement

SECTON [SECTION] 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The existing language regarding curriculum schedule is more about the course schedule and structure. The language in rule is ambiguous. Amending the rule will provide consistency in application of the rule.

The rule change will decrease the regulation around a course schedule and structure. These changes will not require additional services for the small business but allow for the business owner more flexibility in the way they offer a course.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

Table A:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
611692	Driver Training Schools	458		$269 per business per year*

***NOTES:** As of July 1, 2018, there were four hundred fifty-eight driver training schools and branches in Washington (from department of licensing Stats-At-A-Glance fiscal year brochure).

Annual gross income from department of revenue (DOR) (http://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Report.aspx) average for 2015-2017 is $41,079,332. Minimum cost threshold (.3% of annual receipts) is $123,238, or $269 per business per year. (RCW 19.85.020(2).)

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The agency reached out to the Professional Driving School Association and also met with the board members of the association on November 5, 2018. The association conducted a survey to determine impacts to the industry. Initially, the survey revealed a financial impact if the language around "video only make-up lessons" remained in the proposed rule change. After considering the impact, the agency has elected to remove "video only make-up lessons" from the proposed rule change. As a result of this change, it was agreed with the stakeholders that there would be no increased cost of equipment, supplies, labor, professional services or increased administrative costs.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.

The analysis determined no costs associated with the proposed rule change.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

There is no disproportionate impact to small or large businesses. The proposed rule accomplishes less regulation around course structure.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

No disproportionate impact to small businesses.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

The small businesses were provided with the opportunity to express their concern regarding the proposed rule change via email. The agency completed three drafts of the rule change as a result of the small business feedback. The agency also held six Skype forums with the industry to provide another opportunity to discuss the changes. During the forums, the agency was able to discuss the proposed rule change and allow for questions and answers.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

None.

A copy of the detailed cost calculations may be obtained by contacting Driver Training School Program, P.O. Box 9027, Olympia, WA 98507, phone 360-664-6692, fax 360-570-4976, TTY 711, email TSE@dol.wa.gov.

November 28, 2018
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-21-092, filed 10/20/09, effective 1/1/10)

WAC 308-108-150 Curriculum ((~~schedule~~)) requirements. ((~~A~~)) Driver training schools ((~~may offer classroom and behind the wheel instruction to students throughout the~~

~~year. In order to be approved by the director, a curriculum schedule must satisfy or include the following requirements:~~

~~(1) Classroom and behind the wheel instruction that is complementary. This means that classroom instruction is integrated in a timely manner with behind the wheel instruction;~~

~~(2) Having students under age eighteen complete no more than two hours of classroom instruction during any single day, except for make-up classes which shall be no more than two additional hours of class not to exceed three total make-up classes during the traffic safety education course, and no more than one hour of behind the wheel instruction during any single day;~~

~~(3) For students under the age of eighteen to meet the traffic safety education requirement of RCW 46.20.100, instruction that:~~

~~(a) Includes not less than thirty hours of classroom instruction;~~

~~(b) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;~~

~~(c) Consists of at least one hour minimum and no more than two hours maximum of class session during a single day, except when adding a make-up class as provided in subsection (2) of this section, in which case classroom instruction must not exceed four hours in a single day;~~

~~(d) With the exception of make-up lessons, ensures that all students in a classroom session must be on the same lesson. Open enrollment or self-paced instruction is not permitted; and~~

~~(e) Ensures that each traffic safety education classroom course~~)) that provide education for persons under the age of eighteen must ensure their course:

(1) Includes a minimum of thirty hours of classroom instruction;

(2) Meets the behind the wheel instruction and observation requirements of WAC 308-108-160;

(3) Has a minimum of one hour and no more than two hours of classroom instruction and no more than one hour of behind the wheel instruction during a single day, except when adding a make-up class, in which case classroom instruction must not exceed four hours in a single day;

(4) Has a classroom portion that is at least fifty-percent instructor-led with verbal instruction consisting of:

(((~~(i)~~))) (a) In-person training;

(((~~(ii)~~))) (b) Teacher and student interaction; ((~~and~~

~~(iii)~~))) (c) Questions and answers; and

~~(((4) Classroom and behind the wheel instruction in a course that is scheduled for not less than thirty days in which lessons must be in contiguous weeks;~~

~~(5) Students may not enroll in a traffic safety education course after the third class session of any given course;~~

~~(6) All make-up assignments and instruction must be equivalent to the instruction given during the missed sessions;~~

~~(7) Distributing to students~~)) (d) No more than six make-up hours of alternative classroom instruction, delivering the same information that was missed.

(5) Has all students in a classroom session on the same lesson, with the exception of make-up lessons. Open enrollment or self-paced instruction is not permitted;

(6) Is not completed in fewer than thirty calendar days;

(7) Includes comprehensive final written and behind the wheel examinations;

(8) Has a flow chart that indicates how the classroom and behind the wheel instruction are completed throughout the course;

(9) Includes information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements;

(10) Includes the delivery of instructional material developed by the department and the federally designated organ procurement organization for Washington state relating to organ and tissue donation awareness education; and

(((~~(8) Review and approval of the local school curriculum by the department as part of the initial application for a school license. To help ensure that minimum standards of instruction are met, the local school curriculum must include but is not limited to the following:~~

~~(a) Comprehensive elements of classroom and behind the wheel instruction as defined by the department;~~

~~(b) Comprehensive written and behind the wheel examinations, to include:~~

~~(i) Written examinations as submitted to and approved by the department; and~~

~~(ii) Behind the wheel examination criteria as approved by the department;~~

~~(c) A flow chart that indicates how the classroom and behind the wheel instruction are integrated;~~

~~(d) Information on the state of Washington's intermediate license requirements, restrictions, violations, and sanctions for violation of these requirements; and~~

~~(e) A designated time for a parent, guardian, or employer night that is no less than one hour, which may be a part of the thirty hours required for student training, and must include:~~

~~(i)~~))) (11) Has a designated time for a parent, guardian, or employer night that is no less than one hour, which may fulfill one of the thirty hours required for student training, and must include:

(a) Instruction on the parent, guardian, or employer responsibilities and the importance of parent, guardian, or employer involvement with the teen driver;

(((~~(ii)~~))) (b) Information on intermediate license laws, restrictions, and sanctions;

(((~~(iii)~~))) (c) An introduction to the parent guide to teen driving; and

(((~~(iv)~~))) (d) A questions and answers period.

WSR 18-24-031
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed November 28, 2018, 10:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-116.

Title of Rule and Other Identifying Information: Vapor product rules in chapter 314-35 WAC as follows: WAC 314-

35-015 Definitions, 314-35-020 Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations, 314-35-027 What persons or entities have to qualify for a vapor product license, 314-35-040 Age-restricted vapor products retailer licensed locations, 314-35-050 Vapor product license suspensions, 314-35-130 Group 1 violations against public safety, 314-35-140 Group 2 regulatory violations, and 314-35-150 Group 3 license violations.

Hearing Location(s): On January 9, 2019, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: January 23, 2019.

Submit Written Comments to: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by January 20, 2019.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1752, fax 360-664-9689, email rules@lcb.wa.gov, by January 9, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new statutory framework for vapor products became effective on June 28, 2016, and was codified in chapter 70.345 RCW. The Washington state liquor and cannabis board (WSLCB) engaged in rule making to implement the new statutory framework for vapor products passed by the legislature later the same year. The board may adopt rules regarding the regulation of the licenses under RCW 70.345.020(2). WSLCB enforcement officers throughout the state of Washington have made contact at more than one thousand four hundred vapor product locations (licensed/unlicensed). Information gathered resulting from these contacts identified a need for changes to rules for vapor products licensees. Additional rule making is proposed to further refine and clarify existing requirements, as well as address other requirements needed as a result of what we have learned since the implementation of the new statutory and regulatory framework.

Reasons Supporting Proposal: Additional rules were needed to clarify legislation passed in 2016.

Statutory Authority for Adoption: RCW 70.C345.020 [70.345.020] and 70.345.090.

Statute Being Implemented: Chapter 70.345 RCW.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1752; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs or reporting requirements to licensees.

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

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

rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

November 28, 2018
Jane Rushford
Chair

NEW SECTION

WAC 314-35-015 Definitions. The following definitions apply to this chapter in addition to the definitions provided in RCW 70.345.010:

(1) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel upon which it is located. It is the place where a person intends to remain and where the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(2) "Manufacture" as defined in RCW 70.345.010, to include to make, modify, mix, process, label, repack, or relabel a vapor product substance.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-020 Vapor product licenses required—Licensing requirements, denials, suspensions, and revocations. (1) The vapor product license types are: Vapor product retailer's license, vapor product distributor's license, and vapor product delivery sale license. A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license is required to perform the functions of a vapor product retailer, vapor product distributor, or a vapor product delivery seller, respectively, whether or not the vapor product contains nicotine. A vapor product manufacturer must hold a vapor product distributor license if the manufacturer sells vapor products to persons other than ultimate consumers or is engaged in the business of selling vapor products in Washington state and brings or causes to be brought into this state from outside the state any vapor products for sale consistent with RCW 70.345.010 (7) and (9).

(2) A vapor product retailer's license, vapor product distributor's license, or a vapor product delivery sale license cannot be issued to a location that is a domicile.

(a) The Washington state liquor and cannabis board (WSLCB) will not approve any vapor product license for a location where WSLCB access without notice or cause is limited or to a mobile facility.

(b) Any vapor product license that is issued to a domicile or any other location inconsistent with this section in error will be revoked.

(3) A person or entity must meet certain qualifications as specified in this chapter and chapter 70.345 RCW to receive a vapor product license, and must continue to meet those qualifications to maintain the license.

(4) No more than one license of each vapor product license type may be issued at a single location.

(5) A licensed location must be separated from other vapor product businesses and not accessible through neighboring businesses.

(6) For the purpose of reviewing an initial or renewal application for a vapor product license or considering the denial of a license application, the WSLCB may consider prior criminal conduct of the applicant and criminal history record within the five years prior to the date the application is received by the WSLCB. The WSLCB uses the following point system to determine a person's qualification for a license. The WSLCB will not normally issue a vapor product license to a person or entity that has accumulated eight or more points as determined in (a) through (e) of this subsection. If a case is pending for an alleged offense that would earn eight or more points in total for the applicant, the WSLCB will hold the application until the final disposition of the pending case. If the case does not reach final disposition within ninety days of application, the WSLCB may administratively close the application.

(a) Felony conviction within the five years immediately prior to application: Twelve points.

(b) Gross misdemeanor conviction for violation of chapter 82.24 or 82.26 RCW within the five years immediately prior to application: Twelve points.

(c) Other gross misdemeanor conviction within three years immediately prior to application: Five points.

(d) Misdemeanor conviction within three years immediately prior to application: Four points.

(e) Nondisclosure of any of the above: Four points each in addition to underlying points.

(7) For the purpose of reviewing an initial or renewal application for a vapor product license and considering the denial of a vapor product license application, the WSLCB will conduct an investigation of all applicants' liquor and cigarette and tobacco products law and rule administrative violation history. The WSLCB will not normally issue a vapor product license to a person or entity that has four or more violations within the two years prior to the date the application is received by the WSLCB.

(8) The WSLCB may conduct a final inspection of the proposed licensed business to determine if the applicant has complied with all the requirements of the license requested.

(9) A license may not be transferred or relocated without prior approval by the WSLCB.

(a) A licensee must notify the WSLCB at least ten business days before any ownership changes or location changes of the licensed vapor products business. Failure to do so without applying for a separate license for a new location will be treated as operating without a license.

(b) A licensee that fails to notify the WSLCB prior to moving a location may be suspended until such time that the new location meets the conditions required for a vapor products license.

(c) Prior approval may be sought by contacting enforcement by email at enfcustomerservice@lcb.wa.gov or by phone at 360-664-9878.

(10) As a condition of licensure, all vapor products licensees must:

(a) Keep premises where vapor products are stored, manufactured, and offered for sale in a clean and sanitary condition; and

(b) Label all packages and containers that contain nicotine with the nicotine content of the product until such time that the product is packaged and labeled in finished packaging for sale consistent with the packaging and labeling requirements in RCW 70.345.075.

(11) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as provided in chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

NEW SECTION

WAC 314-35-027 What persons or entities have to qualify for a vapor product license. A vapor product license must be issued in the name(s) of the true party(ies) of interest. The Washington state liquor and cannabis board (WSLCB) may conduct a financial investigation as well as a criminal background check of all true parties of interest listed on the license.

(1) True parties of interest. For purposes of this section:

True Party of Interest	Persons To Be Qualified
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	• All general partners and their spouses. • All limited partners and spouses.
Limited liability company	• All members and their spouses. • All managers and their spouses.
Privately held corporation	• All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).

True Party of Interest	Persons To Be Qualified
Any entity or person (inclusive of financiers) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than twenty-five percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(3) Persons who exercise control of business. The WSLCB may conduct an investigation of any person or entity who exercises any control over the applicant's or licensee's business operations. This may include a financial investigation and/or a criminal history background check.

AMENDATORY SECTION (Amending WSR 16-23-088, filed 11/16/16, effective 12/17/16)

WAC 314-35-040 Age-restricted vapor products retailer licensed locations. (1) Age-restricted vapor products retailer licensed locations must register as such with the WSLCB by indicating at the time of application or within ten days prior to becoming an age-restricted location. A vapor product retail licensee must inform the WSLCB in writing ten business days prior to a change in the age-restriction status. The appropriate form is available on the WSLCB web site.

(2) Holders of a vapor product retailer license where entry into the licensed premises is age-restricted to persons eighteen years of age or older must post signs provided by the WSLCB at each entrance point to indicate the premises is age-restricted. Such signs must not be removed at any time during opening hours of the licensed vapor products retail establishment.

(3) All vapor product licensed locations that allow vapor product sampling as allowed under the requirements provided in RCW 70.345.100, must be restricted to persons age eighteen and over at all times.

NEW SECTION

WAC 314-35-050 Vapor product license suspensions. (1) The board may revoke or suspend a retailer, distributor, or delivery seller license issued under chapter 70.345 RCW and this chapter upon sufficient cause showing a violation of chapter 70.345 RCW or this chapter that qualifies for a suspension.

(2) Any retailer license issued under chapter 82.24 or 82.26 RCW to a person whose vapor product retailer license or licenses have been suspended or revoked for violating RCW 26.28.080 must also be suspended or revoked during the period of suspension or revocation under this section and RCW 70.345.170.

(3) Any person whose license or licenses have been revoked under this section may reapply to the board at the expiration of two years of the license or licenses, unless the license was revoked pursuant to RCW 70.345.180 (2)(e). The license or licenses may be approved by the board if it appears to the satisfaction of the board that the licensee will comply with the provisions of this chapter.

(4) A person whose license has been suspended or revoked may not sell vapor products or permit vapor products to be sold during the period of suspension or after revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form. If the suspension or revocation involves licenses issued under chapter 82.24 or 82.26 RCW, the person is prohibited from selling cigarette and tobacco products consistent with WAC 314-34-020.

(5) On the date a vapor product license suspension goes into effect a WSLCB 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 WSLCB due to a violation of a WSLCB law or rule.

(6) During the period of vapor product license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable vapor product 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;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the WSLCB's suspension notice.

(7) During the period of vapor product license suspension:

(a) A vapor product licensee may not operate his/her business.

(b) There is no sale, delivery, service, consumption, manufacturing, removal, or receipt of vapor products.

(8) If the WSLCB makes an initial decision to deny a vapor product license or renewal, or suspend or revoke a license, for the reasons listed above or as otherwise provided in this chapter or chapter 70.345 RCW, the applicant or licensee may request a hearing subject to the applicable provisions under chapter 34.05 RCW. Appeals under this section will be conducted under a brief adjudicative proceeding pursuant to WAC 314-42-110 through 314-42-130, and RCW 34.05.482 through 34.05.494.

(9) Any determination and order by the board, and any order of suspension or revocation by the board of the license issued under chapter 70.345 RCW or this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal in the superior court of Thurston County. The superior court must review the order or ruling of the board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the board.

NEW SECTION

WAC 314-35-130 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. The Washington state liquor and cannabis board (WSLCB) may exceed penalties set forth in this section consistent with RCW 70.345.180 based on aggravating circumstances. The WSLCB may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter and chapter 70.345 RCW based on mitigating circumstances as provided in RCW 70.345.180(11).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Allowing minors to frequent age-restricted vapor products retailer licensed locations. WAC 314-35-040	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month suspension	$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
Sales to a minor by an unlicensed person. RCW 70.345.180 (5) and (6)	$50 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty	$100 monetary penalty
Failure to properly label vapor products. RCW 70.345.075	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month suspension of the license	$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
Prohibited vapor packaging. RCW 70.345.130	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month suspension of the license	$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years
Possession of, sale, or offer for sale CBD vapor products or vapor products containing a cannabidiol. RCW 70.345.030(4)	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 6-month suspension of the license	$3,000 monetary penalty and a 12-month suspension of the license	Revocation of license with no possibility of reinstatement for 5 years

NEW SECTION

WAC 314-35-140 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of vapor product licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
Vapor products purchased from unlicensed source. WAC 314-35-140	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 90-day license suspension	$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years
Records: Improper recordkeeping. WAC 314-35-030	$100 monetary penalty	$300 monetary penalty	$1,000 monetary penalty and a 30-day license suspension	$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years
Signs: Failure to post required signs. WAC 314-35-040 and/or RCW 70.345.070	$100 monetary penalty	$300 monetary penalty	$1,000 monetary penalty and a 30-day license suspension	$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years
Failure to register as age restricted. WAC 314-35-040	$100 monetary penalty	$300 monetary penalty	$1,000 monetary penalty and a 30-day license suspension	$3,000 monetary penalty and a 90-day license suspension	Revocation of license with no possibility of reinstatement for 5 years

NEW SECTION

WAC 314-35-150 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window	5th Violation in a three-year window
True party of interest violation. WAC 314-35-130 and/or RCW 70.345.020	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 90-day license suspension	$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years
Failure to furnish required documents. WAC 314-35-030	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 90-day license suspension	$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years
Misrepresentation of fact. WAC 314-35-020 and/or RCW 70.345.020	$200 monetary penalty	$600 monetary penalty	$2,000 monetary penalty and a 90-day license suspension	$3,000 monetary penalty and a 6-month license suspension	Revocation of license with no possibility of reinstatement for 5 years

WSR 18-24-034
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-086.

Title of Rule and Other Identifying Information: Chapter 260-08 WAC, Practice and procedure.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To move policy 2010-02 into WAC.

Reasons Supporting Proposal: Approved the attendance of a commissioner via electronic methods as a voting member for convenience and possible cost savings.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

NEW SECTION

WAC 260-08-074 Public meetings—Members and public meetings. (1) Commissioners may attend public meetings using telecommunication technology.

(2) The chair or designee must attend physically to preside over the meeting.

WSR 18-24-035
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-083.

Title of Rule and Other Identifying Information: WAC 260-36-010 License required.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To move policy statement 2007-006 in WAC.

Reasons Supporting Proposal: Moves long standing policy on who may not require a license for certain access to the grounds of a licensed race meet.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-15-041, filed 7/13/07, effective 8/13/07)

WAC 260-36-010 License required. (1) Any person acting in an official capacity or any person participating directly in horse racing must have a valid license, except as provided in subsection (2) of this section.

(2) The following persons are not required to have a license:

(a) Commissioners and employees of the commission;

(b) Persons employed by a racing association who only perform duties of concessions, housekeeping, parking, food and beverage, landscaping or similar functions, and do not act in an official capacity or participate directly in horse racing; ((~~and~~))

(c) Persons employed by an out-of-state racing association and holding a valid license from a recognized racing jurisdiction, who work for a Class A or B racing association as parimutuel clerks for a period not to exceed eight days total in any calendar year;

(d) Federal, state, or local governmental agency employees, and public service employees with need to access the grounds in the performance of their duties. Nonuniformed employees will be required to provide proper identification; and

(e) Individuals participating in functions or events on the grounds of a nonprofit meet that is also a multi-use facility will have access to the grounds while the event is taking place.

(3) Decisions regarding who is required to be licensed, if not addressed in this chapter, will be made by the executive secretary. It is a violation of these rules for any person to act in an official capacity or participate directly in horse racing unless licensed by the commission.

WSR 18-24-036
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-082.

Title of Rule and Other Identifying Information: WAC 260-28-030 Financial responsibility.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Moves policy statement 2003-01 into WAC.

Reasons Supporting Proposal: Policy has been in place for fifteen years with no issues.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

WAC 260-28-030 Financial responsibility. (1) A licensee may not willfully fail or refuse to pay money due for services, supplies, or fees connected with his or her operations as a licensee. A licensee may not falsely deny such an amount due or the validity of a complaint on such an amount due for the purpose of hindering, delaying, or defrauding the person to whom the amount is due.

(2) A financial responsibility complaint against a licensee must be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to have been provided, or by a judgment from a civil court that has been issued within two years of the date of the complaint.

(3) Any licensee failing to make restitution as a result of a complaint where the amount owed is undisputed or judgment may be subject to disciplinary action, including a license suspension.

(4) The stewards will consider for disciplinary action only those financial responsibility complaints that meet the following criteria:

(a) The complaint involves services, supplies or fees that are directly related to the licensee's Washington racetrack and training operations; ((~~and~~))

(b) Check cashing provided by the racing association and providers of food services to licensees on the race track premises; and

(c) The debt or cause of action originated in Washington, or the civil court judgment was issued in Washington, within two years of the date the complaint is filed.

(5) In determining whether to act on a financial responsibility complaint, the stewards may consider the number of financial responsibility complaints made by the complainant against the same licensee within a two-year period immediately preceding the current complaint.

(6) A licensee may not write, issue, make or present any check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies when the licensee knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which the check is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account. The fact that such a check is returned to the payee by the bank as refused is grounds for license suspension pending satisfactory redemption of the returned check.

WSR 18-24-037
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-057.

Title of Rule and Other Identifying Information: WAC 260-12-010 Definitions and 260-24-520 Racing secretary.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a definition for digital registration certificates and to update the racing secretary's duties regarding their use of them.

Reasons Supporting Proposal: To prepare for the Jockey Club's move to digital tattoos and registration certificates.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 16-05-070, filed 2/16/16, effective 3/18/16)

WAC 260-12-010 Definitions. The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A five pound weight allowance given to an apprentice jockey.

(6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Assistant trainer." A person employed by a licensed trainer whom has the authority to represent the trainer in all racing matters. An assistant trainer may also perform all the duties of a groom.

(8) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct parimutuel wagering on a race meet.

(9) "Association employee." Any person hired by a racing association.

(10) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

(11) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(12) "Barn superintendent." An association employee who is responsible to assign stalls and maintain records of number of horses in a trainer's care on a daily basis.

(13) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

(14) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

(15) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

(16) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.

(17) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(18) "Cheek pieces." Two pieces of sheepskin or other material which are attached to the cheek pieces of a bridle which may restrict vision.

(19) "Claiming." The act of buying a horse out of a race for a specific price.

(20) "Claim box." A box in a specified location where a claim must be deposited to be valid.

(21) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(22) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(23) "Clocker." An official that times horses when horses are performing an official workout.

(24) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(25) "Colt." Male horse under the age of five.

(26) "Commission."

(a) The three-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(27) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(28) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(29) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(30) "Dead heat." Two or more horses in an exact tie at the finish line.

(31) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

(32) "Digital tattoo." A microchip, or other unique identifier, which is implanted or affixed to a horse and is noted on the registration papers.

(33) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(((~~33~~))) (34) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

(((~~34~~))) (35) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

(((~~35~~))) (36) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(((~~36~~))) (37) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

(((~~37~~))) (38) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising. Exercise riders working at a race track must be licensed as "Exercise rider - track," while those working at the farm or training centers must be licensed as "Exercise rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

(((~~38~~))) (39) "Field." The total horses scheduled to run in a race.

(((~~39~~))) (40) "Filly." A female horse four years and younger.

(((~~40~~))) (41) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

(((~~41~~))) (42) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

(((~~42~~))) (43) "Furosemide." Generic term for a medication used for the treatment of bleeders.

(((~~43~~))) (44) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

(((~~44~~))) (45) "Gelding." A male horse that has been castrated.

(((~~45~~))) (46) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

(((~~46~~))) (47) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

(((~~47~~))) (48) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

(((~~48~~))) (49) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

(((~~49~~))) (50) "Intact male." Any male horse, colt, or ridgling.

(((~~50~~))) (51) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

(((~~51~~))) (52) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

(((~~52~~))) (53) "Jockey fee." The money paid to a jockey for riding in a race.

(((~~53~~))) (54) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

(((~~54~~))) (55) "Mare." A female horse five years old or older.

(((~~55~~))) (56) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

(((~~56~~))) (57) "Morning line." A handicapper's approximate odds quoted in the program.

(((~~57~~))) (58) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

(((~~58~~))) (59) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

(((~~59~~))) (60) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

(((~~60~~))) (61) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

(((~~61~~))) (62) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

(((~~62~~))) (63) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

(((~~63~~))) (64) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

(((~~64~~))) (65) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

(((~~65~~))) (66) "Overnight race." A contest for which entries close at a time set by the racing secretary.

(((~~66~~))) (67) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

(((~~67~~))) (68) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

(((~~68~~))) (69) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

(((~~69~~))) (70) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

(((~~70~~))) (71) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

(((~~71~~))) (72) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

(((~~72~~))) (73) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.

(((~~73~~))) (74) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.

(((~~74~~))) (75) "Place." To finish second in a race.

(((~~75~~))) (76) "Poles." Markers positioned around the track indicating the distance to the finish line.

(((~~76~~))) (77) "Pony rider." A person licensed by the commission to escort horses either in the morning during training or in the afternoon during racing. A pony rider may not exercise horses. Pony riders working at a race track must be licensed as "Pony rider - track," while those working at the farm or training centers must be licensed as "Pony rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

(((~~77~~))) (78) "Post." The starting position on the track.

(((~~78~~))) (79) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

(((~~79~~))) (80) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

(((~~80~~))) (81) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(((~~81~~))) (82) "Program/paper trainer." A licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license.

(((~~82~~))) (83) "Purse." The amount of prize money offered by the racing association for each race.

(((~~83~~))) (84) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

(((~~84~~))) (85) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(((~~85~~))) (86) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

(((~~86~~))) (87) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(((~~87~~))) (88) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(((~~88~~))) (89) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(((~~89~~))) (90) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(((~~90~~))) (91) "Registration certificate." A certificate issued by a breed specific organization, either hard copy or digital, identifying the individual horse.

(92) "Retired horse." A horse that at the time of sale or gift is no longer fit to race. No retired horse is eligible to run in a race under the jurisdiction of the commission.

(((~~91~~))) (93) "Revocation." The cancellation of an existing license for a minimum of three hundred sixty-five days and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission during the period of their revocation.

(((~~92~~))) (94) "Ridgling." A male horse with one or both testicles undescended.

(((~~93~~))) (95) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(((~~94~~))) (96) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(((~~95~~))) (97) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(((~~96~~))) (98) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(((~~97~~))) (99) "Show." To finish third in a race.

(((~~98~~))) (100) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

(((~~99~~))) (101) "Spouse groom." The spouse of a trainer, licensed by the commission and permitted to perform all the duties of a groom, but is not extended industrial insurance coverage under the horse industry account.

(((~~100~~))) (102) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

(((~~101~~))) (103) "Stallion." A male horse or colt which can be used for breeding purposes.

(((~~102~~))) (104) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(((~~103~~))) (105) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

(((~~104~~))) (106) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading

in the starting gate. Horses on the starter's list are ineligible to enter.

(((~~105~~))) (107) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(((~~106~~))) (108) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(((~~107~~))) (109) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

(((~~108~~))) (110) "Suspension." The temporary loss of license privileges for a specific period of time (not to exceed three hundred sixty-five days), or until specific conditions are met. All suspensions for a specific period of time will be in calendar days; with the exception of riding suspensions, which will be race days. Individuals suspended may be banned from all facilities under the jurisdiction of the commission during the period of their suspension.

(((~~109~~))) (111) "Test barn." The enclosure to which selected horses are taken for post race testing.

(((~~110~~))) (112) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

(((~~111~~))) (113) "Trainer." A person who holds a valid trainer's license who has a horse eligible to race under his/her care, custody, or control at the time of entry.

(((~~112~~))) (114) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(((~~113~~))) (115) "Turf course." A racing surface comprised of grass.

(((~~114~~))) (116) "Vendor." Any individual or business which offers a product or service in the restricted area of the grounds.

(((~~115~~))) (117) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

(((~~116~~))) (118) "Walk over." A race that has only one participant.

(((~~117~~))) (119) "Washington bred." A horse that was foaled in the state of Washington.

(((~~118~~))) (120) "Washington race track." A race track licensed and regulated by the commission during the track's licensed race meet and periods of training.

(((~~119~~))) (121) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

(((~~120~~))) (122) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

(((~~121~~))) (123) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

(((~~122~~))) (124) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-520 Racing secretary. The racing secretary is responsible for the following duties:

(1) Programming of races during the race meet;

(2) Compiling and publishing condition books;

(3) Assigning weights for handicap races;

(4) Receiving all entries, nominations, and scratches;

(5) Supervising the racing office employees, including the assistant racing secretary;

(6)(a) Receiving, inspecting, and safeguarding all required foal and health certificates, Equine Infectious Anemia (EIA) test certificates, and other documents of eligibility for all horses competing at the track or stabled on the grounds;

(b) Effective January 1, 2020, the racing secretary shall ensure that the registration certificates for all thoroughbred horses entered to race that were foaled in 2018 or later have a digital tattoo. The digital tattoo shall indicate that the thoroughbred racing protective bureau has confirmed the identity of the horse and uploaded digital photographs to the breed registry database;

(7) Recording the alteration of the sex of a horse on the horse's ((~~foal papers~~)) registration certificates and reporting such to the appropriate breed registry and past performance services;

(8) Recording on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse;

(9) Maintaining a list of heel nerved horses on association grounds and making the list available for inspection by persons participating in the race meet;

(10) Maintaining a list of all fillies or mares on association grounds that have been covered by a stallion, and making this list available for inspection by persons participating in the race meet. This list will include the name of the stallion;

(11) Assigning stalls to be occupied by horses in preparation for racing;

(12) Determining conflicting claims of stable privileges and maintaining a record of arrivals and departures of all horses arriving and departing the association grounds;

(13) Establishing the conditions and eligibility for entering races and publishing the conditions and eligibility to owners, trainers, and the commission. Conditions and eligibility will also be posted in the racing secretary's office.

(a) For the purpose of establishing conditions, winnings will be considered to include all moneys won up to the time of the start of the race;

(b) Winnings during the calendar year will be calculated by the racing secretary from the preceding January 1st;

(14) Entries of horses, which will include:

(a) Examining all entry blanks to verify correct information; and

(b) Selecting the horses to start and the "also eligible" horses, if any, from those entries received in accordance with WAC 260-52-020;

(15) Upon completion of the draw each day, posting a list of entries in a conspicuous location in the race office and making the lists available upon request;

(16) Publishing the official daily program and ensuring the accuracy of the following information:

(a) Sequence of races to be run and post time for the first race;

(b) Purse, conditions and distance for each race, and current track record for each distance;

(c) The name of licensed owners of each horse (indicate as leased, if applicable), and the description of racing colors to be carried;

(d) The name of the trainer and the name of the jockey for each horse together with the weight to be carried;

(e) The post position and the saddlecloth number or designation for each horse if there is a variance with the saddlecloth designation;

(f) Identification of each horse by name, color, sex, age, sire and dam; and

(g) Any other information that may be requested by the association or commission;

(17) Update the foal certificates on all winners to reflect type of race won and amount of purse money awarded;

(18) Accurately record on the foal certificates any transfer of ownership of horses, by either claim or bill of sale, to reflect true ownership of horse;

(19) Examining nominations received for early closing events, late closing events, and stakes events to verify the eligibility of all nominations and compile lists for publication;

(20) Maintaining the permanent records of all stakes and verifying that all entrance moneys due are paid prior to entry for races conducted at the race meet.

WSR 18-24-038
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-16-117.

Title of Rule and Other Identifying Information: Chapter 260-40 WAC, Entries, starts, nominations and scratches.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To prepare for the transition of the Jockey Club from lip tattoos to microchips as a means of identification.

Reasons Supporting Proposal: The Jockey Club will no longer use ink type tattoos on horses for identification beginning with the foal crop of 2018 and microchipping will be required.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 17-03-093, filed 1/13/17, effective 2/13/17)

WAC 260-40-090 Registration certificate. No horse may be allowed to start unless a Jockey Club registration certificate, American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of the racing secretary, except that the stewards may waive this requirement, if the horse is otherwise properly identified and the horse is not entered for a claiming price, with the exception of those horses whose registration certificate is on file in electronic form.

AMENDATORY SECTION (Amending WSR 07-07-010, filed 3/8/07, effective 4/8/07)

WAC 260-40-120 Identification prerequisite to start. (1) No horse may start that has not been properly identified.

(2) All horses must be properly tattooed, or microchipped with the corresponding digital number recorded on the registration papers in the case of thoroughbred horses foaled in 2018 or after, by the thoroughbred racing protective bureau or an approved breeding association, or freeze marked in a manner that meets the standards of the National Crime Information Center.

A horse will not be allowed to start if the tattoo is not applied at least twenty-four hours prior to scheduled post time.

(3) No horse may start unless ownership is first established.

WSR 18-24-039
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-056.

Title of Rule and Other Identifying Information: WAC 260-44-010 Equipment changes.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct a terminology error discovered regarding the change from the use of "whip" to "crop."

Reasons Supporting Proposal: Ensure the same terminology is used consistently within the WAC.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-03-060, filed 1/11/13, effective 2/11/13)

WAC 260-44-010 Equipment changes. (1) Permission to change any equipment from that which a horse carried in its previous race must be obtained from the stewards.

(2) Permission for a horse to add or remove blinkers or cheek pieces must be approved by the starter before being granted by the stewards.

(3) A trainer may tie down a horse's tongue but only with materials that are not dangerous or likely to cause injury to the horse. An official veterinarian will decide any question about the appropriateness of the material used for a tongue-tie. The stewards may monitor the use of tongue-ties.

(4) ((~~Whips~~)) Riding crops will be considered standard equipment in all horse races, unless declared at time of entry.

WSR 18-24-040
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-128.

Title of Rule and Other Identifying Information: WAC 260-44-050 Weighing out—Equipment included in jockey's weight and 260-52-010 Paddock to post.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend language to allow the racing association alternate options to assist the stewards in the placing of horses.

Reasons Supporting Proposal: Current head number requirements are sometimes intrusive to the horses head and alternate means would be more consistent.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 10-07-049, filed 3/11/10, effective 4/11/10)

WAC 260-44-050 Weighing out—Equipment included in jockey's weight. (1) The jockey's weight must also include their clothing and boots, and the saddle and its attachments.

(2) The following items may not be included in a jockey's weight: Riding crop, head number or numbered armband, bridle, bit, reins, number cloth, blinker, over girth, protective helmet or safety vest.

(3) Upon approval by the board of stewards or their designee, jockeys may be allowed up to two pounds more than

published weights to account for inclement weather clothing and equipment.

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-52-010 Paddock to post. (1) Permission must be obtained from a steward to exercise a horse between races.

(2) In a race, each horse must carry a conspicuous saddlecloth number and one of the following: A head number affixed to the horse's bridle, a numbered armband affixed on the right shoulder of the jockey's silks, or a helmet cover on the jockey's helmet, corresponding to its number on the official program. ((~~In the case of an entry each horse making up the entry must carry the same number (head and saddlecloth) with a distinguishing letter. For example, 1-1A, 1X. In the case of a field the horses comprising the field must carry an individual number; i.e., 12, 13, 14, 15, and so on.~~))

(3) After the horses enter the track, and before the start of the race, no jockey may dismount and no horse may be handled by anyone other than the jockey, the starter, the starter's assistants, the outrider, the pony rider, or the official veterinarian without permission of the stewards or the starter.

(4) In the case of injury to a jockey, his/her mount, or damage to equipment, the stewards or the starter may permit the jockey to dismount and the horse to be cared for during the delay. The stewards may permit all jockeys to dismount during the delay.

(5) All horses must participate in the post parade, which includes passing the steward's stand and, all horses must carry their weight from the paddock until the finish of the race unless approved by the stewards.

(6) The post parade may not exceed twelve minutes unless approved by the stewards. When horses have reached the post, they will be started without unnecessary delay.

(7) If the jockey is injured on the way to the post, the horse will be taken to the paddock and another jockey obtained, if available.

(8) No person may ((~~wilfully~~)) willfully delay the arrival of a horse at the post.

(9) No person other than the rider, starter, or assistant starter may strike a horse, or attempt to assist the horse in starting.

(10) A jockey is not required to carry a ((~~whip~~)) crop. However, in any race in which a jockey will not ride with a ((~~whip~~)) crop, the public will be notified prior to the race.

WSR 18-24-041
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-085.

Title of Rule and Other Identifying Information: WAC 260-44-150 Horseshoes.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To move policy statement 2011-01 into WAC.

Reasons Supporting Proposal: Policy statement has been in place for seven years that allow[s] the board of stewards to approve a horse to race unshod for valid reasons.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 11-09-042, filed 4/15/11, effective 5/16/11)

WAC 260-44-150 Horseshoes. (1) A horse starting in a race must be fully shod with racing plates, unless approval, as described in this subsection, is obtained to allow for any other condition relating to horseshoes. Horses racing partially, or completely unshod, must be approved by the official veterinarian, declared at time of entry and noted in the official program with the following exception:

The board of stewards, in consultation with the official veterinarian and the trainer, may allow a horse to race when it has been discovered the horse has loosened or lost a shoe in the receiving barn or paddock and a repair cannot be done. If the stewards allow a horse to run unshod, the public must be notified immediately.

(2) During off-track conditions the trainer is required to report any additional traction devices to the board of stewards or designee.

(3) For turf racing, horses must be shod with racing plates approved by the association.

(4) Toe grabs with a height greater than two millimeters, worn on the front shoes of thoroughbred horses while racing or training on any surface or conditions are prohibited.

WSR 18-24-042
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 28, 2018, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-081.

Title of Rule and Other Identifying Information: WAC 260-70-610 Storage and shipment of split samples.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add language to alllw [allow] a separate set of procedures for the shipment of bicarbonate test samples.

Reasons Supporting Proposal: Bicarbonate samples are drawn pre-race and split samples must be shipped and screened in a time frame that does not support the standard practice of other split samples.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 17-05-057, filed 2/10/17, effective 3/13/17)

WAC 260-70-610 Storage and shipment of split samples. (1) Split samples obtained in accordance with WAC 260-70-600 (2)(b) and (c), with the exception of those collected for screening as provided in WAC 260-70-675, will be secured and made available for further testing in accordance with the following procedures:

(a) A split sample must be secured in the test barn in the same manner as the primary sample acquired for shipment to a primary laboratory. The split samples will be stored until the primary samples are packed and secured for shipment to the primary laboratory. Split samples will then be transferred to a freezer at a secure location approved by the executive secretary.

(b) A freezer used to store split samples will be closed and locked at all times except as specifically provided by these rules.

(c) A freezer for storage of split samples may only be opened to deposit or remove split samples, for inventory, or for checking the condition of samples.

(d) An official veterinarian will maintain a split sample log that must be used each time a split sample freezer is opened. The log will record the following:

(i) The name of the person opening the split sample freezer;

(ii) The purpose for opening the freezer;

(iii) The split samples deposited or removed from the freezer;

(iv) The date and time the freezer was opened;

(v) The time the freezer was closed; and

(vi) A notation verifying that the lock was secured after the freezer was closed.

(e) If at any time it is discovered that the split sample freezer failed or samples were discovered not in a frozen condition, an official veterinarian must document this discovery on the split sample freezer log and immediately report this to the executive secretary.

(2)(a) A trainer or owner of a horse having been notified that a written report from a primary laboratory states that a substance has been found in a specimen obtained pursuant to these rules may request that a split sample corresponding to the portion of the specimen tested by the primary laboratory be sent to another laboratory approved by the commission. The request must be made in writing and delivered to the stewards not later than forty-eight hours after the trainer of the horse receives written notice of the findings of the primary laboratory. The split sample must be shipped within seventy-two hours of the delivery of the request for testing to the stewards.

(b) Approved split sample labs must be accredited by the racing medication and testing consortium.

(3) The owner or trainer requesting testing of a split sample is responsible for the cost of shipping and testing. A split sample must be removed from the split sample freezer, and packaged for shipment by an official veterinarian or designee in the presence of the owner, trainer, or designee. Failure of the owner, trainer or designee to appear at the time and place designated by an official veterinarian to package the split sample for shipping will constitute a waiver of all rights to split sample testing. Prior to shipment, the split sample laboratory's willingness to provide the testing requested and to send results to both the person requesting the testing and the commission, must be confirmed by an official veterinarian. Arrangements for payment satisfactory to the split sample laboratory must also be confirmed by the owner or trainer. A laboratory for the testing of a split sample must be approved by the commission. The commission will maintain a list of laboratories approved for testing of split samples.

(4) Prior to opening the split sample freezer, the commission must provide a split sample chain of custody verification form. The split sample chain of custody verification form must be completed and signed by the representatives of the commission and the owner, trainer or designee. A commission representative will keep the original and provide a copy to the owner, trainer or designee.

The split sample chain of custody verification form must include the following:

(a) The date and time the sample is removed from the split sample freezer;

(b) The sample number;

(c) The address where the split sample is to be sent;

(d) The name of the carrier and the address where the sample is to be taken for shipment;

(e) Verification of retrieval of the split sample from the freezer;

(f) Verification of each specific step of the split sample packaging in accordance with the recommended procedure;

(g) Verification of the address of the split sample laboratory on the split sample package;

(h) Verification of the condition of the split sample package immediately prior to transfer of custody to the carrier;

(i) The date and time custody of the sample is transferred to the carrier; and

(j) The split sample chain of custody verification form must be signed by both the owner's representative and an official veterinarian or designee to confirm the packaging of the split sample.

(5) The exterior of the package must be secured and identified with initialed tape, evidence tape or other means to prevent tampering with the package. The owner, trainer or designee may inspect the package containing the split sample immediately prior to transfer to the delivery carrier to verify that the package is intact and has not been tampered with.

(6) The package containing the split sample will be transported to the location where custody is transferred to the delivery carrier charged with delivery of the package to the commission approved laboratory selected by the owner or trainer.

WSR 18-24-043
PROPOSED RULES
HORSE RACING COMMISSION

[Filed November 28, 2018, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-080.

Title of Rule and Other Identifying Information: WAC 260-70-675 Bicarbonate testing.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows the primary lab to receive split samples for screening for bicarbonate levels.

Reasons Supporting Proposal: Bicarbonate samples are drawn pre-race and split sample screening cannot be delayed until original results are received.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington horse racing commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-03-075, filed 1/12/18, effective 2/12/18)

WAC 260-70-675 Bicarbonate testing. No bicarbonate-containing substance or alkalizing substance that effectively alters the serum or plasma pH or concentration of bicarbonates or total carbon dioxide in a horse may be administered to a horse within twenty-four hours of post time of the race in which the horse is entered.

An official veterinarian, the board of stewards or the executive secretary acting on behalf of the commission may at their discretion and at any time order the collection of test samples from any horses either in the horse's stall or within the receiving or test barn to determine the serum or plasma pH or concentration of bicarbonate, total carbon dioxide, or electrolytes.

Test samples must not exceed 37.0 millimoles of total carbon dioxide concentration per liter of serum or plasma plus the measurement of uncertainty of the laboratory analyzing the sample. A serum or plasma total carbon dioxide level exceeding this value is a violation of this rule. Penalties will be assessed as a category B violation as provided in WAC 260-84-110.

Split samples will be taken from all horses entered to run in a race when bicarbonate testing is to be done. When split samples are taken, they will be shipped as soon as practical to ((~~the~~)) a commission-approved ((~~laboratories~~)) laboratory for total carbon dioxide split sample testing. The split sample may be sent to an approved independent laboratory, or the commission may elect to submit both the primary sample and

split sample to the commission contracted laboratory. The split samples shall be given evidence sample numbers to ensure no connection can be made between the primary and split samples. The commission is responsible for the cost of shipping and testing of split samples taken under this section.

WSR 18-24-044
PROPOSED RULES
HORSE RACING COMMISSION
[Filed November 28, 2018, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-109.

Title of Rule and Other Identifying Information: WAC 260-70-630 Threshold levels.

Hearing Location(s): On January 11, 2019, at 9:30 a.m., at the Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, email doug.moore@whrc.state.wa.us, fax 360-549-6461, by January 3, 2019.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To remove the environmental contaminants from this section and place them in a standalone WAC. Also, updates the anabolic steroids to use serum or blood as a testing method.

Reasons Supporting Proposal: To separate permitted medications from what may be considered an environmental substance.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516, 360-459-6462.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Not business related.

November 28, 2018
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-07-018, filed 3/9/18, effective 4/9/18)

WAC 260-70-630 Threshold levels. (1) Permitted medications.

(a) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in urine:

Acepromazine - 10 ng/ml
Albuterol - 1 ng/ml
Bupivicaine - 5 ng/ml
Butorphanol - 300 ng/ml
Carboxydetomidine - 1 ng/ml
Clenbuterol - 140 pg/ml (in quarter horse and mixed breed races the presence of clenbuterol is prohibited)
Mepivacaine - 10 ng/ml
Promazine - 25 ng/ml
Pyrilamine - 25 ng/ml

(b) The following quantitative medications and/or metabolites are permissible in test samples up to the stated concentrations in serum or plasma:

Betamethasone - 10 pg/ml
Butorphanol - 2 ng/ml
Clenbuterol - 2 pg/ml (in quarter horse and mixed races the presence of clenbuterol is prohibited)
Cetirizine - 6 ng/ml
Cimetidine - 400 ng/ml
Dantrolene - 100 pg/ml
Detomidine - 1 ng/ml
Dexamethasone - 5 pg/ml
Diclofenac - 5 ng/ml
DMSO - 10 mcg/ml
Firocoxib - 20 ng/ml
Glycopyrrolate - 3 pg/ml
Guaifenesin - 12 ng/ml
Isoflupredone - 100 pg/ml
Lidocaine - 20 pg/ml
Methocarbamol - 1 ng/ml
Methylprednisolone - 100 pg/ml
Omeprazole - 10 ng/ml
Prednisolone - 1 ng/ml
*Procaine penicillin - 25 ng/ml
Ranitidine - 40 ng/ml
Triamcinolone acetonide - 100 pg/ml
Xylazine - 200 pg/ml

* Administration of procaine penicillin to those horses entered must be reported to the commission and may require surveillance up to six hours prior to post time.

(c) Hair samples in pre- or post-race testing for quarter horses and mixed breed races may not be found to contain clenbuterol, ractopamine, zilpaterol, or albuterol in any concentration.

(d) Where a permitted medication has thresholds in both urine and serum or plasma, as set forth in this section, it is not a defense to a violation that the permitted medication does not exceed both thresholds.

(2) ((~~Environmental substances.~~

~~(a) Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recog-~~

~~nized as substances of human use and could therefore be found in a horse. The following substances are permissible in test samples up to the stated concentrations:~~

~~Arsenic - 0.3 mcg/ml urine~~
~~Caffeine - 100 ng/ml serum or plasma~~
~~Cobalt - 50 ppb serum or plasma*~~

~~* A level of 25 ppb in serum or plasma will result in the horse being placed on the official veterinarians list until such time as the level drops below the 25 ppb.~~

~~Benzoylecgonine - 50 ng/ml urine~~
~~Estranediol - 0.045 mcg/ml free + conjugated (5a-oestrane-3β,17a-diol), in the urine of male horses, other than geldings~~
~~Gamma Aminobutyric Acid (GABA) - 110 ng/ml in serum or plasma~~
~~Hydrocortisone - 1 mcg/ml urine~~
~~Methamphetamine - 10 ng/ml~~
~~Methoxytyramine - 4 mcg/ml, free + conjugated urine~~
~~Morphine Glucuronides - 50 ng/ml urine~~
~~Salicylate salicylic acid - 750 mcg/ml serum or plasma~~
~~Theobromine - 2 mcg/ml urine~~
~~Tramadol - 50 ng/ml urine~~

~~(b) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.~~

~~(3)~~)) Androgenic-anabolic steroids.

(a) The following androgenic-anabolic steroids are permissible in test samples up to the stated concentrations after hydrolysis of conjugates in urine:

Boldenone (Equipoise) - 15 ng/ml urine in ((~~intact males~~)) male horses other than geldings - 1 ng/ml in urine for geldings, fillies or mares.

Nandrolone (Durabolin) - 1 ng/ml urine in geldings, fillies, and mares, and for nandrolone metabolite (5a-oestrane-3β,17a-diol) - 45 ng/ml urine in ((~~intact males~~)) male horses other than geldings.

Testosterone - Not less than 20 ng/ml urine in geldings. Not greater than 55 ng/ml urine in fillies and mares (unless in foal). Samples from ((~~intact males~~)) male horses other than geldings will not be tested for the presence of testosterone.

(b) The following androgenic-anabolic steroids are permissible in test samples up to the stated free (not conjugated), concentration in plasma or serum:

Boldenone (equipoise) - 25 pg/ml for all horses regardless of sex.

Nandrolone (durabolin) - 25 pg/ml for fillies and mares and geldings, male horses other than geldings shall be tested for nandrolone in urine.

Testosterone - 25 pg/ml in fillies, mares, and geldings.

(c) The sex of the horse must be identified to the laboratory on samples submitted for all pre- and post-race testing designated specifically for AAS screening.

(d) If an anabolic steroid is reported as administered to any horse to assist it with recovery from injury or illness, the horse may be placed on the official veterinarian list until such time as a sample is submitted and the levels are reported below the approved thresholds.

(e) All other androgenic-anabolic steroids are prohibited in race horses.

NEW SECTION

WAC 260-70-635 Environmental substances. Certain substances can be considered "environmental" in that they are endogenous to the horse or that they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination or exposure during the cultivation, processing, treatment, storage, or transportation phases. Certain drugs are recognized as substances of human use and could therefore be found in a horse.

(1) The following substances are permissible in test samples up to the stated concentrations:

Arsenic - 0.3 mcg/ml urine
Caffeine - 100 ng/ml serum or plasma
Cobalt - 50 ppb serum or plasma*

* A level of 25 ppb in serum or plasma will result in the horse being placed on the official veterinarians list until such time as the level drops below the 25 ppb.

Benzoylecgonine - 50 ng/ml urine
Estranediol - 0.045 mcg/ml free + conjugated (5a-estrane-3β,17a-diol), in the urine of male horses, other than geldings
Gamma aminobutyric acid (GABA) - 110 ng/ml in serum or plasma
Hydrocortisone - 1 mcg/ml urine
Methamphetamine - 10 ng/ml urine
Methoxytyramine - 4 mcg/ml, free + conjugated urine
Morphine glucuronides - 50 ng/ml urine
Salicylate salicylic acid - 750 mcg/ml serum or plasma
Theobromine - 2 mcg/ml urine
Tramadol - 50 ng/ml urine

(2) If a preponderance of evidence presented shows that a positive test is the result of environmental substance or inadvertent exposure due to human drug use, that evidence should be considered as a mitigating factor in any disciplinary action taken against the trainer.

WSR 18-24-049
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed November 28, 2018, 3:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-009.

Title of Rule and Other Identifying Information: WAC 246-840-035, 246-840-048, 246-840-340, 246-840-342, 246-840-344, 246-840-360, 246-840-365 and 246-840-367, interim permits for nontraditional nursing students and advanced registered nurse practitioners (ARNP) needing to complete clinical practice hours necessary for licensure. The

nursing care quality assurance commission (commission) proposes permanently adopting the current emergency rule adopted on December 15, 2017, in WSR 18-01-079 regarding interim permits for graduates of nontraditional nursing education programs. In addition, the commission proposes amendments to existing rules to establish interim permits for ARNP applicants to allow for the completion of supervised clinical practice hours.

Hearing Location(s): On January 11, 2019, at 3:00 p.m., at the Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Amber Zawislak-Bielaski, P.O. Box 47864, Olympia, WA 98504-7864, email https://fortress.wa.gov/doh/policyreview, fax 360-236-4738, 360-236-4785, by January 2, 2019.

Assistance for Persons with Disabilities: Contact Amber Zawislak-Bielaski, phone 360-236-4785, fax 360-236-4738, TTY 360-833-6388 or 711, email amber.zawislak@doh.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 18.79.380 Licensed practical nurse/nontraditional registered nurse program, was repealed by HB 1721 (chapter 203, Laws of 2017). The prior law allowed graduates of registered nurse (RN) programs, who did not complete clinical practice instruction during their degree program, to practice under the license of a preceptor RN to gain those clinical hours. With the repeal of RCW 18.79.380, a student currently enrolled in a nontraditional program can no longer practice under the license of another nurse, therefore no mechanism exists for these students to complete the required clinical practice experience to become licensed as an RN in Washington. The commission adopted an emergency rule on December 15, 2017 (WSR 18-01-079), to repeal WAC 246-840-035, since it is no longer authorized in statute, and to establish standards to ensure a student is able to complete the required clinical practice experience.

The commission is proposing to adopt emergency WAC 246-840-048 as a permanent rule, with minor amendments. The proposed rule protects the public by assuring graduates of nontraditional programs have adequate clinical practice prior to licensure. The rules also allow nurses in practice to continue to advance their career, which will contribute to improved public protection.

In addition, the commission is proposing amendments to WAC 246-840-340, 246-840-342, 246-840-344, 246-840-360, 246-840-365, and 246-840-367 to establish interim permits for ARNP applicants to allow for completion of supervised clinical practice hours.

Currently, ARNP applicants who graduated more than one year prior to applying for licensure by examination and ARNP applicants who are unable to demonstrate proof of having worked two hundred fifty hours of active clinical practice upon renewal, reactivation, or endorsement, must obtain supervised clinical practice hours. Existing rules require ARNP applicants to submit a supervised practice agreement and work under their RN license to obtain the required clinical practice hours. ARNP interim permits would allow these applicants to practice at the full scope of an ARNP while obtaining required clinical practice hours, instead of working under their RN license outside of the intended scope of practice.

Reasons Supporting Proposal: The commission determined that proposed WAC 246-840-048 was needed because without it, students of nontraditional nursing education programs would have no method of completing clinical practice hours required for licensure in Washington state. Adopting emergency WAC 246-840-048 as a permanent rule would provide students, who have recently graduated from nontraditional RN nursing education programs, with an ongoing mechanism for completing required clinical practice experience prior to licensure. Clinical practice experience is a mandatory component of nursing prelicensure to ensure students are competent in the provision of direct patient care.

Proposed amendments to WAC 246-840-340, 246-840-342, 246-840-344, 246-840-360, 246-840-365, and 246-840-367 meet the intent of RCW 18.79.010 by establishing mechanisms for ARNP applicants to meet the qualifications for licensure and continuing competency. ARNP applicants applying for initial licensure by examination in Washington state are required to apply within one year of graduating from an advanced nursing education program. If the ARNP applicant does not apply for licensure within the first year following graduation, the ARNP applicant must complete one hundred twenty-five hours of supervised clinical practice in the role of an ARNP, for each year following graduation. Additionally, all ARNPs in Washington are required to attest to having completed two hundred fifty hours of clinical practice as an ARNP every two years. Current rules require ARNP applicants who are noncompliant with the clinical practice hour requirement, to complete supervised practice under the scope of their active RN license.

Instituting the use of interim permits, for the purpose of completing required clinical practice hours for initial licensure, renewal, and reactivation, would provide applicants with a mechanism for completing clinical practice hours under the correct licensure scope of practice. Individuals holding an interim permit are also subject to the Uniform Disciplinary Act found in chapter 18.130 RCW.

Statutory Authority for Adoption: RCW 18.79.110.

Statute Being Implemented: RCW 18.79.110 and 18.79.180.

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

Name of Proponent: Washington state nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Amber Zawislak-Bielaski, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4785; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amber Zawislak-Bielaski, P.O. Box 47864, Olympia, WA 98504, phone 360-236-4785, fax 360-236-4738, TTY 360-833-6388 or 711, email amber.zawislak@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The NAICS code for ARNPs, LPNs, and RNs is 621399, and was used to calculate industry threshold which is one percent of annual payroll. The total $13,992,420,000.00 annual payroll from the NAICS table was multiplied by one percent of the result [and] was used as threshold for the industry as follows: (13,992,420,000)*(0.01) = $13,992,420. There are no estimated costs for this rule, which falls below the NAICS threshold of $13,992,420. It was determined that a small business economic impact statement was not required.

November 28, 2018
Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality
Assurance Commission

NEW SECTION

WAC 246-840-048 Students enrolled in a nontraditional nursing program. This section applies to a licensed practical nurse (LPN) enrolled in a nontraditional LPN to registered nurse (RN) program on July 27, 2017, and describes the eligibility requirements for obtaining a Washington state interim permit.

(1) Graduates of a nontraditional nursing program may apply for an interim permit after degree confirmation by the nontraditional program.

(a) An LPN enrolled in a nontraditional nursing program on July 27, 2017, has until July 27, 2020, to complete the nontraditional program, as defined in WAC 246-840-010.

(b) An LPN successfully completing a nontraditional nursing program after July 27, 2020, may obtain licensure by endorsement in Washington state after completing one thousand hours of practice under an RN license in another state, without discipline.

(2)(a) An LPN successfully completing the nontraditional nursing program and passing the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®) may be eligible to receive an interim permit for the purpose of completing one thousand hours of practice experience in the role of an RN.

(b) Only students licensed as an LPN in Washington state and identified by the nontraditional program on July 27, 2017, will be considered eligible to obtain initial licensure from the commission under this section.

(3) An LPN successfully completing a nontraditional nursing program as identified in subsection (2)(b) of this section shall:

(a) Submit a completed RN application indicating the need for an interim permit with the required fee, as defined in WAC 246-840-990;

(b) Request an official transcript be sent directly to the commission from the nontraditional nursing education program confirming a conferred associate degree in nursing;

(c) Successfully pass the National Council of State Boards of Nursing Registered Nurse Licensing Examination (NCLEX-RN®);

(d) Complete one thousand hours of practice under an interim permit in the role of an RN; and

(e) Provide documented evidence from a commission approved supervising licensed RN verifying the interim permit holder successfully completed the one thousand hours of practice in an RN role.

(4) The supervising RN from the acute care, skilled nursing, or transitional care facility:

(a) Shall submit a commission approved application;

(b) Must have an active, unencumbered RN license;

(c) Shall attest to not being related to or personal friends of the interim permit holder;

(d) Must have at least three years of experience as an RN;

(e) Must have demonstrated teaching and mentoring skills; and

(f) Must be able to evaluate, with input from others, the practice of the interim permit holder in the role of an RN.

(5) The interim permit expires one year after the submission of the application and is not renewable.

(6) An interim permit holder who does not successfully fulfill the practice requirements, as identified in subsection (3)(c) and (d) of this section, does not meet the requirements for licensure by examination as an RN in the state of Washington.

(7) The holder of the interim permit is subject to disciplinary action under chapter 18.130 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-840-035	Initial licensure for registered nurses—Out-of-state nontraditional nursing education program approved by another United States nursing board as defined by WAC 246-840-010(16).

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-340 Initial ARNP requirements. (1) An applicant for licensure as an ARNP ((~~must~~)) shall have the following qualifications:

(a) An active Washington state RN license, without sanctions or restrictions;

(b) A graduate degree from an advanced nursing education program accredited by a national nursing accreditation body recognized by the United States Department of Education;

(c) Certification from a certifying body as identified in WAC 246-840-302;

(d) Completion of advanced clinical practice hours, as defined in WAC 246-840-010(1) and in the role of an advanced practice nurse as defined in WAC 246-840-010(2), when applicable, in situations under subsection (3) of this section.

(2) An applicant for ARNP licensure ((~~must~~)) shall submit:

(a) A completed ARNP application for licensure to the commission;

(b) The license fee as specified in WAC 246-840-990;

(c) A request to the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the commission;

(d) A request to the advanced nursing educational program to send an official transcript directly to the commission showing courses, grades, degree or certificate granted, official seal, and appropriate registrar; and

(e) Program objectives and course descriptions when requested by the commission.

(3) To be granted a license without meeting the advanced clinical practice requirements identified in subsection (4) of this section, the ARNP shall initiate the application process within one year of earning a graduate degree from an advanced nursing education program.

(4) An ARNP applicant who does not apply within one year of earning a graduate degree from an advanced nursing education program ((~~must complete~~)) may be eligible to receive an ARNP interim permit for the purpose of completing one hundred twenty-five hours of advanced clinical practice for ((~~each~~)) every additional year following graduation, not to exceed one thousand hours. The ARNP interim permit expires one year after the submission of the application.

(a) An ARNP applicant's clinical practice must be supervised by an ARNP under chapter 18.79 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or equivalent licensure in another state or United States jurisdiction. The ARNP interim permit holder must complete supervised advanced clinical practice as defined in subsections (((~~(3) through~~)) (4) and (5) of this section.

(b) The supervisor must be in the same practice specialty in which the applicant is seeking licensure. The supervising ARNP or physician ((~~must~~)):

(i) Shall have an active ARNP or physician license, for two or more years, without sanctions or restrictions((~~, for two or more years~~));

(ii) ((~~Not be a relative of the applicant;~~

~~(iii) Not have a personal or financial relationship with the applicant;~~

~~(iv)~~)) Must not be a member of the applicant's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the supervisor's duties to impartially supervise and evaluate the nurse;

(iii) Must not have current disciplinary action on their license;

(((~~(v) Submit a written evaluation to the commission~~)) (iv) Shall submit documented evidence to the commission verifying the applicant's successful completion of the required supervised clinical practice hours ((~~and that the applicant's knowledge and skills are at a safe and appropriate level to practice as an ARNP~~)) in an ARNP role.

(5) An ARNP applicant needing to complete supervised advanced clinical practice ((~~must~~)):

(a) Shall meet the requirements of subsection (1)(a) and (b) of this section; ((~~and~~

~~(b) Have commission approval for the following:~~

~~(i) The clinical site in which the supervision will take place; and~~

~~(ii) The supervising ARNP or physician.~~

~~(6) The nursing commission may request additional evidence supporting the applicant's completion of advanced clinical practice hours for the purposes of this section. The commission reserves the right to conduct on-site visits.~~

~~(7) The nurse will not use the designation ARNP during the time~~))

(b) Shall indicate on the ARNP application the need for an interim permit; and

(c) Must obtain:

(i) Commission approval of the supervising ARNP or physician; and

(ii) The interim permit.

(6) The nurse must use the designation interim ARNP at all times and on all documentation of the supervised clinical practice hours.

(((~~(8)~~))) (7) An applicant holding an active RN license, without sanctions or restrictions((~~,~~)); and current national certification as a CNS((~~,~~)); and is practicing in Washington state in an advanced nursing role, will be exempt from the supervised practice requirement if they can provide evidence of two hundred fifty hours of advanced clinical practice within the last two years.

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-342 Licensure for ARNP applicants by interstate endorsement. (1) An applicant for interstate endorsement for Washington state licensure as an ARNP ((~~must~~)) shall meet the following requirements:

(a) Have an active RN and ARNP license, or recognition in another state or jurisdiction, as practicing in an advanced practice role, without sanctions or restrictions;

(b) Have a graduate degree from an advanced nursing education program as identified in WAC 246-840-340 (1)(b);

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and

(d) Have been performing advanced clinical practice as defined in WAC 246-840-010(1) as a licensed ARNP, or in the role of an advanced practice nurse as defined in WAC 246-840-010(2), for at least two hundred fifty hours within the two years prior to the date of application.

(2) An applicant for an ARNP license through interstate endorsement ((~~must~~)) shall:

(a) Apply for and be granted a Washington state RN license as identified in WAC 246-840-090;

(b) Submit a completed ARNP application for licensure to the commission;

(c) Submit the license fee as specified in WAC 246-840-990;

(d) Request the certifying body, as identified in WAC 246-840-302, to send official documentation of certification directly to the commission;

(e) Request the advanced nursing educational program to send an official transcript directly to the commission showing courses, grades, degree or certificate granted, official seal and appropriate registrar;

(f) Submit nursing education program objectives and course descriptions when requested by the commission; and

(g) Submit evidence of at least two hundred fifty hours of advanced clinical practice as an ARNP, or at an advanced nursing practice level, within the two years prior to the date of application. The two hundred fifty hours may include teaching advanced nursing practice if ((~~the faculty member is~~)) providing direct patient care as a faculty member or serving as a preceptor in a clinical setting.

(3) An ARNP applicant who does not meet practice requirements ((~~must~~)) shall complete two hundred fifty hours of supervised advanced clinical practice for ((~~each~~)) every two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) An ARNP applicant needing to complete the supervised advanced clinical practice ((~~must meet~~)) shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-344 Licensure for ARNP applicants educated and licensed outside the United States. (1) An applicant for ARNP licensure in Washington state, educated and licensed outside the United States, ((~~must~~)) shall:

(a) Apply for and be granted an active RN license, or recognition in another state or jurisdiction, without sanctions or restrictions, issued by a regulatory entity outside the United States, and have been practicing at an advanced practice level;

(b) Submit a course-by-course evaluation of education from a commission approved credential evaluating service verifying the advanced nursing educational program completed by the applicant is equivalent to the ARNP education identified in WAC 246-840-455;

(c) Hold certification from a certifying body as identified in WAC 246-840-302(3); and

(d) Have been performing advanced clinical practice in his or her country for at least two hundred fifty hours within the two years prior to the date of application for ARNP licensure.

(2) ((~~The~~)) An applicant educated and licensed outside of the United States ((~~must~~)) shall:

(a) Apply for and be granted a Washington state RN license, without sanctions or restrictions, as identified in WAC 246-840-045;

(b) Submit a completed ARNP application to the commission;

(c) Submit the license fee as specified in WAC 246-840-990;

(d) Submit a course-by-course evaluation of education completed from a commission approved credential evaluating service;

(e) Request the certifying body, as identified in WAC 246-840-302(3), to send official documentation of certification directly to the commission; and

(f) Submit evidence of at least two hundred fifty hours of advanced clinical practice as an ARNP, or in an advanced practice role, within the two years prior to the date of application. The two hundred fifty hours may include teaching advanced nursing practice if ((~~the faculty member is~~)) providing direct patient care as a faculty member or serving as a preceptor in a clinical setting.

(3) Internationally educated ARNP applicants who do not meet advanced clinical practice requirements ((~~must~~)) shall complete two hundred fifty hours of supervised advanced clinical practice for ((~~each~~)) every two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) ((~~The~~)) An ARNP applicant needing to complete supervised advanced clinical practice ((~~must meet~~)) shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-360 Renewal of ARNP licensure. (1) An applicant applying for ARNP license renewal, ((~~must~~)) shall have:

(a) An active Washington state RN license, without sanctions or restrictions;

(b) Current certification from a certifying body as identified in WAC 246-840-302;

(c) ((~~Obtained~~)) Thirty contact hours of continuing education obtained during the renewal period in each ARNP designation. An ARNP who has certification in more than one area of practice may count the continuing education hours for more than one certification when applicable to each area of practice; and

(d) ((~~Practiced for~~)) At least two hundred fifty hours in advanced clinical practice for each ARNP designation within the two-year licensing renewal cycle. The two hundred fifty hours may include teaching advanced nursing practice only when the faculty member is providing patient care or serving as a preceptor in a clinical setting.

(2) An applicant for ARNP licensure renewal ((~~must~~)) shall comply with the requirements of chapter 246-12 WAC, Part 2 and submit:

(a) The renewal license fee as specified in WAC 246-840-990; ((~~and~~))

(b) Evidence of current certification by the commission approved certifying body for each designation;

(c) A written declaration, on forms provided by the commission attesting to:

(i) Completion of thirty contact hours of continuing education during the renewal period for each ARNP designation; and

(ii) Completion of a minimum of two hundred fifty hours of advanced clinical practice for each designation in the ARNP role within the last two years.

(d) Evidence of completion of continuing education contact hours and advanced clinical practice hours when requested by the commission.

(3) An applicant for ARNP licensure renewal who does not meet advanced clinical practice requirements shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) An applicant for ARNP licensure renewal needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP ((~~must~~)) shall comply with WAC 246-12-090 or 246-12-540, ((~~as appropriate~~)) if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ((~~nurse must~~)) ARNP:

(a) Shall meet the requirements identified in chapter 246-12 WAC, Part 4;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified ((~~in~~)) under WAC 246-840-990;

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1);

(e) Shall submit evidence of thirty contact hours of continuing education for each designation within the past two years; and

(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.

(3) An ARNP applicant who does not have the required practice requirements, ((~~must~~)) shall complete two hundred fifty hours of supervised advanced clinical practice for ((~~each~~)) every two years the applicant may have been out of practice, not to exceed one thousand hours.

(4) The ARNP applicant needing to complete supervised advanced clinical practice ((~~must meet~~)) shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

(5) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it ((~~will be~~)) is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse ((~~must~~)) shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

(2) Applicants who do not ((~~meeting~~)) meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for ((~~each~~)) every two years the applicant may have been out of practice, not to exceed one thousand hours.

(((~~(2)~~))) (3) The ARNP applicant needing to complete supervised advanced clinical practice ((~~must meet~~)) shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).

(((~~(3)~~))) (4) If the ARNP license has expired for two years or more, the applicant ((~~must~~)) shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

(c) Submit evidence of thirty contact hours of continuing education for each designation within the ((~~past~~)) prior two years;

(d) Submit evidence of two hundred fifty hours of advanced clinical practice completed within the ((~~past~~)) prior two years; and

(e) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.

(((~~(4)~~))) (5) If the applicant does not meet the required advanced clinical practice hours, ((~~he or she must complete~~)) the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).

WSR 18-24-050
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed November 28, 2018, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-08-018.

Title of Rule and Other Identifying Information: WAC 246-840-533 Nursing preceptors, interdisciplinary preceptors, and proctors in clinical or practice settings for nursing education programs located in Washington state. The nursing care quality assurance commission (commission) proposes amendments to existing rule that will provide rule clarification and reduce barriers for nursing student access to preceptors for the purpose of completing clinical experience. The proposed amendments also reduce barriers for qualified indi-

viduals to become preceptors and proctors in Washington state.

Hearing Location(s): On January 11, 2019, at 1:15 p.m., at the Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Amber Zawislak-Bielaski, P.O. Box 47864, Olympia, WA 98504-7864, email https://fortress.wa.gov/doh/policyreview, fax 360-236-4738, 360-236-4785, by January 2, 2019.

Assistance for Persons with Disabilities: Contact Amber Zawislak-Bielaski, phone 360-236-4785, TTY 360-833-6388 or 711, email amber.zawislak@doh.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes amendments to WAC 246-840-533 in response to concerns expressed through a petition for rule making. The commission evaluated all concerns during rules workshops with stakeholders and determined necessary amendments to the rule that will likely result in improved access for nursing students to complete clinical experience with a preceptor or proctor. The proposed amendments to WAC 246-840-533 establish minimum qualifications for preceptors and proctors when utilized in nursing education programs.

The proposed amendments to WAC 246-840-533 would improve nursing student access to qualified preceptors for the purpose of gaining clinical nursing experience and reduce barriers for qualified individuals to act as a preceptor. Improving access to clinical experiences, prior to graduating from a nursing education program, contributes to better prepared nurses upon licensure and the protection of the public. A nursing shortage within the health care system has been occurring at the state and national levels over the last several years. The proposed amendments to the rule would assist in addressing the nursing shortage by more rapidly increasing the pool of qualified nurses in the state.

Reasons Supporting Proposal: The proposed amendments to WAC 246-840-533 would improve nursing student access to qualified preceptors and proctors for the purpose of gaining clinical nursing experience and reduce barriers for qualified individuals to act as a preceptor or proctor. Reducing barriers and improving access to clinical experiences, prior to graduating from a nursing education program, contributes to better prepared nurses upon licensure and ultimately, safety of the public. The commission does not require nursing education programs to utilize preceptor and proctor clinical experiences for nursing students, but many nursing education programs find these experiences to be invaluable. The current nursing shortage has negatively affected the nursing education program staffing levels and the availability of clinical nurse educators. Preceptor and proctor clinical experiences help fill the gap and provide students with an opportunity to learn from individuals currently working in the health care field. Since preceptors and proctors are not educationally and experientially prepared as faculty, minimum qualification standards determined by the commission help protect the public. The proposed amendments also improve clarity by adding definitions and strengthening language to reduce confusion regarding preceptor and proctor qualifications when used in nursing education programs.

Statutory Authority for Adoption: RCW 18.79.110.

Statute Being Implemented: RCW 18.79.110.

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

Name of Proponent: Washington state nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Amber Zawislak-Bielaski, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4785; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Amber Zawislak-Bielaski, P.O. Box 47864, Olympia, WA 98504, phone 360-236-4785, fax 360-236-4738, TTY 360-833-6388 or 711, email amber.zawislak@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The NAICS code for ARNPs, LPNs, and RNs is 621399, and was used to calculate industry threshold which is one percent of annual payroll. The total $13,992,420,000.00 annual payroll from the NAICS table was multiplied by one percent of the result [and] was used as threshold for the industry as follows: (13,992,420,000)*(0.01) = $13,992,420. There are no estimated costs for this rule, which falls below the NAICS threshold of $13,992,420. It was determined that a small business economic impact statement was not required.

November 28, 2018
Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality
Assurance Commission

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-533 Nursing preceptors, interdisciplinary ((~~mentors~~)) preceptors, and proctors in clinical or practice settings for nursing ((~~education programs~~)) students located in Washington state. (1) Nursing preceptors, interdisciplinary preceptors, and proctors may be used to enhance clinical or ((~~practice-learning~~)) practice learning experiences after a student has received instruction and orientation from program faculty who ((~~assure~~)) confirm the student is adequately prepared for the clinical or practice experience((~~.~~

~~(2) Nursing education faculty in prelicensure nursing education programs shall not assign more than two students to each nurse preceptor.~~

~~(3) Nursing education faculty in a program leading to licensure as an advanced registered nurse practitioner shall not assign more than one student to each preceptor~~)). For the purpose of this section:

(a) A nursing preceptor means a practicing licensed nurse who provides personal instruction, training, and supervision to a nursing student or graduate nurse, and meets all requirements of subsection (4) of this section.

(b) An interdisciplinary preceptor means a practicing health care provider who is not a licensed nurse, but provides personal instruction, training, and supervision to a nursing student or graduate nurse, and meets all requirements of subsection (5) of this section.

(c) A proctor means an individual who holds an active credential in one of the professions identified in RCW 18.130.040 who monitors students during an examination, skill, or practice delivery, and meets all requirements of subsection (6) of this section.

(2) Nursing education faculty are responsible for the overall supervision and evaluation of the student and must confer with each nursing and interdisciplinary preceptor, and student at least once during each phase of the student learning experience:

(a) Beginning;

(b) Midpoint; and

(c) End.

(3) A nursing preceptor or an interdisciplinary preceptor shall not precept more than two students at any one time.

(4) A nursing preceptor may be used in ((~~practical and registered~~)) nursing education programs when the nursing preceptor:

(a) Has an active, unencumbered nursing license at or above the level for((~~,~~)) which the student is preparing;

(b) ((~~Is experienced in the specialty area for at least two years;~~)) Has at least one year of clinical or practice experience as a licensed nurse at or above the level for which the student is preparing;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is ((~~not related to, or a personal friend of the student~~)) oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is ((~~oriented to the written role expectations of faculty, preceptor, and student~~)) not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(5) ((~~A~~)) An interdisciplinary preceptor may be used in nursing education programs ((~~leading to licensure as an advanced registered nurse practitioner~~)) when the interdisciplinary preceptor:

(a) Has an active, unencumbered license ((~~as an ARNP under chapter 18.79 RCW, a physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW, or equivalent license in other states or jurisdictions;~~

~~(b) Is experienced in the specialty area for at least two years~~)) in the area of practice appropriate to the nursing education faculty planned student learning objectives;

(b) Has the educational preparation and at least one year of clinical or practice experience appropriate to the nursing education faculty planned student learning objectives;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is ((~~not related to, or a personal friend of the student~~)) oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is ((~~oriented to the written role expectations of faculty, preceptor, and student.~~

~~(6) A preceptor may be used in graduate nursing programs as appropriate to the course of study when the preceptor:~~

~~(a) Is experienced in the specialty area for at least two years;~~

~~(b) Is oriented to the written course and student learning objectives;~~

~~(c) Is not related to, or a personal friend of the student; and~~

~~(d) Is oriented to the written role expectations of faculty, preceptor, and student.~~

~~(7) An interdisciplinary mentor who has experience and educational preparation appropriate to the faculty planned student learning experience may be used in some clinical or practice experiences.~~

~~(8) Faculty are responsible for the overall supervision and evaluation of the student and must confer with each preceptor or interdisciplinary mentor and student at least once before the student learning experience, at the mid-point of the experience, and at the end of the learning experience.~~

~~(9)~~)) not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(6) A proctor who monitors, teaches, and supervises students during the performance of a task or skill must ((~~be qualified with~~)):

(a) Have the educational and experiential preparation ((~~in the area~~)) for the task or skill being proctored ((~~and must be credentialed as a licensed health care provider listed in chapter 18.130 RCW. Such a person may~~));

(b) Have an active, unencumbered credential in one of the professions identified in RCW 18.130.040;

(c) Only be used on rare, short-term occasions to proctor students when a faculty member has determined that it is safe for a student to receive direct supervision from the proctor for the performance of a particular task or skill that is within the scope of practice for the nursing student; and

(d) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

WSR 18-24-056
PROPOSED RULES
OLYMPIC REGION CLEAN AIR AGENCY

[Filed November 29, 2018, 8:30 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations: Rule 1.11 Federal Regulation Reference Date.

Hearing Location(s): On February 13, 2019, at 10:00 a.m., at ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: February 13, 2019.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., email mark.goodin@orcaa.org, fax 360-491-6308, by February 11, 2019.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by February 6, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to update the effective date of the federal regulations that have been adopted by the agency. Currently, where federal rules are reference[d] in agency regulations, the effective date of the federal regulations is July 1, 2017. The agency intends to update the date annually. This proposal would change the reference date to July 1, 2018.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Goodin, 2940 Limited Lane N.W., Olympia, 360-539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, 360-539-7610.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies per RCW 70.94.141.

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

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

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70.94.141(1) states: "An air pollution control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

November 29, 2018
Francea L. McNair
Executive Director

AMENDATORY SECTION

Rule 1.11 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, ((~~2017~~)) 2018.

WSR 18-24-075
WITHDRAWL OF PROPOSED RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION
(By the Code Reviser's Office)
[Filed November 30, 2018, 12:11 p.m.]

WAC 391-08-155, proposed by the public employment relations commission in WSR 18-10-084, appearing in issue 18-10 of the Washington State Register, which was distributed on May 16, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-24-079
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed December 3, 2018, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-018.

Title of Rule and Other Identifying Information: Amends WAC 181-77-081 to clarify requirements for career and education specialist career and technical education (CTE) certificate and the CTE counselor certificate.

Hearing Location(s): On January 10, 2019, at 8:30 a.m., at ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by January 3, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: No approved programs came forward to offer a program as required for the CTE career guidance specialist so the rule is amended to remove program requirements and align the two possible CTE certificates for counseling and career guidance specialist certificates.

Reasons Supporting Proposal: Aligns two certificates with near identical purposes.

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

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The professional educator standards board (PESB) initiated these changes to clarify requirements.

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

December 3, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-21-070, filed 10/11/18, effective 11/11/18)

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 certificated 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 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 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 five years.

(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 ten quarter hours of college credit, one hundred clock hours, or four professional growth plans since the initial certificate was issued or renewed. 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 five years.

(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 ten quarter hours of college credit, the equivalent of one hundred 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. 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~~)) may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate in subsection (2) of this section.

Holders of expired one-year occupational information specialist, or one-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired one-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(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.

Holders of expired three-year or five-year occupational information specialist, or three-year or five-year career and technical education counselor certificates, may apply for the initial career guidance specialist certificate, and will be considered to have met the requirements to obtain an initial career guidance specialist certificate with completion of one hundred continuing education credit hours within the previous five years from the date of the renewal application.

These holders of expired three-year or five-year certificates must present evidence to the superintendent of public instruction of completing the continuing education credit hours within the five years prior to the date of the renewal application.

(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.

WSR 18-24-091
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed December 3, 2018, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-22-058 on October 26, 2017.

Title of Rule and Other Identifying Information: Amending WAC 220-450-060 Definitions—Wildlife rehabilitation permits, 220-450-070 Wildlife rehabilitation permits—Requirements and restrictions, 220-450-080 Wildlife rehabilitation—Responsibilities of primary permittees and subpermittees, 220-450-090 Wildlife rehabilitation—Permit revocation, modification, or suspension, 220-450-100 Wildlife

rehabilitation—Facility requirements and inspections—On- and off-site care, 220-450-110 Wildlife rehabilitation—Releasing wildlife, 220-450-120 Wildlife rehabilitation—Veterinary care, 220-450-130 Wildlife rehabilitation—Records retention and reporting requirements, 220-450-140 Wildlife rehabilitation—Falconers assisting with raptor rehabilitation, 220-450-150 Wildlife rehabilitation—Transfer, import, and export of wildlife and restrictions, 220-450-160 Wildlife rehabilitation—Possession of dead wildlife and wildlife parts, 220-450-170 Wildlife rehabilitation—Disposition of nonreleasable and mal-habituated, mal-imprinted, and tame wildlife and live retention for foster and education, 220-450-180 Wildlife rehabilitation—Euthanizing wildlife, 220-450-190 Wildlife rehabilitation—Disposing of wildlife remains and 220-450-200 Wildlife rehabilitation—Commercial uses; and repealing WAC 220-450-210 Oiled bird rehabilitation—Facility requirements, and 220-450-220 Reporting receipt, death, carcass, retention, and release of oiled birds.

Hearing Location(s): On January 11-12, 2019, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: February 8-9, 2019.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email wildthing@dfw.wa.gov, fax 360-902-2162, https://www.surveymonkey.com/r/C53HMDW, by December 26, 2018.

Assistance for Persons with Disabilities: Contact Tami Lininger, phone 360-902-2267, TTY 800-833-6388, email tami.lininger@dfw.wa.gov, by January 4, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-450-060, to eliminate unnecessary definitions, add definitions of terms inserted within the new amendments, and improve and refine definitions that were causing confused interpretation of the rules. Refining this rule will aid wildlife rehabilitators in understanding the rules and therefore assist them in compliance, and will aid the department in evaluating compliance of rehabilitators.

WAC 220-450-070, to more thoroughly specify wildlife rehabilitator qualifications. Enhanced qualifications increase the department's ability to ensure that wildlife receive proper and humane care in wildlife rehabilitation facilities through the permitting and candidate vetting process. Clarifying language was added to existing requirements to help wildlife rehabilitation candidates know what is expected of them, and permitted wildlife rehabilitators know what they must do to maintain and renew their permits. These revisions augment the ability of the department to control the quality and character of those wishing to be wildlife rehabilitators.

WAC 220-450-080, to define more clearly the responsibilities of primary permittees and their subpermittees and impose stricter requirements and conditions on these two classes of permittees. Better definition of responsibilities and relationships of the primary permittee to the subpermittee is intended to alleviate misunderstanding of subpermittees and primary permittee roles and clearly making the primary permittee responsible for their subpermittees. This proposal also expands required qualifications of subpermittees to improve care of wildlife in subpermittee custody and allow the department more control of who may become a subpermittee.

WAC 220-450-090, to present a better and more effectual description of when and how the department may take action when noncompliance, violations, or mal-practice is discovered at a wildlife rehabilitation facility. This rule outlines the procedure for assisting wildlife rehabilitators to return to compliance and the department's process to finally revoke a noncompliant permittee.

WAC 220-450-100, to develop language for better understanding of facility requirements to increase assurance that wildlife rehabilitators provide healthy, safe, and comfortable caging, and a stress-reduced environment. Details were added to emphasize and codify the necessity for wildlife rehabilitators to follow the most current version of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's Minimum Standards for Wildlife Rehabilitation. Understanding the need for these standards aids the rehabilitator in providing the safest and best living environment for captive wildlife, and supports the department with consistent criteria to assist the rehabilitator in compliance. Importantly, off-site subpermittee restrictions and requirements were strengthened to give the department more control over subpermittee operations and protect wildlife in both the subpermittee and primary permittee facilities.

WAC 220-450-110, all wildlife rehabilitation facilities have release protocols that give wildlife the best chance at survival when back in the wild. The purpose of this proposal is to include additional provisions for release and strengthen the requirement that release protocols be followed. Substantial additions were made to this revision to better protect free wildlife populations from competition from released individuals, nonnative species, and disease. In particular is the addition of cervid, amphibian, and introduced species release restrictions.

WAC 220-450-120, to make clear that licensed veterinarians may admit wildlife for first aid, stabilization, and euthanasia, but tightens restrictions on them. The increased restrictions place a time limit on how long a nonpermitted veterinarian may hold wildlife at his or her hospital and the requirement for transfer. This revision adds the definition of the principal veterinarian required by all wildlife rehabilitators.

WAC 220-450-130, to enhance the understanding that records are a vital part of any wildlife rehabilitation program and are necessary for best practices and animal welfare. Little has changed in this WAC except the designation of department required records. This designation allows department agents to the records enhancing compliance.

WAC 220-450-140, to further delimit restrictions on falconers assisting in rehabilitation of raptors. Little has changed in this WAC except the clarification that falconers may not practice wildlife rehabilitation nor use raptors in their care for falconry.

WAC 220-450-150, to tighten restrictions on moving wildlife among wildlife rehabilitation facilities to prevent disease transmission and dispersion. Substantial restrictions on cervid and bat transfers were added.

WAC 220-450-160, to only clarify what may be possessed by wildlife rehabilitators.

WAC 220-450-170, to further describe clearly the rules and restrictions for obtaining education and foster animals taken from the wild and to better protect education wildlife from stress and mistreatment at a facility. Animals not suited as program animals are specifically added in this revision for their well-being and the public's protection. To help prevent over habituation and taming of wildlife at facilities, the 2013 wildlife rehabilitation rules included the provision that, *Wildlife tamed by, imprinted on, or habituated to humans while at the primary permittee's facility or subpermittee's facility must be humanely euthanized no later than one hundred eighty days following admission to the rehabilitation facility, to protect the public and to protect the animal from human abuse* (WAC 220-450-170(2)). Added to this provision is the option of transfer. These animals must still be evaluated for safe retention as education animals.

WAC 220-450-180, to prevent prolonged suffering of wildlife at a facility and ensure they receive the service of euthanasia in a timely and appropriate manner. An addition was made to ensure that wildlife presenting with diseases threatening wildlife populations be immediately reported to the department and provides for euthanasia of those animals.

WAC 220-450-190, to direct for appropriate disposition of deceased wild animals in rehabilitation. Language was strengthened to ensure free wildlife was not poisoned by improperly disposed of chemically treated deceased wildlife. Added were provisions for disposition of animals with reportable diseases.

WAC 220-450-200, to allow wildlife rehabilitators to collect donations and funds to support the wildlife rehabilitation facility but not charge for services. This WAC has substantial changes concerning collecting funds for facility operations.

WAC 220-450-210, to eliminate this rule and merge oiled facility requirements into the existing wildlife rehabilitation facility requirements rule for ease of location and to emphasize that oiled wildlife facilities are a part of general wildlife rehabilitation permitting. Oiled facility requirements were not changed substantially. This rule was moved in consultation with the oil spill team and all language revisions were done by the oil spill team.

WAC 220-450-220, to eliminate this rule and merge with existing appropriate wildlife rehabilitation rules for ease of location. The elimination of this rule and move to existing wildlife rehabilitation rules was done in consultation with the oil spill team.

Reasons Supporting Proposal: WAC 220-450-060, this revision is consistent with providing easy-to-understand rules by which wildlife in captivity may experience best practices for housing and welfare, and compliance is made less complicated for the permitted wildlife rehabilitator.

WAC 220-450-070, these amendments make the rule consistent with the department's responsibility to safeguard wildlife in captivity and strengthen staff's ability to evaluate and certify qualifications of those applying for a wildlife rehabilitation permit. Since the expanded wildlife rehabilitation rules were adopted in 2013 we have recorded where additional qualifications, guidelines, and regulations were necessary for wildlife rehabilitators to provide proper care for wildlife and meet the department requirements. These revisions better ensure that humane care and treatment is provided for wildlife in rehabilitation which is expected by the department and the public.

WAC 220-450-080, the existing rule has failed to provide the tools by which the department can manage subpermittees and protect wildlife in their care, relying too much on the primary permittee to certify qualifications and oversee the operations of their subpermittees. The amendments to this rule will strengthen department oversight of subpermittees, prevent cases of mal-treatment of wildlife and illegal possession of wildlife, and afford the department greater ability to verify and enforce compliance of subpermittees.

WAC 220-450-090, this revision is consistent with the department's responsibility to protect wildlife in captivity from inhumane treatment, protect free wildlife populations from the spread of disease and mal-behavior caused by improper handling of animals, and protect the public from dangerous wildlife to the best of the department's ability, and that all wildlife held under a wildlife rehabilitation permit remains the property of the state held in trust for Washingtonians and is controlled and regulated by the state. The current rule has failed to provide a coherent system for suspending and revoking permits of wildlife rehabilitators who violate rules and permit conditions most flagrantly. This revision should provide a less cumbersome and more efficient stepwise method for assisting wildlife rehabilitators to come into compliance and enforcing state and department rule.

WAC 220-450-100, wildlife rehabilitation housing and operations are essential for captive wildlife health, safety, and successful release and the department must continue improving standards required of wildlife rehabilitators. The intent of this proposal is to improve wildlife housing at new and existing facilities and assist wildlife rehabilitators in providing the best conditions. Included in this revision is a provision to make inspections consistent with RCW 77.15.096 providing for inspections without warrant at any reasonable time and without a rehabilitator present.

The current rule fails to define clearly off-site permittees and their facilities which has been problematic in tracking and enforcing best practices of subpermittees, therefore, detailed requirements and restrictions were added.

WAC 220-450-110, the primary importance of this rule's amendments is the protection of free wildlife populations. The revisions to this rule are consistent with the department's mandate to protect wildlife populations and, particular to this rule, prevent the transmission and introduction of disease. Supporting this proposal will provide this protection with increased regulations on the release of rehabilitated wildlife.

WAC 220-450-120, well-meaning veterinarians often have little to no experience in treating and handling wildlife which results in very poor care to tragic consequences to the individuals. This revision requires that wildlife admitted to a veterinary clinic be transferred within forty-eight hours to a wildlife rehabilitator. Conversely, veterinarians have been unsure of and uncomfortable with accepting wildlife for fear of illegal possession and rehabilitation of wildlife. This rule revision makes it clear that even unpermitted veterinarians may admit wildlife. One of the essential services that veterinarians can provide for wildlife and the public is immediate

euthanasia of a suffering animal. Support of this proposal will encourage provision of that service.

WAC 220-450-130, good recordkeeping provides documentation that animals are being cared for thoroughly and properly. Department agents and staff must be allowed to inspect records to verify that a facility is conforming to best husbandry and treatment practices for wildlife. In past compliance cases, this has not been allowed. Supporting this revision will permit the department to require the records and verify that wildlife is getting the best care at a facility

WAC 220-450-140, the proposed revisions clarify the limits on falconers who assist with raptor rehabilitation. Support of this proposal will maintain the separation of the activities of falconry and wildlife rehabilitation.

WAC 220-450-150, it is exceptionally important to free wildlife populations to be protected from the introduction and transmission of existing diseases and emerging diseases. It is equally important to protect the public from the spread of zoonotic diseases. Supporting this proposal will provide a means for this protection by increasing restriction and regulations on the transfer and movement of wildlife in rehabilitation around the state.

WAC 220-450-160, only minor word changes were made to this WAC.

WAC 220-450-170, considerable concern has been expressed about the conditions under which wildlife is kept for education, and the circumstances under which those wild animals became education animals. Added to this rule is greater protection for wildlife held for education by requiring an application for education and foster animals certifying that the animal is in fact nonreleasable and will not experience pain, suffering, and undue stress while captive.

WAC 220-450-180, this proposal seeks to ensure that all wildlife so severely injured or nontreatable admitted to a permitted wildlife rehabilitation facility be given the service of euthanasia in a humane and timely manner and that those animals not languish for long periods of time.

WAC 220-450-190, amendments to this proposal protect free wildlife from euthanasia, immobilization, and drug chemicals, and from disease transmission.

WAC 220-450-200, wildlife rehabilitators maintain and operate their facilities and services on a donation basis only making it difficult to obtain funding for wildlife rehabilitation. This revision gives them options for collecting funds to support their wildlife rehabilitation practice.

WAC 220-450-210, moving oiled wildlife facility requirements to WAC 220-450-100 Wildlife rehabilitation—Facility requirements and inspections—On- and off-site care, simplifies the oiled wildlife rules and places facility requirements in a logical place in the general wildlife rehabilitation rules.

WAC 220-450-220, the elimination of an extra rule and moving the requirements to an existing rule make the requirements easier to find. This proposal emphasizes that oiled wildlife rehabilitation is part of general wildlife rehabilitation permitting. This rule was moved in consultation with the oil spill team and all language revisions were done by the oil spill team.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.12.467, 77.12.469, and 77.32.070.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, 77.12.240, 77.12.467, 77.12.469, and 77.32.070.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: Steve Bear, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule proposal will not impose more-than-minor costs on businesses in the industry.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: Because the proposed rules will not impose more-than-minor costs on businesses in the affected industry.

December 3, 2018
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-060 Definitions—((~~Oiled wildlife and~~)) Wildlife rehabilitation permits. For the purposes of WAC 220-450-070 through 220-450-220, the following definitions apply:

(1) ((~~"Bird" means any wild animal of the class Aves.~~

~~(2) "Dedicated workspace" means the minimum amount of floor space necessary to maintain access to oiled bird rehabilitation pens.~~)) "Alcid" means a bird of the family Alcidae. The alcid family includes murres, guillemots, auklets, puffins, and murrelets.

(2) "Daily ledger" means a record, kept current daily and available for inspection, documenting all wildlife admissions, transfers, releases, and deaths; reason for admission; case number, date of admission; date of release, transfer, euthanasia, or other type of disposition; any tag or band numbers.

(3) "Director" means the director of the department of fish and wildlife or his or her designee.

(4) ((~~"Drying resources" mean the floor space and pen requirements associated with the removal of water from the skin and feathers of a bird.~~

~~(5)~~)) "Education animal" means a permanently injured or otherwise nonreleasable animal permitted to be kept in permanent confinement on public display or used in educational programs.

(5) "Euthanasia" means compassionate killing with a minimum of pain and distress, in a timely manner, safely to prevent disease transmission, public health or human safety risks, or prolonged or unrelenting animal suffering due to illness, injury, unremitting pain, or inability to be rehabilitated to release.

(6) "Habituate" means an animal stops responding to frequently occurring stimuli (like noises, sights or smells) because no negative consequences occur; it may be temporary and reversible or behavior may become ingrained (i.e., taming) and prevent return to the wild. See "Tame."

(7) "Hacking" means the release, sometimes temporary, of a raptor to the wild so that it may survive on its own.

(((~~(6)~~))) (8) "Humane" means providing care such as water, food, safe handling, clean facilities, medical treatment, and euthanasia if needed, and conditions including environments sensitive to species-typical biology and behavior, with the intent to minimize fear, pain, stress, and suffering.

(9) "Imping" means a method of replacing a broken feather with an undamaged feather ((~~by cutting the shaft of the broken feather on the bird, trimming the replacement feather to the correct length, and gluing the shaft of the replacement feather to the shaft of the broken feather~~)).

(((~~(7)~~))) (10) "Imprinting" means when a very young animal fixes its attention on and follows the first object or creature it sees, hears, or touches, and becomes socially, and later sexually, bonded to that object or creature, identifying itself ((~~as whatever~~)) irreversibly as the species it imprints upon.

(((~~(8) "Indoor area" means the space within an oiled bird rehabilitation facility in which the air temperature and exchange of air can be controlled and maintained. Indoor areas can include oiled bird rehabilitation pools, morgues, freezers, isolation/intensive care units, medical laboratories, laundry and storage facilities, and electrical and mechanical equipment. These areas may consist of space for conducting intake, prewash holding, washing and rinsing, drying, necropsy, and preparing bird food.~~

~~(9) "Intake space" means the minimum amount of floor space necessary to admit live or dead birds into an oiled bird rehabilitation facility.~~

~~(10) "Mesh size" means the measured distance between one vertical side of a mesh unit and the opposite vertical side of the same mesh unit when the netting is pulled taut.~~))

(11) "Mal-imprinting" means imprinting on a species not its own, preventing the animal's return to the wild.

(12) "Nonreleasable" means a wild animal that cannot be released with a reasonable potential for survival in the wild due to physical or psychological impairment, such as the inability to express species-specific appropriate behavior, including the ability to hunt or forage, recognize threats; or is tamed or mal-imprinted.

(13) "Oil" means oil of any kind and any form, such as petroleum and nonpetroleum oils including, but not limited to, crude oil and refined petroleum products, animal fats and vegetable oil, other oils of animal or vegetable origin, and other nonpetroleum oils.

(((~~(12) "Oiled bird" means a bird that has come in contact with oil.~~

~~(13) "Oiled bird rehabilitation pen" means an enclosure used to hold birds during oiled bird rehabilitation.~~

~~(14) "Oiled bird rehabilitation pool" means a container filled with fresh water used during the rehabilitation of oiled birds.~~

~~(15)~~))) (14) "Oiled ((~~bird~~)) wildlife rehabilitation" is a specialized form of wildlife rehabilitation and means the process of caring for oiled ((~~birds~~)) wildlife during intake, ((~~prewash holding~~)) stabilization, washing and rinsing, and drying, to allow the ((~~birds~~)) wildlife to return to their natural habitat((~~. This form of rehabilitation includes keeping the birds in pools and providing semi-static and static areas with steady air temperatures and air exchanges while the birds are in the rehabilitation facility~~)).

(((~~(16)~~))) (15) "Oiled ((~~bird~~)) wildlife rehabilitation facility" is a specifically permitted type or portion of a wildlife rehabilitation facility ((~~and means the indoor and outdoor areas~~)) used for the rehabilitation of oiled ((~~birds~~)) wildlife.

(((~~(17) "Outdoor area" means an area within an oiled bird rehabilitation facility that does not fit the definition of an indoor area.~~

~~(18)~~))) (16) "Orphan-imprinting" means to use conspecific wildlife for the purpose of feeding, socializing, and teaching appropriate wild behavior to young wildlife.

(((~~(19) "Permit" means a wildlife rehabilitation permit without any additional endorsements.~~

~~(20) "Prewash holding resources" mean the floor space and oiled bird rehabilitation pen capabilities of an oiled bird rehabilitation facility to hold birds after intake and prior to washing.~~

~~(21)~~))) (17) "Patient record" means a record, kept current daily and available for inspection, documenting each animal's species, age and sex; daily care including feeding, watering, and cleaning; medical care; and veterinary notes regarding treatment and health of wildlife in the permittee's care.

(18) "Primary permittee" means the person listed on the wildlife rehabilitation permit who ((~~originally applied~~)) applies for and ((~~received the permit and is licensed to practice~~)) receives a wildlife rehabilitation((~~.~~

~~(22)~~))) permit and is responsible for monitoring and approving any subpermittee's conduct and practices; also, "wildlife rehabilitator."

(19) "Principal veterinarian" means a licensed veterinarian who agrees, in writing, to ((~~assist, direct, and oversee a wildlife rehabilitator in conducting~~)) provide and direct, timely, appropriate veterinary medicine in conjunction with wildlife rehabilitation services and activities.

(((~~(23)~~))) (20) "Public display" means to place or locate wildlife so that they may be viewed by the public.

(((~~(24) "Semi-static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space will vary relative to the number of birds to be rehabilitated. These include areas for preparing bird food, conducting necropsies, and storing and freezing items.~~

~~(25) "Static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space does not vary, regardless of the number of birds to be rehabilitated. These areas include isolation/intensive care units, medical laboratories, laundry facilities, and electrical and mechanical equipment.~~

~~(26)~~))) (21) "Record" means the wildlife rehabilitation permit(s) associated with a particular facility and permit-

tee(s); daily ledger; patient records; and annual wildlife rehabilitation reports.

(22) "Stabilize for transport" means life-threatening injuries are addressed including patient airway is clear, patient is hydrated, hemorrhage is controlled, shock is treated, and broken bones are immobilized.

(23) "Subpermittee" means person or persons listed on the primary permittee's (((~~(also "wildlife rehabilitator")~~))) wildlife rehabilitation permit who care for wildlife ((~~away from the rehabilitation facility~~)) with the permission and under the direction of the primary ((~~licensed wildlife rehabilitation permittee ("primary permittee"). The primary permittee is responsible for monitoring and approving the subpermittee's conduct, practices, and facilities.~~

~~(27)~~))) permittee at the facility.

(24) "Tame" means an animal purposefully seeks out human company and social interaction, care, or attention, does not reject human handling, and learns to not fear humans, all of which prevents the animal's return to the wild.

(25) "Veterinarian" means a licensed veterinarian.

(((~~(28) "Wash/rinse resources" mean the water, cleaning agent, and space requirements necessary to remove oil from the skin and feathers of a bird.~~

~~(29)~~))) (26) "Wildlife rehabilitation" means the care and treatment of injured, diseased, oiled, or ((~~abandoned~~)) orphaned wildlife((~~,~~)) including, but not limited to, capturing, transporting, treating, feeding, housing, and conditioning animals so they can be released back to the wild.

(((~~(30)~~))) (27) "Wildlife rehabilitation facility," or "facility," means the authorized site(s), as shown on the wildlife rehabilitation permit, where treatment and rehabilitation of wildlife takes place.

(((~~(31)~~))) (28) "Wildlife rehabilitation permit" means a permit issued by the director that authorizes a person to practice wildlife rehabilitation.

(((~~(32)~~))) (29) "Wildlife rehabilitator" means a person who conducts wildlife rehabilitation and possesses a current wildlife ((~~rehabilitator~~)) rehabilitation permit from the department.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-070 Wildlife rehabilitation permits—Requirements and restrictions. (1) ((~~All wildlife held under a wildlife rehabilitation permit remains the property of the state and is subject to control by the state.~~)) **Purpose.** The purpose of the wildlife rehabilitation permit is to ensure that humane care and treatment is provided for wildlife in rehabilitation including all aspects of animal welfare as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation with the goal of relieving suffering and release back to the wild.

(a) All wildlife held under a wildlife rehabilitation permit remains the property of the state held in trust for Washingtonians and is controlled and regulated by the state.

(b) A wildlife rehabilitation permit is required to take, temporarily possess, and transport wildlife for the purpose of rehabilitation, with the following exceptions:

(i) Public transport. Members of the public may capture and transport injured and orphaned wildlife if it is safe to do so to a wildlife rehabilitation facility; the public must transport injured wildlife to a permitted wildlife rehabilitator within twenty-four hours.

(ii) Veterinary care. Veterinarians may provide stabilization for transport or euthanize wildlife for humane reasons; veterinarians must arrange transport for orphaned or injured wildlife within forty-eight hours to a permitted wildlife rehabilitator.

(2) **Wildlife rehabilitation permits.**

(a) The department may issue a wildlife rehabilitation permit if the applicant:

(i) Is at least eighteen years of age;

(ii) Completes and submits a current application form to the department's wildlife rehabilitation manager;

(((~~(ii)~~))) (iii) Demonstrates completion of at least six months, or one thousand hours, of experience in wildlife rehabilitation under the direct supervision of a wildlife rehabilitator. At least three months, or five hundred hours, of this experience must occur during the spring or summer. The department, at its discretion, may consider education in wildlife rehabilitation to suffice as a partial substitute for experience;

(((~~(iii)~~))) (iv) Submits to the department a written letter of recommendation from a ((~~wildlife rehabilitator~~)) current primary permittee in good standing who has two or more years of experience in wildlife rehabilitation ((~~and who agrees to advise the applicant in performing wildlife rehabilitation~~));

(((~~(iv)~~))) (v) Submits to the department a ((~~written agreement~~)) signed Principal Veterinarian Agreement form from a veterinarian who is willing to serve as the principal veterinarian for the applicant;

(((~~(v)~~))) (vi) Successfully completes the Washington state general wildlife rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam; and

(((~~(vi)~~))) (vii) Possesses, is employed by, or volunteers at ((~~suitable~~)) facilities that ((~~are inspected and approved by the department~~)) have been inspected and approved by the department and meet department standards, and meet current minimum standards for wildlife rehabilitation as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation. New wildlife rehabilitation permits must be signed and returned to the department by the permittee no later than fourteen days from the date of receipt.

A new wildlife rehabilitation permit is only valid when signed by the permittee and the department permitting representative.

(b) Veterinarians are exempt from the requirements in (a)(((~~(ii) through~~))) (iv) and (v) of this subsection if their formal education or practical training is in wildlife medicine. Applicants living in states with boundaries contiguous with Washington state whose wildlife rehabilitation activities

occur in Washington, for Washington wildlife, and/or has or works for a facility in Washington may apply for a Washington wildlife rehabilitation permit.

(c) The department will determine which species the wildlife rehabilitator is qualified to care for and may ((~~tailor~~)) condition the permit according to the applicant's training, experience, capabilities, and facilities.

Inactive permit applications. Permit applications greater than three years old from the date of signature will be classified as inactive. Applicant must submit a new complete and current application to be considered. If exam was taken greater than three years from the date of the new application, the applicant must retake the exam.

(d) Wildlife rehabilitators must display the wildlife rehabilitation permit or a copy of the permit in a location at the facility that is visible to the public.

(e) Wildlife rehabilitation permits are valid for up to three years, as long as the information on the permit remains valid and current and the permittee adheres to permit conditions and department rules.

(f) Wildlife rehabilitators must report any permit information changes to the department within ten business days of the change. These changes include:

(i) Permitted rehabilitator leaving the facility;

(ii) Subpermittees leaving the facility;

(iii) Changes or additions in animal housing and enclosures;

(iv) Change in principle veterinarian;

(v) Facility address;

(vi) Adding facilities.

(g) The department may refuse to issue a wildlife rehabilitation permit to an applicant if within the last ten years of the date of the application the applicant:

(i) Was convicted of a fish or wildlife offense; or

(ii) Was convicted of any offense involving animal or child cruelty ((~~or neglect, or child abuse or neglect.~~

~~(3)~~)) neglect, or abuse.

(iii) Found guilty of practicing veterinary medicine without an active license, as determined by the veterinary board of governors.

(iv) Fails to meet any of the above requirements.

(3) **Cervid endorsement.**

(a) A person must possess a cervid rehabilitation endorsement to house rehabilitative cervids;

(b) Must have completed hands-on training hours for one complete season March through October focused on cervid wildlife rehabilitation with a current primary permittee endorsed for cervid rehabilitation, and submit to the department a written letter of recommendation from that primary permitee;

(c) Must attend the cervid training provided by the department, which may include updated training at time of permit renewal; and

(d) Possess department inspected approval facilities suitable for cervid species listed on the permit and as required by department rules and the current standards as stated in the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation.

(4) **Large-carnivore rehabilitation endorsement.**

(a) A person must possess a large-carnivore rehabilitation endorsement to rehabilitate large carnivores. Large carnivores are brown bear, black bear, cougar, wolf, bobcat, and lynx. The department may issue large-carnivore endorsements to wildlife rehabilitators who:

(i) Have at least ((~~three months, or~~)) five hundred documented hours, of direct safety, handling, and medical care in a current wildlife rehabilitation practice with ((~~and handling of~~)) large carnivores;

(ii) Have received and documented training in large-animal restraint techniques, including ((~~knowledge~~)) demonstration of proper catchpole use and immobilization-drug administration;

(iii) Submit to the department a written recommendation from a currently licensed wildlife rehabilitator who has two or more years of experience in large-carnivore rehabilitation ((~~and who agrees to advise the applicant in performing large-carnivore rehabilitation~~));

(iv) Successfully completes the written large-carnivore rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam; and

(v) Possess department-inspected and -approved facilities suitable for large carnivores as required by department rule and the current standards ((~~set by the International Wildlife Rehabilitation Council (IWRC) and the National Wildlife Rehabilitators Association (NWRA).~~

~~(b) Applicants are exempt from the requirements in (a)(i) and (iii) of this subsection if they are or were employed for at least three months or five hundred hours as a zookeeper or wildlife biologist with direct practice handling and housing large carnivores.~~

~~(4)~~)) as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation.

(5) **Raptor rehabilitation endorsement.** A person must possess a raptor rehabilitation endorsement to rehabilitate raptors. The department may issue raptor rehabilitation endorsements to wildlife rehabilitators who:

(a) Demonstrate ((~~one~~)) five hundred hours direct practice with and handling of raptors;

(b) Successfully complete the written raptor rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam;

(c) Possess department-inspected and department-approved facilities suitable for raptor housing and rehabilitation as required by department rule and ((~~the standards set by the IWRC and the NWRA~~)) as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation; and

(d) Submit to the department a written recommendation from a currently licensed wildlife rehabilitator who has two or more years of experience in raptor rehabilitation and who

agrees to advise the applicant in performing raptor rehabilitation.

(((~~(5)~~))) (6) **Raptors-only rehabilitation permits.** (((~~(a) The department may issue raptors-only rehabilitation permits that allow a person to rehabilitate only raptors and no other wildlife. To qualify for these permits, an applicant must:~~

~~(i) Demonstrate one hundred hours direct practice with and handling of raptors;~~

~~(ii) Successfully complete the raptor rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the raptor rehabilitation examination may retake it beginning fourteen days from the date of the failed exam;~~

~~(iii) Submit to the department a written recommendation from a wildlife rehabilitator who has two or more years of experience in raptor rehabilitation and who agrees to advise the applicant in performing raptor rehabilitation; and~~

~~(iv) Possess department-inspected and department-approved facilities suitable for raptor housing and rehabilitation as required by department rule and IWRC/NWRA.~~

~~(b) General falconers licensed for three years or more and master falconers are exempt from the requirements in (a)(i) and (iii) of this subsection.~~

~~(6) **Oiled-wildlife rehabilitation endorsement.** An oiled-wildlife rehabilitation endorsement is required to rehabilitate oiled wildlife. The department may issue oiled-wildlife rehabilitation endorsements to wildlife rehabilitators who possess or have permission to access or use department-inspected and department-approved facilities for oiled-wildlife.~~

~~(7)~~))) The department may issue raptor-only rehabilitation permits that allow a person to rehabilitate only raptors and no other wildlife. To qualify for these permits, an applicant must:

(a) Demonstrate five hundred hours direct practice with and handling of raptors;

(b) Successfully complete the raptor rehabilitation reexamination by correctly answering eighty percent or more of the questions. An applicant who fails the examination may retake it beginning fourteen days from the date of the failed exam.

(c) Submit to the department a written recommendation from a currently permitted wildlife rehabilitator who has two or more years of experience in raptor rehabilitation and who agrees to advise the applicant in performing raptor rehabilitation; and

(d) Posses department inspected and approved facilities suitable for raptor housing and rehabilitation as required by department rule and as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation.

(7) **Oiled-wildlife rehabilitation endorsement.**

(a) A person must have an oiled-wildlife endorsement or written department approval to retain oiled wildlife. If the primary permittee does not possess an oiled-wildlife endorsement, the permittee must transfer the oiled wildlife to a primary permittee who has an oiled-wildlife endorsement, or obtain department approval to retain the oiled wildlife.

(b) The department may issue an oiled-wildlife endorsement to permitted rehabilitators who possess or have permission to use department-approved facilities suitable for oiled-alcid rehabilitation as required by department rule. For minimum housing/pen and pool requirements for oiled species other than alcids, refer to the most current edition of the National Wildlife Rehabilitators Associations and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation.

(8) **Permittee-requested permit amendments.** A wildlife rehabilitator may ask for permit amendments for:

(a) Changes to permitted species and capacity by submitting a revised species information page from the department-provided application;

(b) Changes to subpermittees by submitting the wildlife rehabilitation subpermittee application; and

(c) Addition of an education or foster animal by submitting the live animal retention application.

(9) **Wildlife rehabilitation permit renewal.** To renew a wildlife rehabilitation permit, the permittee must submit the following ((~~information~~)) documentation at least thirty days prior to ((~~his or her permit expiring~~)) the permit date of expiration:

(a) A ((~~new~~)) current, completed wildlife rehabilitation permit application form; and

(b) Documentation demonstrating ((~~ten hours or more~~)) at least thirty hours of continuing education during the previous three-year permit period. Continuing education includes:

(i) Documented attendance at state wildlife rehabilitator meetings((~~, NWRA annual meetings, or IWRC~~)) or at Washington Wildlife Rehabilitation Association conference, or National Wildlife Rehabilitators Association annual symposium((~~s~~));

(ii) A certificate of completion of an ((~~IWRC~~)) International Wildlife Rehabilitation Council online or in-person class or workshop;

(iii) Completion and documented attendance of privately offered wildlife rehabilitation training;

(iv) Completion and documented attendance of wildlife rehabilitation classes at a college or university;

(v) Documented department preapproved training with a currently licensed wildlife rehabilitator; or

(vi) Other continuing education activities as ((~~approved~~)) preapproved by the department.

(((~~(8)~~))) (vii) Renewed wildlife rehabilitation permits must be signed and returned to the department by the permittee no later than fourteen days from the date of receipt.

(viii) A renewed wildlife rehabilitation permit is valid only when signed by the permittee and the department permitting representative.

(10) **Reinstatement of expired permits.**

(a) A permit expired for less than three years may be reinstated for the facility and species listed on the expired permit ((~~so long as the facilities have not changed within that three-year period. If the facilities change after the permit expires, the department must inspect and approve the facilities before the permit is reinstated~~)) as long as the permittee meets the conditions for permit renewal.

(b) Permits expired for three years or more may be reinstated if:

(i) The applicant ((~~possesses facilities that meet the standards set by the department, the NWRA, and the IWRC's minimum standards for wildlife rehabilitation for treating and housing wildlife for rehabilitation;~~

~~(ii) The facilities are inspected and approved by the department; and~~)) submits a current and complete department provided wildlife rehabilitation permit application;

(ii) Possesses, is employed by, or volunteers at facilities that have been inspected and approved by the department and meet department standards for treating and housing wildlife for rehabilitation; meet current minimum standards for wildlife rehabilitation as stated in, but not limited to, the most current edition of the National Wildlife Rehabilitators Association and International Rehabilitation Council's minimum standards for wildlife rehabilitation.

(iii) The applicant takes and successfully completes the Washington general wildlife rehabilitation examination, the raptor rehabilitation examination, or large carnivore rehabilitation examination, whichever examination is applicable, by correctly answering eighty percent or more of the questions. An applicant who fails the examination may retake it beginning fourteen days from the date of the failed exam.

(((~~(9)~~))) (11) **Out-of-state wildlife rehabilitators.** Wildlife rehabilitators who have a current wildlife rehabilitation permit or a comparable permit issued by another state, and who move to Washington state for the purpose of residency and wish to practice wildlife rehabilitation in Washington, must follow the same procedures and requirements as a new applicant for a Washington state wildlife rehabilitation permit((~~. However, out-of-state wildlife rehabilitators are exempt from the requirement of providing a letter of recommendation from another wildlife rehabilitator~~)).

(((~~(10)~~))) (12) A violation of this section by a person who engages in wildlife rehabilitation without a department permit is punishable under the appropriate statute for the species being rehabilitated, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds; RCW 77.15.410 for big game; and RCW 77.15.430 for wild animals not classified as big game.

(((~~(11)~~))) (13) A violation of this section by a person who has a wildlife rehabilitation permit is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-080 Wildlife rehabilitation—Responsibilities of primary permittees and subpermittees. (1) ((~~A primary permittee on a wildlife rehabilitation permit is the person who applies for and receives the permit. A primary permittee may include other persons on his or her permit. These other people, known as "subpermittees," operate with the permission and under the direction of the primary permittee.~~)) Primary permittees and subpermittees are responsible for abiding by all permit terms and conditions, reporting and record requirements, and compliance with state and federal regulations when conducting wildlife rehabilitation or actions associated with wildlife rehabilitation and in accordance with the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's minimum standards for wildlife rehabilitation.

(2) A primary permittee ((~~has the following responsibilities for his or her subpermittees:~~

~~(a) Ensuring that subpermittees listed on the permit abide by the permit's conditions and state and federal laws and regulations, when conducting wildlife rehabilitation practices or actions associated with wildlife rehabilitation on or off the facility premises; and~~

~~(b) Notifying~~)) is directly responsible for the subpermittee's actions related to wildlife rehabilitation under his or her primary permit.

(a) The primary permittee must submit a completed application provided by the department for each subpermittee;

(b) A primary permittee may have no more than two off-site subpermittees at one time;

(c) A primary permittee must have the capacity to visit the off-site subpermittee at least once a week if the subpermittee has wildlife at his or her facility and is caring for wildlife;

(d) The primary permittee must submit a quarterly report of animals at off-site subpermittee facilities on the form provided by the department;

(e) A subpermittee is authorized and responsible for managing the wildlife rehabilitation activities at the permitted facility in the temporary absence of the primary permittee; and

(f) A primary permittee must notify the department within ten business days of removing or adding a subpermittee or changing the address of a subpermittee's ((~~facilities~~)) facility using the application provided by the department.

(3) In addition to subsection (1) of this section subpermittees must also:

(a) Be listed on the primary permittee's wildlife rehabilitation permit;

(b) Be eighteen years of age or older;

(c) ((~~Be~~)) Been employed by or a registered volunteer for the primary permittee's wildlife rehabilitation facility for at least one hundred documentable hours, have assisted with or observed all facets of wildlife care practices at the facility including during the spring and summer seasons, and possess sufficient experience to tend to the species in his or her care ((~~to the satisfaction of the primary wildlife rehabilitator and the department~~));

(d) Possess direct contact information for at least one other employee or volunteer of the permitted facility in addition to the primary permittee, who the subpermittee must be able to reach at any time; and

(e) ((~~Have read the National Wildlife Rehabilitators Association/International Wildlife Rehabilitation Council minimum standards for wildlife rehabilitation and retained a copy of the publication for reference; and~~

~~(f)~~)) Comply with all federal Migratory Bird Treaty Act rules.

(4) A violation of this section by a primary permittee or a subpermittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-090 Wildlife rehabilitation—Permit revocation, modification, or suspension. (1) The department may ((~~revoke,~~)) modify, ((~~or~~)) suspend, or revoke a wildlife rehabilitation permit if the primary permittee or a subpermittee violates any department rule related to wildlife possession, wildlife rehabilitation, wildlife trafficking, or permit conditions ((~~of the permit. Such~~)). Other violations include, but are not limited to:

(a) ((~~Violating a department rule;~~

~~(b) Failing to comply with permit conditions;~~

~~(c) Failing to provide adequate facilities for the care and housing of wildlife;~~

~~(d) Possessing a species of wildlife not expressly permitted in the wildlife rehabilitation permit or by department authorization;~~

~~(e) Failing to provide adequate care, feed for, or maintenance of the health of wildlife in the permittee's care;~~

~~(f) Treating wildlife in the permittee's care inhumanely, or negligently, or keeping the wildlife in unsanitary conditions;~~

~~(g)~~)) Publicly displaying wildlife in rehabilitation or using wildlife in rehabilitation for public education ((~~or profit;~~

~~(h) Improperly handling, imprinting, habituation~~));

(b) Mal-imprinting, mal-habituation, or taming wildlife in relation to humans or domestic animals at the facility; ((~~or~~

~~(i) Failing to maintain a daily patient log or ledger~~))

(c) A primary permittee or a subpermittee, within the last ten years, was:

(i) Convicted of a fish or wildlife offense; or

(ii) Convicted of any offense involving animal or child cruelty, neglect, abuse, or found guilty practicing veterinary medicine without an active license, as determined by the veterinary board of governors.

(2) A primary permittee who is in violation of permit conditions or department wildlife rehabilitation rules, or whose subpermittee is in violation of permit conditions or department wildlife rehabilitation rules((~~, except for oiled bird facility requirements as provided in WAC 220-450-210, may provide a corrective action plan to return to compliance. The primary permittee must provide the plan to the department within ten days of the notice of the violation. If the department accepts the plan for corrective action, it will allow the primary permittee at least thirty days to correct the permit violation. If the primary permittee fails to return to compliance by the deadline the department gave him or her, the department may revoke his or her permit.~~

~~(3)~~)) shall, in this order:

(a) Receive written warning(s) outlining remedies and a deadline of not less than seven days to come into compliance and at which time the department may impose permit modification to remedy those violations.

(b) If, after fourteen days, the permittee continues to be noncompliant, the permit will be suspended and a requirement to adhere to a department-provided corrective action plan and timeline in which to provide a response and apply compliance plan remedies will be imposed.

(3) In conjunction with the written warning, permit modification or permit suspension, the department will conduct inspections to verify compliance. The permittee may receive permit amendment or restoration pending permittee compliance and department-documented validation inspection.

(4) A primary permittee will have the permit revoked if written warnings, permit modifications, compliance plan remedies, and permit suspension processes with concurrent inspections do not result in permittee compliance. Nothing in this section prevents the department from acting immediately to remove animals or suspend or revoke wildlife rehabilitation permits in case of documented animal cruelty or adverse animal welfare.

(5) If the department revokes, suspends, or modifies a permit, then the department or the U.S. Fish and Wildlife Service may seize ((~~and find a new rehabilitator for~~)) the primary permittee's wildlife and transfer those wildlife to another primary permittee's ((~~wildlife~~)) facility.

(((~~(4)~~))) (6) The department's revocation, modification, or suspension of a rehabilitation permit under this section does not preclude the department from taking criminal action against the primary permittee, subpermittee, or both.

(((~~(5)~~))) (7) The department may use subject matter experts, internal department staff, and external wildlife rehabilitators to review proposed permit modifications, suspensions, or revocations to determine if the proposed department actions reflect current standards of wildlife rehabilitation practice, meet current state wildlife rehabilitation needs, and are in the best interest of the future of wildlife rehabilitation in the state.

Permittees whose rehabilitation permit is revoked may reapply for a new permit three years after the date of revocation. Upon application, the department will consider previous rehabilitation permit performance and the nature of the previous noncompliance or violations when determining whether to issue a new permit. The department will deny an application if the basis for revocation has not been, or is not likely to be resolved.

(8) Any primary permittee whose rehabilitation permit is revoked, modified, or suspended under this section may request an administrative hearing to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-100 Wildlife rehabilitation—Facility requirements and inspections—On- and off-site care. (1) The facility requirements listed in this section address wildlife health and safety. The department of labor and industries and other local, state, or federal agencies may have additional requirements relating to human health and safety. It is the ((~~primary~~)) permittee's responsibility to comply with all state

and federal laws and regulations, and to ensure that his or her subpermittees do the same.

(2) Facilities.

(a) ((~~Primary~~)) Permittees on a wildlife rehabilitation permit must maintain approved facilities that meet the ((~~standards set by the department, the~~)) most current edition of National Wildlife Rehabilitators Association ((~~(NWRA), and the~~)) and International Wildlife Rehabilitation Council's ((~~(IWRC)~~)) *Minimum Standards for Wildlife Rehabilitation*, unless as otherwise provided by the department. ((~~More information on facilities requirements is available at www.wdfw.wa.gov.~~))

(b) All wildlife held under a wildlife rehabilitation permit must be maintained in humane((~~, healthful, and secluded~~)) conditions.

(c) The wildlife rehabilitation facility must protect wildlife from predators, weather extremes, undue human contact and ((~~noise, and domestic animals.~~

~~(d) In-home~~)) visual and auditory stressors.

(d) The wildlife rehabilitation facility must provide physical and visual separation from on-site domestic animals.

(e) Wildlife rehabilitation facilities must designate separate and exclusive rooms used only for wildlife housing, treatment, feeding, food preparation, and rehabilitation. It is unlawful to house, treat, or ((~~handle wildlife in other parts of the residence. It is unlawful to house or treat~~)) care for wildlife anywhere human food is prepared, stored, or consumed.

(((~~(e)~~))) (f) Primary permittee shall report immediately to the department any department surveilled wildlife disease. If the director determines that such outbreak presents a threat to the wildlife of the state, the director may immediately order such action as necessary including quarantine or destruction of stock, sterilization of enclosures and facilities, cessation of activities, and disposal of wildlife in a manner satisfactory to the director.

(g) The primary permittee must notify the department at least thirty days prior to moving if he or she intends to transfer his or her wildlife rehabilitation facilities to another location. The new facilities must pass a department facility inspection before wildlife is moved to the new facility.

(((~~(f)~~))) (h) The wildlife rehabilitation facility must be associated with a primary permittee at all times. If a facility is left with no primary permittees, facility personnel must notify the department within five days of the departure of the last primary permittee. The facility has thirty days in which to bring a primary permittee into the facility. After thirty days, if the facility is no longer associated with a primary permittee, the facility must transfer wildlife to another facility associated with a primary permittee.

(3) If a facility is no longer associated with a primary permittee, the facility must transfer wildlife to another facility associated with a primary permittee until a primary permittee is found. All facilities must be listed on the permittees' permits.

(4) **Oiled-wildlife facility requirements.** The facility requirements described in this section address oiled alcids health and safety. For minimum housing/pen and pool requirements for species other than alcids, refer to the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's *Minimum Standards for Wildlife Rehabilitation*.

(5) **Air temperature and air exchange requirements within indoor areas.**

(a) Air temperature: A permittee must ensure that the air temperature in all indoor areas where live birds are housed is adjustable and can be maintained at between 65°F - 85°F. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following requirements also apply:

(i) Intake and stabilization areas must be air-temperature controlled independently of other oiled bird rehabilitation facility areas. However, intake and stabilization areas may be controlled together;

(ii) Wash/rinse and drying areas must be air-temperature controlled independently of other oiled bird rehabilitation facility areas. However, wash/rinse and drying areas may be controlled together; and

(iii) The isolation/intensive care unit must be air-temperature controlled independently of other oiled bird rehabilitation facility areas.

(b) Air exchange: A permittee must ensure that all indoor areas where live birds are housed allow the exchange of the air volume a minimum of ten times per hour with fresh air from outside.

(c) The fresh-air exchange rate for any given indoor area may be reduced by up to ninety percent of the fresh air by use of an air-recirculation system that employs a high efficiency particulate air (HEPA) filer and an activated carbon filter.

(6) When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following requirements also apply:

(a) Intake and stabilization areas must be independent or other oiled bird rehabilitation facility air-exchange systems, but they may be combined on the same air-exchange system;

(b) Wash/rinse and drying areas must be independent of other oiled bird rehabilitation facility air-exchange systems, but they may be combined on the same air exchange system;

(c) The isolation/intensive care unit air-exchange system must be independent of other oiled bird rehabilitation facility areas; and

(d) The morgue/necropsy air-exchange system must be independent of other oiled bird rehabilitation facility areas.

(7) **Intake space requirements:** Intake of oiled birds must occur in an indoor area. Forty square feet of contiguous floor space must be provided for each group of sixty live or dead oiled birds, or portion of each group of sixty, that are awaiting intake. The floor of the intake space must be impermeable and water must not be allowed to accumulate on the floor.

(8) **Stabilization resource requirements:** Stabilization must occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace must be provided in the stabilization area.

(a) Pen requirements: Oiled-wildlife pens must be constructed to minimize potential injury, provide ventilation and meet species-specific husbandry requirements as defined below or, for nonalcids, as documented in the current edition of the National Wildlife Rehabilitators Association and Inter-

national Wildlife Rehabilitation Council's *Minimum Standards for Wildlife Rehabilitation*.

(b) For oiled alcids, stabilization pens must be:

(i) At least two feet in length by two feet in width, by two feet tall;

(ii) Constructed with knotless nylon net-bottoms with a one-half inch mesh size;

(iii) Constructed so that no point within the pen is greater than two feet from a pen wall;

(iv) Constructed to provide a minimum of at least 1.6 square feet of pen space per bird.

(c) Space requirements: In addition to the space required for the oiled bird stabilization pens, a minimum of an additional 3.2 square feet of dedicated workspace must be provided in the stabilization area for each bird held in that area. The floor of the stabilization area must be impermeable and water must not be allowed to accumulate on the floor.

(9) **Wash/rinse resource requirements:** Wash/rinse must occur in an indoor area. A bird must have wash/rinse space and associated resources made available within twenty-four hours after intake.

(a) Water requirements: A minimum of three hundred gallons of fresh water with the following characteristics must be available within each wash/rinse space for each oiled bird being washed and rinsed. All water requirements listed below must remain available within the specified range at all times.

(i) The water temperature must be adjustable and maintainable at any given temperature between 102°F - 108°F;

(ii) The water hardness must be maintained between 34 mg - 85 mg calcium carbonate/liter (2 - 5 grain hardness);

(iii) The water pressure must be maintained between 40 - 60 p.s.i.;

(iv) The water flow rate must be no less than two gallons per minute from the wash/rinse supply line measured with the wash/rinse nozzle in place.

(b) Space requirements: One hundred square feet of contiguous floor space must be provided for each group of sixteen live oiled birds, or portion of each group of sixteen, that are ready to be washed and rinsed. The floor of the wash/rinse area must be impermeable and water must not be allowed to accumulate on the floor. Wastewater from wash stations should be disposed of appropriately.

(10) **Drying resource requirements:** Drying must occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace must be provided in the drying area. Drying must be accomplished by warming the air in the drying pen. The drying temperature must be adjustable and maintained at any given temperature between 90°F - 106°F.

(a) Pen requirements. Oiled-wildlife pens must be constructed to minimize potential injury, provide ventilation and meet species-specific husbandry requirements as defined below or, for nonalcids, as documented in the current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's *Minimum Standards for Wildlife Rehabilitation*.

(b) For alcids, drying pens must be:

(i) At least two feet in length by two feet in width, by two feet tall;

(ii) Constructed with knotless nylon net-bottoms with one-half inch mesh size;

(iii) Constructed so that no point within the pen is greater than two feet from a pen wall;

(iv) Constructed to provide a minimum of 2.7 square feet of pen space per bird.

(c) Space requirements: In addition to the space required for drying pens, a minimum of an additional 3.2 square feet of dedicated workspace must be provided in the drying area for each bird held in that area. The floor of the drying area must be impermeable and water must not be allowed to accumulate on the floor.

(11) **Oiled bird rehabilitation pool resource requirements:** Oiled bird rehabilitation pools must be filled with fresh water. Oiled bird rehabilitation pool space must be available for use immediately after a bird has been dried, and must be available until the bird is released.

(a) Oiled bird rehabilitation pool requirements: Water from oiled bird rehabilitation pools may be recirculated within pools if the water is made oil-free. Each oiled bird rehabilitation pool must:

(i) Have dimensions so no point within the pool is greater than eight feet from a side of the pool;

(ii) Have a breathable cover available for use to prevent birds from escaping;

(iii) Have a constant supply of water sufficient to maintain a minimum depth of three feet and an exchange rate of not less than four and one-half times per day;

(iv) Be constructed so that water exiting the pool comes from the surface of the pool so that floating debris and oil are removed.

(b) Space requirements:

(i) For alcids, a minimum of 7.5 square feet of water-surface space should be provided for each bird (e.g., a twelve-foot diameter oiled bird rehabilitation pool may not house more than fifteen alcids);

(ii) For nonalcids, pools must meet the species-specific husbandry requirements as documented in the most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's *Minimum Standards for Wildlife Rehabilitation*;

(iii) Oiled bird rehabilitation pools must be located within the area of the oiled bird rehabilitation facility and constructed at least four feet away from other structures.

(12) **Semi-static areas:**

(a) Semi-static areas are spaces within an oiled bird rehabilitation facility where the required size of the space will vary relative to the number of birds present in the facility. Semi-static areas must be areas with impermeable floors and water must not be allowed to accumulate on the floor.

(b) Space requirements:

(i) When the total number of birds in a facility is less than fifty, there are no minimum space requirements for semi-static areas;

(ii) When the total number of birds in a facility is between fifty and one thousand, each semi-static area listed below must be allocated the indicated space:

(A) Morgue/necropsy: Two hundred fifty square feet.

(B) Animal food preparation: Three hundred square feet.

(C) Dry storage: One hundred square feet.

(D) Animal food freezer: One hundred square feet.

(iii) When the total number of birds in a facility is between one thousand one and two thousand, each semi-static area listed above must be allocated two times the associated space;

(iv) When the total number of birds in a facility is between two thousand one and three thousand, each semi-static area listed above must be allocated three times the associated space, etc.; and

(v) Space for the semi-static area listed above must be accommodated as a part of an oiled bird rehabilitation facility.

(13) **Static areas:**

(a) Static areas are dedicated spaces within an oiled bird rehabilitation facility where the required size of the space does not vary, regardless of the number of animals in the facility. Static areas must be indoor areas with impermeable floors and water must not be allowed to accumulate on the floor.

(b) Space requirements:

(i) When the total number of birds in a facility is less than fifty, there are no minimum space requirements for static areas.

(ii) When the number of birds in a facility exceeds fifty, each static area listed below must be allocated the associated space.

(iii) All of the space associated with the areas listed below must be accommodated as a part of an oiled bird rehabilitation facility.

(c) Static area space requirements by activity type:

(i) Isolation/intensive care unit: Two hundred square feet;

(ii) Medical lab: Two hundred square feet;

(iii) Laundry: Two hundred square feet;

(iv) Electrical: One hundred square feet;

(v) Mechanical: Two hundred square feet.

(14) Off-site facilities and care.

(a) A primary permittee is responsible for ensuring that his or her off-site facilities, or those of his or her subpermittee, meet all species- and treatment-stage-specific facility requirements as provided by department rule.

(b) A primary permittee, or subpermittee authorized to care for wildlife off-site from the wildlife rehabilitation facilities, must have adequate facilities to house the species in his or her care, based on the criteria for wildlife rehabilitation facilities outlined in the ((~~NWRA/IWRC~~)) most current edition of the National Wildlife Rehabilitators Association and International Wildlife Rehabilitation Council's *Minimum Standards for Wildlife Rehabilitation*.

(c) It is unlawful for a subpermittee to care for wildlife in his or her off-site facility, or for the primary permittee to transfer wildlife to the subpermittee, unless the following requirements are met:

(i) ((~~The primary facility is overcrowded or~~)) There is a need for twenty-four-hour or after-hours care, such as nestling care or nursing small mammals, or critical care;

(ii) The off-site subpermittee only houses and cares for the following species off-site: ((~~Common small mammals (except bats), ducks and geese (except swans), pheasant, grouse, quail, pigeon and dove, woodpeckers (except pileated woodpecker), and songbirds and perching birds;~~

(~~iii~~))) Eastern gray squirrels, Douglas squirrels, opossum, mallard ducks, pheasant, quail, rock dove, American robin, black-capped chickadee, chestnut-backed chickadee, European starling, son-sparrow, dark-eyed junco, white-crowned sparrow, house finch, house sparrow if the primary permittee is permitted for those species;

(iii) The number of wildlife animals held at the off-site facility does not exceed the total capacity of the primary facility so that the primary facility does not use the off-site subpermittees to increase capacity;

(iv) The primary permittee would not exceed their permitted capacity if animals were returned from the off-site subpermittee;

(v) The wildlife receives an initial intake exam at the primary permittee's facility before ((~~wildlife~~)) it is transferred to the subpermittee for off-site care;

(((~~iv~~))) (vi) The wildlife exhibits no signs of a reportable disease;

(((~~v~~))) (vii) The subpermittee follows a treatment plan developed by the veterinarian or primary permittee if a treatment plan is prescribed ((~~for any nonreportable condition;~~

~~(vi) The subpermittee returns the animal to the wildlife rehabilitation facility under which the subpermittee is permitted as soon as the facility is able to care for the animal, such as space becoming available; and~~

~~(vii)~~));

(viii) The subpermittee possesses a copy of the wildlife rehabilitation permit at all times while in possession of wildlife, including while transporting wildlife for the wildlife rehabilitation facility. It is unlawful for an off-site subpermittee to release wildlife from their facility without returning the animals to the primary facility for release evaluation.

(d) It is unlawful for a subpermittee to house, possess, care for, or treat large carnivores at his or her off-site facilities.

(e) It is unlawful for a subpermittee to house, possess, care for, or treat state ((~~and~~)) or federally designated threatened ((~~or~~)), endangered, or sensitive species at his or her off-site facilities.

(((~~4~~))) (15) Inspections.

(a) ((~~Wildlife rehabilitation facilities, records, equipment, and animals may be inspected without advance notice at reasonable times and in a reasonable manner by authorized state or federal personnel. This includes off-site wildlife rehabilitation facilities, records, equipment, and animals.~~

~~(b) Inspecting authorities may not enter the facilities or disturb wildlife unless the primary permittee, a subpermittee, or a designated staff member or volunteer is present.~~

~~(c)~~)) Fish and wildlife officers or other agents of the department may inspect without warrant or advanced notice at reasonable times and in a reasonable manner all wildlife rehabilitation facilities and premises, cages, enclosures, all records required by the department for wildlife rehabilitation, and all equipment, and animals.

(b) If wildlife rehabilitation facilities are on property owned by a person other than the ((~~primary~~)) permittee ((~~or a subpermittee~~)), the permittee must submit a signed, dated statement in which the property owner((~~:~~

~~(i)~~)) gives written permission to the permittee to engage in wildlife rehabilitation on the property((~~; and~~

~~(ii) Agrees that the wildlife rehabilitation facilities may be inspected by the department at reasonable times and in a reasonable manner~~)).

(((~~(5)~~))) (16) A violation of this section by a ((~~primary~~)) permittee or a subpermittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-110 Wildlife rehabilitation—Releasing wildlife. (1) ((~~A primary permittee must release~~)) Rehabilitated wildlife ((~~according to subsection (3) of this section~~)) must be released as soon as the animal is deemed physically, behaviorally, and psychologically ((~~capable of surviving in~~)) fit and conforming to the species natural history to increase successful reintegration into the wild.

(2) It is unlawful to hold wildlife for rehabilitation longer than one hundred eighty days. A primary permittee must obtain department authorization if ((~~he or she wishes to retain wildlife~~)) the animal requires care longer than the one hundred eighty-day time limit ((~~normally allowed for wildlife rehabilitation~~)). The department ((~~will grant an extension of time if the permittee needs to find suitable placement for the wildlife, or the wildlife~~)) may grant a time extension if wildlife is over-wintering, molting, ((~~or~~)) completing recovery, or waiting for suitable placement.

(3) ((~~A primary permittee must release~~)) Wildlife must be released at locations using methods and protocol to minimize stress on released animal; disease free; and into the same area from which the wildlife was taken((~~. If~~)) unless doing this poses a substantial risk to the health or safety of the released wildlife or humans((~~, the permittee may release the wildlife~~)); or at a location within ((~~its normal individual~~)) the wildlife's normal species range and appropriate habitat((~~. The primary permittee must obtain department approval prior to releasing wildlife at a location other than where it was taken or outside its normal individual range~~)) if location of origin is unknown or release cannot or should not occur at origin location.

The department may direct the permittee to release wildlife at a location other than where the wildlife was taken.

(4) A group of unrelated wildlife ((~~that are~~)) of the same species and that were raised together for socialization ((~~purposes~~)) may be released at the same location even if that location is not where the wildlife was originally taken. All other release requirements must be followed. Migratory birds including raptors may be released at a location other than where they originated, without department preapproval, but within their natural range and must be at a location and timing appropriate for migration or flock behavior.

(5) ((~~If a primary permittee does not know where wildlife was originally taken, he or she must release the wildlife into appropriate habitat and at a location where substantial risk to the health or safety of the wildlife and humans is minimal. Primary permittees must obtain department authorization for the release location prior to releasing cervids, large carnivores, or coyotes.~~)) **Release restriction and requirements.**

(a) Wildlife may not be given to the public to release after rehabilitation.

(b) Permittees must obtain department authorization for the release location prior to releasing cervids, large carnivores, coyotes, or beaver; cervids may not be released out of their WDFW region of origin.

(c) Orphaned cervids received by a wildlife rehabilitator and born during the year received must be released no later than October 31 of the year received. If an extension is needed to complete rehabilitation, a request must be made to the department for an extension authorization.

(d) Eastern gray squirrels, Virginia opossum, eastern cottontail, European starlings, and house sparrows must be released where these species already abundantly occur, releasing these species outside of where these species already occur is prohibited.

(e) Amphibians and reptiles must be released at point of origin, without exception. It is unlawful to release amphibians and reptiles if:

(i) They are a Washington state nonnative species.

(ii) They have been in captivity as pets.

(iii) They have been exposed to items or animals from the pet trade or pet stores including live food items or plants.

(iv) The point of origin is unknown.

(6) The primary permittee must notify and receive authorization from the department ((~~at least seventy-two hours prior to~~)) before releasing oiled wildlife, or state or federally designated threatened, endangered, or sensitive species.

(7) Hacking of orphaned raptors is permitted at or through a permitted facility where ((~~appropriate~~)) department-inspected and approved hacking facilities are available.

(8) A violation of this section is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-120 Wildlife rehabilitation—Veterinary care. (1) Veterinarians may euthanize wildlife or provide ((~~initial care for wildlife~~)) stabilization without a wildlife rehabilitation permit. ((~~However,~~)) Veterinarians must arrange to transfer the wildlife to a primary permittee ((~~after stabilizing the wildlife, preferably~~)) within forty-eight hours of receiving wildlife. Veterinarians must separate wildlife from domestic animals.

Principal veterinarian. Provides timely advice and services, veterinary treatment, and any medical protocol to primary permittee; and

If the principal veterinarian detects, suspects, or confirms a reportable illness or disease, it must be reported to the primary permittee or department's wildlife veterinarian within twenty-four hours.

(2) A violation of this section is punishable under the statute for the species being rehabilitated, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds;

RCW 77.15.410 for big game; and RCW 77.15.430 for wild animals not classified as big game.

(3) A wildlife rehabilitation permit is not a veterinary license.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-130 Wildlife rehabilitation—Records retention and reporting requirements. (1) This section contains records retention and reporting requirements for primary permittees on wildlife rehabilitation permits. Other state and federal laws and regulations may require additional records retention and reporting. ((~~It is the primary permittee's responsibility to comply with all state and federal laws and regulations, and to ensure that his or her subpermittees do the same.~~)) Required records include daily ledger, patient records, verification of volunteer training records, and veterinary summaries.

(2) Retaining records.

(a) The primary permittee must keep all ((~~required permits and~~)) records at the wildlife rehabilitation facility and retain those ((~~permits and~~)) records for a period of five years. Written or electronic records retention is acceptable.

(b) The primary permittee must make ((~~the permits and~~)) records available ((~~for~~)) to the department at inspection ((~~by~~)) or to department personnel upon request.

(3) ((~~Daily ledger.~~

~~(a) The primary permittee must record the following information in his or her daily ledger: All wildlife acquisitions; transfers; admissions; releases; deaths; reasons for admission; nature of illness or injury; dates of release, transfer, or any other disposition; and any tag or band numbers.~~

~~(b) The primary permittee must make the daily ledger available for inspection by department personnel upon request.~~

~~(4)~~)) Annual report. ((~~(a) The primary permittee must fill out the annual report~~)) Submit a completed annual report on the form provided by the department ((~~and submit the annual report~~)) along with the daily ledger containing the prior year's records to the department no later than January 31((~~st~~)) of each year.

((~~(b) Along with the annual report form, the primary permittee must submit a copy of his or her daily ledger containing records for the year.~~

~~(5)~~)) (4) Reporting requirements for oiled, threatened, endangered, or sensitive wildlife.

(a) The primary permittee must notify the department's wildlife rehabilitation manager within twenty-four hours of receiving oiled wildlife or wildlife designated as a threatened or endangered species under state or federal laws or rules.

(b) The primary permittee must notify the department's wildlife rehabilitation manager within seventy-two hours of receiving a state designated sensitive species.

(c) The primary permittee must notify the department's wildlife rehabilitation manager within twenty-four hours if a state or federally designated threatened or endangered species in his or her possession dies. The primary permittee must receive prior department approval before disposing of deceased state or federally designated threatened or endangered species.

(((~~6~~))) (5) The primary permittee must notify the department's wildlife rehabilitation manager within seventy-two hours if he or she admits any wildlife that has a state or federal band, research marker, tag, or transmitter attached to it. The primary permittee must include band numbers and any other relevant information in the report. Primary permittees must send these reports, in writing, to the department's wildlife rehabilitation manager ((~~at P.O. Box 43200, Olympia, WA 98504-3200, or at rehabcoord@dfw.wa.gov~~)).

(((~~7~~))) (6) The primary permittee must report ((~~the following diseases, confirmed by a veterinarian,~~)) any veterinarian-diagnosed and confirmed reportable wildlife diseases listed by the department to the department's wildlife veterinarian within twenty-four hours of diagnosis((~~: West Nile virus, white-nose syndrome, avian cholera, avian pox, duck viral enteritis, psittacosis, rabies, environmental toxins, canine distemper, tuberculosis, Newcastle disease, salmonellosis, hair loss syndrome, deer adenovirus, plague, leptospirosis, and tularemia~~)).

(((~~8~~))) (7) If wildlife is stolen or missing from ((~~a primary permittee or subpermittee~~)) the facility, the primary permittee must report the stolen or missing wildlife to the department ((~~and to the U.S. Fish and Wildlife Service Regional Law Enforcement office~~)) wildlife rehabilitation manager and law enforcement within twenty-four hours of discovering the ((~~theft of the~~)) missing wildlife.

(((~~9~~))) (8) A violation of this section is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-140 Wildlife rehabilitation—Falconers assisting with raptor rehabilitation. (1) ((~~A general or master falconer may assist a primary permittee in rehabilitating raptors to prepare the birds for release into the wild so long as the primary permittee and falconer comply with all applicable federal rules. Only master-class falconers or those falconers with U.S. Fish and Wildlife Service (USFWS) written authorization may assist in rehabilitating bald or golden eagles. Raptors held by falconers for rehabilitation remain under the primary permittee's permit.~~)) A wildlife rehabilitator may utilize a department permitted three-year general or master falconer only for prerelease conditioning for release. Falconers may not practice wildlife rehabilitation without a wildlife rehabilitation permit. Falconers may not rehabilitate nesting raptors.

(2) If the raptor is assigned to a falconer, the primary permittee must provide the falconer with:

(a) A copy of the ((~~USFWS~~)) U.S. Fish and Wildlife Service wildlife rehabilitation permit showing the falconer listed as a subpermittee; or

(b) A copy of the primary permittee's wildlife rehabilitation permit and a copy of the department authorization for transfer; and

(c) A written document identifying the raptor and explaining that the falconer is assisting in the raptor's rehabil-

itation and acting as an authorized subpermittee of the primary permittee. The written document must:

(i) Provide the dates of possession and the falconer's name, state falconry license number, contact information, and location of the falconer's facility; and

(ii) Accompany the raptor at all times, including during transport and at the housing location of the raptor.

(3) The primary permittee is responsible for ensuring that falconers adhere to permit terms, state law, department rules, and federal law and regulations at all times when assisting in rehabilitation activities under the primary permittee's rehabilitation permit.

(4) ((~~A falconer may house and treat a raptor undergoing rehabilitation at an approved falconry facility that does not meet wildlife rehabilitation facility standards so long as the facility meets the standards under department rule for housing raptors.~~

~~(5)~~)) Any raptor that cannot be permanently released into the wild must be returned to the primary permittee or transferred to the department within one hundred eighty days from the date of transfer to the falconer, unless:

(((~~(a)~~))) The department authorizes retaining the raptor for longer than one hundred eighty days((~~; or~~

~~(b) The primary permittee or department transfers the raptor to a permitted educational~~)) to complete conditioning or is awaiting placement to a permitted education facility.

(((~~(6)~~))) (5) A primary permittee may transfer a releasable raptor directly to a falconer for falconry purposes so long as the falconer can lawfully possess the species of raptor and complies with all applicable state and federal laws and regulations. The primary permittee must notify the department of the transfer of the raptor to a falconer within ten days of the transfer. The USFWS may also require notification of raptor transfers and release. It is the primary permittee's and falconer's responsibility to ensure compliance with all state and federal laws and regulations.

(((~~(7)~~))) A falconer may not transfer a bird under his or her care for conditioning to his or her falconry permit.

(6)(a) A violation of this section by a primary permittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

(b) A violation of this section by a falconer assisting a primary permittee is punishable under the statute for the species being rehabilitated, including RCW 77.15.120 for endangered birds; RCW 77.15.130 for protected birds; and RCW 77.15.400 for all other wild birds.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-150 Wildlife rehabilitation—Transfer, import, and export of wildlife and restrictions. (1) A primary permittee may import wildlife into Washington state for wildlife rehabilitation purposes if it is legal to import that species and the primary permittee possesses a health certificate from a veterinarian and an entry permit as required by the Washington state department of agriculture for the animal.

(2) It is unlawful to transfer Washington state mammals to an out-of-state rehabilitator without obtaining prior department approval.

(3) It is unlawful to import species in the order Cervidae((~~, and~~)) or rabies vector species((~~,~~)) into Washington state for rehabilitation purposes.

(a) Cervids are Roosevelt and Rocky Mountain elk, mule deer, black-tailed deer, white-tailed deer, moose, and caribou.

(b) Rabies vector species are bat, skunk, fox, raccoon, and coyote.

(c) Wildlife rehabilitation permits may be conditioned by the department with additional restrictions on wildlife transfer related to a specific endorsement or current interpretations of species-specific disease transfer.

(4) Transferring wildlife for socialization.

(a) Transferring wildlife undergoing rehabilitation between Washington wildlife rehabilitators for the purpose of orphan imprinting, ((~~appropriate companionship,~~)) conspecific socialization, appropriate species behavior maintenance, ((~~flight conditioning and specialized~~)) prerelease condition, and/or species-specific and veterinary medical care is permissible ((~~and encouraged~~)).

(b) No transfer of cervids or bats between eastern Washington (all lands lying east of the Cascade Crest Trail and east of the Big White Salmon River in Klickitat County) and western Washington (all lands lying west of the Cascade Crest Trail and west of and including the Big White Salmon River in Klickitat County).

(c) No transfer of cervids between or among Washington department of fish and wildlife regions.

(d) Wildlife possessed for rehabilitation may be transferred between Washington wildlife rehabilitators without prior department approval if the receiving wildlife rehabilitator is permitted to possess those species and geographic conditions are permitted.

(5) A violation of this section is punishable under RCW 77.15.290, Unlawful transportation of fish or wildlife—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-160 Wildlife rehabilitation—Possession of dead wildlife and wildlife parts. (1) A primary permittee may receive and possess dead wildlife from the department for the purpose of feeding wildlife in rehabilitation.

(2) Feather possession.

(a) A primary permittee may possess bird feathers for imping ((~~as long as he or she possesses a valid wildlife rehabilitation permit~~)).

(b) Primary permittees may receive or exchange feathers of birds from and with other wildlife rehabilitators if the rehabilitators possess and comply with ((~~necessary~~)) relevant U.S. Fish and Wildlife Service Migratory Bird Treaty Act permits.

(((~~(b)~~))) (c) A primary permittee may donate feathers from rehabilitation birds to any person or institution with a valid

permit to possess feathers, except feathers from golden eagle or bald eagle.

(((~~c~~))) (d) A primary permittee may leave feathers that are molted or otherwise lost by a bird in wildlife rehabilitation where they fall, store the feathers, or destroy the feathers, except that the rehabilitator must gather primary or secondary flight feathers or retrices from golden eagle and bald eagle and send these feathers or retrices((~~, if not kept for imping,~~)) to the National Eagle Repository.

(((~~d~~))) (3) A primary permittee whose permit is expired((~~, suspended,~~)) or revoked must donate any ((~~feathers from wildlife that was in his or her care~~)) wildlife carcasses and parts to a person or institution with a valid permit to possess the ((~~feathers~~)) wildlife carcasses and parts, or the primary permittee must burn, bury, or otherwise destroy ((~~the feathers~~)).

(((~~3~~))) (4) A violation of this section is punishable under the statute for the species being unlawfully retained, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds; RCW 77.15.410 for big game; or RCW 77.15.430 for wild animals not classified as big game.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-170 Wildlife rehabilitation—Disposition of nonreleasable and mal-habituated, mal-imprinted, and tamed wildlife and live retention for foster and education. (1) A primary permittee may retain live, nonreleasable wildlife for the purposes of:

(a) Orphan imprinting, socialization, and appropriate wild behavior retention and development, if the permittee possesses valid U.S. Fish and Wildlife Service (USFWS) permits and written authorization from the department. The department determines whether wildlife may be retained for these purposes on a case-by-case basis.

(b) Display and education, if the permittee possesses valid USFWS permits and written authorization from the department.

(((~~i~~))) (c) To obtain authorization for education of fostering, the permittee must submit a completed Education of Foster Animal - Live Wildlife Retention Form application form provided by the department.

(d) A fee for presentation of an education program may be charged to recoup the permittee's cost.

(e) Education programs must provide information about the biology, ecological roles, or needs of wildlife; wildlife may not be presented as pets.

(f) Wildlife tamed by, ((~~imprinted on, or habituated~~)) or mal-imprinted to humans before admission to the primary permittee's facility can be retained for education if the department authorizes this in writing. The department will make such determinations on a case-by-case basis.

(((~~ii~~))) (g) Permittees must house wildlife used for educational purposes separately and out of sight of wildlife in rehabilitation.

(((~~iii) Wildlife~~)) (h) Mammals retained for education purposes may not be used for orphan imprinting or companionship for wildlife in rehabilitation.

(i) It is permissible to use birds retained for education, including raptors, for orphaned imprinting, nestling care, or companionship if federally permitted.

(j) The permittee may not have the following animals for education programs or static display: Cervids, large carnivores, amphibians.

(k) The permittee may not have the following animals used as education program animals: Moles and shrews, weasels, skunks, raccoons, coyotes, foxes, beavers, muskrats, pikas, hares, rabbits, Apodidae, Trochilidae, Picidae, Passerines, loons, grebes, seabirds, herons, bitterns, storks, and ibis.

(2) Wildlife tamed ((~~by, imprinted on, or habituated~~)) or mal-imprinted to humans while at the primary permittee's ((~~facility or subpermittee's~~)) facility and determined to be nonreleaseable must be transferred or humanely euthanized ((~~no later than one hundred eighty days following admission to the rehabilitation facility,~~)) to protect the public and to protect the animal from human abuse.

(3) A violation of this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-180 Wildlife rehabilitation—Euthanizing ((~~protected, threatened, or endangered wildlife and migratory birds~~)) wildlife. Euthanasia must be provided in accordance with an animal's welfare, humane techniques and at a reasonable time after admission to prevent unnecessary suffering of the animal. Permittees must follow the most current American Veterinary Medical Association Guidelines on Euthanasia.

(1) Bald eagles, golden eagles, ((~~peregrine falcons and other state or federally~~)) and state endangered or threatened wildlife may be euthanized, without prior department approval, if the animal is suffering and untreatable or has a terminal illness or injury. In all other cases, prior department approval must be obtained before euthanizing ((~~bald eagles, golden eagles, peregrine falcons, and other state or federally~~)) state endangered or threatened wildlife.

(2) Any bird that has sustained injuries requiring amputation of a ((~~leg,~~)) foot, a portion of a leg or wing at the elbow (humero-ulnar joint) or above, or ((~~a bird that is completely~~)) any animal that is permanently blind must be euthanized.

(3) If ((~~a migratory bird~~)) an animal cannot, after medical management, feed itself, ((~~perch upright,~~)) or ambulate without inflicting additional injury to itself, the ((~~bird~~)) animal must be euthanized.

(4) The primary permittee must comply with all applicable federal Migratory Bird Treaty Act rules when taking action for migratory birds under this section.

(5) The primary permittee shall report immediately to the department any department-surveilled wildlife disease or suspected emerging disease. If the director determines that such disease or outbreak presents a threat to wildlife of the state, the director may immediately order destruction of the wildlife.

(6) A violation of this section is punishable under RCW 77.15.120 for endangered birds; RCW 77.15.130 for pro-

tected birds; or RCW 77.15.400 for all other wild birds, depending on the bird species.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-190 Wildlife rehabilitation—Disposing of wildlife remains. (1) Wildlife carcasses (except for those that are oiled) must be burned, buried, or otherwise destroyed, according to local laws and regulations((~~, within ten days of the animal's death or after final necropsy by a veterinarian. However:~~)) to avoid the risk of poisoning wildlife, a primary permittee must not allow chemically euthanized wildlife to be scavenged.

(a) Wildlife carcasses may be donated to any person or institution authorized under state or federal law to acquire and possess specific wildlife carcasses or parts.

(b) A primary permittee on a wildlife rehabilitation permit may keep the carcass of any bird, except golden eagle or bald eagle, so the feathers on the carcass are available for imping and education as long as they are in compliance with federal rules.

(c) A primary permittee must send ((~~the entire carcass~~)) any and all remains of a golden eagle or bald eagle, including all talons, feathers (((~~unless feathers are kept for imping purposes),~~)) and other parts, to the National Eagle Repository within thirty days of the bird's death.

(d) A primary permittee may retain wildlife carcasses and skins((~~, instead of disposing of the carcasses or skins, to have the carcass mounted or the skin prepared by a taxidermist~~)) for mounting or skin preparation for the purpose of public display and education programs. If prepared by a licensed taxidermist, the primary permittee must supply the taxidermist with written documentation that the carcass or skin is possessed pursuant to a wildlife rehabilitation permit. The taxidermist must possess the written documentation at all times while the carcass or skin is in the taxidermist's possession. The primary permittee must keep the mount at the wildlife rehabilitation facility and may use it for public display for education programs. If the wildlife carcass is a banded bird or has an implanted microchip, the band number or microchip number must ((~~stay in place~~)) be reported to the issuing agency, entity, or person.

(e) A primary permittee who retains a wildlife carcass or parts may only possess the carcass or parts so long as the primary permittee possesses a valid wildlife rehabilitation permit and complies with all applicable federal laws. If the permittee no longer has a valid wildlife rehabilitation permit, the person must have a different authorizing state or federal permit to keep the carcasses or parts, or surrender the carcasses or parts to the department.

(2) ((~~A primary permittee must take appropriate precautions to avoid the risk of poisoning scavenging wildlife when disposing of carcasses of euthanized wildlife. Wildlife euthanized by chemical injection may not be buried or taken to a landfill.~~

~~(3)~~)) Animals that have died of or have been euthanized due to reportable diseases must be disposed of as directed by Washington department of fish and wildlife (WDFW) wildlife veterinarian. No carcasses or parts should be retained.

(3) A primary permittee must not dispose of dead oiled wildlife without obtaining department approval.

(4) A violation of this section by a permittee or subpermittee on a wildlife rehabilitation permit is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

(((~~4~~))) (5) A violation of this section by a person who lacks a valid wildlife rehabilitation permit is punishable under RCW 77.15.120 for endangered birds; RCW 77.15.130 for protected birds; or RCW 77.15.400 for all other wild birds, depending on the bird species.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-450-200 Wildlife rehabilitation—((~~Prohibition on~~)) Commercial uses. (1) It is unlawful to sell, offer for sale, purchase, or use for commercial purposes wildlife or parts of wildlife under any circumstances under a wildlife rehabilitation permit.

(2) ((~~As long as a primary permittee or rehabilitation facility is not paid and does not collect a fee or receive compensation~~)) Consistent with all existing wildlife rehabilitation rules, and the rest of this section, the primary permittee ((~~may use photographs, films, live video, or other sources of information to:~~

~~(a) Provide education on the practice of wildlife rehabilitation or the biology, ecological roles, and conservation needs of wildlife;~~

~~(b) Raise funds to support the wildlife rehabilitation facility or wildlife rehabilitation activities, so long as the primary permittee complies with the following criteria:~~

~~(i) He or she may not require payment or sell items, but may request a "suggested donation." Money exchanged for any item must be by donation only. A primary permittee may not refuse to give an item to a person if the person refuses to donate money or donates less money than the suggested donation;~~

~~(ii) All funds received through fund-raising efforts~~)) or entity operating a wildlife rehabilitation facility may collect funds to support the wildlife rehabilitation facility or wildlife rehabilitation facility activities.

(3) The primary permittee or the entity operating the wildlife rehabilitation facility may request donations or collect funds, however, except for oiled-wildlife rescue and rehabilitation authorized under the Federal Oil Pollution Act, all funds received for wildlife rehabilitation must go to the entity operating the wildlife rehabilitation facility or supporting wildlife rehabilitation activities((~~; and~~

~~(iii)~~)). The primary permittee may not ((~~keep money~~)) retain funds received through fund-raising efforts for personal use.

(((~~3~~))) (4) It is unlawful to require a donation or charge a fee when receiving or admitting wildlife for rehabilitation unless it is authorized under the Federal Oil Pollution Act.

(5) A violation of this section is punishable under RCW 77.15.260 or 77.15.750, or both.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-450-210	Oiled bird rehabilitation—Facility requirements.
WAC 220-450-220	Reporting receipt, death, carcass retention, and release of oiled birds.

WSR 18-24-096
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(By the Code Reviser's Office)
[Filed December 4, 2018, 11:11 a.m.]

WAC 208-620-940, proposed by the department of financial institutions in WSR 18-11-104, appearing in issue 18-11 of the Washington State Register, which was distributed on June 6, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-24-097
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF REVENUE
(By the Code Reviser's Office)
[Filed December 4, 2018, 11:12 a.m.]

WAC 458-19-090, proposed by the department of revenue in WSR 18-11-111, appearing in issue 18-11 of the Washington State Register, which was distributed on June 6, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-24-098
PROPOSED RULES
DEPARTMENT OF ECOLOGY
[Order 18-08—Filed December 4, 2018, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-112.

Title of Rule and Other Identifying Information: Chapter 173-430 WAC, Agricultural burning, this rule implements the agricultural burning program in Washington state.

For more information on this rule making visit https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-430.

Hearing Location(s): On January 8, 2019, at 3:30 p.m., webinar and in-person at 300 Desmond Drive S.E., Lacey, WA 98503. Presentation, question and answer session followed by the hearing. We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions https://watech.webex.com/watech/onstage/g.php?MTID=e8fdd02a524383118ac3fae25dc9b54f0. For audio call U.S. toll number 1-855-929-3239 and enter access code 809 005 897. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: March 1, 2019.

Submit Written Comments to: Jacob Berkey, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, online http://ac.ecology.commentinput.com/?id=H37VT, by January 15, 2019. Submit comments by mail, online, or at the hearing(s).

Assistance for Persons with Disabilities: Contact Sultana Shah, phone 360-407-6831, TTY people with speech disability may call TTY 877-833-6341, people with impaired hearing may call Washington relay service 711, email sultana.shah@ecy.wa.gov, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposing amendments to WAC 173-430-041 and 173-430-080 to:

- Address inadequacies raised in the Washington state auditor's office management letter dated October 24, 2016.
- Incorporate the most current agriculture [agricultural] burning fee schedule and permit fee distribution to avoid confusion.
- Identify and, where appropriate, make needed edits in chapter 173-430 WAC to make updates, technical clarifications, correct errors, and improve readability.

Reasons Supporting Proposal: The Washington state auditor's office performed an accountability audit of ecology from July 1, 2014, to June 30, 2015, and issued a management letter dated October 24, 2016, with their recommendations. Amending chapter 173-430 WAC based on these recommendations.

Ecology and the agricultural burning task force adjusted the agricultural burning fees and agricultural burning fee distribution in 2012-2013, following the process specified in WAC 173-430-042. Revising the fees and fee distribution tables in WAC 173-430-041 with the current fee schedules to avoid confusion.

Changing the fund transfer schedule in WAC 173-430-080 to a schedule that works better for the conservation districts and regulated community. Also changing rule language in WAC 173-430-080 to comply with the auditor's findings about database trainings and records maintenance.

The rest of the changes are to make updates, make technical clarifications, correct errors and improve readability.

Statutory Authority for Adoption: Chapter 70.94 RCW, RCW 70.94.6524, 70.94.6528.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Jacob Berkey, Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-7086; Implementation and Enforcement: Kary Peterson, Department of Ecology, Air Quality Program, 4601 North Monroe, Spokane, WA 99205-1295, 509-329-3523.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because portions of this rule proposal meet the following exemption in RCW 34.05.328 (5)[(b)](iii), rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; RCW 34.05.328 (5)[(b)](iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; RCW 34.05.328 (5)[(b)](vi), rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Is exempt under RCW 19.85.025(4).

December 4, 2018
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 10-23-049, filed 11/10/10, effective 12/11/10)

WAC 173-430-041 Agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	$3.75 per acre
Pile burning	$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(a) **2011 fee schedule.** Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) **Establishing new fee schedules.** Ecology and the task force will examine the fee schedule using the process in WAC 173-430-042.

(3) **Calculating the fee.** The fee consists of a minimum fee plus any applicable variable fee.

(a) **Minimum fee.** The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) **Variable fee.** Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional per acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

Type of Burning	Variable Fee
Field Burning	Fee applied for each additional acre.
Spot Burning	None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.
Pile Burning	Fee applied for each additional ton.

(4) **Fee components.** The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration; and
- Research.

(a) **Permitting program administration.** The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where ecology has permitting authority and has not delegated that authority, ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) **Smoke management administration.** This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

(ii) Help fund the education and smoke management activities of ecology or the local air authority.

(c) **Research fund.** The task force will determine the research portion of the fee based on applied research needs, regional needs, and the research fund budget.

(5) **Permit fee schedule.** Table 1 shows the permit fee schedule((~~, starting in the calendar year 2011~~)). This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see ((~~http://www.ecy.wa.gov~~)) http://www.ecology.wa.gov, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

Table 1

Agricultural Burning Fee Schedule((~~, Starting Calendar Year 2011~~))

Fee	Minimum Fee	Variable Fee
Field Burning	$((~~30~~)) 37.50 for the first 10 acres	$((~~3.00~~)) 3.75 for each additional acre
Spot Burning	$((~~30~~)) 37.50 for 10 acres or less	None
Pile Burning	$80 for ((~~the first 100~~)) piles up to 80 tons	$((~~0.50~~)) 1.00 for each additional ton

Note: These numbers reflect the most recent revision of the agricultural fee schedule, which occurred on July 1, 2012, per WAC 173-430-042.

(6) **Permit fee distribution.** Table 2 shows the permit fee distribution((~~, starting in the calendar year 2011~~)). This distribution will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see ((~~http://www.ecy.wa.gov~~)) http://www.ecology.wa.gov, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

Table 2
Agricultural Burning Fee Distribution

Fee	Permitting Authority Administration	Research	Smoke Management
Field Burning Minimum Fee	$15.00	$0	$((~~15.00~~)) 22.50
Field Burning Variable Fee	$1.25 per acre	$0.50 per acre	$((~~1.25~~)) 2.00 per acre
Spot Burning Fee	$15.00	$0	$((~~15.00~~)) 22.50
Pile Burning Minimum Fee	$16.00	$16.00	$48.00
Pile Burning Variable Fee	$0.10 per ton	$0.10 per ton	$((~~0.30~~)) 0.80 per ton

Note: These numbers reflect the most recent revision of the agricultural burning fee distribution schedule, which occurred on July 1, 2012, per WAC 173-430-042.

(7) **Refunds.** The farmer may receive a refund. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars due to the cost of processing refunds.

AMENDATORY SECTION (Amending WSR 10-23-049, filed 11/10/10, effective 12/11/10)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map must accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, and landmarks.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section must be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and smoke management administration portion of the fee to ecology.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by ((~~July 15 and January 15~~)) September 30th and March 31st.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January - June) permits need to be provided by ((~~July 15th~~)) September 30th and all fall (July - December) permits by ((~~January 15th~~)) March 31st.

(c) Ecology must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to ecology.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits, except for spot burn permits.

(10) The permitting authority or its delegate must use the web-based database for issuing all agricultural burning permits.

(a) Local air authorities and its delegates ((~~must~~)) may make arrangements with ecology to enter information into the web-based database.

(b) ((~~Ecology-delegated permitting authorities must attend a minimum of one database training per calendar year or as provided by~~)) Ecology shall provide training as needed and maintain records for five years documenting each training.

WSR 18-24-105
PROPOSED RULES
PARAEDUCATOR BOARD
[Filed December 4, 2018, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-096.

Title of Rule and Other Identifying Information: Amends definition section to clarify chapter 179-05 WAC, Methods to attain paraeducator certificate.

Hearing Location(s): On January 10, 2019, at 8:30, at ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by January 3, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies requirements.

Reasons Supporting Proposal: Statutory requirement.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: State legislature, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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

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

December 4, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-16-104, filed 7/31/18, effective 8/31/18)

WAC 179-05-020 Definitions. (1) "Continuing education credit hours" as used in this title is defined in WAC 181-85-030.

(2) "Professional growth plan" as used in this title is defined as:

(a) Paraeducator individualized professional growth plan means the document which identifies the formalized learning opportunities and professional development activities that relate to the specific competencies, knowledge, skills and experiences needed to meet the standards of a specific paraeducator certificate.

(b) Only one professional growth plan may be completed each year. Professional growth plans will be completed during the period beginning July 1st of one year and ending June 30th of the following year. Completion of the professional growth plan will include review by the professional growth team, as defined in subsection (3) of this section.

(c) Paraeducators who complete an annual professional growth plan to attain or renew their certificate shall receive the equivalent of twenty-five continuing education credit hours.

(3) "Professional growth team" as used in this title is defined as a team comprised of the individual completing a professional growth plan for renewing or attaining a certificate and a minimum of one colleague, who holds a paraeducator certificate or a Washington state educator certificate as described in Title 181 WAC, chosen by the individual.

(4) "Certificate renewal" means that process whereby the validity of a certificate, subject to expiration, is extended.

NEW SECTION

WAC 179-05-030 Paraeducator certificate renewal. (1) Individuals who hold paraeducator certificates have the following options for renewal:

(a) For the subject matter certificates described in chapters 179-13 and 179-15 WAC, candidates must complete twenty continuing education credit hours during the validity period of the certificate.

(b) For the advanced paraeducator certificate described in chapter 179-17 WAC, candidates must complete thirty continuing education credit hours during the validity period of the certificate.

(2) Application for renewal shall not be submitted earlier than twelve months prior to the expiration date of the current renewal.

(3) Expired certificates may be renewed with completion of required continuing education credit hours as stated in subsection (1) of this section within the previous five years from the date of the renewal application.

(4) An expired certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application.

(5) Individuals who hold a certificate as described in Title 181 WAC may renew a paraeducator certificate, with the exception of:

(a) Undated residency certificates; and

(b) Limited certificates as described in WAC 181-77-014 and 181-79A-231.

(6) For educators holding multiple certificates in this title, continuing education credit hours completed to renew one certificate may be used towards meeting the renewal requirements for all paraeducator certificates held by an individual.

NEW SECTION

WAC 179-05-040 Requirements for attaining a paraeducator certificate for a holder of a valid educational certificate pursuant to WAC 181-79A-140. (1) Requirements for an individual holding a valid educational certificate pursuant to WAC 181-79A-140:

(a) The purpose of this section is to clarify the requirements for individuals holding a valid educational certificate pursuant to WAC 181-79A-140, with the exception of: Educators who only hold limited certificates, as described in chapter 181-77 WAC and WAC 181-79A-231, must meet the requirements of the paraeducator certificate program as outlined in this title.

(b) Educators who do not hold a valid educational certificate pursuant to WAC 181-79A-140 must meet the requirements of the paraeducator certificate program as described in this title.

(2) Individuals must meet the paraeducator minimum employment requirements, as defined in chapter 179-03 WAC.

(3) Individuals must complete the fundamental course of study, as described in chapter 179-09 WAC.

(4) Individuals who hold a valid educational certificate pursuant to WAC 181-79A-140 and have completed the fundamental course of study, as described in chapter 179-09 WAC, are considered to have met the requirement for seventy continuing education credit hours for the general paraeducator certificate as described in chapter 179-11 WAC.

Individuals shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020.

(5) Individuals who hold one of the following endorsements, as described in WAC 181-82A-202, meet the requirements to attain the subject matter certificates as described in chapters 179-13 and 179-15 WAC:

(a) English language learner and/or bilingual, meet the requirements to attain the English language learner subject matter certificate as described in chapter 179-13 WAC;

(b) Special education and/or early childhood special education, meet the requirements to attain the special education subject matter certificate as described in chapter 179-15 WAC;

(c) Individuals shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the attainment of the subject matter certificate.

WSR 18-24-107
PROPOSED RULES
PARAEDUCATOR BOARD

[Filed December 4, 2018, 2:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-122.

Title of Rule and Other Identifying Information: Amends WAC 179-15-030 describing requirements for the subject matter special education certificate for paraeducators.

Hearing Location(s): On January 10, 2019, at 8:30, at ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna @k12.wa.us, fax 360-586-4548, by January 3, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amended explicate requirements for the special education subject matter certificate for paraeducators as required in HB [ESHB] 1115 (2017).

Reasons Supporting Proposal: Statutory requirement.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: State legislature, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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

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

December 4, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-17-011, filed 8/2/18, effective 9/2/18)

WAC 179-15-030 Process. (1) To attain the paraeducator special education subject matter certificate, the paraeducator must complete twenty continuing education credit hours of training that meet the learning objectives of the course outline as described in WAC 179-15-060;

(2) Training for the certificate must include the training competencies that align with WAC 179-15-050; ((~~and~~))

(3) A professional growth plan may not be completed to attain the special education subject matter certificate; and

(4) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the special education subject matter certificate.

WSR 18-24-111
PROPOSED RULES
PARAEDUCATOR BOARD

[Filed December 4, 2018, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-123.

Title of Rule and Other Identifying Information: Amends WAC 179-17-040 describing requirements for the advanced paraeducator certificate.

Hearing Location(s): On January 10, 2019, at 8:30, at ESD 113, 6005 Tyee Drive S.W., Tumwater, WA 98512.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, fax 360-586-4548, by January 3, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amended regulations for the advanced paraeducator certificate as required in HB [ESHB] 1115 (2017).

Reasons Supporting Proposal: Statutory requirement.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Statute Being Implemented: Chapter 28A.413 RCW.

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

Name of Proponent: State legislature, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. Regulatory change does not have a fiscal impact.

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

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

December 4, 2018
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 18-17-012, filed 8/2/18, effective 9/2/18)

WAC 179-17-040 Process. (1) To attain the advanced paraeducator certificate, the paraeducator must complete seventy-five continuing education credit hours of training in topics related to the duties of an advanced paraeducator; ((~~and~~))

(2) Professional growth plans may be completed towards the attainment or renewal of the advanced paraeducator certificate; and

(3) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the advanced paraeducator certificate.

WSR 18-24-117
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed December 5, 2018, 8:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-19-107.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-1615 Who may be qualified providers of respite care?

Hearing Location(s): On January 8, 2019, at 10:00 a.m., at Office Building 2, Department of Social and Health Service (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than January 9, 2019.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., January 8, 2019.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by December 24, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules require homecare agencies to be contracted with the area agencies on aging.

Reasons Supporting Proposal: These amendments align with waiver amendments approved by the Centers for Medicare and Medicaid Services (CMS). Under 42 C.F.R. 441.302 (a)(2), the department must provide to CMS assurances that the standards of state licensure or certification requirements are met for services or for individuals furnishing services that are provided under the waiver. Waiver amendments recently approved by CMS require home care agencies to be contracted with the area agencies on aging. To enforce this requirement, and thus provide the assurances required under federal regulations, the developmental disabilities administration must add this requirement to WAC 388-845-1615.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.030, 71A.12.-120, 42 C.F.R. 441.302.

Rule is necessary because of federal law, 42 C.F.R. 441.302.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Ann Whitehall, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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

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

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

Is exempt under RCW 19.85.025(4) because the rules do not impose new costs.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

November 29, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-1615 Who may be qualified providers of respite care? Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) ((~~Homecare and~~)) Home health agencies licensed under chapter 246-335 WAC, Part 1;

(3) Homecare agencies licensed under chapter 246-335 WAC, Part 1 and contracted with the area agencies on aging (AAA);

(4) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

((~~(4)~~)) (5) Licensed and contracted adult family homes;

((~~(5)~~)) (6) Licensed and contracted adult residential care facilities;

((~~(6)~~)) (7) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

((~~(7)~~)) (8) Licensed child care centers under chapter 170-295 WAC;

((~~(8)~~)) (9) Licensed child day care centers under chapter 170-295 WAC;

((~~(9)~~)) (10) Adult day care providers under chapter 388-71 WAC contracted with DDA;

((~~(10)~~)) (11) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services;

((~~(11)~~)) (12) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or

((~~(12)~~)) (13) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

WSR 18-24-119
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Hearing and Speech)
[Filed December 5, 2018, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-125.

Title of Rule and Other Identifying Information: Chapter 246-828 WAC, Hearing and speech, the board of hearing and speech (board) is proposing changes to specific rule sections that will better align the rules with industry standards regarding examinations and educational programs.

Hearing Location(s): On February 8, 2019, at 9:00 a.m., at the Department of Health, Creekside Two at CenterPoint, Room 307, 20425 72nd Avenue South, Suite 10, Kent, WA 98032.

Date of Intended Adoption: February 8, 2019.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Board of Hearing and Speech, 111 Israel Road, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by January 25, 2019.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, fax 360-239-2901 [360-236-2901], TTY 360-833-6388 or 711, email kimboi.shadduck@doh.wa.gov, by January 25, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule changes update and modernize existing rules pertaining to hearing and speech services. The proposed revisions more clearly describe and clarify when a hearing aid specialist credential applicant may apply to take a written licensing exam. The proposed revisions also update postgraduate professional work experience requirements for audiologists and speech pathologists, supervision of audiologist and speech-language pathologist interim permit holders, and approval of educational programs for hearing aid specialist instruction. These updates and revisions will assure that the public receives quality audiology services from well-educated, qualified providers, consistent with the intent of chapter 18.35 RCW.

Reasons Supporting Proposal: The proposed rule revisions are necessary to remain current and in alignment with commonly accepted industry standards. The proposed revisions also clarify examination, education and supervision requirements for applicants and credential holders, potentially resulting in an increase and availability of quality hearing and speech services to the public. These outcomes support the overarching board goal of access to safe, quality healthcare services.

Statutory Authority for Adoption: RCW 18.35.161.

Statute Being Implemented: RCW 18.35.161.

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

Name of Proponent: Board of hearing and speech, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-2912.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Tumwater, WA 98504, phone 360-236-2912, fax 360-236-2901, TTY 360-833-6388 or 711, email kimboi.shadduck@doh.wa.gov.

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

December 4, 2018
Courtenay Hendricks, Chair
Board of Hearing and Speech

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-020 Examinations. (1) ((~~All~~)) A hearing aid specialist credential applicant((~~s are~~)) is required to take the written International Licensing Exam developed by the International Hearing Society or other entity approved by the board. An applicant((~~s~~)) must obtain a passing score as recommended by the examination administrator and as approved by the board. An applicant may apply to take the written examination no more than ninety days prior to the anticipated completion date of the educational program. The anticipated completion date must be verified by the educational program.

(2) Hearing aid specialist credential applicants who have completed a board-approved nine-month certificate program are required to take the practical examination approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(3) Audiology credential applicants are required to take the Praxis audiology exam or other entity approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(4) Speech-language pathologist credential applicants are required to take the Praxis speech-language pathology exam or other entity approved by the board. Applicants must obtain a passing score as recommended by the examination administrator and as approved by the board.

(5) All credential applicants are required to take and pass a jurisprudence examination approved by the board. The passing score on the jurisprudence examination is one hundred percent.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-025 Definitions. The ((~~following~~)) definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. Institutions where education was obtained outside of the United States or Canada has an equivalency determination completed by the board. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

(4) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

(5) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work((.

~~(a) "Full-time professional experience" means at least 30 hours per week over 36 weeks. Postgraduate professional work experience must be obtained over a period of at least 36 weeks. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.~~

~~(b) "Part-time equivalent" means any of the following:~~

~~(i) 15-19 hours per week over 72 weeks;~~

~~(ii) 20-24 hours per week over 60 weeks;~~

~~(iii) 25-29 hours per week over 48 weeks~~)). Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

(6) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-045 Interim permit—Audiologist and speech-language pathologist. (1) The department will issue an interim permit to any audiologist or speech-language pathologist applicant who has shown to the satisfaction of the department that the applicant:

(a) Has completed the academic course work and clinical practicum as required in RCW 18.35.040.

(b) Is supervised by a speech-language pathologist or audiologist who is licensed and in good standing under chapter 18.35 RCW unless otherwise approved by the board.

(c) Has paid the application and permit fee as required by WAC 246-828-990.

(2) The interim permit must contain the name and title of the approved supervisor ((~~licensed under chapter 18.35 RCW~~)).

(3) The interim permit expires one year from the date it is issued. The board may extend the interim permit up to an additional twenty-four months to accommodate part-time postgraduate professional work experience or upon request of the interim permit holder due to illness or extenuating circumstances.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-04503 Postgraduate professional work experience requirements—Audiologist and speech-language pathologist. (1)(a) The interim permit period must consist of at least thirty-six weeks of full-time postgraduate professional work experience or its part-time equivalent.

(((~~a~~))) (b) Full-time post graduate professional experience means at least thirty hours per week over thirty-six weeks. Postgraduate professional work experience must be obtained over a period of at least thirty-six weeks, with a total of at least one thousand eighty hours completed.

(c) Part-time equivalent means at least fifteen hours per week completed within a thirty-six to seventy-two week time frame, with a total of at least one thousand eighty hours completed. The board may extend the interim permit period under WAC 246-828-045.

(d) Postgraduate professional work experience of less than fifteen hours per week does not meet the requirement and may not be counted toward the postgraduate professional work experience. Experience of more than thirty hours per week may not be used to shorten the postgraduate professional work experience to less than thirty-six weeks.

(((~~b~~))) (2) The supervisor must submit to the department, on a form provided by the department, documentation of supervision and progress during the postgraduate professional work experience, at the end of ((~~each three-month period.~~

~~(2)~~)) the postgraduate professional work experience, unless there are concerns documented by the supervisor. Documented concerns must be submitted to the department within thirty days.

(3) Postgraduate professional work experience will be accepted if completed under a supervisor who is licensed and in good standing under chapter 18.35 RCW or holds a license in another state that the board has determined to be substantially equivalent to Washington state.

(4) The supervisor must cosign all purchase agreements in the fitting and dispensing of hearing instruments.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-04505 ((~~Supervisor delegation for~~)) Supervision of audiologist and speech-language pathologist interim permit holders. (1) The supervisor may delegate portions of the supervisory activities to another ((~~qualified~~)) licensed supervisor of the same discipline ((~~in another facility~~)) working for the same employer or contracting entity. Before delegating supervision responsibility to another licensed supervisor of the same discipline working for a different employer or contracting entity, the supervisor must obtain department approval.

(2) An interim permit holder may have more than one approved supervisor when working under more than one employer or contracting entity.

(3) The department may approve a qualified supervisor upon the written request of the supervisor or the interim permit holder.

(((~~3~~))) (4) The supervisor of an interim permit holder who desires to terminate the responsibility as supervisor must immediately notify the department in writing of the termination. The supervisor is responsible for the interim permit holder until the notification of termination is received by the department.

(((~~4~~))) (5) The interim permit holder must immediately report the termination of a supervisor to the department in writing. The interim permit holder may only practice with an approved supervisor.

(((~~5~~))) (6) An audiologist or speech-language pathologist licensed and in good standing under chapter 18.35 RCW may supervise up to four interim permit holders concurrently.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-600 Approval of programs for hearing aid specialist instruction. (1) Minimum educational requirements for licensure to practice as a hearing aid specialist in Washington are:

(a) Satisfactory completion of a two-year degree program in hearing aid specialist instruction approved by the board. The board will consider for approval any program which meets the requirements as outlined in this section; ((~~or~~))

(b) A two-year or four-year degree in a field of study approved by the board from an accredited institution and satisfactory completion of a nine-month certificate program in hearing aid specialist instruction approved by the board. Two-year and four-year degrees must be completed prior to enrolling in a nine-month certificate program. The board will consider for approval any program which meets the requirements as outlined in this section((~~.~~)); or

(c) Acceptable prerequisite degrees for entry into nine-month certificate programs are baccalaureate or associate degrees from accredited institutions in any field of study which include at least five quarter credits or four semester credits each of 100 level or greater English composition((~~, basic math,~~)) and humanities, and at least four quarter credits or three semester credits of 100 level or greater basic math.

(2) Procedure for approval of two-year degree programs in hearing aid specialist instruction:

(a) An authorized representative of an institution may apply for approval from the board.

(b) The application for approval must be submitted on forms provided by the department.

(c) The authorized representative of the program may request approval of the program as of the date of the application or retroactively to a specified date.

(d) The program application for approval must include, but may not be limited to, documentation required by the board pertaining to curriculum standards as set in WAC 246-828-615.

(e) A program must be fully recognized by the appropriate accreditation body in that jurisdiction.

(f) The board will evaluate the application and may conduct a site inspection of the program prior to granting approval by the board.

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

(h) An authorized representative of an approved program must notify the board of significant changes with respect to information provided on the application within sixty days of change.

(3) Procedure for approval of nine-month certificate programs in hearing aid specialist instruction:

(a) An authorized representative of a program may apply for approval from the board.

(b) The application for approval must be submitted on forms provided by the department.

(c) The authorized representative of the program may request approval of the program as of the date of the application or retroactively to a specified date.

(d) The program application for approval must include, but may not be limited to, documentation required by the board pertaining to curriculum standards as set in WAC 246-828-615.

(e) The board will evaluate the application and may conduct a site inspection of the program prior to granting approval by the board.

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

(g) An authorized representative of an approved program must notify the board of significant changes with respect to information provided on the application within sixty days of change.

(4) The board may inspect a currently approved program or a program requesting approval. These inspections may be at any reasonable time during the normal business hours of the program. The board may withdraw its approval if it finds the program has failed to comply with requirements of law, administrative rules, or representations in the application.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-828-040 Examination review and appeal procedures—Hearing aid specialist.

WSR 18-24-120
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 5, 2018, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-070.

Title of Rule and Other Identifying Information: Highly capable program, chapter 392-170 WAC.

Hearing Location(s): On January 8, 2019, at 9:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), Brouillet Room, Old Capitol Building, 600 South Washington Street, Olympia, WA 98501. Those wishing to testify should arrive by 9:00 a.m.

Date of Intended Adoption: January 11, 2019.

Submit Written Comments to: Jody Hess, OSPI, HiCap, P.O. Box 47200, Olympia, WA 98504-7200, email jody.hess @k12.wa.us, by January 8, 2019.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to align the rules for the highly capable program to the statutory changes made to the program by E2SSB 6362 (2018).

Reasons Supporting Proposal: E2SSB 6362 (2018) added a new section to chapter 28A.300 RCW. The changes go into effect for the 2018-19 school year. New language added to the statute addresses requirements that districts follow criteria specified in the law when identifying students for highly capable services. The superintendent of public instruction is directed to require districts to follow these criteria and to disseminate guidance that is updated and aligned with evidence-based practices.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.185.030, 28A.185.050.

Statute Being Implemented: RCW 28A.300.770.

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

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

December 5, 2018
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-005 Authority. The authority for this chapter is RCW 28A.150.290, 28A.185.030, and 28A.185.-050, which authorize the superintendent of public instruction to adopt rules and regulations for the administration of a program for highly capable students in kindergarten through twelfth grade, including the ((~~nomination~~)) referral, assessment, and selection of such students.

AMENDATORY SECTION (Amending WSR 18-03-012, filed 1/5/18, effective 2/5/18)

WAC 392-170-055 Assessment process for selection as highly capable student. (1) The superintendent of public instruction must require school districts to have identification procedures for their highly capable programs that are clearly stated and implemented by school districts using the following criteria:

(a) Districts must use multiple objective criteria to identify students who are among the most highly capable. Multiple pathways for qualifications must be available and no single criterion may disqualify a student from identification;

(b) Highly capable selection decisions must be based on consideration of criteria benchmarked on local norms, but local norms may not be used as a more restrictive criteria than national norms;

(c) Subjective measures such as teacher recommendations or report card grades may not be used to screen out a student from assessment. These data points may be used alongside other criteria during selection to support identification, but may not be used to disqualify a student from being identified; and

(d) To the extent practicable, screening and assessments must be given in the native language of the student. If native language screening and assessments are not available, a nonverbal screening and assessment must be used.

(2) Students ((~~nominated~~)) referred for selection as a highly capable student, unless eliminated through screening as provided in WAC 392-170-045, shall be assessed by qualified district personnel;

(((~~(2) Districts shall use multiple objective criteria for identification of students who are among the most highly capable.~~)) (3) There is no single prescribed method for identification of students among the most highly capable;

(((~~(3)~~))) (4) Districts shall have a clearly defined and written assessment process; and

(((~~(4)~~))) (5) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students

must prioritize equitable identification of low-income students.

NEW SECTION

WAC 392-170-083 Guidance aligned with evidence-based practices. The superintendent of public instruction must disseminate guidance on best practices for highly capable programs that includes: Referral, screening, assessment, selection, and placement. The guidance must be regularly updated and aligned with evidence-based practices.

WSR 18-24-121
PROPOSED RULES
DEPARTMENT OF HEALTH
(Chiropractic Quality Assurance Commission)
[Filed December 5, 2018, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-02-045.

Title of Rule and Other Identifying Information: WAC 246-808-020 Accreditation and Approval of Colleges—Policy (formerly Colleges—Policies), 246-808-030 Accreditation of colleges—Procedure and 246-808-040 Colleges—Educational standards required for accreditation, the chiropractic quality assurance commission (commission) is proposing amending these sections to update, clarify, and modernize the language. Additionally, the commission is creating WAC 246-808-050 Early remediation program—Purpose, 246-808-060 Early remediation program—Definitions, and 246-808-070 Early remediation program—Criteria. The commission is proposing creating new sections as an alternative to certain disciplinary actions.

Hearing Location(s): On January 10, 2019, at 10:30 a.m., at the DoubleTree by Hilton - Seattle Airport, 18740 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: Robert Nicoloff, Executive Director, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2360, by January 2, 2019.

Assistance for Persons with Disabilities: Contact Robert Nicoloff, phone 360-236-4924, fax 360-236-2360, TTY 360-833-6388 or 711, email cqac@doh.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing to amend WAC 246-808-020, 246-808-030 and 246-808-040, to provide clarity and modernize the commission's accreditation and approval process. These rules were last updated in 1996. Since that time, chiropractic professional best practices have evolved relative to policies, procedures, and educational standards required for accreditation of chiropractic colleges. Under the commission's regulatory jurisdiction and authority, the proposal would maintain the commission's authority to accredit chiropractic schools. It also identifies established national and international chiropractic bodies, such as the Council on Chiropractic Education (CCE) and the Council on Chiropractic Education International (CCEI), citing their expertise in cost-effectively assessing and validating chiropractic schools and colleges that meet Washington's chiropractic educational requirements under chapter 18.25 RCW. New sections are added to establish an early remediation process to better address minor practice deficiencies not resulting in patient harm.

Reasons Supporting Proposal: Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state. The proposal meets the intent of the statute by clarifying, streamlining, and modernizing the rules, and to make the rules consistent with current laws and practice standards for accreditation and approval of college programs while further protecting the public. Implementation of an early remediation process would allow the commission to better address a wider range of disciplinary issues to further patient safety.

Statutory Authority for Adoption: RCW 18.25.0171 and 18.130.050.

Statute Being Implemented: RCW 18.25.0171.

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

Name of Proponent: Chiropractic quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Leann Yount, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2822; and Enforcement: Tammy Kelley, Disciplinary Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2326.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Robert Nicoloff, Executive Director, Chiropractic Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-4924, fax 360-236-2360, TTY 360-833-6388 or 711, email cqac@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Minor cost threshold = one percent of annual payroll of colleges, universities, and professional schools = $64,917. NAICS code 611310 lists annual payroll covering ninety-one establishments at $590,748,000. ($590,748,000/91) * 0.01 = $64,917.

Annualized accreditation cost (see table below for details):

First four years: $5,313 per year ($313 + $625 + $2625 + $1750).

Fifth year and thereafter: $4,438 per year ($313 + $625 + $2625 + 875).

Amount	Description	Requirements	Notes
$2,500	Initial application fee	$2,500 one-time	For initial accreditation only $2,500/8 = $313 per year first eight years
$5,000	Initial self-study report	$5,000 one-time	For initial accreditation only $5,000/8 = $625 per year first eight years

Amount	Description	Requirements	Notes
$21,000	Focused comprehensive site visit	Initial and every eight years	$21,000/8 = $2,625 per year
$7,000	Interim site visit	$7,000 once every four years after each comprehensive site visit	$7,000/4 = $1750 per year for the first four years. $7,000/8 = $875 annual cost for year five and after.
Unavailable	College resources to prep CCE application (time x salary, printing, copying, postage…)	One-time	Neither CCE nor the colleges contacted were willing to provide this information. *They expressed that it is proprietary/confidential.*
Unavailable	College resources to accompany/be available to CCE personnel for site visits	Every four years	Costs may differ based on comprehensive vs. interim site visit (length of time and number of personnel required). *Same as above.*

Source: The Council on Chiropractic Education (CCE). http://www.cce-usa.org/publications.html and http://www.cce-usa.org/uploads/1/0/6/5/106500339/2018-01_cce_manual_of_policies.pdf.

December 4, 2018
Robert Nicoloff
Executive Director

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-020 Accreditation and approval of chiropractic colleges—Policy. (1) In determining a chiropractic college's eligibility for accreditation and approval in the state of Washington, the commission may utilize((~~, at its discretion,~~)) recognized national or international chiropractic accrediting ((~~associations, recognized regional accrediting associations, and appropriate professional firms, agencies and individuals~~)) bodies that meet the criteria in WAC 246-808-040 (3)(d), (e), and (f), unless the chiropractic college applies directly to the commission for accreditation and approval under RCW 18.25.025, and meets all criteria of WAC 246-808-040.

(2) ((~~Accreditation shall be~~)) The commission shall accredit and approve chiropractic colleges primarily contingent upon a course of study ((~~which~~)) that incorporates educationally sound practices and complies with the chiropractic educational requirements for the state of Washington as defined in WAC 246-808-040.

(((~~(3) A college must have successfully graduated a class prior to making application for accreditation.~~))

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-030 Accreditation of chiropractic colleges—Procedure. In determining a chiropractic college's eligibility for accreditation and approval in the state of Washington, the chiropractic college must be accredited by a commission-recognized national or international accrediting body whose standards meet the criteria of WAC 246-808-040 (3)(d), (e), and (f), or receive accreditation and approval from the commission in accordance with RCW 18.25.025 and WAC 246-808-040.

(1) Application and determination. ((~~A chiropractic college which desires to be accredited by the commission may secure an application form by sending a written request to the commission. The applicant shall complete the application form and submit it to the commission, along with any accompanying documents. Recent photographs of the college or the buildings in which the college is located shall be submitted with the application.~~))

(a) To apply for accreditation and approval by the commission, a chiropractic college shall send a written request to the commission requesting an application form. The applicant shall complete the application form and submit it to the commission, along with any accompanying documents, and recent photographs of the chiropractic college or the buildings in which the chiropractic college is located.

(b) Within one hundred twenty days after the receipt of the completed application, the commission shall consider the application, determine whether or not the chiropractic college fulfills the requirements ((~~for accreditation~~)) in WAC 246-808-040, and notify the applicant((~~, by mail,~~)) of the commission's determination. If the commission determines that the chiropractic college ((~~is not~~)) cannot be accredited and approved ((~~for accreditation~~)), the notice shall ((~~set forth~~)) include the reasons for denial. The commission may withhold making a determination for a reasonable period of time for any justifiable cause upon giving notice to the applicant.

(2) ((~~Interrogatories. If~~)) Additional information. The commission ((~~desires, it~~)) may request additional information from the applicant ((~~to~~)) including answers to specific inquiries. The ((~~granting or the denial of accreditation may be~~)) commission may grant or deny the accreditation and approval contingent upon the applicants' response to such inquiries.

(3) ((~~Oath. The answers to the inquiries in the application, and any other inquiries, shall be sworn to before a notary public.~~

~~(4)~~)) Inspection. ((~~If~~)) The commission ((~~desires, it~~)), at its discretion, may make ((~~the~~)) a physical inspection of ((~~a particular~~)) the applicant's chiropractic college a condition for ((~~its being accredited. Reasonable costs for necessary on-campus visitation shall be paid by the applicant.~~

~~(5)~~)) accreditation and approval.

(4) Duration. ((~~A college which is once accredited~~)) An accredited and approved chiropractic college shall continue to be accredited and approved for ((~~so~~)) as long as it fulfills the requirements ((~~set forth by the commission, or to be set forth by the commission. Upon receiving convincing evidence that a college has ceased to fulfill the requirements, the commission shall withdraw the accreditation of the college~~

~~and shall inform the college of its reasons for doing so~~)) of this chapter.

(a) A chiropractic college shall ((~~inform~~)) report to the commission ((~~of~~)) any changes((~~, if any, in status which could reasonably jeopardize the~~)) to its accreditation status, financial solvency, ownership status, administration, or curriculum.

(b) A chiropractic college shall also report any changes to its faculty, facilities, or equipment that may affect the chiropractic college's qualifications for ((~~accreditation. Such changes shall include, but are not limited to, changes in curriculum, administration, faculty, classrooms and equipment.~~

~~(6) Revocation of accreditation. When the commission receives evidence that an accredited institution is not complying with commission criteria, it may, after meeting with institutional representatives, place the institution on probation. The institution shall be supplied~~)) commission accreditation and approval.

(5) Enforcement. The commission may place an accredited and approved chiropractic college on probation when the commission receives evidence that the chiropractic college is not meeting criteria for continued commission accreditation and approval. The commission will provide the chiropractic college with a written statement of ((~~charges setting forth~~)) deficiencies describing the specific((~~s~~)) areas of ((~~the~~)) noncompliance. The commission and ((~~chief administrative officer of the institution~~)) the chiropractic college may agree on a mutually acceptable timetable and procedures for correction of the deficiencies or the commission may set the timetable. Should the ((~~institution~~)) chiropractic college not make the required corrections ((~~recommended~~)), or should further deficiencies develop during the probation, the commission may((~~, after meeting with institutional representatives,~~)) revoke the ((~~accreditation~~)) approval of the chiropractic college. The commission need not place a chiropractic college on probation before pursuing suspension or revocation of the approval.

(((~~(7) Reinstatement of accredited status. Once the commission has revoked the accredited status of an institution, it must reapply by submitting either a new self-study or an updated self study as may be required by the commission. The commission's usual procedure for applicants for initial accreditation and petitions for renewal is applied to petitioners for reinstatement. The visitation team report, hearing evidence and supporting data must show not only correction of the deficiencies which led to the disaccreditation but, in addition, compliance with the commission's criteria.~~

~~(8) Appeal. An appeal of a decision adverse to the college~~)) (6) Appeal. A chiropractic college whose approval is suspended or revoked may request an adjudicative proceeding under chapter 246-11 WAC to contest the decision. A request for an adjudicative proceeding must be filed with the commission within thirty calendar days of ((~~receipt~~)) service of the commission's ((~~written~~)) notice of decision. ((~~To be valid the appeal must contain a certified copy of a formal action authorizing the appeal, taken by a lawfully constituted meeting of the governing body of the institution. The appeal is based on a review of self-evaluation documents, catalog, visitor's report, institution's response to visitor's report, predecision hearing of the commission and commission decision. Alleged improvements effective subsequent to the evaluation which can be verified only through another on-site visit provide the basis for another evaluation, not for an appeal. An appeal does not include a dispute on a finding of fact unless appellant presents a valid reason showing the finding is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record before the commission. The commission shall meet to consider the appeal at its earliest opportunity, and send a formal reply to the appealing college within thirty days of such meeting, unless it extends the time for good cause shown.~~))

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-040 Chiropractic colleges—Educational standards required for accreditation and approval. (1) ((~~Objectives - The college~~)) A chiropractic college seeking to obtain or maintain commission accreditation and approval shall have clearly defined education objectives.

(2) Administration and organization((~~—~~)). The chiropractic college shall:

(a) Be incorporated as a nonprofit institution and recognized as such by its state of domicile((~~.~~));

(b) Have a full-time administrator((~~.~~));

(c) Have either a president or a dean of education with a doctor of chiropractic degree((~~.~~)); and

(d) Adopt ((~~policy of~~)) policies on nondiscrimination as to national origin, race, religion, or ((~~sex~~)) sexual orientation.

(3) The chiropractic college shall provide educational offerings ((~~- The college shall~~)) that:

(a) ((~~Provide educational offerings which prepare~~)) Prepare the student for successfully completing the licensing examination and engaging in practice((~~.~~));

(b) ((~~Offer~~)) Have an educational program with a minimum of four thousand ((~~in-class~~)) classroom hours provided over a four year academic term((~~.~~));

(c) Have available syllabi for all courses((~~.~~));

(d) Offer a chiropractic curriculum as follows:

(i) Principles of chiropractic - Two hundred ((~~in-class~~)) classroom hours;

(ii) Adjustive technique - Four hundred ((~~in-class~~)) classroom hours;

(iii) Spinal roentgenology - One hundred seventy-five ((~~in-class~~)) classroom hours;

(iv) Symptomatology and diagnosis - Four hundred twenty-five ((~~in-class~~)) classroom hours; and

(v) Clinic - Six hundred twenty-five ((~~in-class~~)) classroom hours.

(e) ((~~Offer at least one hundred twenty hours for the study of "principles of chiropractic" as the study of chiropractic philosophy, which shall be defined as the commonly held tenets which provide the basis for chiropractic as a separate and distinct form of practice.~~

~~The required one hundred twenty hours of philosophy instruction shall be clearly identified in the application and subsequent college catalogue as philosophy of chiropractic by course title and description. The remaining eighty required hours may include history of chiropractic, ethics, interprofes-~~

~~sional relationships and other subjects specifically relating to the principles and practice of chiropractic.~~

~~(f)~~)) The computation of hours required in subsection (3)(d) of this section do not include mechanotherapy, physiotherapy, acupuncture, acupressure, ((~~or dietary therapy~~)) or any other therapy ((~~in computation of the qualifying four thousand classroom hours.~~

~~(g)~~)); and

(f) Maintain a clinical program sufficient to fulfill the objectives of the chiropractic college.

(4) Faculty - The chiropractic college shall provide sufficient faculty to support the educational program of the chiropractic college.

(5) Students - The chiropractic college shall:

(a) Select students on a nondiscriminatory basis((~~.~~));

(b) Require that students maintain a 2.00 grade point average and have no chiropractic subject grade less than ((~~2.0.~~)) 2.00; and

(c) Require the student to complete a four-year academic program ((~~which~~)) that meets all requirements of ((~~statute and rule~~)) chapter 18.25 RCW and this chapter for licensing to practice chiropractic in Washington state.

(6) Physical facilities and equipment - The chiropractic college shall:

(a) Maintain a library of size and quality sufficient to serve the educational program((~~.~~));

(b) Maintain a ((~~basic~~)) physical plant that facilitates the educational program((~~.~~)); and

(c) Maintain clinic facilities that are of sufficient size and equipped appropriately to serve the number of students enrolled.

(7) Financial - The chiropractic college shall:

(a) Have adequate present and anticipated income to sustain a sound educational program((~~.~~));

(b) Have well formulated plans for financing existing and projected education programs((~~.~~));

(c) Have an annual audit of financial records by a ((~~CPA.~~)) certified public accountant; and

(d) Make records available for review by the commission upon request.

(8) Self-evaluation - The chiropractic college shall have a program of continuing self-evaluation and such evaluation must be made available upon request by the commission.

(9) A chiropractic college must have successfully graduated a class prior to making application for commission accreditation and approval.

NEW SECTION

WAC 246-808-050 Early remediation program—Purpose. The purpose of the early remediation program is to address minor practice deficiencies that have not resulted in patient harm. The early remediation program may include education, training, and monitoring to improve the quality of care and reduce the risk of patient harm.

WAC 246-808-060 and 246-808-070 establish the early remediation program and its eligibility criteria and procedures.

The commission intends to use the early remediation program only in cases in which there is no evidence of patient harm as a direct result of the licensee's practice-related deficiencies. The commission may resolve allegations of practice deficiencies through early remediation during an investigation.

NEW SECTION

WAC 246-808-060 Early remediation program—Definitions. The definitions in this section apply to WAC 246-808-050 through 246-808-070, unless the context clearly requires otherwise.

(1) "Complaint" means a documented report of a possible violation of the Uniform Disciplinary Act, for which the commission shall assess and may subsequently authorize an investigation.

(2) "Licensee" means a chiropractor or chiropractic X-ray technician who holds an active license under chapter 18.25 RCW.

(3) "Remediation plan" means a documented agreement between the licensee named in the complaint(s) and the commission listing remedial steps to be taken by the licensee to resolve the identified practice deficiencies. Remediation plans may include education, training, and monitoring of the licensee.

NEW SECTION

WAC 246-808-070 Early remediation program—Criteria. (1) The commission shall use the following criteria to determine eligibility for early remediation:

(a) Practice limitations are not needed to ensure patient protection;

(b) The identified practice deficiencies may be corrected by education, training, monitoring, or any combination of these;

(c) The respondent is willing and able to participate in the early remediation program; and

(d) The practice deficiency did not result in patient harm.

(2) The commission may offer a remediation plan to resolve a complaint in cases of the following practice deficiencies:

(a) Documentation of care;

(b) Radiographic standards;

(c) Billing and coding;

(d) Advertising or marketing;

(e) Continuing education; or

(f) Other minor practice concerns as determined by the commission.

(3) The commission may offer a remediation plan to resolve eligible complaints. Nothing in this section requires the commission to offer a remediation plan. A licensee who accepts a remediation plan waives any right to a hearing to modify a remediation plan or challenge the commission's decision regarding successful completion of a remediation plan.

(4) The commission shall use the following process to implement the early remediation program:

(a) After a preliminary investigation identifies the practice deficiencies, the commission shall apply criteria in subsections (1) and (2) of this section to determine eligibility for the early remediation program;

(b) If all of the criteria are met, and if the commission determines the licensee is eligible for participation in the early remediation program, the commission shall propose a remediation plan to the licensee;

(c) The commission shall evaluate whether the practice deficiencies have been corrected and are unlikely to recur;

(d) The commission may decide to conduct a full investigation and consider disciplinary action if additional facts become known or circumstances change such that the licensee is no longer eligible based on the criteria in subsections (1) and (2) of this section; and

(e) If the licensee complies with the agreed remediation plan, the commission may consider the licensee's completion of the remediation plan as grounds to close the matter without further action.

WSR 18-24-122
PROPOSED RULES
DEPARTMENT OF HEALTH
(Chiropractic Quality Assurance Commission)
[Filed December 5, 2018, 9:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-066.

Title of Rule and Other Identifying Information: The chiropractic quality assurance commission (commission) standards of care, WAC 246-808-320 Protected health information (formerly privileged communications), 246-808-330 Discontinuation of care (formerly patient abandonment), 246-808-350 Unethical requests, 246-808-360 Patient welfare, 246-808-370 Patient disclosure, 246-808-380 Degree of skill, 246-808-390 Illegal practitioners, and 246-808-520 Identification. The commission is proposing to amend, repeal, and update the rules to clarify and consolidate them.

Hearing Location(s): On January 10, 2019, at 10:00 a.m., at the DoubleTree by Hilton - Seattle Airport, 18740 International Boulevard, Seattle, WA 98188.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: Robert Nicoloff, Executive Director, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2360, by January 2, 2019.

Assistance for Persons with Disabilities: Contact Robert Nicoloff, phone 360-236-4924, fax 360-236-2360, TTY 360-833-6388 or 711, email cqac@doh.wa.gov, by January 2, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing to amend WAC 246-808-320, 246-808-330, 246-808-350, 246-808-360, 246-808-390 and 246-808-520, in order to clarify, streamline, and modernize the rule language, and to be consistent with current laws and practice standards. The commission is also proposing to repeal WAC 246-808-370 and 246-808-380, after incorporating the rule language into other rule sections identified within the scope of rule making.

History: Except for revising individual rule sections, a comprehensive review of the chiropractic chapter has not been conducted since 1996. When completed, the proposed changes will satisfy the requirements in law to review rules every five years, along with other rule making currently being done.

As part of the rules chapter review, the commission identified a need for the following improvements, updates, or clarifications:

- Addition of direct references in WAC 246-808-320 to state and federal regulations regarding protected health information, in place of outdated language;
- Clear direction added to WAC 246-808-330 that a chiropractor must not neglect, ignore, abandon, or refuse to provide treatment to a current patient without reasonable cause, and the steps the chiropractor must take when choosing to discontinue treatment. The current rule is unclear and doesn't directly address patient abandonment;
- Combination of four sections dealing with patient welfare into one section and repeal of the other three sections (WAC 246-808-370, 246-808-380 and 246-808-390, being added to WAC 246-808-360) making it easier and more efficient for stakeholders to find. Additionally, the commission is proposing repealing WAC 246-808-390 Illegal practitioners, as this is an existing requirement in the chiropractic laws within RCW 18.25.002 and 18.25.011, and the Uniform Disciplinary Act in RCW 18.180.130, therefore making this rule redundant; and
- Clarification added to WAC 246-808-520 on how chiropractors must identify themselves and in WAC 246-808-350 on unethical requests to conceal patient physical disabilities or conditions.

The commission has determined that these sections are outdated, unclear, duplicative of other rule sections, or did not address the topic in the rule title (patient abandonment). Therefore, the need for clarification and streamlining of these rule sections was identified.

Reasons Supporting Proposal: It is the purpose of the commission established under RCW 18.25.0151 to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state. The proposal meets the intent of the statute by clarifying, streamlining, and modernizing the rules, by making the rules consistent with current laws and practice standards while further protecting the public, and by condensing similar rule sections into one rule for efficiency and ease of use purposes.

Statutory Authority for Adoption: RCW 18.25.0171 and 18.130.050.

Statute Being Implemented: RCW 18.25.0171.

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

Name of Proponent: Leann Yount, Program Yount [Manager], Chiropractic Quality Assurance Commission,

P.O. Box 47858, Olympia, WA 9504-7858 [98504-7858], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Leann Yount, 310 Israel Road S.E., Tumwater, WA 98501, 360-236-2822; and Enforcement: Tammy Kelley, 310 Israel Road S.E., Tumwater, WA 98501, 360-236-2822.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Leann Yount, Program Manager, Chiropractic Quality Assurance Commission, P.O. Box 47858, Olympia, WA 98504-7858, phone 360-236-2822, fax 360-236-2360, TTY 360-833-6388 or 711, email cqac@doh.wa.gov.

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

December 3, 2018
Robert Nicoloff
Executive Director

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-320 ((~~Privileged communications.~~)) Protected health information. ((~~A chiropractor shall not, without the consent of the patient, reveal any information acquired in attending such patient, which was necessary to enable the chiropractor to treat the patient. This shall not apply to the release of information in an official proceeding where the release of information may be compelled by law.~~)) A chiropractor shall comply with the provisions of the Federal Health Insurance Portability and Accountability Act, 42 U.S.C. Sec. 1302(a) and 42 U.S.C. Sec. 1302d-1320d-9, the Health Information Portability and Accountability Act (HIPAA), 45 C.F.R. Parts 160, 162, and 165.

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-330 ((~~Patient abandonment.~~)) Discontinuation of care. ((~~The chiropractor shall always be free to accept or reject a particular patient, bearing in mind that whenever possible a chiropractor shall respond to any reasonable request for his/her services in the interest of public health and welfare.~~)) If a chiropractor chooses to discontinue care, the chiropractor shall:

(1) Advise the patient in writing and document in the patient record that the chiropractor is terminating the doctor-patient relationship; and

(2) Advise the patient to seek any future treatment from another chiropractor or health care provider.

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-350 Unethical requests. A chiropractor shall not ((~~assist in any immoral practice such as aiding~~)) aid a patient in the pretense ((~~of disability in order to avoid jury or military duty,~~)) or the concealment of a physical condition or disability ((~~in order to secure favorable insurance~~)).

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-360 Patient welfare. The health and welfare of the patient shall always be paramount((~~, and expectation of remuneration or lack thereof shall not in any way affect the quality of service rendered the indigent patient~~)).

(1) A chiropractor owes their patient(s) the highest degree of skill and care.

(2) Absolute honesty shall characterize all transactions with patients.

(3) A chiropractor shall act in the best interest of the patient and not in the interest of any other party.

(4) A chiropractor shall provide evaluations, opinions, and recommendations that are unbiased.

(5) A chiropractor shall neither intentionally exaggerate nor minimize the gravity of the patient's condition, nor offer any false hope or prognosis.

(6) A chiropractor shall provide the highest quality of services regardless of expectation of reimbursement or lack thereof, including care provided to an indigent patient.

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-390 Illegal practitioners. A chiropractor((~~s~~)) shall safeguard their profession by exposing those who ((~~might attempt to~~)) practice without proper credentials((~~, and by reporting violations of the laws regulating chiropractic to the proper authorities~~)). This is in addition to mandatory reporting rules adopted by the secretary of health.

AMENDATORY SECTION (Amending WSR 96-16-074, filed 8/6/96, effective 9/6/96)

WAC 246-808-520 Identification. (1) ((~~A~~)) When using their name, a licensed chiropractor must clearly identify oneself as a chiropractor on ((~~his/her~~)) their office signs, web site, business cards, letterhead, electronic and other media with the use of one or more of the following: Doctor of chiropractic; D.C.; D.C., Ph.C.; chiropractor; or chiropractic physician consistent with RCW 18.25.090.

(2) ((~~All identification of chiropractic practice shall be presented~~)) A chiropractor shall identify and present their chiropractic practice in a dignified manner, and ((~~shall not be~~)) not in a sensational or misleading way.

(3) A chiropractor practicing in a multidisciplinary setting must identify oneself as a chiropractor.

(4) Nothing in this section prohibits the use of a business name that does not include one of the terms in subsection (1) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-808-370 Patient disclosure.

WAC 246-808-380 Degree of skill.

WSR 18-24-124
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed December 5, 2018, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-001.

Title of Rule and Other Identifying Information: Amends WAC 181-80-010 and 181-80-020; and creates new WAC 181-80-002 and 181-80-005 describing statutory authority and a definitions section. Amendments address requirements for alternative route programs (WAC 181-80-010) and the types of routes available for programs to develop (WAC 181-80-020). Laws of 2017 HB [EHB] 1654 directed the professional educator standards board (PESB) to create explicit requirements for these programs in WAC.

Hearing Location(s): On January 10, 2019, at 8:30 a.m., ESD 113, at 6005 Tyee Drive S.W., Tumwater, WA 98512.

Date of Intended Adoption: January 10, 2019.

Submit Written Comments to: David Brenna, 600 Washington Street, Olympia, WA 98504, email david.brenna@k12.wa.us, by January 3, 2019.

Assistance for Persons with Disabilities: Contact David Brenna, phone 360-725-6238, fax 360-586-4548, email david.brenna@k12.wa.us, by January 3, 2019.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In removing explicit requirements from statute, PESB was required to address requirements in Washington Administrative Code.

Reasons Supporting Proposal: Statutory requirement.

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

Statute Being Implemented: RCW 28B.660.020 and [28B.660.]035.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, 600 Washington Street, Olympia, WA 98504, 360-725-6238.

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

A cost-benefit analysis is not required under RCW 34.05.328. No costs involved.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

December 5, 2018
David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-80-002 Authority. As provided for in RCW 28A.410.210, 28A.660.020, and 28A.660.035, the Washington professional educator standards board establishes policies and requirements for the preparation and certification of educators, including establishing policies for the approval of nontraditional preparation program providers, providing oversight and accountability related to the quality and effectiveness of these programs, and constructing rules that address the competitive grant process and program design. The professional educator standards board will accept proposals for educator preparation programs from community college and nonhigher education providers as described in RCW 28A.410.290. The professional educator standards board has the authority to implement the articulated pathway for teacher preparation and certification as described in RCW 28A.410.292.

NEW SECTION

WAC 181-80-005 Definitions. The following definitions shall apply to terms used in this chapter:

(1) Clinical practice: "Clinical practice" means the period during a field experience where the candidate practices or serves in the role for which he or she is being prepared. Clinical practice must take place in an education setting and under the general supervision of a certificated practitioner in the role for which the candidate is seeking certification, as defined in WAC 181-78A-010.

(2) District staff member: For the purposes of chapter 181-80 WAC, these candidates may be classified district staff members, or district staff members who hold initial, continuing, or limited career technical education certificates, or district early learning education staff.

(3) Field experience: "Field experience" means learning experiences in school, clinical, or laboratory settings. These learning experiences must be related to specific program outcomes and designed to integrate educational theory, knowledge, and skills in actual practice under the direction of a qualified supervisor as defined in WAC 181-78A-010.

(4) Internship: "Internship" means the period of clinical practice for candidates enrolled in approved administrator, school counselor, and school psychologist preparation programs as defined in WAC 181-78A-010.

(5) Preresidency intensive academy: The preresidency intensive academy shall require candidates to, prior to beginning residency, gain foundational knowledge in professional educator standards board-approved program domain stan-

dards; an introduction to the culture of schools, lesson planning, and basic classroom management; and must require training in cultural competency.

(6) Residency: A residency is a year-long field experience with a minimum of five hundred forty hours of student teaching. Residency is facilitated through partnership of preparation program and school district. Mentoring is required for the duration of the residency.

(7) Student teaching: "Student teaching" means the period of clinical practice for individuals enrolled in teacher preparation programs as defined in WAC 181-78A-010.

AMENDATORY SECTION (Amending WSR 17-18-006, filed 8/24/17, effective 9/24/17)

WAC 181-80-010 Basic requirements. (1) ((~~The professional educator standards board shall transition the alternative route partnership grant program from a separate competitive grant program to a preparation program model to be expanded among approved preparation program providers.~~)) Alternative routes to teacher certification programs are partnerships between professional educator standards board-approved preparation program((~~s~~)) providers, Washington school districts, and other partners as appropriate. These partnerships are focused on district-specific teacher shortage areas. Authorized alternative routes partnerships are eligible to apply for the alternative routes block grant and to facilitate alternative route conditional scholarship program as described in RCW 28A.660.050.

(2) Each prospective teacher preparation program provider, in cooperation with a Washington school district or consortia of school districts ((~~applying to operate an~~)) operating an approved alternative route to teacher certification program ((~~shall include in its proposal to the Washington professional educator standards board:~~

~~(a) The route or routes the partnership program intends to offer and a detailed description of how the routes will be structured and operated by the partnership;~~

~~(b) The estimated number of candidates that will be enrolled per route;~~

~~(c) An identification, indication of commitment, and description of the role of approved teacher preparation programs and partnering district or consortia of districts;~~

~~(d) An assurance that the district or approved preparation program provider will provide adequate training for mentor teachers specific to the mentoring of alternative route candidates;~~

~~(e) An assurance that significant time will be provided for mentor teachers to spend with the alternative route teacher candidates throughout the internship. Partnerships must provide each candidate with intensive classroom mentoring until such time as the candidate demonstrates the competency necessary to manage the classroom with less intensive supervision and guidance from a mentor;~~

~~(f) A description of the rigorous screening process for applicants to alternative route programs, including entry requirements specific to each route, as provided in RCW 28A.660.040;~~

~~(g) A summary of procedures that provide flexible completion opportunities for candidates to achieve a residency certificate; and~~

~~(h) The design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's new performance-based standards for residency certification and adjusting any requirements accordingly. The plan may include the following components:~~

~~(i) A minimum of one-half of a school year, and an additional significant amount of time if necessary, of intensive mentorship during field experience, starting with full-time mentoring and progressing to increasingly less intensive monitoring and assistance as the intern demonstrates the skills necessary to take over the classroom with less intensive support. Before the supervision is diminished, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program must both agree that the teacher candidate is ready to manage the classroom with less intensive supervision;~~

~~(ii) Identification of performance indicators based on the knowledge and skills standards required for residency certification by the Washington professional educator standards board;~~

~~(iii) Identification of benchmarks that will indicate when the standard is met for all performance indicators;~~

~~(iv) A description of strategies for assessing candidate performance on the benchmarks;~~

~~(v) Identification of one or more tools to be used to assess a candidate's performance once the candidate has been in the classroom for about one-half of a school year;~~

~~(vi) A description of the criteria that would result in residency certification after about one-half of a school year but before the end of the program; and~~

~~(vii) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route interns will advance its school improvement plans.~~

~~(3) To the extent funds are appropriated for this purpose, alternative route programs may apply for program funds to pay stipends to trained mentor teachers of interns during the mentored internship. The per intern amount of mentor stipend provided by state funds shall not exceed five hundred dollars~~)) must meet the following requirements:

(a) Partnership requirements. Alternative routes providers shall establish an alternative routes partnership memorandum of agreement (MOA) between the approved teacher preparation program provider and each partnering district or consortia of districts. Each MOA shall require:

(i) An identification, indication of commitment, and description of the role of approved teacher preparation program provider and partnering district or consortia of districts, including specific duties of each partner;

(ii) The role of each partner in candidate recruitment, screening, selection, and oversight;

(iii) The role of each partner in field placement and student teaching and a description of when each begins within the program;

(iv) The role of each partner in mentorship selection, training, and support;

(v) A description of how the district intends for the alternative route program to support its workforce development plan and how the presence of alternative route candidates will advance its school improvement plans.

(b) Programmatic requirements. Programs shall uphold the following requirements in addition to requirements and standards listed in chapter 181-78A WAC.

(i) Ensure candidates meet assessment requirements for basic skills, content knowledge, and performance-based assessment per RCW 28A.410.220, 28A.410.280, and WAC 181-78A-300(3).

(ii) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate.

(iii) Clinical practice for teacher candidates should consist of no less than five hundred forty hours in classroom settings.

(iv) Mentorship requirements must be met in accordance with WAC 181-78A-220 and 181-78A-300 and each candidate must be assigned a mentor. The candidate must receive mentoring for the duration of the residency.

(v) Teacher development plan: Ensure the design and use of a teacher development plan for each candidate. The plan shall specify the alternative route coursework and training required of each candidate and shall be developed by comparing the candidate's prior experience and coursework with the state's standards for residency certification. The plan must also include:

(A) Identification of one or more tools to be used to assess a candidate's performance once the candidate is about halfway through their residency;

(B) Recognition for relevant prior learning within the teacher development plan that demonstrates meeting residency certification competencies; and

(C) A description of the criteria that would result in early exit from the program with residency certification.

(vi) Shortage areas. Alternative route programs shall enroll candidates in a subject or geographic endorsement shortage area, as defined by the professional educator standards board including, but not limited to, bilingual, English language learner, special education, early childhood education, and areas with shortages due to geographic location as determined by the professional educator standards board.

AMENDATORY SECTION (Amending WSR 17-18-006, filed 8/24/17, effective 9/24/17)

WAC 181-80-020 Program types. Alternative route programs under this chapter shall operate one to four specific route programs. Successful completion of ((~~the program shall make a candidate eligible~~)) an alternative route program shall meet the program completion requirements for residency teacher certification. The mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the teacher preparation program provider must both agree that the teacher candidate has successfully completed the program.

(1) ((~~Alternative route programs operating~~)) Route 1: Providers approved to offer route one programs shall enroll currently employed ((~~classified instructional employees~~)) district staff members with transferable associate degrees seeking residency teacher certification ((~~with endorsements in special education, bilingual education, or English as a second language. It is anticipated that~~)). Candidates enrolled in ((~~this route will~~)) route one program may complete both their baccalaureate degree and requirements for residency certification in two years or less((~~, including a mentored internship to be completed in the final year. In addition, partnership programs~~)). Program providers and partners shall uphold entry requirements for route one candidates that include:

(a) A transferable associate degree, or associate degree, or associate of applied science, or ninety quarter credits or the equivalent in semester credits from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of successful student interaction and leadership ((~~as a classified instructional employee;~~

~~(b) Successful passage of the statewide basic skills exam; and~~

~~(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.~~

~~(2) Alternative route programs operating~~)).

(2) Route 2: Providers approved to offer route two programs shall enroll currently employed ((~~classified~~)) district staff members with baccalaureate degrees seeking residency teacher certification ((~~in subject matter shortage areas and areas with shortages due to geographic location~~)). Candidates enrolled in this route must complete a ((~~mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via videoconference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs~~)) preresidency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from an accredited institution of higher education;

(b) District or building validation of qualifications, including one year of successful student interaction and leadership ((~~as classified staff;~~

~~(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;~~

~~(c) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of the statewide basic skills exam~~)).

(3) ((~~Alternative route programs seeking funds to operate~~)) Route 3: Providers approved to offer route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. ((~~When selecting candidates for certification through route three, districts and approved preparation program pro-~~

~~viders shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs~~)) Candidates enrolled in this route must complete a preresidency intensive academy. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from ((~~a regionally~~)) an accredited institution of higher education((~~. The individual's grade point average may be considered as a selection factor;~~

~~(b) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(c)~~)); and

(b) External validation of qualifications, including demonstrated ((~~successful~~)) experience with students or children, such as reference letters and letters of support from previous employers((~~;~~

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of statewide basic skills exam.~~

~~(4) Alternative route programs operating~~)).

(4) Route 4: Providers approved to offer route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold ((~~conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. If employed on a conditional certificate, the intern may serve as the teacher of record, supported by a well-trained mentor. In addition, partnership programs~~)) limited certificates as described in WAC 181-79A-231, or hold initial, continuing, or limited career technical education certificates as described in chapter 181-77 WAC. Candidates enrolled in this route must complete a preresidency intensive academy. The candidate will be delegated primary responsibility for planning, conducting, and evaluating instructional activities. Program providers and partners shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from ((~~a regionally~~)) an accredited institution of higher education((~~. The individual's grade point average may be considered as a selection factor;~~

~~(b) Successful completion of the subject matter assessment required by RCW 28A.410.220(3);~~

~~(c)~~)); and

(b) External validation of qualifications, including demonstrated ((~~successful~~)) experience with students or children, such as reference letters and letters of support from previous employers((~~;~~

~~(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and~~

~~(e) Successful passage of statewide basic skills exam~~)).

(5) Applicants for alternative route programs who are eligible veterans or National Guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission.