WSR 20-03-004
PROPOSED RULES
BENTON CLEAN AIR AGENCY
[Filed January 3, 2020, 11:23 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation 1: Article 3 - Industrial Source Regulations, Article 8 - Asbestos, Article 10 - Fees and Charges.

Hearing Location(s): On March 26, 2020, at 5:00 p.m., at Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336.

Date of Intended Adoption: March 26, 2020.

Submit Written Comments to: Robin Priddy, Benton Clean Air Agency, 526 South Steptoe Street, Kennewick, WA 99336, email robin.priddy@bentoncleanair.org, fax 509-783-6562, by March 26, 2020.

Assistance for Persons with Disabilities: Contact 711 relay, or Robin Priddy, phone 509-178-1304, fax 509-783-6562, email robin.priddy@bentoncleanair.org, by March 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The changes to Article 8 and Article 10 are administrative in nature, also removing a fee table from the regulation. The changes to Article 3 are [to] clarify the agency's regulatory authority regarding marijuana odor for facilities licensed through the Washington state liquor and cannabis board (LCB).

Reasons Supporting Proposal: The changes to Article 3 are proposed to clarify the agency's authority regarding odors from marijuana processors and producers that are commercially licensed through the LCB. The changes to Article 8 and Article 10 are administrative and are proposed to make Regulation 1 more consistent.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et. seq., 42 U.S.C. 7412.

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

Name of Proponent: Benton Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robin Priddy, 526 South Steptoe Street, Kennewick, 99336, 509-783-1304.

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 is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

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

Is exempt under RCW 70.94.141(1).

Explanation of exemptions: A small business economic impact statement was not prepared under chapter 19.85 RCW. This is a local agency rule and pursuant to RCW 70.94.141(1), chapter 19.85 RCW does not apply.

January 3, 2020

Robin Priddy
Director

AMENDATORY SECTION

Section 3.04 Standards for Marijuana Production and Marijuana Processing

A. Purpose.

The production and processing of marijuana emits air contaminants. Section 3.04 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

B. Authority.

BCAA implements and enforces WAC 173-400-040 (General standards for maximum emissions) in Benton County in addition to Section 3.04. The provisions of RCW 70.94.141 (Air pollution control authority—Powers and duties of activated authority) are herein incorporated by reference.

C. Applicability.

This section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Benton County.

D. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this section will have the following meaning:

1. "Control of environmental conditions" means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 3.04, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

2. "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

3. "Indoor marijuana production and indoor marijuana processing" means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

4. "Marijuana" means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

5. "Processor (process, processing)" means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

6. "Producer (production, producing)" means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

7. "Public Place" - means that portion of any building used by and open to the public. A public place does not include a private residence. A public place also includes a lot, parcel, or plot of land that includes a building or structure thereon that is used by and open to the public.

8. "Responsible person" means any person who owns or controls property on which Section 3.04 is applicable.

E. Marijuana Odor.

With respect to odor, it shall be unlawful for any production or processing facility of marijuana to cause an odor that can be detected beyond the facilities property line. The agency may take enforcement action pursuant to chapter 70.94 RCW, under this section if the Control Officer or a duly authorized representative has documented the following:

1. The odor or can be readily smelled from a public place or the private property of another housing unit;

2. An affidavit from a person making a complaint that demonstrates that they have experienced the odor of marijuana so as to unreasonably interfere with their life and property. (The affidavit should describe or identify, to the extent possible, the location, duration, and offensiveness of the odor experienced by the complainant);

3. The source of the odor.

F. With respect to odor, the agency will determine whether or not a violation of Section 3.04 ((~~D~~)) E has occurred based on its review of the information obtained during the investigation.

G. When determining whether to take formal enforcement action authorized in Section 3.04 ((~~D~~)) E, the agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the agency may decline to pursue formal enforcement action.

H. Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

I. Requirements.

All persons or entities subject to the requirements of Section 3.04 must comply with the following:

1. Production and processing must occur indoors, as defined in 3.04 ((~~C~~)) B, unless the operation is exempt under Section 3.04((~~M~~)) N;

2. Indoor production and processing requirements:

a. Control equipment and facility design:

i. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or

ii. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or

iii. Both.

b. Operations must meet the requirements of Section 3.04 ((~~D~~)) E.

3. Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturers recommendations. An operation and maintenance plan for the air pollution control equipment must be available on site. The plan must include written operation instructions and maintenance schedules. Record shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment. Record must be kept on site for the previous 24 months and be provided to the agency upon request.

J. Compliance with Other Laws and Regulations. Compliance with Regulation I, Article 3, Section 3.04, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

K. Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article 3, Section 3.04 ((~~D~~)) E, a Notice of Violation may be issued to all producers and processors on the parcel, and all responsible persons.

L. Compliance Schedule. All persons or entities subject to the requirements of Article 3, Section 3.04 must be in compliance with Section 3.04 requirements as follows:

1. New producers and processors or expansion at existing producers and processors, that begin or expand operations after August 17, 2018, must be in full compliance with Section 3.04 requirements before production and/or processing begins.

M. Any new marijuana production or processing facility must notify the agency by completing the proof of notification form found on *www.bentoncleanair.org*.

N. Exemptions.

1. Existing marijuana producers and processors, in-operation prior to the Section 3.04 effective date August 17, 2018 are exempt from of Section 3.04 ((~~H~~)) I. This exemption does not exclude them from the requirements of Section 3.04 ((~~D~~)) E.

2. Any existing marijuana producer or processor, in-operation prior to the section 3.04 effective date August 17, 2018 found to be in violation of Section 3.04E, may be required to comply with Section 3.04 ((~~H~~)) I within 180 days of receipt of the penalty from said violation or as defined by a compliance schedule agreed upon with the Benton Clean Air Agency.

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

AMENDATORY SECTION

Section 8.01 Definitions

A. "AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation

Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. "AHERA Project Designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. "Asbestos" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. "Asbestos-Containing Material" means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA.

E. "Asbestos-Containing Waste Material" means any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. "Asbestos Project" means any activity involving the abatement, renovation, demolition, removal, salvage, cleanup or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

G. "Asbestos Survey" means a written report resulting from a thorough inspection performed pursuant to Section 8.02 of this Regulation.

H. "Asphalt Shingles" means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. "Competent Person" means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J. "Component" means any equipment, pipe, structural member, or other item or material.

K. "Contiguous" means touching or adjoining.

L. "Controlled Area" means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

M. "Demolition" means wrecking, razing, leveling, dismantling, or intentional burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member.

N. "Disposal Container" means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

O. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

P. "Homogenous Area" means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by the Agency, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

Q. "Friable Asbestos-Containing Material" means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal.

4. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

R. "Leak-Tight Container" means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

S. "Nonfriable Asbestos-Containing Material" means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by

hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

T. "Owner-Occupied, Single-Family Residence" means any non-multiple residential unit that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g. utility bills). This term does not include rental properties, multiple unit buildings (e.g. duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g. a business being operated out of a residence), structure, or installation that contains a residential unit.

U. "Owner's Agent" means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article 8 of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 8.03 of this Regulation and/or performing the asbestos survey.

V. "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

W. "Renovation" means altering a structure or component in any way, other than demolition, that disturbs materials totaling greater than or equal to 10 linear feet, or greater than or equal to 48 square feet, that was considered a suspect asbestos containing material prior to performing an asbestos survey.

X. "Residential Unit" means any building with four or fewer dwelling units each containing space for uses such as living, sleeping, preparation of food, and eating that is used, occupied, or intended or designed to be occupied by one family as their domicile. This term includes houses, mobile homes, trailers, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include any facility that contains a residential unit.

Y. "Structure" means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

Z. "Surfacing Material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

AA. "Suspect Asbestos-Containing Material" means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g. as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993).

AB. "Thermal System Insulation" means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AC. "Visible Emissions" means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AD. "Wallboard System" means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AE. "Waste Generator" means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AF. "Workday" means Monday through Friday 8:00 a.m. to 5:00 p.m. excluding legal holidays observed by the Agency.

AMENDATORY SECTION

Section 10.08 Asbestos Fees and Waiting Periods

A. Any fee required ((~~under Table 10-1~~)) for asbestos projects will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

B. Failure to pay all or part of the fee may result in the commencement of a formal enforcement action.

C. ((~~The waiting period begins at the time of filing.~~)) The notification waiting period begins on the workday on which a complete notification is received.

((~~**Table 10-1: Asbestos Fees**~~

~~**Demolition/Asbestos Projects at Residential Units**~~		
~~**Activity**~~	~~**Waiting Period**~~	~~**Fee**~~
~~Demolition~~	~~5 Days~~	~~$50~~
~~Owner Occupied Single Family Residence Asbestos Project ≥ 10 linear. ft. or ≥ 48 sq. ft. of friable ACM performed by owner-occupant~~	~~Prior Notice~~	~~$25~~
~~Asbestos Project Involving Only Non-Friable ACM That Will Remain Non-Friable~~	~~Prior Notice~~	~~$25~~

~~Demolition/Asbestos Projects at Residential Units~~		
~~Activity~~	~~Waiting Period~~	~~Fee~~
~~All Other Residential Asbestos Projects ≥ 10 linear feet or ≥ 48 sq. ft~~	~~3 Days~~	~~$50~~
~~Renovation with No ACM~~	~~Prior Notice~~	~~$0~~
~~Demolition or Asbestos Project Amendment~~	~~Prior Notice~~	~~$0~~
~~Emergency Notification Waiver~~	~~Prior Notice~~	~~Twice the Regular Fee~~
~~Asbestos Project Using Alternate Work Practices~~	~~10 Days~~	~~Twice the Regular Fee~~

~~Demolition/Asbestos Projects at Facilities~~		
~~Activity~~	~~Waiting Period~~	~~Fee~~
~~Demolition~~	~~10 Days~~	~~$150~~
~~Asbestos Project Involving Only Non-Friable ACM That Will Remain Non-Friable~~	~~Prior Notice~~	~~$25~~
~~Asbestos Project (amount of friable ACM):~~		
~~10 to 259 ln ft and/or 48 to 159 ft²~~	~~10 Days~~	~~$150~~
~~260 to 999 ln ft and/or 160 to 4,999 ft²~~	~~10 Days~~	~~$325~~
~~1,000 to 9,999 ln ft and/or 5,000 to 49,999 ft²~~	~~10 Days~~	~~$650~~
~~Over 10,000 ln ft and/or Over 50,000 ft²~~	~~10 Days~~	~~$1800~~
~~Renovation with No ACM~~	~~Prior Notice~~	~~$0~~
~~Demolition or Asbestos Project Amendment~~	~~Prior Notice~~	~~$0~~
~~Emergency Notification Waiver~~	~~Prior Notice~~	~~Twice the Regular Fee~~
~~Asbestos Project Using Alternate Work Practices~~	~~10 Days~~	~~Twice the Regular Fee~~

~~Asbestos Containing Waste Material Temporary Storage Permit~~	
~~ACWM Temporary Storage Permit Application~~	~~$75~~

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AMENDATORY SECTION

Section 10.09 Title 5 Air Operating Permit Fees

[Statutory Authority RCW 70.94.161]

All eligible sources under Chapter 173-401 WAC will be subject to the annual fees described in this Section.

A. Permanent annual fee determination and certification.

1. Fee Determination.

a. Fee Determination.

The Agency will develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees will be sufficient to cover all permit administration costs. The Agency will also collect its jurisdiction's share of Ecology's development and oversight costs. The fee schedule will differentiate as separate line items the Agency and Ecology's fees. Opportunities for public participation will be afforded throughout the fee determination process, as provided in Section 10.08.A.3.a of this Regulation.

b. Fee Eligible Activities.

The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration.

Permit administration costs are those incurred by the Agency in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(a) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management;

(p) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

ii. Ecology Development and Oversight.

Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are in Chapter 252, Laws of 1993 Section 6.2.b of this Regulation.

c. Workload Analysis.

i. The Agency will conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of preparation for permit administration. The workload analysis will include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.08.A.1.b.i of this Regulation.

ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.08.A.1.b.ii of this Regulation.

d. Budget Development.

The Agency will annually prepare an operating permit program budget. The budget will be based on the resource requirements identified in an annual workload analysis and will take into account the projected fund balance at the start of the calendar year. The Agency will publish a draft budget for the following calendar year on or before May 31 and will provide opportunity for public comment in accordance with. Chapter 173-401 WAC Operating Permit Regulation. The Agency will publish a final budget for the following calendar year on or before June 30.

e. Allocation Method.

i. Permit Administration Costs.

The Agency will allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit program sources for which it acts as permitting authority, according to a three-tiered model based upon:

(a) The number of sources under its jurisdiction;

(b) The complexity of the sources under its jurisdiction, and

(c) The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source will be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers will be equally weighted.

ii. Ecology Development and Oversight Costs.

Ecology will allocate its development and oversight costs among all permitting authorities, including the Agency based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule.

The Agency will issue annually a fee schedule reflecting the permit administration fee and Ecology's development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule will be based on the information contained in the final source data statements for each year; the final source data statements will be issued after opportunity for petition and review has been afforded in accordance with Section 10.08.A..4 of this Regulation.

2. Fee Collection - Ecology and Benton Clean Air Agency.

a. Collection from Sources.

The Agency, as a delegated local authority, will collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

b. Dedicated Account.

All receipts from fees collected by the Agency, as a delegated local authority, from permit program sources will be deposited in - dedicated account -. Expenditures from these dedicated accounts will be used only for the activities described in RCW 70.94.162.

3. Accountability.

a. Public Participation during Fee Determination Process.

The Agency will provide for public participation in the fee determination process described under Section 10.09.A of this Regulation which provision will include but not be limited to the following:

i. The Agency will provide opportunity for public review of and comment on:

(a) Each annual workload analysis;

(b) Each annual budget; and

(c) Each annual fee schedule

ii. The Agency will submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.

iii. The Agency will make available for public inspection and to those requesting opportunity for review copies of its draft:

(a) Annual workload analysis on or before May 31;

(b) Annual budget on or before May 31; and

(c) Annual fee schedule on or before May 31.

iv. The Agency will provide a minimum of thirty (30) days for public comment on the draft annual workload analysis and draft annual budget. Such thirty-day period for comment will run from the date of publication of notice in the Permit Register as provided in this Section.

b. Tracking of Revenues, Time and Expenditures.

i. Revenues.

The Agency will track revenues on a source-specific basis.

ii. Time and Expenditures.

The Agency will track time and expenditures on the basis of functional categories as follows:

(a) Application review and permit issuance;

(b) Permit modification;

(c) Permit maintenance;

(d) Compliance and enforcement;

(e) Business assistance;

(f) Regulation and guidance development;

(g) Management and training; and

(h) Technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures.

The Agency will use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.09.A.1.d of this Regulation.

iv. The information obtained from tracking revenues, time, and expenditures will not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits.

A system of regular, periodic fiscal audits, reports and performance audits will be conducted in order to evaluate Ecology's and the Agency's operating permit program administration, as follows:

i. Fiscal Audits.

The Agency will contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits.

The Agency will be subject to annual routine performance audits, except that the routine audit will be incorporated into the extensive performance audit, conducted pursuant to Section 10.09.A.3.c.v of this Regulation in each year during which an extensive performance is conducted. Ecology will issue guidance regarding the content of the routine performance audits and will conduct the Agency audits.

iii. Annual Random Individual Permit Review.

One permit issued by the Agency will be subject to review in conjunction with the annual routine performance. The permit to be reviewed will be selected at random. Ecology will issue guidance regarding the content of the random individual permit review and will conduct the Agency's review.

iv. Periodic Extensive Performance Audits.

The Agency will be subject to extensive performance audits every five years. In addition, the Agency may be subject to an extensive performance audit more frequently under the conditions of Section 10.09.A.3.c.v of this Regulation. Ecology will issue guidance regarding the content of the extensive performance audits and will conduct the audits of this agency.

v. Finding of Inadequate Administration or Need for Further Evaluation.

If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the Agency is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit will be conducted, as provided in Section 10.09.A.3.c.iv of this Regulation.

vi. Annual Reports.

The Agency will prepare an annual report evaluating its operating permit program administration. Such report will include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The Agency will submit its report to its Board and to Ecology.

4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data.

The Agency will provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the Agency intends to base its allocation determination under Section 10.09.A.1.e of this Regulation. Such preliminary statement will be provided to the permit program sources on or before September 30 of each year. Such preliminary statement will indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.08.A.4.b of this Regulation regarding the accuracy of the data contained therein.

b. Petition for Review of Statement.

A permit program source or other individual under the jurisdiction of the Agency as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.08.A.4.a of this Regulation. Such petition will be lodged on or before October 31 of each year. Such petition will be in writing, directed to the individual indicated on the statement of source data. Such petition will indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written

documentation supporting the request for review. Such petition will, in addition, state the name, address and telephone number of the person or persons to whom the Agency may direct inquiries regarding the request. Upon receipt of such a petition, the Agency, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response will state the conclusions of the review and the reasons therefore, and will contain a new preliminary source data statement, revised to reflect any changes necessitated by the Agency's response.

c. Final Source Data Statement.

The Agency will provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the Agency will base its allocation determination under Section 10.08.A.1 of this Regulation along with an invoice reflecting the fee billed to that source on or before January 20th of each year.

5. Fee Payment and Penalties.

a. Fee Payment.

Each permit program source will pay a fee in the amount reflected in the invoice issued under Section 10.09.A.4.c of this Regulation. Fees will be invoiced by January 20 of each year. Such fee will be due on or before ((~~February 28~~)) April 15th of each year.

b. Late Payment of Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for late payment of all or part of its operating permit fee at the following rates:

i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties.

The penalties authorized in Section 10.08.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

6. Development and Oversight Remittance by Local Authorities to Ecology.

a. Ecology will provide to the Agency a statement of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The Agency will remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and will remit to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

B. Air Operating Permit sources are not subject to fees under the Registration Program.

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

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

WSR 20-03-028
PROPOSED RULES
HEALTH CARE AUTHORITY

[Filed January 7, 2020, 8:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-044.

Title of Rule and Other Identifying Information: WAC 182-531-1550 Sterilization physician-related services; and other related rules as appropriate.

Hearing Location(s): On February 25, 2020, at 10:00 a.m., Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than February 26, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 25, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by February 14, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-531-550 to remove coverage of hysteroscopic sterilizations. The Federal Drug Administration restricted the sale and distribution of the Class III contraceptive device used in this procedure.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Melissa Kundur, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-5297.

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

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

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

January 7, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-531-1550 Sterilization physician-related services. (1) For purposes of this section, sterilization is any medical procedure, treatment, or operation for the purpose of rendering a client permanently incapable of reproducing.

Hysterectomy results in sterilization and is not covered by the medicaid agency solely for that purpose. (See WAC 182-531-0150 and 182-531-0200 for more information about hysterectomies.)

STERILIZATION

(2) The ((~~medicaid~~)) agency covers sterilization when all of the following apply:

(a) The client is at least eighteen years of age at the time an agency-approved consent form is signed;

(b) The client is a mentally competent individual;

(c) The client participates in a medical assistance program (see WAC 182-501-0060);

(d) The client has voluntarily given ((~~**informed consent**~~)) informed consent; and

(e) The date the client signed a sterilization consent is at least thirty days and not more than one hundred eighty days before the date of the sterilization procedure.

(3) Any medicaid provider who is licensed to do sterilizations within their scope of practice may provide vasectomies and tubal ((~~ligations~~)) sterilizations to any medicaid client. (((~~(See subsections (10), (11), and (12) of this section for additional qualifications of providers performing hysteroscopic sterilizations.)~~)))

(4) The ((~~medicaid~~)) agency requires at least a seventy-two hour waiting period rather than the usual thirty-day waiting period for sterilization in either of the following circumstances:

(a) At the time of a premature delivery when the client gave consent at least thirty days before the expected date of delivery. (The expected date of delivery must be documented on the consent form.)

(b) For emergency abdominal surgery. (The nature of the emergency must be described on the consent form.)

(5) The ((~~medicaid~~)) agency waives the thirty-day consent waiting period for sterilization when the client requests that sterilization be performed at the time of delivery and completes a sterilization consent form. One of the following circumstances must apply:

(a) The client became eligible for ((~~**medical assistance**~~)) medical assistance during the last month of pregnancy;

(b) The client did not obtain medical care until the last month of pregnancy; or

(c) The client was a substance abuser during pregnancy, but is not using alcohol or illegal drugs at the time of delivery.

(6) The ((~~medicaid~~)) agency does not accept informed consent obtained when the client is:

(a) In labor or childbirth;

(b) In the process of seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances, including pain medications for labor and delivery, that affects the client's state of awareness.

(7) The ((~~medicaid~~)) agency has certain consent requirements that the provider must meet before the agency reimburses sterilization of an institutionalized client or a client with mental incompetence. The agency requires both of the following:

(a) A court order, which includes both a statement that the client is to be sterilized, and the name of the client's legal guardian who will be giving consent for the sterilization; and

(b) A sterilization consent form signed by the legal guardian, sent to the agency at least thirty days before the procedure.

(8) The ((~~medicaid~~)) agency reimburses epidural anesthesia in excess of the six-hour limit for deliveries if sterilization procedures are performed in conjunction with or immediately following a delivery.

(a) For reimbursement, anesthesia time for sterilization is added to the time for the delivery when the two procedures are performed during the same operative session.

(b) If the sterilization and delivery are performed during different operative sessions, the anesthesia time is calculated separately.

(9) The ((~~medicaid~~)) agency reimburses all attending providers for the sterilization procedure only when the provider submits an agency-approved and complete consent form with the claim for reimbursement. (((~~(See subsections (10), (11), and (12) of this section for additional coverage criteria for hysteroscopic sterilizations.)~~)))

(a) The physician must complete and sign the physician statement on the consent form within thirty days of the sterilization procedure.

(b) The agency reimburses attending providers after the procedure is completed.

((~~HYSTEROSCOPIC STERILIZATIONS~~

~~(10) The medicaid agency pays for hysteroscopic sterilizations when the following additional criteria are met:~~

~~(a) A device covered by the agency is used.~~

~~(b) The procedure is predominately performed in a clinical setting, such as a physician's office, without general anesthesia and without the use of a surgical suite; and is covered according to the corresponding agency fee schedule.~~

~~(c) If determining that it is medically necessary to perform the procedure in an inpatient rather than outpatient setting, a provider must submit clinical notes with the claim, documenting the medical necessity.~~

~~(d) The client provides informed consent for the procedure.~~

~~(e) The hysteroscopic sterilization is performed by an approved provider who:~~

~~(i) Has a core provider agreement with the agency;~~

~~(ii) Is nationally board certified in obstetrics and gynecology (OB-GYN);~~

~~(iii) Is privileged at a licensed hospital to do hysteroscopies;~~

~~(iv) Has successfully completed the manufacturer's training for the device covered by the agency;~~

~~(v) Has successfully performed a minimum of twenty hysteroscopies; and~~

~~(vi) Has established screening and follow-up protocols for clients being considered for hysteroscopic sterilization.~~

~~(11) To become approved for hysteroscopic sterilizations, interested providers must send the medicaid agency-approved vendor, identified in the agency's billing instructions, the following:~~

~~(a) Documentation of successful completion of the manufacturer's training;~~

~~(b) Documentation demonstrating privilege at a licensed hospital to perform hysteroscopies;~~

~~(c) Documentation attesting to having successfully performed twenty or more hysteroscopies;~~

~~(d) Evidence of valid National Board Certification; and~~

~~(e) Office protocols for screening and follow-up.~~

~~(12) The provider will not be paid to perform the hysteroscopic procedure until the medicaid agency sends written approval to the provider.~~))

WSR 20-03-029
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed January 7, 2020, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-028.

Title of Rule and Other Identifying Information: Amending chapter 495A-104 WAC to update with current state statutes and [make] consistent with Bates Technical College's protocols.

Hearing Location(s): On March 5, 2020, at 1:30 - 2:30 p.m., at the Clyde Hupp Room, Building A, Room A329, downtown campus location: 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Date of Intended Adoption: March 30, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by February 24, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, phone 253-680-7163, fax 253-680-7101, email jehernandez@batestech.edu, by February 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 495A-104 WAC, Board of trustees.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.30.075, chapter 34.05 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

January 7, 2020
Dr. Jean Hernandez
Special Assistant
to the President

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-104-010 ((~~Time and place of board meetings.~~)) Organization. ((~~The board of trustees shall hold one regular meeting on the third Wednesday of each month except for the month of August at 2:00 p.m. and such special~~

~~meetings as may be requested by the chairman of the board or by a majority of the members of the board and announced in accordance with law.~~

~~All regular and special meetings of the board of trustees shall be held at Bates Technical College, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405, unless scheduled elsewhere, and are open to the general public, except for lawful executive sessions.~~

~~No official business may be conducted by the board of trustees except during a regular or special meeting.~~)) Bates Technical College, District 28, is established in Title 28B RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.

NEW SECTION

WAC 495A-104-015 Time and place of board meetings. The board of trustees shall hold one regular meeting on the third Monday of each month except for the month of August. Meetings will begin with a study session at 2:00 p.m., followed by the business meeting at 3:00 p.m. Special meetings, as may be requested by the chair of the board or by a majority of the members of the board, shall be announced in accordance with applicable open public meetings requirements.

All regular and special meetings of the board of trustees shall be held at Bates Technical College, Downtown Campus, 1101 South Yakima Avenue, Tacoma, WA 98405, unless scheduled elsewhere and so noted in accordance with the requirements of the Open Public Meetings Act, chapter 42.30 RCW. Board meetings are open to the general public, except for lawful executive sessions.

No official business may be conducted by the board of trustees except during a regular or special meeting.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-104-020	Request for items to be placed on board agenda.
WAC 495A-104-030	Delegation to college president.

WSR 20-03-030
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed January 7, 2020, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-029.

Title of Rule and Other Identifying Information: Amending chapter 495A-133 WAC to update with current state statutes and [make] consistent with Bates Technical College's protocols.

Hearing Location(s): On March 5, 2020, at 2:30 - 3:30 p.m., at the Clyde Hupp Room, Building A, Room A329, downtown campus location: 1101 South Yakima Avenue, Tacoma, WA 98405-4895.

Date of Intended Adoption: March 30, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895, email jehernandez@batestech.edu, fax 253-680-7101, by February 24, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, phone 253-680-7163, fax 253-680-7101, email jehernandez@batestech.edu, by February 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending chapter 495A-133 WAC, College operations and information.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.30.075, chapter 34.05 RCW.

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

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, 253-680-7163; Implementation and Enforcement: Office of the President, Bates Technical College, 253-680-7105.

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 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

January 7, 2020
Dr. Jean Hernandez
Special Assistant
to the President

Chapter 495A-133 WAC

((~~ORGANIZATION~~)) COLLEGE OPERATIONS AND INFORMATION

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-133-020 ((~~Organization—Operation—Information.~~)) College operations. (((~~(1) Organization. Bates Technical College is established in Title 28B RCW as a public institution of higher education. The college is governed by a five-member board of trustees, appointed by the governor. The board employs a president, who acts as the chief executive officer of the college. The president establishes the structure of the administration.~~

~~(2) Operation.~~)) The administrative office is located at the following address:

1101 South Yakima Avenue
Tacoma, WA 98405

The office hours are ((~~8:00~~)) 7:30 a.m. to ((~~5:00~~)) 4:30 p.m., Monday through Friday, except legal holidays. Educational operations also are ((~~also~~)) located at the following addresses:

South Campus
2201 South 78th Street
Tacoma, WA 98409

((~~Home and Family Life Center~~
~~5214 North Shirley Street~~
~~Tacoma, WA 98407~~

~~Business and Management Center~~
~~7030 Tacoma Mall Boulevard~~
~~Tacoma, WA 98409~~

~~(3) Information. Additional and detailed information concerning the educational offerings of the college may be obtained from the catalog, copies of which are available at the following address:~~

~~1101 South Yakima Avenue~~))
Central Campus
2320 South 19th Street
Tacoma, WA 98405

NEW SECTION

WAC 495A-133-030 Information. Additional and detailed information concerning the educational offerings of the college may be obtained from the catalog, college website, and at the following address:

Downtown Campus
1101 South Yakima Avenue
Tacoma, WA 98405

WSR 20-03-034
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 7, 2020, 9:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-101.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-829R WAC, Overnight planned respite services.

Hearing Location(s): On February 25, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2.

Date of Intended Adoption: Not earlier than February 26, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., February 25, 2020.

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 February 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is proposing amendments to chapter 388-829R WAC to do the following: Add certification and evaluation procedures; add definitions for administrator, direct support professional, owner, and primary caregiver; replace sections about certification, evaluation, and monitoring in WAC 388-829R-185 through 388-829R-200 with WAC 388-829R-220 through 388-829R-260; require the client to identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable; require a client to not be receiving residential habilitation services under the core waiver to be eligible to receive overnight planned respite services; amend the factors the adult respite services committee considers when reviewing respite requests; change "individual respite services agreement" to "overnight planned respite services individualized agreement"; require the provider and client to complete and approve the overnight planned respite services individualized agreement before the client's respite stay; require the provider to send a copy of the overnight planned respite services individualized agreement to DDA before the client's respite stay; require direct support professionals to be trained on a client's overnight planned respite services individualized agreement before working alone with a client; require the provider to keep copies of the DSHS 10-403 form signed by all direct support professionals and the administrator; replace content copied from the nurse delegation rules with direct references to the nurse delegation rules; remove references to the overnight planned respite services provider contract; require background checks every two years for all provider employees, including administrators, owners, direct support profes-

sionals, and volunteers; prohibit anyone with a disqualifying background check from having unsupervised access to a client; require the provider to notify the DDA overnight planned respite services program manager or designee after reporting suspected abandonment, abuse, financial exploitation, or neglect of a vulnerable adult; add informal dispute resolution procedures for providers who disagree with a certification evaluation or certification decision; and add an administrative hearing right for providers who disagree with a certification action or the outcome of an informal dispute resolution process.

Reasons Supporting Proposal: The proposed amendments are necessary to do the following: Amend eligibility criteria to offer overnight planned respite services to clients with paid and unpaid caregivers; add certification and evaluation procedures to clarify the quality assurance process; clarify who can become an overnight planned respite services provider; and increase readability for people who use chapter 388-829R WAC by reorganizing content, clarifying language, and eliminating duplications and outdated information.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Nichole Jensen, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1521.

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 proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

January 3, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

((~~"Adult protective services" or "APS" means the investigative body designated by the aging and long term care support administration (ALTSA) to investigate suspected cases of abandonment, abuse, financial exploitation, and neglect as defined in chapter 74.34 RCW.~~))

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

"Authorization" means DDA approval of funding for a service as identified in the ((~~individual support~~)) person-centered service plan or evidence of payment for a service.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who the ((~~administration~~)) DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" ((~~or "the administration"~~)) means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

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

"Family" means ((~~relatives who live in the same home with the eligible client. Relatives include~~)) one or more of the following relatives: Spouse or registered domestic partner((~~,~~)); natural((~~,~~)); adoptive((~~,~~)); or stepparent((~~,~~)); grandparent((~~,~~)); child((~~,~~)); stepchild((~~,~~)); sibling((~~,~~)); stepsibling((~~,~~)); uncle((~~,~~)); aunt((~~,~~)); first cousin((~~,~~)); niece((~~,~~)); or nephew.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

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

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

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

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for ((~~persons~~)) a person who ((~~live~~)) lives with ((~~the~~)) and acts as a DDA ((~~client as the~~)) client's primary ((~~care provider and are either a family member who is paid or unpaid or a nonfamily member who is not paid. These services also provide the opportunity for the client to receive support, care, and engagement in the community~~)) caregiver.

"Overnight planned respite services provider((~~,~~))" ((~~"service provider"~~)) and "provider" means ((~~a provider~~)) an agency that is contracted to provide overnight planned respite services.

((~~"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a NA-R or NA-C in selected situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.~~))

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the client's care and supervision and lives with the client.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-010 What is the purpose of this chapter? This chapter establishes rules for ((~~clients and providers regarding~~)) overnight planned respite services administered by DDA.

NEW SECTION

WAC 388-829R-011 Who is eligible to receive overnight planned respite services? To be eligible to receive overnight planned respite services, a client must:

(1) Be eligible for DDA services under chapter 388-823 WAC;

(2) Be eighteen or older;

(3) Be living at home with a primary caregiver and not currently receiving residential habilitation services under the core waiver; and

(4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

NEW SECTION

WAC 388-829R-012 How are overnight planned respite services requested? The case resource manager assists the client or the client's primary caregiver to complete a respite application and submit it to the respite services committee.

NEW SECTION

WAC 388-829R-013 What does the respite services committee consider when reviewing a respite request? The adult respite services committee will consider the following factors when reviewing a respite request:

(1) Whether the client is eligible to receive overnight planned respite services under WAC 388-829R-011;

(2) Whether the client's needs can be safely met in the respite setting;

(3) Whether a respite site is available to accommodate the client's accessibility needs; and

(4) Whether there are vacancies within six months of the requested service dates.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-018 What ((~~are the time limitations of~~)) limits apply to overnight planned respite services? (1) A client must not receive overnight planned respite services ((~~may not exceed~~)) more than fourteen days in a calendar year.

(2) A provider must not provide overnight planned respite services to more than one unrelated client per respite home at a time.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-020 What are the responsibilities of an overnight planned respite services provider? An overnight planned respite services provider must:

(1) Meet the requirements of this chapter ((~~and its contract~~));

(2) Deliver the service on the dates approved by ((~~the administration~~)) DDA;

(3) Complete the overnight planned respite services individualized agreement with the client or the client's primary caregiver before the respite stay;

(4) Provide supports and services outlined in the ((~~individual~~)) overnight planned respite services individualized agreement;

(((~~(4)~~))) (5) Provide adequate staff to administer the program and meet the needs of clients;

(((~~(5)~~))) (6) Ensure that clients have ((~~immediate~~)) access to ((~~staff~~)) employees or the means to contact ((~~staff~~)) employees at all times; and

(((~~(6)~~))) (7) Retain all records and other material related to the services contract for six years after expiration of the contract.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-025 What requirements must ((~~an agency~~)) a provider meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with DDA to provide overnight planned respite services, ((~~an agency~~)) a provider must:

(1) ((~~Must be certified by the DDA to perform the duties of overnight planned respite service;~~

~~(2) Must~~)) Be approved as a contractor by the department; and

(((~~(3) Providing respite to more than one client per respite home is prohibited~~))) (2) Receive initial certification no more than ninety days after the first date of service delivery.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-030 ((~~Are the rules in chapters 388-113 and 388-825 regarding~~)) Who must have a background ((~~checks applicable to providers of overnight planned respite services~~)) check? ((~~Yes. The rules in chapters 388-113 and 388-825 regarding~~)) (1) An overnight planned respite services provider employee, administrator, owner, direct support professional, volunteer, and any other employee who may have unsupervised access to a DDA client must have a background ((~~checks are applicable to providers of overnight planned respite services~~)) check.

(2) Any person required to have a background check under this section must have a nondisqualifying background

check result every two years, or more frequently if required by DSHS.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-035 What will disqualify a direct support professional providing overnight planned respite services ((~~providers~~)) or a volunteer from working in a capacity that may involve access to individuals with a developmental disability? (1) Criminal convictions and pending charges that disqualify a direct support professional providing overnight planned respite services ((~~providers and their employees and volunteers~~)) or a volunteer from working with individuals with a developmental disability are listed in chapter 388-113 WAC. ((~~Individuals~~))

(2) A volunteer or person employed by an overnight planned respite services ((~~providers~~)) provider who ((~~receive~~)) receives a DSHS background check with a disqualifying ((~~results are~~)) result is prohibited from any unsupervised access to DDA clients.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-060 What are the minimum requirements for direct support professionals providing overnight planned respite services ((~~providers~~))? To provide overnight planned respite services ((~~providers must at a minimum~~)), a direct support professional must:

(1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;

(2) Be ((~~at least~~)) eighteen ((~~years of age when employed as a direct care staff, or at least twenty-one years of age when employed as an administrator~~)) or older;

(3) Have a clear understanding of job responsibilities ((~~and knowledge of individual support~~)), person-centered service plans, and ((~~client needs~~)) overnight planned respite services individualized agreements; and

(4) Have a current background check as required by WAC 388-829R-030((~~; and~~

~~(5) Be able to:~~

~~(a) Read, understand, and provide services outlined in the individual support plan (ISP) and individual respite services agreement;~~

~~(b) Reasonably accommodate the client's individual preferences;~~

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

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

~~(e) Protect the client's financial interests;~~

~~(f) Fulfill reporting requirements as required in this chapter and the overnight planned respite services contract;~~

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

~~(h) Successfully complete the training required in this chapter~~)).

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-065 What training requirements must overnight planned respite services ((~~staff~~)) employees meet? (1) Overnight planned respite services provider ((~~staff~~)) employees must meet all training and certification requirements that apply to community residential service businesses in accordance with chapter 388-829 WAC.

(2) A direct support professional must be trained on a client's overnight planned respite services individualized agreement before working alone with the client as verified by a signature on the overnight planned respite services individualized agreement.

(3) The provider must document that ((~~its staff has~~)) employees have met these requirements and make this documentation available for DDA.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-070 What policies and procedures must overnight planned respite services providers have? (1) Overnight planned respite services providers must develop and implement policies and procedures that address:

(a) Client rights, including a client's right to file a complaint or suggestion without interference;

(b) Reporting requirements for suspected abuse, neglect, financial exploitation, ((~~or~~)) and abandonment;

(c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;

(d) Emergent situations that may pose a danger or risk to the client or others;

(e) Response to a missing person and other client emergencies;

(f) Emergency response plans for natural ((~~or~~)) and other disasters;

(g) Client access to medical, mental health, and law enforcement resources for clients;

(h) Notification to client's primary caregiver, legal representative, or relatives in case of emergency;

(i) Client grievances;

(j) Appropriate response and supports for clients who engage in aggressive or assaultive behavior as informed by the client's overnight planned respite services individualized agreement; and

(k) All aspects of medication management including ((~~but not limited to~~)):

(i) Supervision of medication;

(ii) Client refusal;

(iii) ((~~Services related to medications and treatments provided under the delegation of a registered~~)) Nurse ((~~consistent with~~)) delegation under chapter 246-840 WAC;

(iv) The monitoring of a client who self-administers medication;

(v) Medication assistance ((~~for clients who need support~~)) under chapter 246-888 WAC; and

(vi) What the service provider will do in the event it becomes aware that a client is no longer safe to take his or her own medications.

(2) The service provider must train ((~~staff~~)) employees on its policies and procedures, maintain current written policies and procedures, and make them ((~~accessible~~)) available upon request to all ((~~staff and available to~~)) employees, clients ((~~and~~)), primary caregivers, client legal representatives ((~~upon request~~)), and DDA.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-075 What are the requirements for an ((~~individual~~)) overnight planned respite services individualized agreement? (1) An overnight planned respite services ((~~providers~~)) provider must develop an ((~~individual~~)) overnight planned respite services individualized agreement with the client's ((~~paid or unpaid~~)) primary caregiver, and legal representative if the client has one, at least three business days ((~~prior to~~)) before the client's ((~~placement~~)) start date for respite services.

(2) The ((~~individual~~)) overnight planned respite services individualized agreement must:

(a) Outline supports and services ((~~to~~)) that may be provided during the respite stay; and

(b) Be signed by the client, or the legal representative if the client has one, and the client's primary caregiver before the client's start date for respite services. An email approval is acceptable if the provider is unable to obtain a signature.

(3) The provider must send a copy of the approved overnight planned respite services individualized agreement to DDA before the start date for respite services.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-080 What services and activities must be a part of overnight planned respite services? The overnight planned respite services provider must provide the following services and activities at no cost to the client:

(1) ((~~Support staff available twenty-four hours per day for each day of the respite stay as determined in the individual respite services agreement to meet the client's needs as identified in the client's assessment;~~

~~(2)~~)) A furnished home environment including a private, furnished bedroom for the respite client;

(((~~3) An accessible site for clients with physical disabilities;~~

~~(4)~~)) (2) Three nutritious meals and two snacks per day;

(((~~(5)~~))) (3) Bedding and towels;

(((~~(6)~~))) (4) Access to laundry facilities;

(((~~(7)~~))) (5) Access to a telephone for local calls; and

(((~~(8)~~))) (6) The following as identified in a client's overnight planned respite services individualized agreement:

(a) Up to twenty-four hour support from a direct support professional for each day of the respite stay;

(b) Medication ((~~monitoring,~~)) assistance under chapter 246-888 WAC and medication administration under WAC 246-840-910 through 246-840-970 as needed, including assistance with medical treatment prescribed by a health professional that does not require registered nurse delegation or professionally licensed services;

(((~~(9)~~))) (c) Instruction and support services ((~~identified in the client's individual respite services agreement~~));

(((~~(10)~~))) (d) Transportation ((~~as identified in the individual respite services agreement~~));

(((~~(11)~~))) (e) Supports for performing personal hygiene routines and activities of daily living ((~~as identified in the individual respite service agreement and individual support plan~~)); and

(((~~(12)~~))) (f) Activities within the home and community ((~~as outlined in the individual respite services agreement~~)).

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-085 Are overnight planned respite providers responsible to transport a client? (1) The client and client's ((~~family~~)) primary caregiver are responsible for transportation to and from the respite services.

(2) The overnight planned respite services provider ((~~is responsible to~~)) must ensure that the client's transportation needs are met during the respite stay as identified in the client's ((~~individual~~)) overnight planned respite services individualized agreement.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-090 What requirements must be met before an overnight planned respite provider transports a client? Before transporting a client, an overnight planned respite services providers or direct support professional must have:

(1) ((~~Carry~~)) Automobile insurance ((~~per~~)) coverage under chapter 46.30 RCW; and

(2) ((~~Have~~)) A valid driver's license ((~~per~~)) under chapter 46.20 RCW.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-115 How may ((~~an~~)) a direct support professional providing overnight planned respite services ((~~provider~~)) assist a client with medication? (1) ((~~An~~)) A direct support professional providing overnight planned respite services ((~~provider~~)) may ((~~only~~)) provide medication assistance ((~~per~~)) under chapter 246-888 WAC ((~~if the client meets the following criteria:~~

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

~~(b) Is aware that he or she is receiving medication~~)).

(2) An overnight planned respite services provider may provide ((~~specific medication assistance~~)) delegated nursing tasks ((~~as described under chapter 246-888 WAC as follows~~)) if the direct support professional is:

((~~Medication Assistance Task~~	~~May an overnight planned respite services provider complete this task if the client meets both criteria in subsection (1)(a) and (b) of this section?~~
~~Remind or coach the client to take his or her medication.~~	~~Yes~~
~~Open the medication container.~~	~~Yes~~
~~Hand client the medication container.~~	~~Yes~~
~~Place medication in the client's hand.~~	~~Yes~~
~~Transfer medication from a container to another device for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device.~~	~~Yes~~
~~Alter a medication by crushing or mixing, or similar alterations.~~	~~Yes, if the client is aware that the medication has been altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.~~
~~Handing the client a prefilled insulin syringe.~~	~~Yes, but the client must be able to inject the insulin by him or herself.~~
~~Guide or assist client to apply or instill skin, nose, eye and ear preparations.~~	~~Yes, but hand-over-hand administration is not allowed.~~
~~Assistance with injectable or IV medication.~~	~~No, this is not allowed.~~
~~Hand-over-hand assistance with medication.~~	~~No, may only be done under nurse delegation.~~
~~Assistance with medication beyond the examples provided in this chart.~~	~~No, may only be done by a licensed professional within the scope of their license or under registered nurse delegation.~~))

(a) A registered nurse;

(b) A licensed practical nurse; or

(c) Delegated by a registered nurse to perform nursing care tasks.

(3) To provide delegated nursing tasks, the direct support professional must:

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

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

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

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

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-140 Where must overnight planned respite services be provided? Overnight planned respite services providers must provide overnight planned respite services in a ((~~single person~~)) residence maintained and furnished by the provider.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

(2) In an emergency, the overnight planned respite services provider must:

(a) Immediately call 911 if it is a life-threatening emergency;

(b) Provide emergency services;

(c) Notify DDA ((~~and~~));

(d) Notify the client's legal representative or backup caregiver; and

(((~~(d)~~))) (e) Submit a written report to DDA ((~~as required by the DDA residential reporting requirements specified in the overnight planned respite services contract~~)).

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-170 What records must overnight planned respite services providers keep? (1) For each client, the overnight planned respite services providers must keep the following information:

(((~~(1)~~))) (a) The client's name and address;

(((~~(2)~~))) (b) The name, address, and telephone number of the client's ((~~relative~~)) primary guardian or legal representative;

(((~~(3)~~))) (c) A copy of the client's most recent ((~~ISP~~)) person-centered service plan;

(((~~(4)~~))) (d) A copy of the ((~~individual~~)) client's overnight planned respite services individualized agreement;

(((~~(5)~~))) (e) Nurse delegation records, if applicable;

(f) Progress notes;

(g) Incident reports, if applicable;

(h) Medication documentation, including a medication intake form and medication administration records, if applicable;

(i) A list of the client's personal property upon arrival and departure; and

(j) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay, if applicable.

(2) An overnight planned respite services provider must also keep the following:

(((~~(6)~~))) (a) Water temperature monitoring records;

(((~~(7) Staff~~))) (b) Direct support professional training records;

(((~~(8) Staff~~))) (c) Direct support professional time sheets specific to locations worked;

(((~~(9)~~))) (d) Payment records;

(((~~(10) Dates and times of service;~~

~~(11) Progress notes and incident reports;~~

~~(12) Medication intake records;~~

~~(13) A list of the client's personal property upon arrival and departure; and~~

~~(14) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay~~)) (e) A signed copy of DSHS form 10-403 for each direct support professional and administrator.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-175 Are direct support professionals providing overnight planned respite services ((~~providers~~)) mandatory reporters? (((~~(1) Yes.~~))) A direct support professional providing overnight planned respite services ((~~providers are~~)) is a mandatory ((~~reporters. They are required to report all instances of suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults as defined in~~)) reporter under chapter 74.34 RCW.

(((~~(2) Overnight respite services providers must comply with DDA's residential reporting requirements specified in their contract.~~

~~(3) Providers must retain a signed copy of the DDA policy on residential reporting requirements specified in their contract and submit a signed copy of the policy to DDA.~~))

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-180 How must overnight planned respite services providers report abuse and neglect? In compliance with the DDA residential reporting requirements, an overnight planned respite services ((~~providers~~)) provider must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

(1) Adult protective services using the DSHS ((~~toll free telephone number, 1-866-END-HARM or 1-866-363-4276~~)) online reporting tool or by calling 1-877-734-6277 (TTY: 1-800-977-5456);

(2) The DDA ((~~in compliance with the DDA residential reporting requirements as specified in the~~)) overnight planned respite services ((~~contract~~)) program manager or designee; and

(3) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-205 What happens if the overnight planned respite services provider is found to be out of compliance? (1) If DDA finds in its evaluation that the overnight planned respite services provider is out of compliance with any part of this chapter ((~~or the DDA contract~~)), the provider and DDA must develop a corrective action plan.

(2) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-210 When may DDA stop ((~~the~~)) payment authorization for ((~~payment or terminate a contract for the services of an~~)) overnight planned respite services ((~~provider~~))? DDA may stop ((~~the~~)) payment authorization for ((~~payment or terminate a contract for the services of an~~)) overnight planned respite services ((~~provider when~~)) if:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter ((~~or the overnight planned respite services provider contract~~)); or

(4) DDA has a reasonable, good faith belief that the client's health, safety, or well-being is at risk.

AMENDATORY SECTION (Amending WSR 16-17-003, filed 8/4/16, effective 9/4/16)

WAC 388-829R-215 May the overnight planned respite services provider request an administrative hearing to contest DDA's decision to stop payment ((~~or terminate its contract~~))? No. The overnight planned respite services provider may not contest the decision to stop payment ((~~or termination of the contract~~)) by administrative hearing. ((~~A client may challenge DDA's decision to deny a provider of choice.~~))

NEW SECTION

WAC 388-829R-220 What is initial certification? (1) Initial certification is a document issued by DDA that indicates a provider meets the requirements under this chapter to deliver overnight planned respite services.

(2) A provider must obtain initial certification no more than ninety days after the first date of service delivery.

(3) The provider must allow a DDA-contracted evaluator to complete an on-site certification evaluation.

(4) Based on the findings of the certification evaluation, DDA may issue:

(a) Initial certification; or

(b) Provisional certification.

(5) An initial certification is valid for no more than twelve months.

NEW SECTION

WAC 388-829R-225 What is standard certification? (1) Standard certification is a document issued by DDA that indicates a provider meets the requirements under this chapter to deliver overnight planned respite services.

(2) A provider must obtain standard certification before their initial certification expires.

(3) The provider must allow a DDA-contracted evaluator to complete an on-site certification evaluation.

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

(a) Issue standard certification;

(b) Issue provisional certification; or

(c) Decertify the provider.

(5) A standard certification is valid for no more than twenty-four months.

NEW SECTION

WAC 388-829R-230 What is provisional certification? (1) DDA may impose a provisional certification for a maximum of ninety days if the provider:

(a) Prevents or interferes with a certification evaluation or complaint investigation by DSHS;

(b) Fails to comply with chapter 388-829R WAC;

(c) Fails to comply with chapter 74.34 RCW;

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

(e) Fails to implement a plan of correction.

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

(3) At the end of the provisional certification, if the provider has not complied with certification requirements, DDA must decertify the overnight planned respite services provider.

NEW SECTION

WAC 388-829R-235 What must an overnight planned respite services provider comply with to maintain certification? To maintain certification an overnight planned respite services provider must comply with:

(1) Requirements under this chapter;

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

(3) Requirements under chapter 74.34 RCW;

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

NEW SECTION

WAC 388-829R-240 When may DDA decertify an overnight planned respite services provider? DDA may decertify an overnight planned respite services provider who:

(1) Has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state or federal regulations;

(2) Obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation; or

(3) Willfully prevented or interfered with or failed to cooperate with any investigation or certification evaluation made by the department or DDA-contracted evaluator, including refusal to permit authorized department representatives to interview clients or have access to their records.

NEW SECTION

WAC 388-829R-245 How does DDA monitor overnight planned respite services? (1) To monitor overnight planned respite services, DDA reviews all feedback received from overnight planned respite services post-services surveys and follows up as needed with any concerns.

(2) DDA monitors an overnight planned respite services provider through certification evaluation to ensure that the client's needs are being met and the provider is in compliance with this chapter.

NEW SECTION

WAC 388-829R-250 How must the overnight planned respite services provider participate in the certification evaluation process? The overnight planned respite services provider must participate in the certification evaluation process with DDA employees and DDA-contracted evaluators by:

(1) Allowing scheduled and unscheduled visits;

(2) Providing information and documentation as requested;

(3) Cooperating in setting up appointments;

(4) Responding to questions or issues identified;

(5) Participating in an exit conference; and

(6) Submitting a corrective action plan within an agreed time frame, if applicable.

NEW SECTION

WAC 388-829R-255 What if the overnight planned respite services provider disagrees with a certification evaluation or certification decision? If an overnight planned respite services provider disagrees with a certification evaluation or certification decision under this chapter, the provider may request an informal dispute resolution meeting with DDA by:

(1) Submitting a written request to DDA no more than ten days after receiving the final certification letter and report; and

(2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

NEW SECTION

WAC 388-829R-260 What if the overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution?

(1) If an overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution, the provider may request an administrative hearing under chapter 388-02 WAC.

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

(3) The administrative hearing request must include:

(a) A copy of the contested certification action; and

(b) The reason the provider is contesting the certification action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-829R-015	What conditions must be met to be eligible to receive overnight planned respite services?
WAC 388-829R-016	How do I access overnight planned respite services?
WAC 388-829R-017	Who are the qualified providers of overnight planned respite services?
WAC 388-829R-110	What health care assistance must an overnight planned respite provide a client?
WAC 388-829R-120	What is required for an overnight planned respite services provider to administer medication and provide delegated nursing tasks?
WAC 388-829R-125	What is required for an overnight planned respite services provider to perform nursing tasks under the registered nurse delegation program?
WAC 388-829R-130	When is an overnight planned respite services provider not allowed to perform nursing tasks?
WAC 388-829R-135	What records must the overnight planned respite services provider keep regarding registered nurse delegation?
WAC 388-829R-185	Who oversees, monitors, and evaluates overnight planned respite services?
WAC 388-829R-190	How often must DDA evaluate overnight planned respite services providers?
WAC 388-829R-195	How must the overnight planned respite services provider participate in the evaluation process?
WAC 388-829R-200	What occurs during the review and evaluation process?

WSR 20-03-049
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed January 9, 2020, 10:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-054.

Title of Rule and Other Identifying Information: Chapter 315-31 WAC, Daily Game rules, amendments to change the name from "Daily Game" to "Pick 3" in order to reduce player confusion.

Hearing Location(s): On April 23, 2020, at 8:30 a.m., at Washington's Lottery, 814 4th Avenue East, Olympia, WA 98506.

Date of Intended Adoption: April 23, 2020.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by April 22, 2020.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, TTY 360-586-0933, email DRobinson@walottery.com, by April 17, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to chapter 315-31 WAC would change the name of the Daily Game to Pick 3. This name change will assist players with distinguishing between this game and other similar draw games the lottery currently offers.

Reasons Supporting Proposal: The current language in chapter 315-31 WAC has shown to be somewhat confusing for players because the lottery offers daily draw games other than the Daily Game. Changing the name to Pick 3 would more accurately reflect the nature of the game as well as help distinguish it from lottery's other daily draw games.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881.

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 lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

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

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

January 9, 2020
Kristi Weeks
Director of Legal Services

Chapter 315-31 WAC

((~~DAILY GAME~~)) PICK 3 RULES

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

WAC 315-31-020 Price of ((~~Daily Game~~)) Pick 3 online ticket. The base price of a ((~~Daily Game~~)) Pick 3 online ticket shall be $.50 or $1.00, except six-way straight box and three-way straight box tickets, which cost $1.00 each.

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

WAC 315-31-030 Types of play for ((~~Daily Game~~)) Pick 3. (1) The following play options may be selected by the player for ((~~Daily Game~~)) Pick 3:

(a) Straight. A play in which winning is achieved only when the three digits selected by the player match in exact order the winning digits drawn for the day selected. For example, if the winning digits are "123," only straight plays of "123" in that exact order will be winners.

(b) Six-way box. A play in which winning is achieved only when the three digits selected by the player contains three unique digits and those three digits are contained in any combination of the winning digits drawn for the day selected. For example, if the winning digits are "123," only box plays of "123," "132," "213," "231," "312," and "321" will be winners.

(c) Three-way box. A play in which winning is achieved only when the three digits selected by the player contains two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected. For example, if the winning digits are "122," only box plays of "122," "212," and "221" will be winners.

(d) Front-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the first two winning digits drawn for the day selected. For example, if the player selects a front-pair play of "12*," the player will win only if the winning digits are "120," "121," "122," "123," "124," "125," "126," "127," "128," or "129."

(e) Back-pair. A play in which winning is achieved only when the player selects two digits and those two digits match in exact order the last two winning digits drawn for the day selected. For example, if the player selects a back-pair play of "*12," the player will win only if the winning digits are "012," "112," "212," "312," "412," "512," "612," "712," "812," or "912."

(f) Six-way straight box. A play in which the player selects three digits with three unique digits and plays $.50 on a straight play and $.50 on a box play for a particular day. For example, if the player selects a "123" six-way straight/box play:

(i) The player will win both the straight and box players if the winning digits are "123" for the day selected.

(ii) The player will win the box play only if the winning digits are "132," "213," "231," "312," or "321" for the day selected.

(g) Three-way straight/box. A play in which the player selects three digits with two identical digits and one unique digit and plays $.50 on a straight play and $.50 on a box play for a particular day. For example, if the player selects a "122" three-way straight/box play:

(i) The player will win both the straight and box plays if the winning digits are "122" for the day selected.

(ii) The player will win the box play only if the winning digits are "212" or "221" for the day selected.

(h) Super six-way box. A play in which winning is achieved only when the three digits selected by the player contain three unique digits and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of six straight plays on a single online ticket. The cost of this type of play is 6 times the base price. For example, if the player selects a "123" super six-way box play, the player will win one straight play if the winning digits are "123," "132," "213," "231," "312," or "321."

(i) Super three-way box. A play in which winning is achieved only when the three digits selected by the player contain two identical digits and one unique digit and those three digits are contained in the winning digits drawn for the day selected. This play is the equivalent of three straight plays on a single online ticket. The cost of this type of play is three times the base price. For example, if the player selects a "122" super three-way box play, the player will win one straight play if the winning digits are "122," "212," or "221."

(2) Method of play: The player may use play slips to make number selections. The TDM will read the play slip and issue ticket(s) with corresponding plays. If a play slip is not available, the online retailer may enter the selected numbers via the keyboard. A player may leave all play selections to a random number generator operated by the computer, commonly referred to as "quick play."

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

WAC 315-31-040 Prizes for ((~~Daily Game~~)) Pick 3. (1) The prize amounts for winning $.50 plays are:

(a)	Straight	$	250.00
(b)	Six-way box	$	40.00
(c)	Three-way box	$	80.00
(d)	Front-pair or back-pair	$	25.00

(2) The prize amounts for winning $1.00 plays are:

(a)	Straight	$	500.00
(b)	Six-way box	$	80.00
(c)	Three-way box	$	160.00
(d)	Front-pair or back-pair	$	50.00
(e)	Six-way straight/box		
	Straight play win	$	290.00
	Box play only win	$	40.00
(f)	Three-way straight/box		
	Straight play win	$	330.00
	Box play only win	$	80.00

(3) The prize amounts for winning super six-way plays are:

(a)	Base price $.50, cost $3.00	$	250.00
(b)	Base price $1.00, cost $6.00	$	500.00

(4) The prize amounts for winning super three-way plays are:

(a)	Base price $.50, cost $1.50	$	250.00
(b)	Base price $1.00, cost $3.00	$	500.00

AMENDATORY SECTION (Amending WSR 89-12-042, filed 6/1/89)

WAC 315-31-050 Ticket purchases. (1) ((~~Daily Game~~)) Pick 3 tickets may be purchased or redeemed no less than seventeen hours each day in accordance with a schedule to be determined by the director, provided online retailers shall only sell and redeem tickets during their normal business hours.

(2) ((~~Daily Game~~)) Pick 3 tickets may be purchased only from a lottery retailer authorized by the director to sell online tickets.

(3) Each ((~~Daily Game~~)) Pick 3 ticket shall contain the player's selection of digits, amount, type of play, and drawing date.

AMENDATORY SECTION (Amending WSR 92-16-004, filed 7/23/92, effective 11/5/92)

WAC 315-31-060 Drawings. (1) Drawings for ((~~Daily Game~~)) Pick 3 shall be held on a daily basis, Monday through Sunday, except that the director may exclude certain holidays from the drawing schedule.

(2) The drawing shall determine, at random, three winning digits or symbols with the aid of mechanical drawing equipment which shall be tested before and after each drawing. Any drawn digits are not declared winning digits until the drawing is certified by the lottery. The winning digits shall be used in determining all ((~~Daily Game~~)) Pick 3 winners for the day of the drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(3) The winning digits shall not be invalidated based on the liability of the lottery.

WSR 20-03-050
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed January 9, 2020, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-053.

Title of Rule and Other Identifying Information: Chapter 315-39 WAC, Hit 5 game rules, amendments would change current language within the chapter to increase the interest amongst players.

Hearing Location(s): On April 23, 2020, at 8:30 a.m., at Washington's Lottery, 814 4th Avenue East, Olympia, WA 98506.

Date of Intended Adoption: April 23, 2020.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, email KWeeks@walottery.com, fax 360-515-0416, by April 22, 2020.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, TTY 360-586-0933, email DRobinson@walottery.com, by April 17, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapter 315-39 WAC include changing elements of the draw game Hit 5 such as draw frequency, game odds, and prize structure. These modifications will potentially provide more appeal to players as well as increase sales and contributions to the lottery's beneficiaries.

Reasons Supporting Proposal: Recent sales from Hit 5 and data from other states with similar games suggest that players and the state would benefit from changes to the game in order to enhance interest and attract new players.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

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

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881.

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 lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, the lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint administrative rules review committee has not made the section applicable to the adoption of this rule.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule will not result in any cost to small businesses.

January 9, 2020
Kristi Weeks
Legal Services Director

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

WAC 315-39-010 Definitions for Hit 5 Game. (1) Number: Any play integer from 1 through ((~~39~~)) 42 inclusive.

(2) Game grids: A field of ((~~39~~)) 42 numbers found on the play slip.

(3) Play: One selection of five numbers.

(4) Play slip: A mark-sensitive game card used by players of Hit 5 Game to select plays.

(5) Hit 5 Game ticket: A computer-generated receipt evidencing payment for one or more plays in the Hit 5 Game. Tickets shall be issued by a licensed lottery retailer and shall list the set of five-number plays that belong to the ticket holder.

(6) Cashpot: The game's top prize.

(7) Lottery drawing official: Lottery personnel designated by the director to conduct drawings.

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

WAC 315-39-040 Prizes for Hit 5 Game. (1) The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the first prize category shall vary due to the parimutuel calculation of prizes. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the second prize category shall be $((~~100~~)) 150.00. The prize amount to be paid to each Hit 5 Game player who holds a winning combination of numbers in the third prize category shall be $((~~10.00~~)) 15.00. The prize amount to be ((~~paid~~)) given to each Hit 5 Game player who holds a winning combination of numbers in the fourth prize category shall be $((~~1.00~~)) a free play.

WINNING COMBINATIONS	PRIZE CATEGORIES	ODDS OF WINNING (ONE PLAY)
All five winning numbers in one play	First Prize: Cashpot	((~~1:575,757~~)) 1:850,668.00
Any four but not five winning numbers in one play	Second Prize: $((~~100.00~~)) 150.00	((~~1:3,387~~)) 1:4,598.21
Any three but not four or five winning numbers in one play	Third Prize: $((~~10.00~~)) 15.00	((~~1:102~~)) 1:127.73
Any two, but not three, four or five winning numbers in one play	Fourth Prize: (($~~1.00~~)) free play	((~~1:9.6~~)) 1:10.95

(2) Prize amounts.

(a) First prize (cashpot). All first prizes will be the amount announced by the director as the Hit 5 Game cashpot. The cashpot will be divided equally among all players who selected all five winning numbers in one play (in any sequence).

(b) Second prize. A $((~~100~~)) 150.00 prize is to be paid to each player who holds four of the five winning numbers in one play in any sequence.

(c) Third prize. A $((~~10.00~~)) 15.00 prize is to be paid to each player who holds three of the five winning numbers in one play in any sequence.

(d) Fourth prize. A (($~~1.00~~)) free play prize is to be ((~~paid~~)) given to each player who holds two of the five winning numbers in one play in any sequence.

(e) The holder of a winning ticket may win only one prize per play.

(f) In the event any player who holds two, three, four or five of the five winning numbers does not claim the prize won within one hundred eighty days after the drawing in which the prize was won, that player's prize shall be retained in the state lottery account for use, pursuant to RCW 67.70.190.

(3) Prize payments will be made in accordance with WAC 315-30-030(6). Each prize shall be paid in a single payment. Federal income tax shall be withheld from prize payments as required by law.

AMENDATORY SECTION (Amending WSR 07-03-113, filed 1/22/07, effective 2/22/07)

WAC 315-39-060 Drawings. (1) The Hit 5 Game drawings shall be held pursuant to WAC 315-30-040.

(2) The drawing will be conducted by lottery drawing officials.

(3) Each drawing shall randomly select five winning numbers. The drawing method shall be tested before and after each drawing. Any drawn numbers are not declared winners until the drawing is certified by the lottery. The winning numbers shall be used in determining all Hit 5 Game winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine actual winners.

(4) The drawing shall not be invalidated based on the liability of the lottery.

(5) The Hit 5 game drawings shall be held on a daily basis, Monday through Sunday, except that the director may exclude certain holidays from the drawing schedule.

WSR 20-03-091
PROPOSED RULES
HORSE RACING COMMISSION
[Filed January 13, 2020, 11:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-050.

Title of Rule and Other Identifying Information: WAC 260-12-010 Definitions and 260-40-120 Identification prerequisite to start.

Hearing Location(s): On March 13, 2020, at 9:30 a.m., at Auburn City Council Chambers, 25 West Main, Auburn, WA 98002.

Date of Intended Adoption: March 13, 2020.

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 March 6, 2020.

Assistance for Persons with Disabilities: Contact Patty Brown, phone 360-459-6462, fax 360-459-6461, email patty.brown@whrc.state.wa.us, by March 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates penalties to reflect current practice and amended WAC.

Reasons Supporting Proposal: In preparation for the implementation of digital tattooing on throughbreds [thoroughbreds].

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.

January 13, 2020
Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-03-075, filed 1/14/19, effective 2/14/19)

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 digital certification which is attached to the horse's registration papers in the breed registry that validates the horse's identity. This digital tattoo is accessible through the scan of the horse's microchip((,)) or other unique identifier((, ~~which is implanted or affixed to a horse and is noted on the registration papers~~)) as authorized by the appropriate breed registry.

(33) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(34) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

(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.

(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.

(37) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

(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.

(39) "Field." The total horses scheduled to run in a race.

(40) "Filly." A female horse four years and younger.

(41) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

(42) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

(43) "Furosemide." Generic term for a medication used for the treatment of bleeders.

(44) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

(45) "Gelding." A male horse that has been castrated.

(46) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

(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.

(48) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

(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.

(50) "Intact male." Any male horse, colt, or ridgling.

(51) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

(52) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

(53) "Jockey fee." The money paid to a jockey for riding in a race.

(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.

(55) "Mare." A female horse five years old or older.

(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.

(57) "Morning line." A handicapper's approximate odds quoted in the program.

(58) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

(59) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

(60) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

(61) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

(62) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

(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.

(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.

(65) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

(66) "Overnight race." A contest for which entries close at a time set by the racing secretary.

(67) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

(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.

(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.

(70) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

(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.

(72) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

(73) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.

(74) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.

(75) "Place." To finish second in a race.

(76) "Poles." Markers positioned around the track indicating the distance to the finish line.

(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.

(78) "Post." The starting position on the track.

(79) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

(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.

(81) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(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.

(83) "Purse." The amount of prize money offered by the racing association for each race.

(84) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

(85) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(86) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

(87) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(88) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(89) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(90) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(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.

(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.

(94) "Ridgling." A male horse with one or both testicles undescended.

(95) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(96) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(97) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(98) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(99) "Show." To finish third in a race.

(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.

(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.

(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.

(103) "Stallion." A male horse or colt which can be used for breeding purposes.

(104) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(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.

(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.

(107) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(108) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(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.

(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.

(111) "Test barn." The enclosure to which selected horses are taken for post race testing.

(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.

(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.

(114) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(115) "Turf course." A racing surface comprised of grass.

(116) "Vendor." Any individual or business which offers a product or service in the restricted area of the grounds.

(117) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

(118) "Walk over." A race that has only one participant.

(119) "Washington bred." A horse that was foaled in the state of Washington.

(120) "Washington race track." A race track licensed and regulated by the commission during the track's licensed race meet and periods of training.

(121) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

(122) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

(123) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

(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 19-03-074, filed 1/14/19, effective 2/14/19)

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~~)) breed registry, 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~~)) a tattoo which is done physically is not applied at least twenty-four hours prior to scheduled post time.

(3) No horse may start unless ownership is first established.

WSR 20-03-096

PROPOSED RULES

BOARD OF TAX APPEALS

[Filed January 14, 2020, 9:23 a.m.]

Continuance of WSR 19-22-052.

Preproposal statement of inquiry was filed as WSR [19-12-063].

Title of Rule and Other Identifying Information: WAC 456-11-015 Record evidence.

Hearing Location(s): On February 28, 2020, at 11:00 a.m., at 1110 Capitol Way South, Suite 300, Olympia, WA.

Date of Intended Adoption: February 28, 2020.

Submit Written Comments to: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, email bta@bta.wa.gov, fax 360-586-9020, by February 21, 2020.

Assistance for Persons with Disabilities: Contact Keri Lamb, phone 360-753-5446, fax 360-586-9020, email bta@bta.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of tax appeals proposes this new WAC to clarify what is considered a part of the board's official record. Continuance from previous proposal.

Statutory Authority for Adoption: RCW 82.03.170.

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

Name of Proponent: Washington board of tax appeals, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Keri Lamb, 1110 Capitol Way South, Suite 300, Olympia, WA 98501, 360-753-5446.

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 19.85.025(3) as the 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.

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 regulation applies only if a business files an annual property tax appeal. The proposed rule does not impose more than a minor cost on such businesses. Additionally, it does not create any new filing or recordkeeping requirements that have not already been established as a procedural requirement for presenting evidence at the board of tax appeals.

January 14, 2020
Kate Adams
Executive Director

Chapter 456-11 WAC

HEARINGS—PRACTICE AND PROCEDURE

NEW SECTION

WAC 456-11-015 Record evidence. (1) Except as otherwise provided by law, the board holds a de novo hearing on the evidence before it.

(2) The board will not consider the written record of a county board of equalization proceeding, except as provided in this rule. The board does not receive or consider audio recordings of a county board of equalization proceeding.

(3) A party may request by motion, no later than the deadline set by the board for submitting new evidence, that the board consider evidence from the written record of a county board of equalization proceeding. The motion must comply with the board's rules on motions and must identify the evidence to be considered by:

(a) Description or title of evidence;

(b) Identifying date, if any;

(c) Page number, if any; and

(d) Other identifying information as may be required by the board by order or rule.

(4) Upon request, the board will provide the parties with an electronic copy of the written record of a county board of equalization proceeding. Paper copies may be requested at the same cost per page as for a public record request.

(5) The board does not receive the written record or any audio recording of any department of revenue proceeding.

WSR 20-03-102
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed January 14, 2020, 5:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-021.

Title of Rule and Other Identifying Information: Hours of availability and suitable work: Adjusting the hours unemployment claimants must be available for work in order to be eligible for unemployment benefits and updating factors used to determine suitable work.

Hearing Location(s): On March 24, 2020, at 9:00 a.m., at the John L. O'Brien Building, 504 15th Avenue S.E., House Hearing Room C, Olympia, WA 98501.

Date of Intended Adoption: March 27, 2020.

Submit Written Comments to: Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by March 23, 2020.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email teckstein@es.wa.gov, by March 16, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Under current rules, unemployment claimants must be available for work during all the usual hours and days of the week customary for their occupation. This requirement can be unobtainable for some claimants who work in 24/7 professions, especially those claimants who have family caregiving responsibilities. Rule making is necessary to set a more obtainable standard.

Additionally, rule making is necessary to include shifts of employment as a factor used to determine suitable work, consistent with Unemployment Insurance Program Letter No. 41-98.

Reasons Supporting Proposal: Current availability requirements force many Washington workers to make difficult choices between providing care necessary for family members and being available for work during unattainable days and hours. Approximately forty percent of industries in Washington are classified as having customary hours of twenty-four hours a day, seven days a week. This forces claimants to be available morning, afternoons, and overnight, even if the claimant had not previously worked shifts during those time frames. Many claimants are unable to accept work different from previous work schedules due to obligations for providing care for a child or vulnerable adult, which precludes the claimant from receiving unemployment insurance benefits. By removing the requirement that claimants be available for "all of" the customary hours of the industry, claimants are provided flexibility to receive UI benefits while the claimant searches for new suitable employment while meeting obligations for providing care to family members.

Clarifying the definition of suitable work to include previous shifts of employment provides a level of protection for workers. The amended definition of suitable work removes hardships on claimants while protecting charged employers by preventing claimants from imposing undue restrictions on availability.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department. RCW 50.12.042 provides specific rule-making authority regarding the requirement that unemployment claimants be able to work, available for work, and actively seek work. RCW 50.20.100 provides rule-making authority to determine what factors are used to determine suitable work.

Statute Being Implemented: RCW 20.12.042.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, 360-890-3635.

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 Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, https://esd.wa.gov/newsroom/ui-rule-making/.

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. From July 1, 2017, through July 1, 2019, the department denied 22,105 claims for claimants who were not available during the work hours and days usual for their type of work. Each claim, on

average, represents $7,285 in charged benefits to an employer. When considering the total denied claims spread across the state-wide employer base, the proposed rule would increase each employers' average charged benefits by $130.48 per year. An increase of this size is unlikely to increase the tax liability for many employers.

January 14, 2020
Dan Zeitlin
Employment Security Policy Director

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-140-200 What happens if I certify that I am not able to or available for work? (1) Benefits will be denied or reduced ((~~under RCW 50.20.130~~)) in accordance with WAC 192-170-020 without requiring additional information or interview if you file a weekly claim that:

(a) States you were not available for work or were not able to work ((~~on one or two days of a week or weeks being claimed~~)) for at least forty hours during the week during the hours customary for your trade or occupation; and

(b) ((~~The day or days to which this condition applies are normal working days in your regular occupation; and~~

~~(c)~~)) The information supplied clearly supports this finding.

((~~This reduction applies only to the day or days for which available information shows you are ineligible for benefits.~~

~~(2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that:~~

~~(a) States you were not available for work or were not able to work for three or more days of a week or weeks being claimed; and~~

~~(b) The days to which this condition applies are normal working days in your regular occupation; and~~

~~(c) The information supplied clearly supports this finding.~~

~~This denial applies only to the week or weeks for which you specifically indicate you are ineligible for benefits.~~

~~(3)~~)) (2) Benefits will be denied under RCW 50.20.010 (1)(c) without requiring additional information or interview if you file a weekly claim that indicates you are not able to work or not available for work because of a circumstance that is expected to continue beyond the immediate week or weeks claimed.

This denial will begin with the first week claimed in which the circumstance applies and continue until the circumstance no longer exists.

((~~(4)~~)) (3) Any denial of benefits under subsections ((~~(2) and (3)~~)) (1) and (2) of this section will be issued without delay. The department will not issue a written decision when benefits are reduced under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-200-005 Disqualification of students—RCW 50.20.095. (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of twelve or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for twelve or more hours of instruction. You must certify to the department that you are not currently registered for twelve or more credit hours and will not be registered for twelve or more credit hours for at least sixty days. If you begin classes within sixty days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than sixty days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

(c) Show by a preponderance of the evidence that ((~~your student status does not significantly interfere with your actual availability for work when you apply~~)) you meet the availability requirements in chapter 192-170 WAC.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-010 Availability for work—RCW 50.20.010. (1) In general, the department will consider you available for work if you:

(a) Are willing to ((~~work~~)) accept suitable full-time, part-time, and ((~~accept~~)) temporary work during ((~~all of~~)) the usual hours and days of the week customary for your occupation.

(i) You are not required to ((~~be available for~~)) accept part-time or temporary work if it would substantially interfere with your return to your regular occupation.

(ii) The requirement to be ((~~available for~~)) willing to accept full-time work does not apply under the circumstances described in WAC 192-170-050 (1)(b) or 192-170-070;

(b) Are capable of accepting and reporting for any suitable work within the labor market in which you are seeking work;

(c) Do not impose conditions that substantially reduce or limit your opportunity to return to work at the earliest possible time;

(d) Are available for work for at least forty hours during the week during the hours customary for your trade or occupation; and

(e) Are physically present in your normal labor market area, unless you are actively seeking and willing to accept work outside your normal labor market.

(2) You are not considered available for work if you fail or refuse to seek work as required in a directive issued by the department under WAC 192-180-010.

NEW SECTION

WAC 192-170-020 Benefit reductions due to only partial availability—RCW 50.20.130(1). (1) If you are available for at least forty hours during the week during the hours customary for your trade or occupation, benefits will not be reduced under RCW 50.20.130(1).

(2) If you are available for at least thirty-five but less than forty hours during the week during the hours customary for your trade or occupation, your weekly benefit amount will be reduced by one-seventh.

(3) If you are available for at least thirty but less than thirty-five hours during the week during the hours customary for your trade or occupation, your weekly benefit amount will be reduced by two-sevenths.

(4) If you are not available for at least thirty hours during the week during the hours customary for your trade or occupation, benefits will be denied under RCW 50.20.010 (1)(c).

AMENDATORY SECTION (Amending WSR 02-08-072, filed 4/2/02, effective 5/3/02)

WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110. (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "disability" means a sensory, mental, or physical condition that:

(i) Is medically recognizable or diagnosable;

(ii) Exists as a record or history; and

(iii) Substantially limits the proper performance of your job.

(b) The department may determine in individual circumstances that less than full-time work is suitable if:

(i) The disability prevents you from working the number of hours that are customary to the occupation;

(ii) You are actively seeking work for the occupation and hours you have the ability to perform; and

(iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, shifts of employment, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

(i) The restrictions on the tasks or work-related functions you can perform;

(ii) The restrictions on the number of hours you can work, if any;

(iii) The expected duration of the disability and resulting work restrictions; and

(iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

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

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

AMENDATORY SECTION (Amending WSR 05-19-018, filed 9/9/05, effective 10/10/05)

WAC 192-170-070 What are the availability requirements for part-time eligible workers?—RCW 50.20.119. ((~~(1)~~)) If you are a part-time eligible worker as defined in RCW 50.20.119((~~, you may limit your availability for work to~~)):

(1) You must be willing to accept work of 17 or fewer hours per week. You may refuse any job of 18 or more hours per week.

(2) You must be available for work at least 17 hours per week during the usual hours and days of the week customary for your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must ((~~be available for work all days of the week that are usual for your occupation, even if you have not worked those days in the past. If you are not available for work on any day that is a usual day of work for your occupation, we will reduce your benefits under RCW 50.20.130. For example, if your occupation usually works Monday through Friday, you must be available for work Monday through Fri-~~

~~day, even if you have only worked weekends in the past~~)) not impose conditions on your availability that substantially reduce or limit your opportunity to return to work at the earliest possible time.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-090 Incarceration. (1) If you were previously warned that your continued employment was in jeopardy because of poor attendance, and you engage in illegal activities where you are aware there is a clear possibility of arrest and detention, misconduct may be established under RCW 50.04.294 (2)(d) or (e).

(2) If you are jailed but later released without having been charged with or convicted of a crime, the separation is not considered misconduct except as provided in subsection (3) of this section.

(3) If your employer discharges you for absenteeism or job abandonment because you failed without good cause to notify the employer of your incarceration or anticipated release date, such failure may be considered misconduct.

(((~~(4) You will be considered unavailable for work during any days in which you are incarcerated unless those days are not part of your regular work week based on your occupation. Example: You are sentenced to a specific time in custody but allowed to serve your time on weekends. If weekends are not part of your regular work week, you will be considered available for work.~~))

WSR 20-03-108
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 15, 2020, 1:27 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 246-272-3000 Large on-site sewage system fees. Increasing existing fees and proposing new fees.

Hearing Location(s): On March 2, 2020, at 1:00 p.m., at the Department of Health, Town Center 1, Room 163, 101 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: March 9, 2020.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email https://fortress.wa.gov/doh/policyreview, by March 2, 2020.

Assistance for Persons with Disabilities: Contact Lisette Anson, phone 360-236-3301, TTY 360-833-6388 or 711, email lisette.anson@doh.wa.gov, by February 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal increases fees for all large on-site sewage systems (LOSS). The proposal increases the annual base fees from $150 to $450 in 2020 and from $450 to $608 in 2021 and the LOSS design flow fee of approved system capacity from $.01 to $.03 per gallon in 2020 and from $.03 to $.0405 per gallon in 2021. The proposal also includes increases on project fees and adds a late application processing fee for systems that do not submit their annual operating permit applications in a timely manner. The department of health completed an economic impact analysis that examined the LOSS program's revenues and expenses to determine the amount of the increases.

Reasons Supporting Proposal: The program expenses have increased and the program is not generating sufficient revenue to cover the cost of operating the program. The proposed fee increases are necessary to cover the program's operating costs and to offer technical assistance and operator training to continue protecting the health and safety of Washington residents and the environment.

Statutory Authority for Adoption: RCW 70.118B.030, 43.70.110, 43.20B.020, 43.70.250.

Statute Being Implemented: RCW 70.118B.030, 43.70.-110, 43.20B.020, 43.70.250.

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

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

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Doritha Ramey, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3318.

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)(vi) exempts rules that set or adjust fees or rates pursuant to legislative 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 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

January 10, 2020
Lauren Jenks
Assistant Secretary

AMENDATORY SECTION (Amending WSR 10-16-108, filed 8/2/10, effective 9/2/10)

WAC 246-272-3000 Large on-site sewage system fees. This section establishes fees for large on-site sewage systems (LOSS) as regulated under chapter 246-272B WAC.

(1) The following ((~~fees apply to LOSS review and inspection.~~

~~(a) The owner shall pay a nonrefundable base project review fee of eight hundred dollars at the time the project is submitted. The nonrefundable fee covers up to eight hours of review time.~~

~~(b) The owner shall pay one hundred dollars per hour for additional review time over eight hours for new construction LOSS.~~

~~(c) The owner shall pay one hundred dollars per hour for LOSS review not included in (a) or (b) of this subsection.~~

~~(d) The owner shall pay a flat rate of five hundred dollars for each presite and final inspection.~~

~~(2) The owner shall pay all outstanding fees before any department approval is granted.~~

~~(3) Operating permit fees consist of a base fee for each LOSS plus a LOSS volume fee as shown below.~~

~~Category~~	~~Base Fee~~	~~LOSS Volume Fee~~
~~Operating permit and annual renewal~~	~~$150.00~~	~~$.01 for each gallon of approved daily design flow~~

~~(4) For initial operating permits, the owner shall pay the operating permit fee at the time the application is submitted to the department.~~

~~(5) For renewal of operating permits, the owner shall pay the operating permit fee at the time the renewal application is submitted to the department.~~)) nonrefundable fees apply to engineering and environmental reviews and inspections of LOSS.

(a) New and modification project reviews. The owner shall pay a project review base fee of eight hundred forty-eight dollars at the time the project application is submitted to the department. The fee covers up to eight hours of review time. The owner shall pay one hundred six dollars per hour for additional review time over eight hours.

(b) Reduced modification project reviews. The owner may request and the department may approve a reduced project review base fee of four hundred twenty-four dollars at the time the project application is submitted to the department. The fee covers up to four hours of review time. The owner shall pay one hundred six dollars per hour for additional review time over four hours.

(c) Review of LOSS documents in response to permit conditions. The owner shall pay a fee based on one hundred six dollars per hour.

(d) Review of LOSS documents not associated with project reviews or permit conditions under (a), (b) or (c) of this subsection. The owner shall pay a fee based on one hundred six dollars per hour.

(e) Site inspections and inspections related to enforcement events. The owner shall pay a fee of one thousand dollars.

(f) Final inspections. The owner shall pay a fee of five hundred dollars.

(2) Initial operating permit and annual operating permit renewals. The owner shall pay nonrefundable operating permit fees consisting of a base fee plus a department-approved LOSS design flow fee as shown in Table A Operating Permit Fees.

Table A
Operating Permit Fees

Operating Permit Fees	Effective July 1, 2020	Effective July 1, 2021
Base fee	$450.00	$608.00
Department-approved LOSS design flow fee	$.03 per gallon	$.0405 per gallon

(3) Initial operating permits. The owner shall pay operating permit fees at the time the operating permit application is submitted to the department in accordance with WAC 246-272B-02150 and 246-272B-02200.

(4) Renewal of annual operating permits. The owner shall pay annual operating permit fees to the department at least thirty days prior to the expiration of the current operating permit in accordance with WAC 246-272B-02650.

(5) Late applications. The department will assess a ninety-four dollar late application processing fee to LOSS owners that do not submit an annual operating permit at least thirty days prior to the permit's expiration date.

(6) Outstanding fees. LOSS owners shall pay all outstanding fees under this section before the department will issue a notice to proceed, project approval, or annual operating permit.

WSR 20-03-118
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed January 16, 2020, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-067.

Title of Rule and Other Identifying Information: Chapter 246-710 WAC, the department of health (department) is proposing: (1) Updating the coordinated children's services rules to current standards; (2) amending to include accessing the department as a payer of last resort, and repayment to the department under certain circumstance; and (3) adding new sections to include programs such as neurodevelopmental centers (NDC).

Hearing Location(s): On March 3, 2020, at 1:00 p.m., at the Department of Health, Town Center 1, Room 166, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: March 4, 2020.

Submit Written Comments to: Ashley Noble, Department of Health, P.O. Box 47380, Olympia, WA 98504-7903, email https://fortress.wa.gov/doh/policyreview, by March 3, 2020.

Assistance for Persons with Disabilities: Contact Ashley Noble, phone 360-236-3736, TTY 360-833-6388 or 711, email ashley.noble@doh.wa.gov, pchrules@doh.wa.gov, by February 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The children and youth with special health care needs (CYSHCN) program at the department is a required program under the maternal and child health block grant (MCHBG) from the United States Health Resources and Services Administration (HRSA). This [The] proposed rule changes will fulfill that requirement by

ensuring clear, consistent guidance for the program and clients so they can better understand the supports available and have better access to services.

Reasons Supporting Proposal: The department continues to need this rule to administer the CYSHCN program. Much of this rule has not been updated since 2003, which has resulted in the existing requirements and language in the rule becoming outdated. Several sections of the rule also need to be expanded to outline the policies and procedures for the department's programs, such as accessing MCHBG funds as a payer of last resort, and repayment to the department under certain circumstances. Additionally, a new section is needed to describe the NDC designation and administration of funds, as well as data sharing requirements and procedures.

Updating this rule will provide stable guidance and direction for these programs, establish protocols and procedures for services, supports, and data sharing, simplify our program contracts, and provide comprehensive guidance for our NDCs.

Statutory Authority for Adoption: RCW 43.70.040, 43.70.080, 43.70.120.

Statute Being Implemented: RCW 43.70.040, 43.70.080, 43.70.120.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ashley Noble, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3736.

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 Ashley Noble, P.O. Box 47830, Olympia, WA 98504-7830, phone 360-236-3736, TTY 360-833-6388 or 711, email pchrules@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 rule would codify existing practices and not require any changes that would impact business practices or otherwise affect businesses in Washington state.

January 15, 2020
John Wiesman, DrPH, MPH
Secretary

Chapter 246-710 WAC

((~~COORDINATED CHILDREN'S SERVICES~~)) CHILDREN AND YOUTH WITH SPECIAL HEALTH CARE NEEDS (CYSHCN) PROGRAM

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-001 Declaration of purpose. ((~~The following rules implement RCW 43.20.140 and chapter 43.70 RCW. The state board of health may develop rules that are necessary to implement RCW 43.20A.635 authorizing the secretary of the department of health to administer a program of services for children with special health care needs.~~)) The purpose of the ((~~CSHCN~~)) children and youth with special health care needs (CYSHCN) program is to ((~~develop, extend, and improve services and service systems for locating, diagnosing, and treating children with special health care needs within available resources~~)) assure comprehensive, coordinated, integrated, family-centered, and culturally competent systems of care. The CYSHCN program focuses on developing, extending, and improving services and service systems for identifying, diagnosing, and treating infants, children, and youth up to eighteen years of age who have or are at risk of developing chronic physical, developmental, behavioral, or emotional conditions, or any combination thereof, and require health and related services of a type beyond what is required by children generally. The program works to ensure CYSHCN are able to achieve the healthiest lives possible and develop to their fullest potential by building the capacity of communities to support CYSHCN and their families while developing and enhancing the capacity of statewide systems of care that are comprehensive, coordinated, integrated, family-centered, community-based, and culturally appropriate with the purpose of supporting and promoting health equity.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Children and youth with special health care needs" or "CYSHCN" means children and youth up to eighteen years of age who have or are at increased risk of developing chronic physical, developmental, behavioral, or emotional conditions which require health and related services of a type or amount beyond that required by children generally.

(2) "Client" means ((~~an individual~~)) a child or youth with special health care needs((~~, seventeen years of age or younger, who is being served by~~)) who is receiving services from a local ((~~CSHCN~~)) CYSHCN agency.

(((~~(2) "Children with special health care needs" means children with disabilities or handicapping conditions; chronic illnesses or conditions; health related educational or behavioral problems; or children at risk of developing such disabilities, conditions, illnesses or problems.~~)))

(3) ((~~"CSHCN" means the children with special health care needs program~~)) "CYSHCN program" means the program administered in the state of Washington by the department funded through the federal Title V Maternal Child Health block grant and other discretionary funding when available.

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

(5) "DX/TX funds" means diagnostic and treatment funds managed by the department that are used to pay for medically necessary services which are not covered by the HCA-medicaid program or other funding sources responsible and available for the care of a child or youth participating in the CYSHCN program.

(6) "Health care authority," "HCA," or "authority" means the state agency responsible for the administration of Washington state's medicaid program.

(7) "Local ((~~CSHCN~~)) CYSHCN agency" means the local health jurisdiction or other ((~~agency locally administering the CSHCN~~)) local agency designated by the department to administer the CYSHCN program for the county where the client resides ((~~in the state of Washington.~~

~~(6) "Service systems" means community-based systems of services such as primary and specialty medical services, early intervention, special education, and social and family support services for children with special health care needs and their families.~~

~~(7)~~)).

(8) "Nonphysician provider" means any medical, behavioral, developmental or social support worker or organization that has been determined by the department to provide services for CYSHCN, that does not hold an allopathic or osteopathic physician's license.

(9) "Services" means health-related interventions((~~,~~)) including, but not limited to:

(a) Early identification((~~,~~));

(b) Referrals for additional screening and diagnostic services;

(c) Care coordination((~~,~~));

(d) Case management;

(e) Family support;

(f) Health education and life skills;

(g) Medical, ((~~surgical~~)) habilitative and ((~~rehabilitation care,~~)) rehabilitative services; and

(h) Equipment provided in ((~~hospitals, clinics, offices, and homes~~)) the client's home or community setting by local ((~~CSHCN~~)) CYSHCN agencies, physicians and ((~~other health care~~)) nonphysician providers.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-030 ((~~Program limitations.~~)) Scope and eligibility. (((~~(1) The department may reduce the scope of CSHCN services and impose or revise funding limitations on certain services when required for budgetary reasons to accommodate available funding.~~

~~(2) Financial eligibility for a client must be determined annually when health-related services and equipment are paid for with CSHCN funds. Financial eligibility will be determined according to national standards of living for low-income families such as federal poverty levels or state median income adjusted for family size. Financial eligibility is not entitlement to CSHCN services.~~))

(1) A child, youth, or family with a current address in Washington state is eligible for services if the child or youth is younger than eighteen years of age, and has one or more of the following:

(a) A disability or disabling condition(s);

(b) Chronic illness or condition(s);

(c) Health-related educational or behavioral condition(s); or

(d) A risk of developing disabilities, chronic conditions, or health-related educational and behavioral conditions.

For the purposes of subsection (1) of this section, length of stay in the state is not considered in determining residency.

(2) Financial eligibility is not considered in determining client eligibility for the CYSHCN program except as outlined in subsection (3) of this section regarding DX/TX funds.

(3) Some services may be covered for established clients who are eighteen to twenty-one years of age, provided that the service or treatment:

(a) Was previously planned as a continued stage of treatment required to achieve health goals;

(b) Was initiated before the client turned eighteen;

(c) Has a definable treatment course with a clear end point; and

(d) Will not be authorized after a client's twenty-first birthday.

(4) A client may, at the discretion of the department, be eligible for DX/TX funds if they meet either of the following:

(a) Eligible for medicaid without monthly premiums; or

(b) Have current eligibility approved by the HCA-medicaid program, or the women, infants, and children program.

(5) A client shall request and the department shall determine DX/TX financial eligibility annually.

(6) DX/TX funds are not an entitlement. DX/TX funds are subject to medical necessity review by the local CYSHCN agency and availability of funding. The department may reduce the scope of CYSHCN services and impose or revise funding limitations on certain services when required for any reason including, but not limited to, budgetary reasons.

(7) For the purposes of this section, "medical necessity" means services which are reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent worsening of conditions that endanger life, cause suffering or pain, result in illness or infirmity, threaten to cause or aggravate a disability or health condition, for which there is no other equally effective, more conservative, or substantially less costly course of treatment available or suitable for the client. For the purposes of this definition, a course of treatment may include treatment, observation, or no treatment at all.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-050 Authorization of ((~~services~~)) diagnostic and treatment (DX/TX) funds. ((~~Authorization for~~)) The department may authorize diagnostic and treatment services paid for with ((~~CSHCN~~)) CYSHCN funds ((~~will be accomplished~~)) in accordance with the following:

(1) ((~~Financial eligibility for a client has been determined.~~

~~(2) A request for services to be paid for with CSHCN funds has been reviewed for consistency with program directions. Services must be recognized as an acceptable form of treatment by a significant portion of the professional community.~~

~~(3) No services will be authorized~~)) The department shall make decisions about using DX/TX funds on a case-by-case basis. DX/TX funds are not intended for those items that are part of usual daily living expenses that are the responsibility of parents/caregivers. DX/TX funds are not entitlement funds

and the local CYSHCN agency or the department may choose not to use those funds.

(2) The department may only make a decision about whether to pay for services with DX/TX funds once all of the following have been completed:

(a) Determination of financial eligibility for a client;

(b) Department receipt, review, and approval of a HSA form submitted electronically to the department by the local CYSHCN agency;

(c) Services must be recognized as an acceptable form of treatment by a significant portion of the professional community; and

(d) Determination by the department that the services are medically necessary.

(3) The department will not authorize payment for services for out-of-state providers if an equivalent service is available within the state of Washington. ((~~However, use of resources in bordering states will be authorized when appropriate.~~)) If an equivalent service is not available in Washington state, services for out-of-state providers may be approved by the department on a case-by-case basis.

(4) For the purposes of this section, "Health Services Authorization form" or "HSA form" means an electronic form which must be completed by the local CYSHCN agency and submitted to the department for approval or denial in order to access DX/TX funds to pay for service, treatment, or equipment.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-060 Qualifications of ((~~hospitals and~~)) providers. ((~~Providers of services paid for with CSHCN funds must meet the following minimum qualifications.~~

~~(1) Hospitals will be:~~

~~(a) Accredited by the joint commission on the accreditation of health care organizations; and~~

~~(b) Licensed in the state where the hospital is located.~~

~~(2)~~)) The department shall determine the eligibility of qualified medical and nonmedical providers to receive payment out of DX/TX funds. A service may not be authorized for out-of-state providers if an equivalent service is available within the state of Washington. The department may authorize the use of resources in bordering states when appropriate. Providers of services paid for with DX/TX funds shall meet the following minimum qualifications:

(1) Physicians ((~~will be~~)), advanced registered nurse practitioners (ARNPs), and physician's assistants (PAs) must:

(a) ((~~Licensed to practice medicine in Washington, or other state~~)) Hold an active license in the jurisdiction where they practice; ((~~and~~

~~(b) Board-certified or board-eligible by the appropriate specialty board.~~

~~(3) Providers other than physicians will be:~~

~~(a) Licensed or certified in Washington or in the state where they practice; or~~

~~(b) Accredited by the appropriate national professional organization when there is no state licensure or certification process.~~))

(b) Be licensed, certified, or registered with the appropriate state authority and in good standing in the jurisdiction where they practice;

(c) Have no record of disciplinary action taken on his or her license in the previous five years; and

(d) Not be listed in the federal exclusions database.

(2) All other health providers not listed in subsection (1) of this section must:

(a) Where state or territorial licensing or certification exists for the person's profession, be:

(i) Licensed, certified, or registered with the appropriate state authority and in good standing in the jurisdiction where they practice; and

(ii) Have no record of disciplinary action taken on his or her license or certification in the previous five years; or

(b) Where state or territorial licensing or certification does not exist for the person's profession, be:

(i) Accredited by the appropriate national professional organization; and

(ii) Have no record of discipline or misconduct related to that accreditation within the previous five years.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-070 Provider diagnostic and treatment fund fees and payments. (1) Payments to providers ((~~of services~~)) using ((~~CSHCN~~)) DX/TX funds ((~~will~~)) must be made using the current ((~~CSHCN~~)) CYSHCN program standards and payment schedules, including the Washington state ((~~department of social and health services medical assistance administration~~)) HCA-medicaid fee schedule and the ((~~CSHCN~~)) CYSHCN program supplemental fee schedule.

(2) A provider ((~~will accept the fees paid under this section as full payment for~~)) shall consider payment to have been made in full for the services rendered when accepting the fees paid under this section.

(3) A provider may not bill or in any way seek billing or payment from a client for any remaining balances, unless the local CYSHCN agency has arranged for such billing before services were provided.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-080 Third-party resources. ((~~CSHCN is a secondary payer to all private and other public funded health programs. The department may pay for services with CSHCN funds only after payment by all entitlement programs and by all other private and public funding resources~~)) The department shall be the payor of last resort to all private and other publicly funded health programs. The department may pay for services with DX/TX funds only after payment by all entitlement programs and all other private and public funding resources have been exhausted, except where prohibited by federal law.

AMENDATORY SECTION (Amending WSR 99-01-100, filed 12/17/98, effective 1/17/99)

WAC 246-710-090 Repayment. Repayment to the department from the provider, family or other source is required should insurance benefits, trusts, court-awarded damages or ((~~like~~)) similar funds become available, and where payments have been made to the ((~~family~~)) vendor or provider for services paid for by ((~~CSHCN~~)) DX/TX funds. A provider shall provide repayment to the department for overpayment made for services paid out of DX/TX funds. In instances where repayment is required, the vendor or provider must refund the DX/TX payment to the local CYSHCN agency payable to the department which the local CYSHCN agency must transfer to the department.

NEW SECTION

WAC 246-710-100 Neurodevelopmental centers (NDCs). (1) For the purposes of this section, "neurodevelopmental center (NDC) of excellence" means a department-designated nonprofit agency, hospital, or other organization located in Washington state that provides multidisciplinary pediatric assessment and treatment services including outreach, evaluation, diagnosis, treatment planning, and specialized therapies to CYSHCN up to twenty-one years of age.

(2) NDCs provide evaluation, diagnosis, and coordinated therapies and may also, at the discretion of a child's primary care provider, refer for additional medical specialty consultation.

(3) NDCs may be designated by the department as neurodevelopmental centers of excellence. In order to be considered for NDC designation by the department, a NDC shall:

(a) Be licensed or capable of becoming licensed to do business in the state of Washington;

(b) Maintain a formal relationship with a designated medical director with specialized pediatric training; and

(c) Employ occupational therapists licensed under chapter 18.59 RCW, physical therapists licensed under chapter 18.74 RCW, and speech language pathologists licensed under chapter 18.35 RCW with pediatric training on staff.

NEW SECTION

WAC 246-710-110 Data sharing. (1) The department's CYSHCN program has a federal mandate under Title V of the Social Security Act (42 U.S.C. 701 et seq.) to ensure that the HCA-medicaid program is made aware of medicaid-enrolled recipients of services through Title V. The purpose of this mandate is to ensure the medicaid agency is able to identify a child or youth who has special health care needs in order for the authority to offer care coordination and other services.

(2) The department shall take appropriate measures to safeguard any information gathered, and shall share information with only those agencies with a legitimate need to know or to comply with federal law. Consent to share client information with agencies outside of the local CYSHCN agency requires a separate release of information form signed by the parent or guardian.

(3) The department may create and release data files for public use, provided that these files do not contain any direct or indirect patient identifiers.

(4) The following definitions apply for the purpose of this section:

(a) "Direct identifier" means a single data element that identifies an individual person.

(b) "Indirect identifier" means a single data element that on its own might not identify an individual person, but when combined with other indirect identifiers is likely to identify an individual person.

WSR 20-03-125
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed January 17, 2020, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-093.

Title of Rule and Other Identifying Information: WAC 246-840-342 and 246-840-360 pertaining to advanced registered nurse practitioner (ARNP) clinical practice hour requirements. The nursing care quality assurance commission (commission) is proposing amendments to ARNP clinical practice hour requirements for license renewal and licensure by endorsement.

Hearing Location(s): On March 13, 2020, at 9:00 a.m., at the Department of Health, Town Center 2, Conference Room 166 and 167, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: March 13, 2020.

Submit Written Comments to: Brandon Williams, P.O. Box 47864, Olympia, WA 98504, email https://fortress.wa.gov/doh/policyreview, fax 360-236-4738, 360-236-4239, by March 4, 2020.

Assistance for Persons with Disabilities: Contact Brandon Williams, phone 360-236-4239, fax 360-236-4738, TTY 360-833-6388 or 711, email brandon.williams@doh.wa.gov, by March 4, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing amendments to WAC 246-840-342 and 246-840-360 pertaining to ARNP clinical practice hour requirements for license renewal and licensure by interstate endorsement. The advanced practice subcommittee (APSC) completed a literature review and determined that the requirement for ARNPs to submit proof of two hundred fifty clinical practice hours upon license renewal or initial interstate endorsement is not necessary due to other requirements for license renewal or initial interstate endorsement.

The proposed amendments remove the requirements for the applicant to complete a minimum of two hundred fifty [hours] of advanced clinical practice for each designation in the ARNP role within the last two years. The amendment removes requirements in both the rule language for ARNP licensure renewal, and ARNP applications by interstate endorsement.

Reasons Supporting Proposal: For an individual to maintain an active ARNP license in Washington state, the commission requires proof of an active national certification by one of the approved certifying bodies listed in WAC 246-840-302. Because these certifying bodies have continuing education and practice hour requirements, the current rule is redundant to the requirements of certifying bodies and may create additional barriers to practice.

Statutory Authority for Adoption: RCW 18.79.110, 18.79.160.

Statute Being Implemented: RCW 18.79.110, 18.79.160.

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: Brandon Williams, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4239; 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 Brandon Williams, P.O. Box 47864, Olympia, WA 98504, phone 360-236-4239, fax 360-236-4738, TTY 360-833-6388 or 711, email brandon.williams@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, the proposed rules only impact provider licensing requirements.

January 16, 2020
Paula R. Meyer, MSN, RN, FRE
Executive Director
Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-342 Licensure for ARNP applicants by interstate endorsement. (1) An applicant for interstate endorsement for Washington state licensure as an ARNP 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); and

(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 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; and

(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 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 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 ARNP applicant needing to complete the 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 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-360 Renewal of ARNP licensure. (1) An applicant applying for ARNP license renewal, 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; and

(c) 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) 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 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;

(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).~~)))

WSR 20-03-126
PROPOSED RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)
[Filed January 17, 2020, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-124, 18-09-066, 18-01-123, 18-09-063.

Title of Rule and Other Identifying Information: Chapter 246-945 WAC, the pharmacy quality assurance commission (commission) is proposing a new chapter of rule to consolidate multiple chapters of existing rules into one administrative chapter that covers the practice of pharmacy, including: general provisions, general licensing, professional standards, and operational standards.

Hearing Location(s): On March 5, 2020, at 9:00 a.m., at the Department of Health, 111 Israel Road S.E., Town Center Two, Room 166/167, Tumwater, WA 98501.

Date of Intended Adoption: March 5, 2020.

Submit Written Comments to: Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by February 28, 2020.

Assistance for Persons with Disabilities: Contact Doreen Beebe, phone 360-236-4834, TTY 360-833-6388 or 711, email doreen.beebe@doh.wa.gov, by February 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In September 2017 the commissions was able to dedicate the time and resources necessary to update their rules. Current pharmacy rules regulating the practice of pharmacy, facilities, production, distribution and drugs are spread over thirty-four chapters. Many of these chapters are outdated and overly prescriptive, limiting the ability for licensees to adapt to changes in practice and technological advances.

By creating this new chapter, the commission is repealing all currently existing WAC chapters under the commission's jurisdiction. The standards set forth in this new chapter were discussed over the course of two years with conversations between the commission members, commission staff and the public to provide feedback.

The proposed new rules incorporate current WAC, amended WAC, and newly created WAC. The proposed rules will also include the hospital pharmacy associated clinics emergency rules, and make those rules permanent. The proposed new rules incorporate current practice, including some current policy and interpretative statements, while allowing for flexibility as practice evolves. New rules are needed in order to update outdated practices, eliminate redundancies, and allow for professional judgment while still ensuring patient safety and access to quality care.

The commission is proposing a new chapter of administrative rules that covers the practice of pharmacy including: (1) General provisions, (2) general licensing, (3) professional standards, and (4) operational standards. Each of these four topics are covered in separate parts of the new chapter with additional subparts grouping like topics together for ease of access.

The first part of the new chapter is general provisions that apply to the practice of pharmacy as well as all drugs under the commission's authority. This will include operations for the commission including inspection requirements, prescriptions and refill requirements, labeling requirements, record retention, advertising, legend drugs, controlled substances, precursors and home dialysis. In addition, definitions that apply throughout the pharmacy WAC chapter.

Part two of the new chapter is general licensing for all personnel, facilities and production or distribution under the commission's authority. This will include licensing and registration requirements, continuing education, qualifications, renewals and associated fees.

Part three of the new chapter is professional standards for all pharmacy personnel under the commission's jurisdiction. This will include professional responsibilities, unauthorized conduct, delegation and nondelegable tasks, counseling, refills and continuity of care, prescription modification, substitution and transfers, as well as collaborative drug therapy agreements, monitoring of drug therapy and patients' rights.

Part four of the new chapter is operational standards for all facilities under the commission's jurisdiction. This chapter will include building standards, dispensing and reporting requirements, technology implementation, and the management of drugs. Proposed rules for this chapter also include requirements for animal control agencies, wholesalers, and distributors.

Much of this new chapter is taking current WAC and updating them to meet current practice, but there are a few sections of significant change, this includes mandating electronic recordkeeping for all facilities, refilling and adapting of prescriptions by pharmacist, and requiring that all prescriptions be electronically transferred.

Reasons Supporting Proposal: The proposed new rules incorporate current WAC, amended WAC, and newly created WAC. The proposed new rules incorporate current practice

while allowing for flexibility as practice evolves. New rules are needed in order to update outdated practices, eliminate redundancies, and allow for professional judgment while still ensuring patient safety and access to quality care.

The proposed rule should be supported to ensure that the commission has up to date rules that meet the practice as it is today and allow for adaptation as the practice evolves. This rule also places all rules under the commission's authority into a single chapter which will allow for licensees to only have to look to a single chapter rather than searching through multiple chapters to find the rules that apply to them.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590.

Statute Being Implemented: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Caitlin Gates, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2932; Implementation and Enforcement: Tracy West, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4988.

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 Lauren Lyles, Washington Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4853, fax 360-236-2901, TTY 360-833-6388 or 711, email lauren.lyles@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. Staff reviewed all costs imposed by this rule and determined that the costs are under the minimum threshold. Since this proposed new chapter covers several different North American Industry Classification System (NAICS) codes staff reviewed the thresholds for each individual code as well as the estimated costs identified. For wholesalers the threshold was $13,028, the proposed rule does not impose new costs that would exceed this threshold. The threshold for pharmacies and drug stores is $6,416, the proposed rule does not impose costs that would exceed this threshold. Staff also reviewed the electronic shopping threshold, which may apply to some of the other sections of the rule and the threshold is $4,943, the proposed rule does not impose costs that would exceed this threshold.

January 15, 2020
Tim Lynch, Chair
Pharmacy Quality Assurance Commission

Chapter 246-945 WAC

PHARMACY QUALITY ASSURANCE COMMISSION

PART 1 - GENERAL PROVISIONS

NEW SECTION

WAC 246-945-001 Definitions. The definitions in chapters 18.64 and 18.64A RCW and those in this section apply throughout this chapter unless otherwise stated.

(1) "ACPE" means accreditation council for pharmacy education.

(2) "Active ingredient" means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in that drug product in a modified form intended to furnish the specified activity or effect.

(3) "Adulterated" refers to a drug that was produced and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with WAC 246-945-550 as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

(4) "Animal control agency" means any agency authorized by law to euthanize or destroy animals; to sedate animals prior to euthanasia or to engage in chemical capture of animals.

(5) "Approved legend drugs" means any legend drug approved by the commission for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.

(6) "Audit trail" means all materials and documents required for the entire process of filling a prescription, which shall be sufficient to document or reconstruct the origin of the prescription, and authorization of subsequent modifications of that prescription.

(7) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(8) "Blood component" means that part of the blood separated by physical or mechanical means.

(9) "Central fill pharmacy" means a pharmacy contracting with an originating pharmacy, or having the same owner as an originating pharmacy, that provides centralized prescription filling on behalf of the originating pharmacy pursuant to these rules.

(10) "Chemical capture program" means wildlife management programs registered under RCW 69.41.080 and 69.50.320 to use approved legend drugs and controlled substance for chemical capture. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes.

(11) "Collaborative drug therapy agreement" or "CDTA" means a written guideline or protocol previously established and approved by a practitioner authorized to prescribe drugs that enables a pharmacist to exercise prescriptive authority.

(12) "Controlled substances" has the same meaning as RCW 69.50.101.

(13) "Controlled substance wholesaler" means a wholesaler licensed under RCW 18.64.046 to possess and sell controlled substances to a licensed pharmacy or other legally licensed or authorized person.

(14) "Commission" means the pharmacy quality assurance commission.

(15) "Counterfeit" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(16) "CPE" means continuing pharmacy education accredited by the ACPE.

(17) "Consultation" means:

(a) A communication or deliberation between a pharmacist and a patient, a patient's agent, or a patient's health care provider in which the pharmacist uses professional judgment to provide advice about drug therapy.

(b) A method by which the pharmacist meets patient information requirements as set forth in WAC 246-945-325.

(18) "Credential" means a license, certification, or registration under the chapters specified in RCW 18.130.040 issued to a person to practice a regulated health care profession. Whether the credential is a license, certification, or registration is determined by the law regulating the profession.

(19) "DEA" means the United States Drug Enforcement Administration.

(20) "Delegated tasks" means tasks that are performed pursuant to a pharmacist's direction, without the exercise of the pharmacy ancillary personnel's own judgment and discretion, and which do not require the pharmacy ancillary personnel's to exercise the independent professional judgment that is the foundation of the practice of the profession of pharmacy.

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

(22) "Dose" means the amount of drug to be administered at one time.

(23) "Drug(s) of concern" are those drugs identified by the commission as demonstrating a potential for abuse by all professionals licensed to prescribe, dispense, or administer such substances in this state.

(24) "Drug price advertising" means the dissemination of nonpromotional information pertaining to the prices of legend or prescription drugs.

(25) "Drug product" means a finished dosage form (e.g., tablet, capsule, solution) that contains an active drug ingredient generally, but not necessarily, in association with inactive ingredients. The term also includes a finished dosage form that does not contain an active ingredient but is intended to be used as a placebo.

(26) "Drug sample" means a unit of prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(27) "Drug standard and information sources" means industry recognized reference and resources.

(28) "Drug storage area" means an area where legend drugs, controlled substances, or other restricted items are stored, compounded, or dispensed.

(29) "Drug utilization review" includes, but is not limited to, the following activities:

(a) Evaluation of prescriptions and patient records for known allergies, rational therapy-contraindications, appropriate dose, and route of administration and appropriate directions for use;

(b) Evaluation of prescriptions and patient records for duplication of therapy;

(c) Evaluation of prescriptions and patient records for interactions between drug-drug, drug-food, drug-disease, and adverse drug reactions; and

(d) Evaluation of prescriptions and patient records for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes.

(30) "Electronic means" an electronic device used to send, receive, and/or store prescription information, including computers, facsimile machines, etc.

(31) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(32) "Enrolled student" means a student who has accepted an offer of admission in writing and the student has made the appropriate deposit securing admission to an accredited school or college of pharmacy.

(33) "Equivalent manager" means an individual authorized to act on behalf of a pharmaceutical firm not licensed as a pharmacy to serve as the primary contact for the department and is responsible for managing the facility operations which includes, but is not limited to, actively involved in and aware of the daily operations of the facility.

(34) "Export wholesaler" means any wholesaler authorized by the commission to export legend drugs and nonprescription (OTC) drugs to foreign countries.

(35) "FDA" - United States Food and Drug Administration.

(36) "Full-line wholesaler" means a drug wholesale distributor that is licensed under RCW 18.64.046 to possess and sell legend drugs, controlled substance and nonprescription drugs to a licensed pharmacy or other legally licensed or authorized person.

(37) "FPGEC" means foreign pharmacy graduate examination committee.

(38) "FPGEE" means foreign pharmacy graduate equivalency examination.

(39) "Generic substitution" means the act of switching between a branded drug and its therapeutically equivalent generic version.

(40) "Hospital" means any institution licensed under chapter 70.41 or 71.12 RCW or designated under RCW 72.23.020.

(41) "Hospital pharmacy" means that portion of a hospital licensed under RCW 18.64.043 which is engaged in the manufacture, production, preparation, dispensing, sale, or distribution of drugs, components, biologicals, chemicals, devices and other materials used in the diagnosis and treatment of injury, illness and diseases.

(42) "Hospital pharmacy associated clinic" or "HPAC" means an individual practitioner's office or multipractitioner clinic owned, operated, or under common control of a parent hospital or health system, where the physical address of the office or clinic is identified on a hospital pharmacy license.

(43) "Immediate supervision" means supervision by a pharmacist who is immediately available at all times the delegated tasks are being performed; who is aware of delegated tasks being performed; and who provides personal assistance, direction and approval throughout the time the delegated tasks are being performed.

(a) "Immediately available" means the pharmacist and pharmacy ancillary personnel or interns are on the same physical premises, or if not, technology is used to enable real time, two-way communications between the pharmacist and technician(s).

(b) Use of technology: A pharmacist, as an adjunct to assist in the immediate supervision of the pharmacy ancillary personnel or intern, may employ technological means to communicate with or observe the pharmacy ancillary personnel or intern. A pharmacist shall make certain all applicable state and federal laws including, but not limited to, confidentiality, are fully observed when employing technological means of communication and observation. If technology is being used to provide immediate supervision of pharmacy ancillary personnel or intern such technology shall be sufficient to provide the personal assistance, direction and approval required to meet the standard of practice for the delegated tasks.

(44) "Inoperable" means a credential status indicating that an individual cannot practice because he or she is not actively participating or enrolled in a required training program when this condition is a requirement of the credential. Inoperable status is not the result of enforcement action. The health care professional can resume practice when appropriately enrolled in a required training program and the credential is reactivated.

(45) "Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the test.

(46) "Investigational drug" means any article that has an investigational drug application (INDA) has been approved by the FDA.

(47) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(48) "Law enforcement" means any general or limited authority Washington peace officer or federal law enforcement officer or tribal officer.

(49) "Lot" means a batch or a specific identified portion of a batch having uniform character and quality within specified limits, or in the case of a drug product produced by continuous process, it is a specific identified amount produced in a unit of time or quantity in a manner that assures it is having uniform character and quality within specified limits.

(50) "Manual signature" means a printed or wet signature.

(51) "Misbranded" applies to all drugs the package or label of which bears any statement, design or device regarding such article or the ingredients or substances contained therein which is false or misleading in any particular way, and drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

(52) "NABP" means the National Association of Boards of Pharmacy.

(53) "NDC" means National Drug Code.

(54) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

(55) "Nuclear pharmacist" means a pharmacist licensed under RCW 18.64.080 who holds an endorsement that meets the requirements of WAC 246-945-180.

(56) "Originating pharmacy" means a pharmacy that receives a prescription from a patient, the patient's agent, or a prescriber, outsources prescription filling or processing functions to another pharmacy, and ultimately dispenses the prescription drug or device to the patient or the patient's agent. This does not include pharmacies engaged in shared pharmacy services in accordance with RCW 18.64.570.

(57) "Over-the-counter drugs" (OTC) means "nonlegend" or "nonprescription" drugs, and any drugs which may be lawfully sold without a prescription.

(58) "Over-the-counter only wholesaler" means any wholesaler licensed under RCW 18.64.046 to possess and sell OTC drugs to any outlets credentialed for resale.

(59) "Pharmaceutical firm" means a business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into Washington state.

(60) "Pharmacy intern" means a person who is registered with the commission under RCW 18.64.080(3) as a pharmacy intern.

(61) "Pharmacy services" means any services provided that meet the definition of the practice of pharmacy, RCW 18.64.011.

(62) "Plan of correction" is a proposal devised by the applicant or credential holder that includes specific corrective actions that must be taken to correct identified unresolved deficiencies with time frames to complete them.

(63) "Precursor drugs" as defined in chapter 69.43 RCW.

(64) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal statute or regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(65) "Protocol" means a written set of procedures, steps or guidance.

(66) "Radiopharmaceutical service" means, but is not limited to:

(a) The preparing, compounding, dispensing, labeling, and delivery of radiopharmaceuticals;

(b) The participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews;

(c) The proper and safe storage and distribution of radiopharmaceuticals;

(d) The maintenance of radiopharmaceutical quality assurance;

(e) The responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; or

(f) The offering or performing of those acts, services, operations or transactions necessary in the conduct, operation management and control of a nuclear pharmacy.

(67) "Radiopharmaceutical" means any substance defined as a drug in section 201 (g)(1) of the Federal Food, Drug, and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term "radioactive drug" includes a "radioactive biological product."

(68) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

(69) "Readily retrievable" means a record that is kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that it can be separated out from all other records in a reasonable time.

(70) "License transfer" means the process used by licensed pharmacists to transfer their existing pharmacist license to Washington using NABP's Electronic Licensure Transfer Program® (e-LTP™).

(71) "Reverse distributor" means a pharmaceutical wholesaler that receives drugs for destruction, return credit, or otherwise disposes of drugs received from a registrant that holds a credential to dispense or possess drugs.

(72) "Secretary" means the secretary of the Washington state department of health.

(73) "Strength" means:

(a) The concentration of the drug product; and/or

(b) The potency, that is, the therapeutic activity of the drug product as indicated by appropriate laboratory tests or by adequately developed and controlled clinical data.

(74) "U.S. jurisdiction" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(75) "USP" means the United States Pharmacopeia.

(76) "Therapeutic substitution" means the act of dispensing an alternative drug that is believed to be therapeutically similar but may be chemically different, in a different category, or with different pharmacokinetic properties. This substitution is based on the premise that the substituted drug will provide similar clinical efficacy, desired outcome, and safety profile.

(77) "TOEFL iBT" means an internet based test which measures the ability to use and understand English. It evaluates the combined use of reading, listening, speaking and writing skills.

(78) "Virtual manufacturer" means an individual or facility that sells his or her own prescription drugs, but never physically possesses the drugs.

(79) "Virtual wholesaler" means an individual or facility that sells a prescription drug and/or device, but never physically possesses the product.

(80) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) The sale, purchase, or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription;

(b) The lawful distribution of drug samples by manufacturers' representatives or distributors' representatives;

(c) The sale, purchase, or trade of blood and blood components intended for transfusion;

(d) Intracompany sales, being defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity, unless such transfer occurs between a wholesale distributor and a health care entity or practitioner; or

(e) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by retail pharmacy to another retail pharmacy or practitioner to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sale revenue of either the transferor or transferee pharmacy during any twelve consecutive month period.

Subpart A - Commission Operations

NEW SECTION

WAC 246-945-002 Administrative proceedings and appeals. (1) The commission adopts the model procedural rules for boards as adopted by the department, and contained in chapter 246-11 WAC, including subsequent amendments.

(2) The commission adopts the administrative procedures and requirements for credentialed heath care providers as adopted by the department and contained in chapter 246-12 WAC, including subsequent amendments under chapter 246-12 WAC.

(3) Where there is a conflict between the rules incorporated in subsections (1) and (2) of this section, the commission's rule shall supersede.

NEW SECTION

WAC 246-945-005 Commission inspections and investigations. (1) Records subject to commission inspection. A pharmaceutical firm shall make available for inspection upon request by the commission or designee records created, maintained, or retained in compliance with statutes or rules enforced by the commission. It is unlawful to refuse to permit or to obstruct a commission inspection.

(2) Initial inspections. Prior to starting a business, as applicable, and upon presentation of appropriate identification, a pharmaceutical firm shall permit the commission, or its designee, to enter and inspect the premises and to audit the records of each entity for compliance with laws enforced by or under the commission's jurisdiction.

(3) Periodic commission inspection. A pharmaceutical firm is subject to periodic inspections to determine compliance with the laws regulating the practice of pharmacy.

(a) Statement of deficiency.

(i) At the end of the inspection, the commission, or its designee, will conduct an exit meeting with the responsible pharmacy manager, or designee, or equivalent manager, addressing unresolved deficiencies identified during the inspection.

(ii) The commission, or its designee, shall provide a written statement of deficiency to the pharmaceutical firm within ten business days of the exit meeting.

(iii) The statement of deficiency may include unresolved deficiencies identified at the end of a periodic commission inspection, describing the unresolved deficiencies in detail with a reference to all applicable laws.

(b) Plan of correction. A pharmaceutical firm shall submit a plan of correction to the commission, or its designee, addressing each identified unresolved deficiency within ten business days of receipt of a statement of deficiency.

(i) The commission, or its designee, shall notify the pharmacy within ten business days, whether or not a submitted plan of correction adequately addresses the unresolved deficiencies identified in the statement of deficiency.

(ii) Implementation of the corrective action is required within the time frames set in the approved plan of correction, and are subject to verification by the commission, or its designee, which may require the pharmacy to submit a progress report(s) attesting to the correction of deficiencies, or a follow-up inspection.

(c) Pharmaceutical firms with deficiencies that represent an imminent or immediate risk or threat to public health, safety, or welfare may be subject to summary suspension of the pharmacy license, at the discretion of the commission.

(4) Self-inspections. The responsible pharmacy manager, or equivalent manager, is required to conduct an annual self-inspection of the pharmaceutical firm on the self-inspection worksheet(s) provided by the commission. The self-inspection must be completed within the month of March each year.

(a) The responsible pharmacy manager, or equivalent manager, shall sign and date the completed self-inspection worksheet(s), and maintain completed worksheets for two years from the date of completion.

(b) When a change in responsible pharmacy manager, or equivalent manager occurs, the new responsible pharmacy manager, or equivalent manager, shall conduct a self-inspection as required under this section. The new responsible pharmacy manager, or equivalent manager, shall sign and date the self-inspection worksheet(s) within thirty days of becoming responsible pharmacy manager, or equivalent manager, and maintain completed worksheets for two years from the date of completion.

(5) Inspection informal dispute process.

(a) A pharmaceutical firm may dispute within ten business days:

(i) Any or all deficiencies included on a statement of deficiency issued by the commission;

(ii) The rejection of the first submitted plan of correction;

(iii) The pharmaceutical firm may request a one-time extension.

(b) A pharmaceutical firm shall submit a dispute under this subsection to the commission in writing. The dispute must be in detail and include any supporting documentation for commission consideration.

(c) The commission may review and consider a second rejection of a plan of correction.

(d) The commission shall consider any dispute and notify the pharmaceutical firm of its determination.

(6) Investigations. A pharmaceutical firm shall cooperate with commission investigations conducted to confirm compliance with laws enforced by the commission, to gather information pertinent to a complaint received by the commission, or to enforce disciplinary actions.

Subpart B - Prescription Labeling, Records, and Advertising

NEW SECTION

WAC 246-945-010 Prescription and chart order—Minimum requirements. (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

(a) Prescriber's name;

(b) Name of patient, authorized entity, or animal name and species;

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

(g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

(e) Any other requirements listed in 21 C.F.R., Chapter II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within seven days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the seven day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

NEW SECTION

WAC 246-945-011 Prescription validity. (1) Prior to dispensing and delivering a prescription, a pharmacist shall verify its validity.

(2) A prescription shall be considered invalid if:

(a) At the time of presentation, the prescription shows evidence of alteration, erasure, or addition by any person other than the person who wrote it;

(b) The prescription does not contain the required information as provided in WAC 246-945-010;

(c) The prescription is expired; or

(d) The prescription is for a controlled substance and does not comply with the requirements in RCW 69.50.308.

(3) A prescription is considered expired when:

(a) The prescription is for a controlled substance listed in Schedule II through V and the date of dispensing is more than six months after the prescription's date of issue.

(b) The prescription is for a noncontrolled legend drug or OTC's and the date of dispensing is more than twelve months after the prescription's date of issue.

NEW SECTION

WAC 246-945-012 Prescription refills. (1) A prescription for a controlled substance listed in Schedule II cannot be refilled.

(2) A prescription for a controlled substance listed in Schedule III, IV, or V may be refilled a maximum of five times as indicated by the prescriber. The prescription will expire six months after the date of issue pursuant to WAC 246-945-011 even if there are refills remaining.

(3) A prescription for a noncontrolled legend drug may be refilled as indicated by the prescriber in accordance with RCW 18.64.520. There is no limit on the number of refills, but the prescription will expire after twelve months from the date of issue pursuant to WAC 246-945-011.

NEW SECTION

WAC 246-945-013 Partial filling of prescriptions. (1) A pharmacist may partially fill a prescription for noncontrolled legend drugs and controlled substances listed in Schedule III through V provided that:

(a) The partial fill is requested by the patient or the prescriber;

(b) The partial filling is recorded in the same manner as a refilling;

(c) The total quantity dispensed and delivered in all partial fillings must not exceed the total quantity prescribed; and

(d) Partial fills for controlled substances listed in Schedule III through V comply with 21 C.F.R. Sec. 1306.23.

(2) A pharmacist may partially fill a prescription for a controlled substance listed in Schedule II within the limits of RCW 18.64.265, 21 U.S.C. Sec. 829, and 21 C.F.R. Sec. 1306.13.

NEW SECTION

WAC 246-945-015 Minimum requirements for dispensing practitioners. (1) A practitioner authorized to prescribe or administer a legend drug including a controlled substance, other than a pharmacy, can dispense a legend drug including a controlled substance directly to an ultimate user without a prescription.

(2) All practitioners authorized to prescribe legend drugs and who dispense legend drugs directly to the ultimate user shall affix a label to the prescription container that meets the requirements of RCW 69.41.050.

NEW SECTION

WAC 246-945-016 Prescriptions—Outpatient labels—Minimum requirements. (1) All licensees of the commission who dispense legend drugs to outpatients shall affix a label to the prescription container that meets the requirements of RCW 69.41.050 and 18.64.246, and shall also include:

(a) Drug quantity;

(b) The number of refills remaining, if any;

(c) The following statement, "Warning: State or federal law prohibits transfer of this drug to any person other than the person for whom it was prescribed.", except when dispensing to an animal, when a warning sufficient to convey "for veterinary use only" may be used;

(d) The name and species of the patient, if a veterinary prescription; and

(e) The name of the facility or entity authorized by law to possess a legend drug, if patient is the facility or entity.

(2) In addition to the requirements in subsection (1) of this section, a compounded product must meet the labeling requirements of USP chapters <795>, <797>, <800>, and <825>. For compounded products, the BUD shall be equivalent to the expiration date required by RCW 18.64.246.

(3) For the purposes of determining an expiration date as required in RCW 18.64.246, the dispenser shall take the following factors into account:

(a) The nature of the drug;

(b) The container in which it was packaged by the manufacturer and the expiration date;

(c) The characteristics of the patient's container, if the drug is repackaged for dispensing;

(d) The expected conditions to which the drug may be exposed;

(e) The expected length of time of the course of therapy; and

(f) Any other relevant factors.

NEW SECTION

WAC 246-945-017 Prescriptions—Hospital inpatient labels—Minimum requirements. (1) All licensees of the commission who dispense legend drugs to hospital inpatients shall ensure all drug containers are labeled clearly, legibly and adequately to show the drug's name (generic and/or trade) and strength, when applicable.

(2) In addition to the requirements in subsection (1) of this section, a compounded product dispensed to a hospital inpatient must meet the labeling requirements of USP chapters <795>, <797>, <800>, and <825>.

NEW SECTION

WAC 246-945-018 Prescriptions—Labeling—Prepackage medications. Prepackage medications dispensed pursuant to RCW 70.41.480, medications dispensed in unit dose form, medications dispensed by a pharmacy to a long-term care facility must include a label with the following information:

(1) Drug name;

(2) Drug strength;

(3) Expiration date in accordance with WAC 246-945-016(3);

(4) The manufacturer's name and lot number, if not maintained in a separate record; and

(5) The identity of the pharmacist or provider responsible for the prepackaging, if not maintained in a separate record.

NEW SECTION

WAC 246-945-020 Records retention period and commission access to records. (1) Unless an alternative standard for a specified record type, form, or format is expressly stated a pharmaceutical firm must maintain and retain records required as evidence of compliance with statutes and rules enforced by the commission in a readily retrievable form and location for at least two years from the date the record was created or received, whichever date is later.

(2) A pharmaceutical firm must allow the commission, or its designee, access to the pharmaceutical firm's records upon request for the purposes of monitoring compliance with statutes and rules enforced by the commission.

NEW SECTION

WAC 246-945-025 Prescription drug price advertising. (1) A pharmacy may advertise legend or prescription drug prices provided:

(a) The advertising complies with all state and federal laws, including regulations of the FDA and the Washington State Consumer Protection Act, chapter 19.86 RCW.

(b) The advertising is solely directed towards providing consumers with drug price information and does not promote the use of a prescription drug or drugs to the public.

(c) The drug price advertising shall contain all the following information for all drug products or brand names used in the advertisement:

(i) The proprietary name of the drug product advertised, if any;

(ii) The generic name of the drug product advertised, if any;

(iii) The strength of the drug product advertised. If the drug product advertised contains more than one active ingredient and a relevant strength can be associated with it without indicating each active ingredient, the generic name and quantity of each active ingredient is not required; and

(iv) The price charged for a specified quantity of the drug product.

(2) Advertising of any generic drug that in any way compares a generic drug to a brand name drug may not in any manner imply that the brand name drug is the product offered for sale.

(3) A person, partnership, corporation, association, or agency may not advertise controlled substances for sale to the general public in any manner that promotes or tends to promote the use or abuse of those drugs. Controlled substances may not be physically displayed to the public.

(4) Upon request from the patient, no pharmacy shall refuse to disclose the cost to the specific patient of a prescription drug without third-party reimbursement or discounts.

Subpart C - Legend Drugs and Controlled Substances

NEW SECTION

WAC 246-945-030 Identification of legend drugs for purposes of chapter 69.41 RCW. (1) Those drugs determined by the FDA to require a prescription under federal law

should be classified as legend drugs under state law because their toxicity, potential for harmful effect, methods of use, or collateral measures necessary to their use indicate they are only safe for use under the supervision of a practitioner.

(2) The commission finds that under state law, legend drugs are those drugs designated as legend drugs under federal law, as of the date of adoption of this rule, and listed in at least one of the following publications:

(a) The 39th Edition, including supplements, of the *Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book"* (available at https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book).

(b) The 2019 version, including monthly updates, of the *Approved Animal Drug Products "Green Book"* (available at https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book).

(c) The 2019 *List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book"* (available at https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or).

(3) Copies of the reference material listed in subsection (2) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(4) The commission also identifies those ephedrine products specified in WAC 246-945-031 as legend drugs under state law.

(5) There may be changes in the marketing status of drugs after the publication of the above references. Upon application of a manufacturer or distributor, the commission may grant authority for the over-the-counter distribution of certain drugs designated as legend drugs in these references. These determinations will be made after public hearing and will be published as an amendment to this chapter.

NEW SECTION

WAC 246-945-031 Ephedrine prescription restrictions. (1) The commission, under RCW 69.41.075, identifies ephedrine, or any of its salts in a solid or aqueous form normally intended for oral administration, in any quantity, as a legend drug subject to the restrictions of RCW 69.41.030.

(2) The following products containing ephedrine or its salts in the amount of 25 mg. or less per solid dosage unit or per 5 ml. of liquid forms in combination with other ingredients in therapeutic amounts are exempt from subsection (1) of this section:

	TRADE NAME	EPHEDRINE CONTENT
1.	AMESAC capsule (Russ)	25 mg. ephedrine HCL
2.	AZMA AID tablet (Various, e.g., Purepac)	24 mg. ephedrine HCL
3.	BRONC-EASE PLUS (Natur-Pharma)	25 mg. ephedrine HCL
4.	BRONCHODILATOR AND EXPECTORANT (PDK Labs)	25 mg. ephedrine HCL
5.	BRONITIN tablet (Whitehall)	24 mg. ephedrine HCL
6.	BRONKAID tablet (Breon)	24 mg. ephedrine sulfate
7.	BRONKOLIXER (Sterling Winthrop)	12 mg. ephedrine
8.	BRONKOTABS tablet (Breon)	24 mg. ephedrine sulfate
9.	EFEDRON nasal jelly (Hyrex)	0.6% ephedrine HCL in 20 g.
10.	MINI THINS asthma relief (BDI Pharmaceuticals)	25 mg. ephedrine
11.	PAZO HEMORRHOID suppository (Bristol-Meyers)	3.86 mg. ephedrine sulfate
12.	PAZO HEMORRHOID ointment (Bristol-Meyers)	0.2% ephedrine sulfate
13.	PRIMATENE tablet (Whitehall)	24 mg. ephedrine HCL
14.	PRIMATENE M tablet (Whitehall)	24 mg. ephedrine HCL
15.	PRIMATENE P tablet (Whitehall)	24 mg. ephedrine HCL
16.	QUELIDRINE (Abbott)	5 mg. ephedrine HCL
17.	TEDRAL tablet (Parke-Davis)	24 mg. ephedrine HCL
18.	THEODRINE tablet (Rugby)	25 mg. ephedrine HCL
19.	VATRONOL nose drops (Vicks Health Care)	0.5% ephedrine sulfate

(3) Ma Huang or other botanical products of genus ephedra used in their natural state and containing 25 mg. or less of ephedrine per recommended dosage as a preparation for human consumption are not legend drugs for the purposes of this section.

(4) Any reformulation of listed products which increases the ephedrine content to more than 25 mg. of ephedrine per solid dosage unit or per 5 ml. of liquid forms shall negate the exemption. The manufacturers of listed products shall notify the commission of any reformulation which increases the ephedrine content to more than 25 mg. of ephedrine per solid dosage unit or per 5 ml. of liquid forms prior to distributing that product in the state of Washington.

(5) Manufacturers of products containing 25 mg. or less of ephedrine per solid dosage unit or per 5 ml. of liquid forms in combination with other ingredients in therapeutic amounts may gain exemption from subsection (1) of this section if, prior to the distributing of any such product in the state of Washington, the manufacturer:

(a) Provides the commission with the formulation of any such product;

(b) Provides the commission samples of all dosage forms in which the product is to be marketed in the packaging in which the product is to be marketed; and

(c) Receives the commission's approval to market such product.

NEW SECTION

WAC 246-945-032 Child-resistant containers. (1) All legend drugs shall be dispensed in a child-resistant container as required by federal law or regulation, including 16 C.F.R., Part 1700, unless:

(a) Authorization is received from the prescriber to dispense in a container that is not child-resistant.

(b) Authorization is obtained from the patient or a representative of the patient to dispense in a container that is not child-resistant.

(2) No pharmacist or pharmacy employee may designate themselves as the patient's agent.

NEW SECTION

WAC 246-945-033 Over-the-counter drugs. Except as provided in 21 C.F.R. 206.1 et seq., no nonimprinted solid dosage form drug that is intended for OTC sale may be distributed into or sold in the state of Washington unless it has been found by the commission to be exempt from the provisions of this chapter or has received an exemption from the FDA pursuant to 21 C.F.R. 206.7.

NEW SECTION

WAC 246-945-035 Drug sample prohibitions. (1) Except as provided in subsection (2) of this section, a pharmacy shall not possess, distribute or dispense legend drug samples.

(2) A pharmacy of a licensed hospital or health care entity which receives and distributes drug samples at the request of an authorized practitioner pursuant to RCW 69.45.050 may possess, distribute or dispense legend drug samples.

NEW SECTION

WAC 246-945-037 Regulated steroids. The following drugs are classified as steroids for the purposes of RCW 69.41.310. The drugs designated shall include the following and any synthetic derivatives or any isomer, ester, salt, or derivative of the following that act in the same manner on the human body:

(1) Anabolicum;
(2) Anadrol;
(3) Anatrofin;
(4) Anavar;
(5) Androxon;
(6) Andriol;
(7) Android;
(8) Bolandiol;
(9) Bolasterone;
(10) Boldenone;
(11) Boldenone undecylenate;
(12) Bolenol;
(13) Bolfortan;
(14) Bolmantalate;
(15) Cheque;
(16) Chlorotestosterone;
(17) Clostebol;
(18) Deca Durabolin;
(19) Dehydrochlormethyl-testosterone;
(20) Delatestyl;
(21) Dianabol; and
(22) Dihydrolone.

NEW SECTION

WAC 246-945-038 Availability and identity of amygdalin. (1) Amygdalin (laetrile) may be manufactured and distributed through intrastate commerce in Washington in accordance with all applicable state laws and regulations.

(2) Amygdalin (laetrile) imported into the state of Washington shall be imported in conformity with federal regulations or court decisions.

(3) Under the direction of the commission batches of amygdalin (laetrile) must be made with the costs for required testing, including purity and potency, to be borne by the manufacturer and wholesale distributor. The manufacturer and wholesale distributor is responsible for the quality of the drug product, in accordance with RCW 18.64.270.

NEW SECTION

WAC 246-945-040 Uniform Controlled Substance Act. (1) The commission adopts 21 C.F.R. as its own. The following sections do not apply: Sec. 1301.13, Sec. 1301.33, Sec. 1301.35-.46, Sec. 1303, Sec. 1308.41-.45, and Sec. 1316.31-.67. Any inconsistencies between 21 C.F.R. Sec. 1300 through 1321 and this chapter should be resolved in favor of this chapter. Nothing in this chapter applies to the production, processing, distribution, or possession of marijuana as authorized and regulated by the Washington state liquor and cannabis board.

(2) Registration. A separate registration is required for each place of business, as defined in 21 C.F.R. Sec. 1301.12, where controlled substances are manufactured, distributed, or dispensed. Application for registration must be made on forms supplied by the commission, and all requested information must be supplied unless the information is not applicable, which must be indicated by the applicant. An applicant for registration must hold the appropriate license provided for in chapter 18.64 RCW.

(3) Recordkeeping and Inventory. Every registrant shall keep and maintain inventory records required by 21 C.F.R. Sec. 1304.04. Registrants are also required to keep a record of receipt and distribution of controlled substances. Records shall include:

(a) Invoices, orders, receipts, or any other document regardless of how titled, establishing the date, supplier, and quantity of drug received, and the name of the drug;

(b) Distribution records, including invoices, or any other document regardless of how titled from wholesalers, manufacturers, or any other entity to which the substances were distributed and prescriptions records for dispensers;

(c) In the event of a significant loss or theft, two copies of DEA 106 (report of theft or loss of controlled substances) must be transmitted to the federal authorities and a copy must be sent to the commission;

(d) For transfers of controlled substances from one dispenser to another, a record of the transfer must be made at the time of transfer indicating the drug, quantity, date of transfer, who it was transferred to, and from whom. Records must be retained by both the transferee and the transferor. These transfers can only be made in emergencies pursuant to 21 C.F.R. Sec. 1307.11.

(4) Credential holders and pharmaceutical firms shall maintain records for Schedule II drugs separately from all other records.

(5) Credential holders and pharmaceutical firms may maintain records for Schedule III, IV, and V drugs either separately or in a form that is readily retrievable from the business records of the registrant.

(6) A federal order form is required for each distribution of a Schedule I or II controlled substance. Credential holders and pharmaceutical firms must keep and make readily available these forms and other records to the commission or its designee.

NEW SECTION

WAC 246-945-043 Designation of nonnarcotic stimulant drugs for the purposes of RCW 69.50.402 (1)(c). The commission hereby designates, the following Schedule II controlled substances as nonnarcotic stimulants for purposes of RCW 69.50.402 (1)(c):

(1) Amphetamine sulfate in any of its generic forms.

(2) Dextroamphetamine sulfate in any of its generic forms and under the following brand names:

(a) Dexedrine (SKF);

(b) Dexedrine spansules (SKF).

(3) Dextroamphetamine HCL in any of its generic forms.

(4) Dextroamphetamine tannate in any of its generic forms.

(5) Methamphetamine HCL (Desoxyephedrine HCL) in any of its generic forms and under the following brand name: Desoxyn (Abbott).

(6) Amphetamine complex in any of its generic forms and under the following brand names:

(a) Biphetamine 12 1/2 (Pennwalt);

(b) Biphetamine 20 (Pennwalt).

(7) Combined amphetamines sold under the following brand names: Obetrol-10 and 20 (Obetrol).

(8) Phenmetrazine HCL in any of its generic forms and under the following brand name: Preludin (Boehringer-Ingelheim).

(9) Methylphenidate HCL in any of its generic forms and under the following brand name: Ritalin (Ciba).

(10) Lisdexamfetamine in any of its generic forms and under the following brand name: Vyvanse.

NEW SECTION

WAC 246-945-045 Prescribing, dispensing, or administering of Schedule II nonnarcotic stimulants. The Schedule II stimulants listed in WAC 246-945-043 may be prescribed, dispensed, or administered to patients for the following disease states or conditions:

(1) Disease states or conditions listed in RCW 69.50.402 (1)(c)(ii); and

(2) Moderate to severe binge eating disorder in adults.

NEW SECTION

WAC 246-945-047 Sodium pentobarbital registration disciplinary action. In addition to any criminal or civil liabilities that may occur, the commission may deny, suspend, or revoke registration upon determination that:

(1) The registration was procured through fraud or misrepresentation;

(2) The registrant or any agent or employee of the registrant has violated any of the federal or state laws related to drugs, or has violated any of the rules or regulations of the commission.

NEW SECTION

WAC 246-945-050 Commission authority to control. Pursuant to the authority granted to the commission in RCW 69.50.201, the commission has considered the following factors with regards to each of the substances listed in this chapter and in chapter 69.50 RCW:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) The risk to the public health;

(7) The potential of the substance to produce psychic or psychological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the Uniform Controlled Substances Act (chapter 69.50 RCW).

NEW SECTION

WAC 246-945-051 Schedule I. The commission finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment under medical supervision. In addition to the substances scheduled in RCW 69.50.204 the commission places each of the following controlled substances by whatever official name, common or usual name, chemical name, or brand name in Schedule I.

(1) Opiates. Unless specifically exempted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide); some other names: Acetyl fentanyl;

(b) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: U-47700;

(c) 3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl] benzamide; some other names: AH-7921;

(d) Dextrorphan;

(e) N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Acryl fentanyl and acryloylfentanyl;

(f) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Butyryl fentanyl;

(g) N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Furanyl fentanyl;

(h) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl) isobutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: 4-fluoroisobutyryl fentanyl and para-fluoroisobutyryl fentanyl;

(i) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Beta-hydroxythiofentanyl; and

(j) Propheptazine.

(2) Opium derivatives. Unless specifically exempted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: Methylhydromorphine.

(3) Hallucinogenic substances. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation. For purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers:

(a) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one; some other names: Butylone and bk-MBDB;

(b) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one; some other names: Pentylone and bk-MBDP;

(c) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine; some other names: 2C-P;

(d) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine; some other names: 2C-E;

(e) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine; some other names: 2C-D;

(f) 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine; some other names: 2C-N;

(g) 2-(2,5-Dimethoxyphenyl)ethanamine; some other names: 2C-H;

(h) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine; some other names: 25B-NBOMe and 2C-B-NBOMe;

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-C;

(j) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25C-NBOMe and 2C-C-NBOMe;

(k) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-I;

(l) 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25I-NBOMe and 2C-I-NBOMe;

(m) 2,5-dimethoxyamphetamine; some other names: 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;

(n) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-2;

(o) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-4;

(p) 3,4-Methylenedioxymethcathinone; some other names: Methylone;

(q) 3,4-methylenedioxy-N-ethylamphetamine; some other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)-phenethylamine, N-ethyl MDA, MDE, and MDEA;

(r) 3,4-Methylenedioxypyrovalerone; some other names: MDPV;

(s) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; some other names: 4-bromo-2,5-DMA;

(t) 4-methoxyamphetamine; some other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine, PMA;

(u) 4-methyl-2,5-diamethoxyamphetamine;

(v) 4-methyl-2,5-dimethoxy-amphetamine; some other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

(w) 4-Methylmethcathinone; some other names: Mephedrone;

(x) 5-methoxy-N,N-dimethyltryptamine; some other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole and 5-MeO-DMT;

(y) Alpha-ethyltryptamine; some other names: Etryptamine; monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; a-ET; and AET;

(z) Beta-keto-N-Methylbenzodioxolylpropylamine; some other names: bk-MBDB and Butylone;

(aa) Ethylamine analog of phencyclidine; some other names: N-ethyl-1phenylcyclohexalymine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(bb) Ibogaine; some other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; and Tabernanthe iboga;

(cc) Marijuana Extract - Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus Cannabis, other than the separated resin (whether crude or purified) obtained from the plant;

(dd) N-hydroxy-3,4-methylenedioxyamphetamine; some other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine; and N-hydroxy MDA;

(ee) Pyrrolidine analog of phencyclidine; some other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; and PHP;

(ff) Thiophene analog of phencyclidine; some other names: 1-[1-(2-thienyl)-cyclohexyl]-pipendine; 2-thienylanalog of phencyclidine; TPCP; TCP.

(4) Stimulants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) Cathinone; also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(b) *N*,*N*-dimethylamphetamine; some other names: N,N-alpha-trimethyl-benzeneethanamine; and N,N-alpha-trimethylphenethylene.

(5) Cannabimimetic agents and synthetic cannabinoids. Any of the following synthetic cannabimimetics and cannabinoids, commonly known as spice, their salts, isomers, and salts of isomers, unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quality of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) (1-pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone; some other names: UR-144;

(b) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: THJ-2201;

(c) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetrame thylcyclopropyl)methanone; some other names: 5-fluoro-UR-144 and XLR11;

(d) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole; some other names: AM2201;

(e) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole; some other names: AM694;

(f) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole; some other names: JWH-200;

(g) 1-butyl-3-(1-naphthoyl)indole; some other names: JWH-073;

(h) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)in dole; some other names: SR-18 and RCS-8;

(i) 1-hexyl-3-(1-naphthoyl)indole; some other names: JWH-019;

(j) 1-pentyl-3-(1-naphthoyl)indole; some other names: JWH-018 and AM678;

(k) 1-pentyl-3-(2-chlorophenylacetyl)indole; some other names: JWH-203;

(l) 1-pentyl-3-(2-methoxyphenylacetyl)indole; some other names: JWH-250;

(m) 1-pentyl-3-(4-chloro-1-naphthoyl)indole; some other names: JWH-398;

(n) 1-pentyl-3-(4-methyl-1-naphthoyl)indole; some other names: JWH-122;

(o) 1-pentyl-3-[(4-methoxy)-benzoyl]indole; some other names: SR-19 and RCS-4;

(p) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole; some other names: JWH-081;

(q) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: CP-47,497;

(r) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: Cannabicyclohexanol or CP-47,497 C8-homolog;

(s) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MDMB-FUBINACA;

(t) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-ADB; and 5F-MDMB-PINACA;

(u) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-AMB;

(v) Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MDMB-CHMICA; and MMB-CHMINACA;

(w) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide; some other names: APINACA and AKB48;

(x) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: ADB-FUBINACA;

(y) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclo hexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MAB-CHMINACA; and ADB-CHMINACA;

(z) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide; some other names: ADB-PINACA;

(aa) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide; some other names: AB-FUBINACA;

(bb) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-CHMINACA;

(cc) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-PINACA;

(dd) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-APINACA; and 5F-AKB48;

(ee) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate; some other names: 5-fluoro-PB-22; and 5F-PB-22;

(ff) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate; some other names: PB-22; and QUPIC.

(6) Synthetic cathinones, commonly known as bath salts, and its derivatives. Unless specifically exempted or listed in another schedule, any of the following synthetic cathinone and derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific designation:

(a) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one; some other names: Naphyrone;

(b) 2-(methylamino)-1-phenylpentan-1-one; some other names: Pentedrone;

(c) 3-fluoro-N-methylcathinone; some other names: 3-FMC;

(d) 4-fluoro-N-methylcathinone; some other names: 4-FMC and flephedrone;

(e) 4-methyl-alpha-pyrrolidinopropiophenone; some other names: 4-MePPP;

(f) 4-methyl-N-ethylcathinone; some other names: 4-MEC;

(g) Alpha-pyrrolidinobutiophenone; some other names: Alpha-PBP;

(h) Alpha-pyrrolidinopentiophenone; some other names: Alpha-PVP;

(i) N-Ethylpentylone, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one).

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

NEW SECTION

WAC 246-945-052 Schedule II. The commission finds that the following substances have a high potential for abuse and have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions and that the abuse of the following substances may lead to severe psychic or psychological dependence. In addition to the substances listed in RCW 69.50.206, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule II.

(1) Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including:

(a) Decocainized coca leaves or extractions which do not contain cocaine or ecgonine; or

(b)[^{123}I]ioflupane.

(2) Opiates. Unless specifically exempted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene exempted: Thiafentanil.

(3) Hallucinogenic substances.

(a) Dronabinol[(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration;

(b) Nabilone; some other names: (±)-trans-3-(1,1-dimethlheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(4) Immediate precursors. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

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

NEW SECTION

WAC 246-945-053 Schedule II immediate precursors. The commission finds and designates the following substances as being the principal compound used or produced primarily for use and which are an immediate chemical intermediary used or likely to be used, in the manufacture of a Schedule II controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(1) Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts or isomers having potential for abuse associated with the preparation of controlled substances shall be a Schedule II controlled substance.

(a) Anthranilic acid;

(b) Ephedrine;

(c) Hydriodic acid;

(d) Methylamine;

(e) Phenylacetic acid;

(f) Pseudoephedrine;

(g) Methephedrine;

(h) Lead acetate; and

(i) Methyl formamide.

(2) Any drug or compound containing ephedrine, or any of its salts or isomers, or pseudoephedrine, or any of its salts or isomers that are prepared for dispensing or over-the-counter distribution and are in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances for the purpose of this section.

(3) Any cosmetic containing lead acetate that is distributed in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances.

NEW SECTION

WAC 246-945-054 Schedule III. The commission finds that the following substances have a potential for abuse less than the substances listed in Schedule I under RCW 69.50.204 and WAC 246-945-051 and Schedule II under RCW 69.50.206 and WAC 246-945-052, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to moderate or low physical dependency or high psychological dependency. In addition to substances listed in RCW 69.50.208, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule III.

(1) Depressants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system: Perampanel, and its salts, isomers, and salts of isomers.

(2) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmaco-

logically related to testosterone, other than estrogens, progestins, and corticosteroids that promotes muscle growth, and includes:

(a) 17alpha-methyl-3alpha,17beta-dihydroxy-5alpha-androstane;

(b) 17alpha-methyl-3beta,17beta-dihydroxy-5alpha-androstane;

(c) 17alpha-methyl-delta1-dihydrotestosterone (17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) some other names: '17-alpha-methyl-1-testosterone';

(d) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-dine-3,17-dione);

(e) Norandrostenediol:

(i) 19-nor-4-androstenediol (3alpha, 17beta-dihydroxyestr-4-ene);

(ii) 19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene);

(iii) 19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene);

(iv) 19-nor-5-androstenediol (3alpha, 17beta-dihydroxyestr-5-ene).

(f) Norandrostenedione:

(i) 19-nor-4-androstenedione (estr-4-en-3,17-dione);

(ii) 9-nor-5-androstenedione (estr-5-en-3,17-dione).

(g) Androstanediol:

(i) 3alpha,17beta-dihydroxy-5alpha-androstane;

(ii) 3beta,17beta-dihydroxy-5alpha-androstane.

(h) Boldione (androsta-1,4-dine-3,17-dione);

(i) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol); some other names: 'madol'.

(j) Mestanolone (17alpha-methyl-17beta-hydroxy-5alpha-androstan-3-one);

(k) Methasterone (2alpha,17alpha-dimethyl-5alpha-androstan-17beta-ol-3-one);

(l) Prostanozol (17beta-hydroxy-5alpha-androstano[3,2-c]pyrazole).

(m) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(3) Exempt anabolic steroid products. The following anabolic steroid products in Table A of this subsection containing compounds, mixtures, or preparations are exempt from the recordkeeping, refill restrictions, and other Controlled Substances Act requirements:

Table A

Trade Name	Company	Form	Ingredients	Quantity
Andro-Estro 90-4	Rugby Laboratories, Rockville Centre, NY	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
Component E-H in process granulation	Ivy Laboratories, Inc., Overland Park, KS	Pail or drum	Testosterone propionate; Estradiol benzoate	10 parts; 1 part
Component E-H in process pellets	Ivy Laboratories, Inc., Overland Park, KS	Pail	Testosterone propionate; Estradiol benzoate	25 mg/2.5 mg/pellet
Component TE-S in process granulation	Ivy Laboratories, Inc., Overland Park, KS	Pail or drum	Trenbolone acetate; Estradiol USP	5 parts; 1 part
Component TE-S in process pellets	Ivy Laboratories, Inc., Overland Park, KS	Pail	Trenbolone acetate; Estradiol USP	120 mg/24 mg/pellet
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Depo-Testadiol	The Upjohn Company, Kalamazoo, MI	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
DEPTO-T.E.	Quality Research Pharm., Carmel, IN	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Duomone	Wintec Pharmaceutical, Pacific, MO	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
DUO-SPAN II	Primedics Laboratories, Gardena, CA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL

Trade Name	Company	Form	Ingredients	Quantity
DURATESTRIN	W. E. Hauck, Alpharetta, GA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Essian	Pharmaceutics International Inc., Hunt Valley, MD	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Essian H.S.	Pharmaceutics International Inc., Hunt Valley, MD	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
Esterified Estrogens and Methyltestosterone, USP (0.625 mg/1.25 mg)	Interpharm, Inc.	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
Esterified Estrogens and Methyltestosterone, USP (1.25 mg/2.5 mg)	Interpharm, Inc.	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Esterified Estrogens/ Methyltestosterone, (0.625 mg/1.25 mg) Tablet	ANDAPharm, LLC	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
Esterified Estrogens/ Methyltestosterone, (1.25 mg/2.5 mg) Tablet	ANDAPharm, LLC	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Estratest	Solvay Pharmaceuticals, Marietta, GA	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Estratest H.S.	Solvay Pharmaceuticals, Marietta, GA	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
Masculinizing Feed for Fish (Investigational)	Rangen, Inc., Buhl, ID	Plastic Bags	Methyltestosterone	60 mg/kg fish feed
Menogen	Sage Pharmaceuticals, Shreveport, LA	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Menogen H.S.	Sage Pharmaceuticals, Shreveport, LA	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
Methyltestosterone and Esterified Estrogens (2.5 mg/1.25 mg)	Lannett Company, Inc.	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Methyltestosterone and Esterified Estrogens (Half Strength) (1.25 mg/0.625 mg)	Lannett Company, Inc.	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
PAN ESTRA TEST	Pan American Labs; Covington, LA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Premarin with Methyltestosterone	Ayerst Labs Inc., New York, NY	TB	Conjugated estrogens; Methyltestosterone	0.625 mg; 5.0 mg
Premarin with Methyltestosterone	Ayerst Labs Inc., New York, NY	TB	Conjugated estrogens; Methyltestosterone	1.25 mg; 10.0 mg
Synovex H in-process bulk pellets	Syntex Animal Health, Palo Alto, CA	Drum	Testosterone propionate; Estradiol benzoate	25 mg; 2.5 mg/pellet
Synovex H in-process granulation	Syntex Animal Health, Palo Alto, CA	Drum	Testosterone propionate; Estradiol benzoate	10 parts; 1 part
Synovex Plus in-process bulk pellets	Fort Dodge Animal Health, Fort Dodge, IA	Drum	Trenbolone acetate; Estradiol benzoate	25 mg; 3.5 mg/pellet

Trade Name	Company	Form	Ingredients	Quantity
Synovex Plus in-process granulation	Fort Dodge Animal Health, Fort Dodge, IA	Drum	Trenbolone acetate; Estradiol benzoate	25 parts; 3.5 parts
Syntest D.S.	Syntho Pharmaceuticals, Inc.	TB	Esterified estrogens; Methyltestosterone	1.25 mg; 2.5 mg
Syntest H.S.	Syntho Pharmaceuticals, Inc.	TB	Esterified estrogens; Methyltestosterone	0.625 mg; 1.25 mg
TEST-ESTRO Cypionates	Rugby Laboratories, Rockville Centre, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testoderm 4 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp., Palo Alto, CA	Sheet	Testosterone	0.25 mg/cm^2
Testoderm with Adhesive 4 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	10 mg
Testoderm with Adhesive 6 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	15 mg
Testoderm with Adhesive in-process film	Alza Corp., Palo Alto, CA	Sheet	Testosterone	0.25 mg/cm^2
Testosterone Cyp 50 Estradiol Cyp 2	I.D.E.-Interstate, Amityville, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Best Generics, North Miami Beach, FL	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Goldline Labs, Ft. Lauderdale, FL	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Schein Pharmaceuticals, Port Washington, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Steris Labs Inc., Phoenix, AZ	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL

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

NEW SECTION

WAC 246-945-055 Schedule IV. The commission finds that the following substances have a low potential for abuse relative to substances in Schedule III under RCW 69.50.208 and WAC 246-945-054, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. In addition to substances listed in RCW 69.50.210, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule IV.

(1) Narcotic drugs. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set in this subsection: 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers (including tramadol).

(2) Depressants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Alfaxalone;

(b) Fospropofol;

(c) Suvorexant.

(3) Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, wherever the existence of such salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Cathine ((+) - norpseudoephedrine);

(b) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts: Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl] amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

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

NEW SECTION

WAC 246-945-056 Schedule V. The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

(3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.

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

NEW SECTION

WAC 246-945-060 Other controlled substance registrants—Requirements. (1) All persons and firms, except persons exempt from registration, must register with the commission in order to legally possess or use controlled substances.

(2) Persons or firms which are not classified as pharmacies, wholesalers, manufacturers, or researchers will be classified as other controlled substance registrants. Examples of persons or firms in this classification include analytical laboratories, dog handlers/trainers who use dogs for drug detection purposes, school laboratories and other agencies which have a legitimate need to use precursor chemicals as defined in WAC 246-945-053.

(3) The applicant for a controlled substance registration must complete and return an application form supplied by the commission. A list of the controlled substances to be used, the purpose for such use, and the names of the persons authorized to access the controlled substances must be listed on the application or on an addendum.

(4) All controlled substances must be stored in a substantially constructed locked cabinet. The registrant shall maintain records in sufficient detail in order to account for the receipt, use, and disposition of all controlled substances. The registrant shall inventory all controlled substances in the possession of the registrant every two years on the anniversary of the issuances of the registration and shall maintain the inventory list for two years. The registrant shall return unwanted, outdated, or unusable controlled substances to the source from which it was obtained or surrendered to the DEA.

NEW SECTION

WAC 246-945-063 Precursor definitions. The definitions in this section apply to WAC 246-945-065 through 246-945-088.

(1) "Registered product" means any nonprescription product containing any detectable quantity of ephedrine, pseudoephedrine, and phenylpropanolamine or their salts or isomers, or salts of isomers.

(2) "Retailer" means a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW that sells, dispenses, or otherwise provides restricted products to purchasers.

(3) "Sale" means the transfer, selling, or otherwise furnishing of any restricted product to any person.

NEW SECTION

WAC 246-945-065 Precursor substance control. (1) For the purpose of this chapter, in addition to the substances in RCW 69.43.010, a precursor substance is any of the following substances or their salts or isomers:

(a) Gamma-butyrolactone (GBL); and

(b) Hydriodic acid.

(2) A precursor substance defined in subsection (1) of this section does not include any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine or any cosmetic if that drug or cosmetic can be lawfully sold, transferred, or furnished over-the-counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

NEW SECTION

WAC 246-945-070 Reports of precursor receipt. (1) Any manufacturer, wholesaler, retailer, or any other person who receives from any source outside the state of Washington any precursor substance listed in WAC 246-945-065 or RCW 69.43.010 shall submit a report of such transaction within fourteen days of the receipt of that substance.

(2) The report shall contain the following information:

(a) Name of substance;

(b) Quantity received;

(c) Date received;

(d) Name and address of firm or person receiving substance; and

(e) Name and address of the source selling, transferring, or furnishing the substance.

(3) The report shall be on a form approved by the commission. In lieu of an approved form the commission will accept a copy of an invoice, packing list, or other shipping document which contains the information in subsection (2) of this section. Under this option purchase price information appearing on the document can be deleted.

NEW SECTION

WAC 246-945-072 Precursor substance monthly reporting. (1) A permit holder who regularly transfers the same precursor substance to the same recipient may apply to the commission for authorization to submit the report of said transactions on a monthly basis. Requests for monthly reporting authorization must be received at the commission office at least thirty days prior to the commission meeting at which the request will be considered. The commission will review each request to determine if the requirements of RCW 69.43.-010(4), are met and will notify the permit holder of its decision and the reporting format that will be authorized.

(2) A permit holder may also petition the commission to accept the monthly report on a computer-generated basis. The report may be furnished in hard copy, on commission-approved data storage methods or by computer interface with a commission-operated computer. The permit holder is responsible for the accuracy of the report and the prompt correction of any data entry or transmission errors.

(3) The authorization to use monthly reports or computer-generated monthly reports may be rescinded at the commission's discretion and with thirty days' notice.

NEW SECTION

WAC 246-945-075 Suspicious transactions and reporting requirements. (1) A manufacturer, wholesaler or distributor who sells, transfers, or furnishes a regulated product to any licensee shall report any suspicious transaction in writing to the commission.

(2) For the purpose of this rule, a regulated product is defined as a product specified in RCW 69.43.010(1) or WAC 246-945-065.

(3) For the purposes of this rule, a "suspicious transaction" is defined as any sale or transfer that meets any of the following criteria:

(a) Any sale or transfer that would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as:

(i) The amount of the substance involved;

(ii) The method of payment;

(iii) The method of delivery; or

(iv) Any past dealings with any participant in the transaction.

(b) Any sale or transfer involving payment for a regulated product in cash or money orders in a total amount of more than two hundred dollars.

(c) Any sale or transfer of a regulated product that meets the criteria identifying suspicious orders in the U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Program Report of the Suspicious Orders Task Force. Copies of the publication are available upon request from the board of pharmacy.

(d) Any individual sale or transfer of a regulated product that exceeds ten percent of the nonprescription drugs contained in the order.

(e) Any order which contains regulated products and has no additional nonprescription drugs is considered a suspicious transaction.

(4) The written report of a suspicious transaction shall contain, at a minimum, the following information:

(a) Name, address, and phone number of the manufacturer and/or wholesaler making the report;

(b) Washington state license number of the wholesaler;

(c) Washington state unified business identifier (UBI) number of the recipient of the suspicious transaction;

(d) Trade/brand name of regulated product;

(e) Generic name of regulated product's active ingredients;

(f) Name, address and phone number of the recipient of the suspicious transaction;

(g) Quantity of substance purchased, transferred, or furnished, by number of units and doses per unit;

(h) Date of purchase or transfer;

(i) Method of payment of the substance;

(j) Lot number if available; and

(k) National Drug Code number if available.

NEW SECTION

WAC 246-945-077 Precursor substance requirements for the sale of a restricted product. Unless exempted in RCW 69.43.110, a retailer must:

(1) Verify the purchaser's identity by means of acceptable identification as defined in this chapter;

(2) Ensure that the purchaser is at least eighteen years of age; and

(3) Record all of the information required in WAC 246-945-078 in the record of transaction before completing the sale.

NEW SECTION

WAC 246-945-078 Record of sales—Electronic methamphetamine precursor tracking. (1) Unless granted an exemption under RCW 69.43.110 upon the sale or attempted sale of a restricted product, each retailer shall enter and electronically transmit the following information to the methamphetamine precursor tracking system prior to completion of the transaction:

(a) Sale transaction information including:

(i) Date and time of the intended purchase;

(ii) Product description;

(iii) Quantity of product to be sold including:

(A) Total grams of restricted product per box;

(B) Number of boxes per transaction.

(b) Purchaser's information including:

(i) Full name as it appears on the acceptable identification;

(ii) Date of birth;

(iii) The address as it appears on the photo identification or the current address if the form of photo identification used does not contain the purchaser's address. The address information must include the house number, street, city, state, and zip code;

(iv) Form of photo identification presented by the purchaser, including the issuing agency of the acceptable identification, and the identification number appearing on the identification; and

(v) Purchaser's signature. If the retailer is not able to secure an electronic signature, the retailer shall maintain a hard copy of a signature logbook consisting of each purchaser's signature and the transaction number provided by the methamphetamine precursor tracking system.

(c) The full name or initials of the individual conducting the transaction; and

(d) Other information as required by the methamphetamine precursor tracking system database.

(2) If a transaction occurs during a time when the methamphetamine precursor tracking system is temporarily unavailable due to power outage or other technical difficulties, the retailer shall record the information required in this section in a written logbook for entry into the methamphetamine precursor tracking system within seventy-two hours of the system becoming operational.

NEW SECTION

WAC 246-945-080 Acceptable forms of identification. Acceptable forms of identification are defined as current foreign, federal, state, or tribal government-issued identification which include the person's photograph, name, date of birth, signature, and physical description. Acceptable forms of identification include, but are not limited to:

(1) A valid driver's license or instruction permit issued by any U.S. state or foreign government. If the purchaser's driver's license has expired, he or she must also show a valid temporary driver's license with the expired card.

(2) A United States Armed Forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.

(3) A merchant marine identification card issued by the United States Coast Guard.

(4) An identification card issued by any foreign, federal, or state government.

(5) An official U.S. passport or an unexpired foreign passport that contains a temporary I-551 stamp.

(6) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington state, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington state drivers' licenses.

NEW SECTION

WAC 246-945-085 Maintenance of and access to retail sales records of restricted products. (1) The retail sales records required under WAC 246-945-078 are confidential and accessible by the commission and law enforcement agencies. Law enforcement may access the retail sales records for criminal investigations when, at a minimum, there is an articulated individualized suspicion of criminal activity.

(2) Each law enforcement agency's administrator, chief, sheriff, or other chief executive officer shall ensure:

(a) Only authorized employees have access to the databases;

(b) Each employee use his or her unique password or access code to access the databases;

(c) Each employee adheres to all state and federal laws regarding confidentiality; and

(d) As employees change, new passwords or access codes are assigned to new employees and passwords of ex-employees or transferred employees are removed.

(3) Retail sales records of restricted products, electronic or written, must be kept for a minimum of two years.

(4) Retail sales records must be destroyed in a manner that leaves the record unidentifiable and nonretrievable.

NEW SECTION

WAC 246-945-087 Exemptions from electronic reporting. (1) Pharmacies are exempt from entering purchase information into the methamphetamine precursor tracking system when the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts or isomers, or salts of isomers is sold pursuant to a prescription written by an authorized practitioner.

(2) A retailer must demonstrate "good cause" to qualify for an exemption from electronic reporting requirements. "Good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the methamphetamine precursor tracking system is unavailable or cost prohibitive to the retailer.

(a) A retailer must submit a written request on a form provided by the board, which shall include the following information:

(i) The reason for the exemption; and

(ii) The anticipated duration needed for the exemption.

(b) An exemption from electronic reporting may not exceed one hundred eighty days.

(c) A retailer may request additional exemptions by submitting a form defined in this subsection at least thirty days before the current exemption expires. The retailer must show that compliance will cause the business significant hardship.

(d) For all sales transactions involving the sale or attempted sale of a restricted product occurring during the period of an exemption, the retailer shall record into a written logbook, at the time of the sale or attempted sale, the information required under WAC 246-945-078(1).

(e) The written logbook of each sale or attempted sale shall be available for inspection by any law enforcement officer or board inspector during normal business hours.

NEW SECTION

WAC 246-945-088 Denial of a sale—Override. (1) The retailer must deny the sale of restricted product to purchasers who are not able to produce acceptable identification or if the sale would violate RCW 69.43.110 or federal law.

(2) In the event that the retailer perceives that refusal of the purchase may place them in imminent physical harm, the retailer may use the database safety override function to proceed with the sale, provided that when the threat is no longer perceived, the retailer must immediately contact local law enforcement to report the incident.

Subpart D - Home Dialysis

NEW SECTION

WAC 246-945-090 Home dialysis program—Legend drugs. Pursuant to RCW 18.64.257 and 69.41.032, a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program may sell, deliver, possess or dispense directly to its home dialysis patients in cases or full shelf package lots, if prescribed by a physician, the following legend drugs:

(1) Sterile heparin, 1000 u/mL, in vials;

(2) Sterile potassium chloride, 2 mEq/mL, for injection;

(3) Commercially available dialysate; and

(4) Sterile sodium chloride, 0.9%, for injection in containers of not less than 150 mL.

NEW SECTION

WAC 246-945-091 Home dialysis program—Pharmacist consultant. Home dialysis programs involved in the distribution of legend drugs as permitted by RCW 18.64.257 and 69.41.032, shall have an agreement with a pharmacist which provides for consultation as necessary. This shall include advice on the drug distribution process to home dialysis patients and on the location used for storage and distribution of the authorized drugs, which shall be reasonably separated from other activities and shall be secure.

NEW SECTION

WAC 246-945-092 Home dialysis program—Records. (1) A record of shipment shall be attached to the prescriber's order and shall include:

(a) The name of the patient;

(b) Strengths and quantities of drugs;

(c) The manufacturers' names;

(d) Date of shipment;

(e) Names of persons who selected, assembled and packaged for shipment; and

(f) The name of the pharmacist or designated individual responsible for the distribution.

(2) Prescription and drug distribution records shall be maintained in accordance with WAC 246-945-020.

NEW SECTION

WAC 246-945-093 Home dialysis program—Quality assurance. Home dialysis programs involved in the distribution of legend drugs as permitted by RCW 18.64.257 and 69.41.032, shall develop a quality assurance program for drug distribution and shall maintain records of drug distribution errors and other problems, including loss due to damage or theft.

Subpart E - Compounding

NEW SECTION

WAC 246-945-100 Compounding minimum standards. (1) All licensees of the commission must comply, at a minimum, with the following chapters of the United States Pharmacopeia (USP) when engaged in compounding nonsterile and sterile products for patient administration or distribution to a licensed practitioner for patient use or administration:

(a) USP General Chapter <795> Pharmaceutical Compounding - Nonsterile Preparations;

(b) USP General Chapter <797> Pharmaceutical Compounding - Sterile Preparations;

(c) USP General Chapter <800> Hazardous Drugs - Handling in Healthcare Settings; and

(d) USP General Chapter <825> Radiopharmaceuticals - Preparation, Compounding, Dispensing, and Repackaging.

(2) Copies of the USP General Chapters listed in subsection (1) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

PART 2 - GENERAL LICENSING

NEW SECTION

WAC 246-945-145 License required. An individual providing pharmacy services to individuals located in Washington is required to be credentialed by the commission, unless the individual is providing pharmacy services within the scope of their employment, or affiliation, with a Wash-

ington licensed nonresident pharmacy or the law otherwise permits the practice.

NEW SECTION

WAC 246-945-150 Applicable forms. All applications for initial licensure and renewals must be submitted on forms provided by the commission as well as any other required documentation.

Subpart A - Pharmacy Interns and Pharmacist

NEW SECTION

WAC 246-945-155 Pharmacy interns—Registration requirements. (1) Unless otherwise stated, each individual shall register with the commission, as a pharmacy intern before beginning pharmacy practice experiences in Washington state. The commission shall grant a registration to practice pharmacy as a pharmacy intern to an individual who is:

(a) Currently enrolled in a professional degree program of a commission accredited school or college of pharmacy and making satisfactory progress towards meeting the requirements for licensure as a pharmacist;

(b) A graduate of a commission accredited school or college of pharmacy;

(c) A graduate of a school or college of pharmacy located outside the United States who has established educational equivalency by obtaining certification by FPGEC;

(d) Required by the commission to be an intern because the commission has determined the individual needs to complete additional practical experience before a pharmacist license is issued or reissued; or

(e) An out-of-state pharmacist enrolled in or participating in an established residency program.

(2) A pharmacy intern shall practice under the immediate supervision of a licensed pharmacist except in accordance with RCW 18.64.253.

(3) A pharmacy intern registration can only be renewed twice.

(4) The commission may consider a pharmacy intern registration inoperable or superseded if one of the following occurs:

(a) A pharmacy intern has not graduated from and is no longer enrolled or in good standing with a commission accredited school or college of pharmacy.

(b) A pharmacy intern is issued a license to practice as a pharmacist in Washington state or another U.S. jurisdiction.

NEW SECTION

WAC 246-945-156 Pharmacy intern—Temporary practice permit. (1) An individual that holds a pharmacy intern registration in another U.S jurisdiction, that has registration standards substantially equivalent to Washington, may request a temporary practice permit if:

(a) The applicant is not subject to denial of a credential or issuance of a conditional or restricted credential in any state;

(b) Does not have a criminal record in Washington state;

(c) The applicant's fingerprint-based national background check results are pending; and

(d) The applicant meets WAC 246-945-155 (1)(a) or (b).

(2) To request a temporary practice permit, the pharmacy intern applicant shall submit a written request for a temporary practice permit, and any applicable fees in accordance with WAC 246-945-XXX.

(3) A temporary practice permit expires:

(a) When the pharmacy intern registration is issued;

(b) When a notice of decision on the pharmacy intern registration application is mailed to the applicant; or

(c) Ninety days after the temporary practice permit is issued. The applicant may obtain a one-time extension of up to ninety days with approval of the commission.

NEW SECTION

WAC 246-945-162 Pharmacist license qualifications. (1) In addition to the requirements in RCW 18.64.080, an applicant for a pharmacist license who holds a baccalaureate degree in pharmacy or a doctor of pharmacy degree from a commission accredited school or college of pharmacy shall submit documentation of education and practice experience as follows:

(a) An applicant who graduated before July 1, 2020, whose official transcripts confer or award a baccalaureate of pharmacy or doctorate of pharmacy degree shall provide certification of at least fifteen hundred pharmacy internship hours in accordance with WAC 246-945-163.

(b) An applicant who graduates after July 1, 2020, whose official transcripts confer or award a doctorate of pharmacy is deemed to have satisfied the pharmacy practice experience and education requirements for licensure without documentation of internship hours.

(2) An applicant for a pharmacist license whose academic training in pharmacy is from institutions in foreign countries shall:

(a) Achieve certification by FPGEC including:

(i) Passing FPGEE;

(ii) Passing required TOEFL iBT;

(b) Provide official transcripts or diploma that shows a baccalaureate of pharmacy or doctorate of pharmacy degree is awarded or conferred; and

(c) Certification of a minimum of fifteen hundred pharmacy internship hours in accordance with WAC 246-945-163.

(3) An applicant for a pharmacist license shall take and pass pharmacist licensure examinations as defined in WAC 246-945-165.

(4) An applicant for a pharmacist license shall provide proof of completion of seven hours of AIDS education as required in chapter 246-12 WAC, Part 8. The applicant is exempt from this requirement if they are a graduate of a commission accredited school or college of pharmacy because the curriculum satisfies this requirement.

NEW SECTION

WAC 246-945-163 Certification of internship hours. Hours reported to the commission under WAC 246-945-162, 246-945-173, and 246-945-175, shall occur as follows:

(1) Hours must be completed within eighteen months from the date of graduation;

(2) From a commission accredited school or college of pharmacy, U.S. jurisdiction board or commission or the supervising pharmacist at the internship site;

(3) Hours shall be reported thirty days after the completion of any internship experience;

(4) The documentation must include the supervising pharmacist's evaluation and certification of internship hours, and an intern site evaluation;

(5) If the report of hours submitted to the commission indicates that the intern has not adequately performed the practice of pharmacy, the commission may reject all or part of the hours reported.

NEW SECTION

WAC 246-945-165 Pharmacist licensure and jurisprudence examinations. (1) Upon authorization by the commission or its designee, an individual applying for a pharmacist license shall take and pass a pharmacy licensure examination and jurisprudence examination approved by the commission.

(2) A score of seventy-five or higher is required to pass each of the examinations.

(3) An individual who fails the licensure examination or jurisprudence examination three times shall not be authorized for further examination until they have satisfactorily completed a study or tutorial program approved by the commission.

(4) An applicant for a pharmacist license who has passed an approved licensure examination in another state may transfer their score to Washington to meet the commission's requirement to take and pass a commission approved pharmacy licensure examination if:

(a) The applicant meets the requirements in WAC 246-945-162; and

(b) The applicant completes the application process to receive a pharmacist license before the score transfer expires. The score transfer application will expire one year from the date the department receives the score transfer application.

NEW SECTION

WAC 246-945-170 Pharmacist licensure by license transfer—Temporary practice permits. (1) An individual who holds an active pharmacist license, in good standing, issued by another U.S. jurisdiction may apply for a pharmacist license in Washington by license transfer. In addition to the completion of the commission's application, the applicant must:

(a) File for license transfer using the NABP eLTP process; and

(b) Take and pass the approved jurisprudence examination.

(2) A temporary practice permit to practice pharmacy may be issued to an applicant for a pharmacist license by license transfer if the applicant meets all of the requirements and qualifications in subsection (1) of this section, and the following criteria are met:

(a) The applicant is not subject to denial of a credential or issuance of a conditional or restricted credential in any U.S. jurisdiction;

(b) Does not have a criminal record in Washington state;

(c) The applicant's fingerprint-based national background check results are pending; and

(d) To request a temporary practice permit, the applicant shall submit a written request for a temporary practice permit, and pay the applicable fees in accordance with WAC 246-945-XXX.

(3) A temporary practice permit expires:

(a) When the pharmacist license is issued;

(b) When a notice of decision on the pharmacist license application is mailed to the applicant; or

(c) One hundred eighty days after the temporary practice permit is issued. The applicant may obtain a one-time extension of one hundred eighty days with approval of the commission.

(4) A temporary practice permit holder cannot qualify as a responsible pharmacy manager.

NEW SECTION

WAC 246-945-173 Expired pharmacist license. To return to active status a pharmacist with an expired license shall pay the applicable fees in accordance with WAC 246-945-XXX and:

(1) If the pharmacist license has been expired for less than three years the pharmacist shall meet the requirements of chapter 246-12 WAC, Part 2 and fifteen CPE hours per year the license has been expired.

(2) If the pharmacist license has been expired for three years or more, and the pharmacist holds an active credential in another U.S. jurisdiction, and is in good standing, the pharmacist shall:

(a) Meet the requirements in chapter 246-12 WAC, Part 2;

(b) Provide certification of an active pharmacist license which includes:

(i) Name and license number;

(ii) Issue and expiration date; and

(iii) Verification that the license has not been the subject of final or pending disciplinary action.

(c) Submit verification of current active pharmacy practice from another U.S. jurisdiction; and

(d) Take and pass the commission approved jurisprudence examination.

(3) If a pharmacist license has been expired for three years or more, and the pharmacist has not been in active practice in another U.S. jurisdiction, the pharmacist shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Serve an internship of three hundred hours in compliance with WAC 246-945-163; and

(c) Take and pass the commission approved jurisprudence and licensure examinations.

NEW SECTION

WAC 246-945-175 Inactive pharmacist license. (1) A pharmacist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.64.140.

(2) An inactive license can be renewed in accordance with WAC 246-945-XXX.

(3) If a license is inactive for three years or less, to return to active status a pharmacist shall meet the requirements of chapter 246-12 WAC, Part 4.

(4) If a license is inactive for more than three years, and the pharmacist has been in active practice in another U.S. jurisdiction, to return to active status the pharmacist must:

(a) Provide certification of an active pharmacist license which includes:

(i) Name and license number;

(ii) Issue and expiration date; and

(iii) Verification that the license has not been the subject of final or pending disciplinary action.

(b) Submit verification of current active pharmacy from another U.S. jurisdiction;

(c) Meet the requirements of chapter 246-12 WAC, Part 4; and

(d) Take and pass the commission approved jurisprudence examination.

(5) If a pharmacist license has been inactive for more than three years, and the pharmacist has not been in active practice in another U.S. jurisdiction, to return to active status, the pharmacist shall comply with the requirements of WAC 246-945-173(3).

NEW SECTION

WAC 246-945-178 Pharmacist continuing education. (1) As part of the process to renew a pharmacist license, a pharmacist shall complete CPE in compliance with this section.

(2) A pharmacist shall complete the equivalent of 3.0 of CPE hours (equal to thirty contact hours) administered by an ACPE accredited provider each license renewal cycle.

(3) A pharmacist shall register with a program designated by the commission for tracking completed CPE hours.

(4) A pharmacist shall complete a one-time training in suicide screening and referral by the end of the first full renewal cycle after initial licensure. The training must meet the following requirements:

(a) Be at least three hours long;

(b) Be from the department of health's model list of approved suicide prevention training programs, and include content related to imminent harm via lethal means; and

(c) The hours spent completing the training in this subsection may count toward meeting CPE requirements.

(5) CPE hours cannot be carried over to the next renewal cycle.

NEW SECTION

WAC 246-945-180 Nuclear pharmacist endorsement. To receive a nuclear pharmacist endorsement, a pharmacist must:

(1) Be licensed to practice in Washington;

(2) Meet minimal standards of training and experience in the handling of radioactive materials in accordance with WAC 246-240-075 and submit to the commission proof of compliance; and

(3) Receive a letter of recognition as a nuclear pharmacist from the commission.

Subpart B - Pharmacy Assistants and Technicians

NEW SECTION

WAC 246-945-200 Pharmacy assistants. (1) To become registered as a pharmacy assistant an applicant shall submit an application to the commission that meets the requirements of chapter 246-12 WAC, Part 2.

(2) An initial applicant shall complete four hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) The supervising pharmacist, shall instruct the pharmacy assistant regarding their scope of practice.

(4) To renew a registration a pharmacy assistant shall submit an application to the commission with the applicable fees in accordance with WAC 246-945-XXX.

NEW SECTION

WAC 246-945-203 Pharmacy technician-in-training authority for experiential training. (1) An individual who is enrolled in a commission-approved pharmacy-technician training program shall obtain an endorsement for experiential training in a pharmacy for:

(a) Initial certification; or

(b) As required by the commission to complete additional practice experience before a pharmacy technician certification is issued, renewed, or reactivated.

(2) An individual with a technician in training endorsement may only work in that capacity at those sites identified on the application.

(3) Before beginning the pharmacy-technician training program the individual shall submit an application to the commission to become certified as a pharmacy assistant. The application must include verification of enrollment in a commission-approved pharmacy-technician education and training program.

(4) The commission may consider the pharmacy technician-in-training authority inoperable or superseded if one of the following occurs:

(a) A pharmacy technician certification is issued;

(b) A pharmacy technician-in-training is no longer enrolled or in good standing with a commission-approved training program; or

(c) A pharmacy technician-in-training does not complete a training program within two years of entering a technician-in-training program, unless otherwise authorized by the commission.

NEW SECTION

WAC 246-945-205 Pharmacy technician certification. (1) An applicant for a pharmacy technician certification shall be eighteen years of age and hold a high school diploma or GED.

(2) To be issued a certification as a pharmacy technician an applicant shall meet the qualifications in RCW 18.64A.-020, and:

(a) Provide proof of completion of eight hours of guided study of Washington state and federal pharmacy law. The law study shall be done in coordination and oversight of a Washington licensed pharmacist.

(b) Provide proof of four hours of AIDS education as required in chapter 246-12 WAC, Part 8, the applicant is exempt if they have completed a commission-approved training program whose program materials on file with the commission office document four hours of AIDS education.

(c) Provide proof of successful completion of a commission-approved pharmacy-technician training program WAC 246-945-215. Acceptable documentation includes:

(i) On-the-job training program. Successful completion of didactic and practice experience signed by the program director on a form provided by the commission; or

(ii) Formal academic or college programs. Official transcripts of completion of a diploma or certificate program at a pharmacy technician school or a two-year associate degree program, which shall include evidence of practice training hours; or

(iii) Certificate of Release or Discharge from Active Duty, DD214 documenting evidence of pharmacy technician training provided by a branch of the federal armed services.

(d) Pass a national certification examination approved by the commission within one year of completing a commission-approved training program and applying for certification, unless otherwise authorized by the commission.

(3) An applicant who is a graduate of a foreign school, university or college of pharmacy or medicine, whose professional degree program is approved by the commission shall complete the following:

(a) If English is not the primary language, the applicant shall take and pass TOEFL iBT;

(b) Complete five hundred twenty hours of supervised experience under the supervision of a licensed pharmacist with training hours reported using forms provided by the commission; and

(c) Pass a national certification examination approved by the commission.

(4) An out-of-state pharmacy technician applicant must meet the same requirements as a pharmacy technician trained in Washington state.

NEW SECTION

WAC 246-945-210 Pharmacy technician—Temporary practice permit—Military spouse eligibility and issuance. A military spouse or state registered domestic partner of a member of the military may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for a pharmacy technician certification. The commission adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

NEW SECTION

WAC 246-945-215 Pharmacy technician education and training programs. A pharmacy technician-training program must meet the minimum requirements of this section and be approved by the commission.

(1) A pharmacy technician-training program shall be considered approved by the commission if it is accredited, approved, or administered by:

(a) The American Society of Health-System Pharmacists (ASHP);

(b) The Accreditation Council for Pharmacy Education;

(c) Pharmacy Technician Certification Board; or

(d) The United States Armed Forces.

(2) A pharmacy technician education and training program not covered by subsection (1) of this section shall be considered meeting the requirements of RCW 18.64A.020 and approved by the commission if it meets the following minimum requirements:

(a) Prepare students for entry-level practice in a variety of settings including, but not limited to, community, hospital, and long-term care, this shall include:

(i) Orientation to pharmacy practice. Health care delivery systems, broad definitions of pharmacy practice and practice settings, communication techniques, confidentiality of information and safety considerations;

(ii) Basic pharmaceutics. Medical and pharmaceutical terminology and abbreviations, components of a prescription and patient medication record, drug dosage forms, routes of administration and drug product packaging, weighing and measuring, labeling, drug nomenclature, aseptic techniques, drug storage and handling, and drug standard and information sources;

(iii) Federal and state regulations. A minimum of eight hours in principles of applicable state and federal pharmacy laws, rules, regulations, guidelines, and interpretive statements; and

(iv) Pharmaceutical calculations. Basic mathematics including: Fractions, decimals, percentages, proportions, and weights and measures.

(b) Include a multicultural health curriculum as required by RCW 43.70.615.

(c) Have a pharmacist program director that is accountable for the overall quality of the program.

(d) Include minimum hours of education and training that extends over a period of fifteen weeks but under twenty-four months, and includes at a minimum:

(i) For vocational or technical training eight hundred hours which includes one hundred sixty hours supervised practice experience.

(ii) For formal or academic training programs two academic quarters with thirty credit hours each and includes one hundred sixty supervised practice experience.

(iii) On-the-job training of at least five hundred twenty hours with twelve hours of instructive education.

(3) To be approved by the commission a program must provide to the commission:

(a) A complete application;

(b) The name of a designated licensed pharmacist as program director;

(c) A list or copies of training manuals and reference;

(d) Content of instruction;

(e) Methods for evaluating trainees; and

(f) Verification of eight hours of pharmacy law study.

(4) A pharmacy technician training program must renew every five years. Any substantive changes to the program or change in program director must be reported to the commission within thirty calendar days.

NEW SECTION

WAC 246-945-217 Expired pharmacy technician certification. To return to active status a pharmacy technician with an expired certification shall pay the applicable fees in accordance with WAC 246-945-XXX, and:

(1) If a pharmacy technician's certification has expired for five years or less, the pharmacy technician shall meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the pharmacy technician's certification has expired for over five years and they have not been in active practice in another U.S. jurisdiction, the pharmacy technician shall:

(a) Complete the requirements for certification under WAC 246-945-205; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the pharmacy technician's certification has expired for over five years and they have been in an active practice in another U.S. jurisdiction with duties that are substantially equivalent to a pharmacy technician in Washington state, the pharmacy technician shall:

(a) Submit verification of current active pharmacy practice in another U.S. jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

NEW SECTION

WAC 246-945-220 Pharmacy technician—Continuing education. (1) As part of the process to renew a pharmacist license, a pharmacist shall complete continuing pharmacy education (CPE) in compliance with this section.

(2) A pharmacy technician shall complete 2.0 CPE hours (equal to twenty contact hours) administered by an ACPE accredited program each certification renewal period.

(3) A pharmacy technician shall register with a program designated by the commission for tracking completed CPE hours.

(4) CPE hours cannot be carried over to the next renewal cycle.

Subpart C - Pharmaceutical Firm Licensing

NEW SECTION

WAC 246-945-230 General information, change of location, ownership or new construction. (1) The definitions in this subsection apply throughout WAC 246-945-230 through 246-945-247 unless otherwise specified:

(a) "License" includes "licensing," "licensure," "certificate," "certification," and "registration."

(b) "Facility" includes pharmacies, nonresident pharmacies, health care entities, hospital pharmacy associated clinics, wholesalers, and manufacturers.

(2) The commission shall license a facility that:

(a) Submits a completed application for the license applied for on forms provided by the commission;

(b) Pays the applicable fees in accordance with WAC 246-945-XXX. This fee will not be prorated under any circumstances;

(c) Undergoes an inspection by the commission if the facility is located in Washington pursuant to WAC 246-945-005 that results in either no deficiencies or an approved plan of correction; and

(d) Obtains a controlled substances registration from the commission and is registered with the DEA if the facility intends to possess or distribute controlled substances.

(3) Once an initial license is issued, a licensed facility must:

(a) Notify the commission and pay a facility inspection fee in lieu of paying an original license fee for modifications or remodels. A modification or remodel of a pharmacy location includes changes to a previously approved area, room or pharmacy building which result in changes in the pharmacy that affects security, square footage, access to drugs, compounding or necessitates temporary relocation of pharmacy services.

(b) Submit a new application on forms provided by the commission and pay the original license fee as established in WAC 246-945-XXX if the facility changes location to a different address. If located in Washington, a facility may not relocate prior to the inspection of the new premises.

(c) Notify the commission and pay the original license fee in accordance with WAC 246-945-XXX whenever there is a change of ownership. Change in ownership includes changes in business or organizational structure such as a change from sole proprietorship to a corporation, or a change of more than fifty percent ownership in a corporation.

(i) Upon receipt of a change of ownership application and fees, the purchaser may begin operations prior to the issuance of a new pharmacy license only when the purchaser and seller have a written power of attorney agreement. This agreement shall delineate that violations during the pending application process shall be the sole responsibility of the seller.

(ii) This agreement shall be provided to the commission upon request.

(d) Notify the commission within thirty days of any changes to the information provided on their application.

(e) Notify the commission of any changes in their responsible pharmacy manager in accordance with WAC 246-945-480, if a responsible pharmacy manager is required for initial licensure.

(f) Renew their license in accordance with WAC 246-945-XXX.

(4) A license is issued to a location and is not transferable.

NEW SECTION

WAC 246-945-232 Pharmacy licensing. The commission shall issue a pharmacy license to an applicant that:

(1) Is in compliance with WAC 246-945-230;

(2) Has a designated responsible pharmacy manager; and

(3) If a pharmacy is new or remodeled, the applicant has provided the commission evidence of being built or remodeled in accordance with all building, health, and fire codes required for the particular area.

NEW SECTION

WAC 246-945-233 Hospital pharmacy associated clinics. (1) A parent hospital pharmacy may add or delete a hospital pharmacy associated clinic (HPAC) to a hospital pharmacy license at any time in compliance with WAC 246-945-230 (2)(a), (b), and (d).

(2) The HPAC must designate a responsible pharmacy manager and notify the commission of changes.

(3) HPAC locations are identified as follows:

(a) Category 1 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC and does not perform sterile or nonsterile compounding of drugs.

(b) Category 2 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC and performs sterile or nonsterile compounding of drugs.

(4) A HPAC licensed under the parent hospital pharmacy license must obtain a separate DEA registration in order to possess controlled substances.

NEW SECTION

WAC 246-945-235 Nonresident pharmacy license. The commission shall issue a nonresident pharmacy license to an applicant that:

(1) Provides all information required by RCW 18.64.-360;

(2) Is in compliance with WAC 246-945-230;

(3) Has identified a responsible pharmacy manager, whose license is in good standing in the U.S. jurisdiction in which they are located; and

(4) Has provided to the commission proof that its resident license is in good standing.

NEW SECTION

WAC 246-945-245 Health care entity license. (1) The commission shall issue a health care entity license to an applicant that:

(a) Is in compliance with WAC 246-945-230; and

(b) Has designated a responsible pharmacy manager.

(2) An organization (e.g., a clinic) must obtain a separate license for each of its locations. One organization occupying multiple suites in one facility is deemed to be occupying one location requiring one license. Separate organizations occupying the same location must obtain separate licenses.

NEW SECTION

WAC 246-945-246 Wholesaler. (1) Every wholesaler who engages in wholesale distribution into, out of, or within Washington state must be licensed by the commission before engaging in wholesale distribution of drugs. Entities required to be licensed as a wholesaler includes:

(a) In-state and out-of-state pharmaceutical wholesalers;

(b) Out-of-state manufacturer that distribute or sell drugs into Washington;

(c) Virtual wholesalers;

(d) Out-of-state virtual manufacturers that distribute or sell drugs into Washington;

(e) Outsourcing facilities required to be registered with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b (d)(4)(A) that are located in Washington, or distribute or sell drugs into Washington; and

(f) Reverse distributors.

(2) The commission may issue a wholesaler license to an applicant that is in compliance with the requirements in WAC 246-945-230 and this section.

(3) In addition to the requirements in subsection (2) of this section if the applicant is located outside of Washington, the applicant must provide:

(a) A copy of a site inspection conducted by the regulatory authority in the resident U.S. jurisdiction or third-party inspection program recognized by the commission within the last two years and every two years with the distributor's renewal;

(b) A copy of the resident state license; and

(c) A list of licenses, registrations, permits or certificates held in other U.S. jurisdictions.

(4) In addition to the requirements in subsection (2) of this section if the applicant plans to export noncontrolled drugs to persons in a foreign jurisdiction, the applicant must provide letters from the consulate of the country to which the drugs are exported and should verify consignee receiving such drugs is legally entitled in that country to receive them, if applicable. These letters shall be made available to the commission upon its request. The issuance of an export wholesaler license does not authorize delivery of drugs in the United States.

(5) Minimum qualifications. The commission shall consider, at a minimum, the following factors in reviewing the qualifications of individuals who engage in wholesale distribution of prescription drugs within the state:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale, or retail drug distribution, or distribution of controlled substances;

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;

(d) Any false or fraudulent material furnished by the applicant on any application made in connection with drug manufacturing or distribution;

(e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the

applicant for the manufacture or distribution of any drugs, including controlled substances;

(f) Compliance with licensing requirements under any previously granted licenses;

(g) Compliance with requirements to maintain and make available to the commission, federal, state, or local enforcement officials those records required to be maintained by wholesale drug distributors; and

(h) Any other factors or qualifications the commission considers relevant to and consistent with public health and safety.

(6) When operations are conducted at more than one location by a single wholesale distributor, each location shall be licensed by the commission.

NEW SECTION

WAC 246-945-247 Pharmaceutical manufacturer license. (1) An entity located in Washington state that manufactures drugs must be licensed by the commission in accordance with the laws and regulations of Washington state before engaging in manufacturing.

(2) The commission shall issue a manufacturer license to an applicant that is in compliance with the requirements in WAC 246-945-230.

(3) When operations are conducted at more than one location by a single manufacturer, each location shall be licensed by the commission.

Subpart D - Commission Registrations

NEW SECTION

WAC 246-945-250 Researcher and other controlled substance registration. (1) Applicants for initial registration and renewal for researcher or other controlled substance registrations shall submit to the commission a complete application with fees relevant to the registration type.

(a) Researcher:

(i) Noncontrolled legend drugs; or

(ii) Researchers requiring to purchase, possess, administer or dispense controlled substances shall apply for a controlled substance authority on its license with the commission and register with the DEA.

(b) Other controlled substance registrations:

(i) Opioid treatment programs;

(ii) Analytical laboratories;

(iii) Dog handler; and

(iv) Other agencies who have demonstrated a legitimate need to use precursor chemicals.

(2) The application shall:

(a) List all legend drugs and controlled substances to be used and the purpose for its use;

(b) Name the primary registrant; and

(c) List the names of the individuals authorized to access the controlled substances.

(3) Applicants shall undergo an initial inspection and periodic inspections as deemed appropriate by the commission.

NEW SECTION

WAC 246-945-253 Shopkeeper registration. (1) A shopkeeper registration is issued to a business license authorizing the holder to purchase, possess, and sell over-the-counter medications as defined in RCW 18.64.044 and chapter 69.43 RCW, if applicable.

(2) A business entity with a licensed pharmacy with different operating hours shall hold a shopkeeper registration to acquire, possess, and sell over-the-counter medications when the pharmacy is closed.

NEW SECTION

WAC 246-945-254 Animal control and humane society registration. (1) Humane societies and animal control agencies registered with the commission under RCW 69.50.310 may purchase, possess, and administer sodium pentobarbital and approved legend drugs as provided in RCW 69.41.080.

(2) To apply for registration, a humane society or animal control agency shall submit to the commission a completed application for registration on forms provided by the commission and undergo an initial inspection.

(3) The registered agency shall designate an individual responsible for maintaining all records and submitting all reports required by applicable federal or state law or rule.

(4) The registered agency shall provide to the commission a list of staff trained and authorized to administer approved drugs.

NEW SECTION

WAC 246-945-255 Chemical capture—Department of fish and wildlife. (1) The department of fish and wildlife may apply to the commission for a limited registration under chapters 69.50 and 69.41 RCW to purchase, possess, and administer controlled substances and legend drugs for use in chemical capture programs.

(2) Each department of fish and wildlife field office that stores controlled substances or legend drugs must register with the commission. The department of fish and wildlife must notify the commission of the names of individuals who are authorized to possess and administer controlled substances and legend drugs.

(3) The department of fish and wildlife shall designate one individual at each field office who shall be responsible for the ordering, possession, safe storage, and utilization of controlled substances and legend drugs. The department of fish and wildlife shall notify the commission of the name of the designated individual.

PART 3 - PROFESSIONAL STANDARDS

NEW SECTION

WAC 246-945-305 Pharmacist's professional responsibilities. (1) A pharmacist shall be knowledgeable of, and comply with, all applicable rules and laws.

(2) A pharmacist is responsible for providing patients with safe and appropriate medication therapy.

(3) A pharmacist shall be responsible for any delegated act performed by pharmacy interns, pharmacy technicians, and pharmacy assistants under their supervision.

(4) A pharmacist shall delegate pharmacy functions in accordance with WAC 246-945-315.

NEW SECTION

WAC 246-945-310 Responsible pharmacy manager. The responsible pharmacy manager must be licensed to practice pharmacy in the state of Washington. The responsible pharmacy manager designated by a facility as required under WAC 246-945-410 shall have the authority and responsibility to assure that the area(s) within the facility where drugs are stored, compounded, delivered, or dispensed are operated in compliance with all applicable state and federal statutes and regulations.

NEW SECTION

WAC 246-945-315 Delegation of pharmacy functions to pharmacy ancillary personnel. (1) All delegated pharmacy functions shall be performed under a pharmacist's immediate supervision. A pharmacist, as an adjunct to assist in the immediate supervision of the pharmacy ancillary personnel or intern, may employ technological means to communicate with or observe the pharmacy ancillary personnel or intern. A pharmacist shall make certain all applicable state and federal laws including, but not limited to, confidentiality, are fully observed when employing technological means of communication and observation. If technology is being used to provide immediate supervision of pharmacy ancillary personnel or intern such technology shall be sufficient to provide the personal assistance, direction and approval required to meet the standard of practice for the delegated tasks.

(2) When delegating a pharmacy function to a pharmacy technician:

(a) A pharmacist shall consider the pharmacy technician's scope of practice, education, skill, and experience and take them into account; and

(b) A pharmacist will not delegate a pharmacy function that is listed in WAC 246-945-320.

(3) A pharmacist may delegate to a pharmacy assistant those functions defined in RCW 18.64A.030 and the following:

(a) Prepackage and label drugs for subsequent use in prescription dispensing operations; and

(b) Count, pour, and label for individual prescriptions.

NEW SECTION

WAC 246-945-317 Tech check tech. (1) "Verification" as used in this section means the pharmacist has reviewed a patient prescription initiated by an authorized prescriber, has examined the patient's drug profile, and has approved the prescription after taking into account pertinent drug and disease information to ensure the correctness of the prescription for a specific patient. The verification process must generate an audit trail that identifies the pharmacist. The pharmacist who performs the verification of a prescription is responsible for all reports generated by the approval of that prescription. The unit-dose medication fill and check reports are an example.

(2) A pharmacist may allow for unit-dose medication checking. Following verification of a prescription by the pharmacist, a technician may check unit-dose medication cassettes filled by another pharmacy technician or pharmacy intern in pharmacies serving facilities licensed under chapter 70.41, 71.12, 71A.20, or 74.42 RCW. No more than a forty-eight hour supply of drugs may be included in the patient medication cassettes and a licensed health professional must check the drug before administering it to the patient.

NEW SECTION

WAC 246-945-320 Nondelegable tasks. (1) A pharmacist shall not delegate the following to ancillary personnel:

(a) Receipt or transfer of a verbal prescription other than refill authorization from a prescriber.

(b) Consultation with the patient regarding the prescription, both prior to and after the prescription filling regarding any information contained in a patient medication record system; however, this shall not prohibit pharmacy ancillary personnel from providing to or receiving from the patient or the patient's agent certain information where no professional judgment is required.

(c) Consultation with the prescriber regarding the patient and the patient's prescription.

(d) Interpretation of data in a patient medication record system.

(e) Ultimate responsibility for all aspects of the completed prescription and assumption of the responsibility for the filled prescription, such as: Accuracy of drug, strength, labeling, proper container and other requirements.

(f) Patient counseling in accordance with WAC 246-945-325.

(g) Substitution of a biological or drug product in accordance with WAC 246-945-340.

(h) Decision to not dispense lawfully prescribed drugs or devices or to not distribute drugs and devices approved by the FDA for restricted distribution by pharmacies.

(i) Prescription adaptation in accordance with WAC 246-945-335.

(2) A pharmacy intern can perform any pharmacy function based on their education, skill and experience, except supervising other pharmacy personnel.

NEW SECTION

WAC 246-945-325 Patient counseling. (1) The pharmacist shall offer to counsel:

(a) Upon the initial fill of a prescription for a new or change of therapy.

(b) When the pharmacist using their professional judgment determines counseling is necessary to promote safe and effective use and to facilitate an appropriate therapeutic outcome for that patient.

(2) This does not apply to medications that are administered by a licensed health professional acting within their scope of practice.

NEW SECTION

WAC 246-945-330 Refilling prescriptions. (1) A prescription may be refilled when permitted by state and federal law and only as authorized by the prescriber.

(2) Except as provided in subsection (1) of this section, a pharmacist may renew a prescription for a noncontrolled legend drug one time in a six-month period when an effort has been made to contact the prescriber and they are not available for authorization under the following conditions:

(a) The amount dispensed is the quantity on the most recent fill or a thirty-day supply, whichever is less;

(b) The refill is requested by the patient or the patients agent;

(c) The patient has a chronic medical condition;

(d) No changes have been made to the prescription; and

(e) The pharmacist communicates the renewal to the prescriber within one business day.

NEW SECTION

WAC 246-945-332 Continuity of care. When the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharmacists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records or in the professional judgment of the pharmacist; or

(b) If the prescription is expired or has no refills and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of the last dispensed quantity or up to a thirty-day supply of a maintenance medication.

(c) If the patient is unable to provide either a valid prescription or prescription container the pharmacist may use their professional judgment when accepting a provider reconciled medication list.

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing as soon as possible following the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.

NEW SECTION

WAC 246-945-335 Prescription adaptation. Upon patient consent, a pharmacist may adapt drugs as specified in this rule, provided that the prescriber has not indicated that adaptation is not permitted.

(1) Change quantity. A pharmacist may change the quantity of medication prescribed if:

(a) The prescribed quantity or package size is not commercially available;

(b) The change in quantity is related to a change in dosage form;

(c) The change is intended to dispense up to the total amount authorized by the prescriber including refills in accordance with RCW 18.64.520; or

(d) The change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program in accordance with RCW 48.43.096.

(2) Change dosage form. A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed.

(3) Complete missing information. A pharmacist may complete missing information on a prescription if there is evidence to support the change.

(4) Documentation. A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient's record.

NEW SECTION

WAC 246-945-340 Prescriptions—Drug product substitutions. (1) A pharmacist may substitute a drug or biologic product dispensed pursuant to a prescription if in compliance with applicable laws and rules.

(2) A pharmacist may substitute a drug product or a biologic product when any of the following applies:

(a) The substitution is permitted by RCW 69.41.120;

(b) The substitution is permitted by a formulary developed by an interdisciplinary team of an institutional facility; or

(c) The substitution is otherwise permitted by law.

(3) In addition to any other applicable requirements, a pharmacist shall only substitute a drug or a biologic product pursuant to subsection (2)(b) of this section if:

(a) An employee or contractor of the institutional facility prescribed the drug or biologic product to be substituted;

(b) The interdisciplinary team was composed of a nonpharmacist prescriber listed in RCW 69.41.030 and a pharmacist; and

(c) The formulary is readily retrievable by the pharmacist.

NEW SECTION

WAC 246-945-345 Prescription transfers. (1) Subsections (2) through (5) of this section apply to the transfer of prescription information for noncontrolled drugs. The transfer of controlled substance prescription information must conform to the requirements of 21 C.F.R. Sec. 1306.25.

(2) Upon patient request, a prescription may be transferred within the limits of state and federal law.

(3) Sufficient information needs to be exchanged in the transfer of a prescription to maintain an auditable trail, and all elements of a valid prescription.

(4) Pharmacies sharing a secure real-time database are not required to transfer prescription information for dispensing.

(5) Prescriptions must be transferred by electronic means or facsimile, except in emergent situations.

NEW SECTION

WAC 246-945-350 Collaborative drug therapy agreements. (1) A pharmacist exercising prescriptive authority in their practice must have a valid CDTA on file with the commission and their practice location.

(2) A CDTA must include:

(a) A statement identifying the practitioner authorized to prescribe and the name of each pharmacist who is party to the agreement;

(i) The practitioner authorized to prescribe must be in active practice; and

(ii) The authority granted must be within the scope of the practitioners' current practice.

(b) A statement of the type of prescriptive authority decisions which the pharmacist is authorized to make, which includes:

(i) A statement of the types of diseases, drugs, or drug categories involved, and the type of prescriptive authority activity (e.g., modification or initiation of drug therapy) authorized in each case.

(ii) A general statement of the training required, procedures, decision criteria, or plan the pharmacist is to follow when making therapeutic decisions, particularly when modification or initiation of drug therapy is involved.

(c) A statement of the activities the pharmacist is to follow in the course of exercising prescriptive authority, including:

(i) Documentation of decisions made; and

(ii) A plan for communication or feedback to the authorizing practitioner concerning specific decisions made.

(3) A CDTA is only valid for two years from the date of signing.

(4) Any modification of the written guideline or protocol shall be treated as a new CDTA.

NEW SECTION

WAC 246-945-355 Monitoring of drug therapy by pharmacist. In the absence of a CDTA, the term "monitoring drug therapy" used in RCW 18.64.011 shall mean a review of the drug therapy regimen of patients by a pharmacist for the purpose of evaluating or rendering advice to the prescribing practitioner or patient regarding the patients drug therapy. Monitoring of drug therapy includes, but not be limited to, the evaluation of the patient through history taking, physical examination, ordering, administering or reviewing laboratory tests, imaging, and social evaluation related to an existing diagnosis and drug therapies for optimization of drug therapy.

NEW SECTION

WAC 246-945-360 Patient rights. Any person authorized to practice or assist in the practice of pharmacy shall not engage in any of the following:

(1) Destroy unfilled lawful prescription;

(2) Refuse to return unfilled lawful prescriptions;

(3) Violate a patient's privacy;

(4) Discriminate against patients or their agent in a manner prohibited by state or federal laws; or

(5) Intimidate or harass a patient.

NEW SECTION

WAC 246-945-365 Approval of impaired practitioner substance abuse monitoring program. (1) The commission will approve recovery, assistance and monitoring programs under RCW 18.130.175 for its credential holders.

(2) For the purposes of RCW 18.130.175(1), the commission will consider a licensee to have not successfully completed the program if they are discharged from the program for failure to comply with the program's terms and conditions.

(3) A licensee referred or required to participate in a program will be subject to disciplinary action under chapter 18.130 RCW if they fail to sign or otherwise revoke a waiver allowing the program to release information to the commission.

(4) An approved program shall report a licensee who fails to comply with the program's terms and conditions within seven calendar days.

(5) A licensee shall report themselves to the commission if they fail to comply with RCW 18.130.175, the program's terms and conditions, or any part of this section within seven calendar days. The fact an approved program has reported under subsection (4) of this section does not absolve the licensee of a responsibility to report.

NEW SECTION

WAC 246-945-370 Sexual misconduct. (1) A pharmacy health care practitioner must not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action.

(2) Practitioner under this section shall be defined as any person credentialed under RCW 18.64.080 or chapter 18.64A RCW.

(3) Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community

standards of practice within the health care practitioner's scope of practice;

(c) Rubbing against a patient, client, or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client, or key party;

(i) Removing patient's or client's clothing or gown or draping without consent, except emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client, or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client, or key party;

(o) Discussing the sexual history, preferences or fantasies of the health care provider;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client, or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client, or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(t) Showing a patient, client, or key party sexually explicit materials, other than for legitimate health care purposes.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(5) A health care practitioner must not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client, or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care practitioner's sexual needs.

(6) A health care practitioner must not engage, or attempt to engage, in the activities listed in subsection (4) of this section with a former patient, client, or key party if:

(a) There is a significant likelihood that the patient, client, or key party will seek or require additional services from the health care practitioner; or

(b) There is an imbalance of power, influence, opportunity, or special knowledge of the professional relationship.

(7) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the commission will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the practitioner-patient relationship;

(b) Transfer of care to another health care practitioner;

(c) Duration of the practitioner-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care practitioner and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the health care practitioner;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(8) Patient, client, or key party initiation or consent does not excuse or negate the health care practitioner's responsibility.

(9) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

PART 4 - OPERATIONAL STANDARDS

Subpart A - Pharmacies, HCEs and HPACs

NEW SECTION

WAC 246-945-405 Applicability. (1) The rules in this chapter apply to pharmacies, health care entities (HCE), and hospital pharmacy associated clinics (HPAC).

(2) Unless specified, the term "facility" as used in this part includes pharmacies, HCEs, and HPACs.

NEW SECTION

WAC 246-945-410 Facility standards. A facility must meet the following minimum requirements:

(1) The facility shall be constructed and equipped with adequate security to protect equipment, records, and supply

of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use.

(2) The facility shall be properly equipped to ensure the safe, clean, and sanitary condition necessary for the proper operation, the safe preparation of prescriptions, and to safeguard product integrity.

(3) The facility shall be staffed sufficiently to allow appropriate supervision, operate safely and, if applicable, remain open during posted hours of operation.

(4) The facility shall be adequately stocked to maintain at all times a representative assortment of drugs in order to meet the pharmaceutical needs of its patients in compliance with WAC 246-945-415.

(5) The facility shall designate a responsible pharmacy manager:

(a) By the date of opening; and

(b) Within thirty calendar days of a vacancy.

(6) The facility shall create and implement policies and procedures related to:

(a) Purchasing, ordering, storing, compounding, delivering, dispensing, and administering legend drugs, including controlled substances.

(b) Accuracy of inventory records, patient medical records as related to the administration of controlled substances and legend drugs, and any other records required to be kept by state and federal laws.

(c) Adequate security of legend drugs, including controlled substances.

(d) Controlling access to legend drugs, including controlled substances.

(7) Prescription drugs must only be dispensed pursuant to a valid prescription as required by WAC 246-945-011.

(8) A drug utilization review of each prescription before dispensing and delivery shall occur except in emergent medical situations, or if:

(a) The drug is a subsequent dose from a previously reviewed prescription;

(b) The prescriber is in the immediate vicinity and controls the drug dispensing process;

(c) The system is being used to provide access to medications on override and only a quantity sufficient to meet the immediate need of the patient is removed; or

(d) Twenty-four hour pharmacy services are not available, and a pharmacist will review all prescriptions added to a patient's profile within six hours of the facility opening.

(9) Each drug dispensed and delivered to a patient must bear a complete and accurate label as required by WAC 246-945-015 through 246-945-018. The information contained on the label shall be supplemented by oral or written information as required by WAC 246-945-325.

(10) Access to the drug storage area located within the facility should be limited to pharmacists unless one of the following applies:

(a) A pharmacy intern, or pharmacy ancillary personnel enter under the immediate supervision of a pharmacist; or

(b) A pharmacist authorizes temporary access to an individual performing a legitimate nonpharmacy function under the immediate supervision of the pharmacist; or

(c) The facility has a policy and procedure restricting access to a health care professional licensed under the chapters specified in RCW 18.130.040, and the actions of the health care professional are within their scope of practice.

(11) In accordance with RCW 18.64A.060 prior to utilizing pharmacy ancillary personnel a facility shall submit to the commission a utilization plan for pharmacy technicians and pharmacy assistants:

(a) Utilization plan for pharmacy technicians. The application for approval must describe the manner in which the pharmacy technicians will be utilized and supervised, including job descriptions, task analysis or similar type documents that define the duties performed and the conditions under which they are performed, number of positions in each category, as well as other information as may be required by the commission. The commission will be notified of all changes to the utilization plan. A copy of the utilization plan must be maintained in the pharmacy. The utilization plan must comply with WAC 246-945-315 and 246-945-320.

(b) Utilization plan for pharmacy assistants. The application for approval shall list the job title or function of the pharmacy assistant and comply with WAC 246-945-315(3).

(12) A facility's paper prescriptions must be maintained in accordance with WAC 246-945-020 and as follows:

(a) Paper prescriptions for Schedule II drugs must be maintained as a separate file from other prescriptions.

(b) Paper prescriptions for Schedule III, IV, and V drugs must be maintained as a separate file, or maintained in a separate file with prescriptions for noncontrolled legend drugs as allowed under federal law.

NEW SECTION

WAC 246-945-415 Dispensing and delivery of prescription drugs. (1) A pharmacy may deliver filled prescriptions as long as appropriate measures are taken to ensure product integrity and receipt by the patient or patient's agent.

(2) Pharmacies have a duty to deliver lawfully prescribed drugs or devices to patients and to distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies, or provide a therapeutically equivalent drug or device in a timely manner consistent with reasonable expectations for filling the prescription, except for the following or substantially similar circumstances:

(a) Prescriptions containing an obvious or known error, inadequacies in the instructions, known contraindications, or incompatible prescriptions, or prescriptions requiring action in accordance with WAC 246-945-410(8) or 246-945-335;

(b) National or state emergencies or guidelines affecting availability, usage, or supplies of drugs or devices;

(c) Lack of specialized equipment or expertise needed to safely produce, store, or dispense drugs or devices, such as certain drug compounding or storage for nuclear medicine;

(d) Potentially fraudulent prescriptions; or

(e) Unavailability of drug or device despite good faith compliance with WAC 246-945-410(4).

(3) Nothing in this section requires pharmacies to deliver a drug or device without payment of their usual and customary or contracted charge.

(4) If despite good faith compliance with WAC 246-945-410(4), the lawfully prescribed drug or device is not in stock,

or the prescription cannot be filled pursuant to subsection (1)(a) of this section, the pharmacy shall provide the patient or agent a timely alternative for appropriate therapy which, consistent with customary pharmacy practice, may include obtaining the drug or device. These alternatives include, but are not limited to:

(a) Contact the prescriber to address concerns such as those identified in subsection (1)(a) of this section or to obtain authorization to provide a therapeutically equivalent product;

(b) If requested by the patient or their agent, return unfilled lawful prescriptions to the patient or agent; or

(c) If requested by the patient or their agent, communicate or transmit, as permitted by law, the original prescription information to a pharmacy of the patient's choice that will fill the prescription in a timely manner.

(5) Engaging in or permitting any of the following shall constitute grounds for discipline or other enforcement actions:

(a) Destroy unfilled lawful prescriptions;

(b) Refuse to return unfilled lawful prescriptions;

(c) Violate a patient's privacy;

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws; and

(e) Intimidate or harass a patient.

(6) Filled prescriptions may be picked up or returned for delivery by authorized personnel when the pharmacy is closed for business if the prescriptions are placed in a secured delivery area outside of the drug storage area. The secured delivery area must be a part of a licensed pharmacy, and equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft, or diversion. Access to the secured delivery area must be addressed by the policies and procedures developed by the responsible pharmacy manager.

(7) HCEs shall dispense in accordance with RCW 18.64.450.

(8) A licensed hospital pharmacy dispensing appropriately labeled, patient specific drugs to a HPAC licensed under the parent hospital pharmacy may do so only pursuant to a valid prescription and prescription information is authenticated in the medical record of the patient to whom the legend drug or controlled substance will be provided according to the policy and procedures of the parent hospital pharmacy.

NEW SECTION

WAC 246-945-417 Electronic systems for patient medication records, prescriptions, chart orders, and controlled substance records. (1) A pharmacy shall use an electronic recordkeeping system to establish and store patient medication records, including patient allergies, idiosyncrasies or chronic conditions, and prescription, refill, transfer information, and other information necessary to provide safe and appropriate patient care.

(a) Systems must prevent auto-population of user identification information.

(b) Pharmacies that provide off-site pharmacy services without a pharmacist for product fulfillment or prescription processing must track the identity of each individual involved in each step of the off-site pharmacy services.

(2) The electronic recordkeeping system must be capable of real-time retrieval of information pertaining to the ordering, verification, and processing of the prescription where possible.

(3) The electronic recordkeeping system must include security features to protect the confidentiality and integrity of patient records including:

(a) Safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription information and patient medication records; and

(b) Functionality that documents any alteration of prescription information after a prescription is dispensed, including the identification of the individual responsible for the alteration.

(4) The pharmacy shall have policies and procedures in place for system downtime.

(a) The procedure shall provide for the maintenance of all patient recordkeeping information as required by this chapter.

(b) Upon restoration of operation of the electronic recordkeeping system the information placed in the auxiliary recordkeeping procedure shall be entered in each patient's records within two working days, after which the auxiliary records may be destroyed.

(c) This section does not require that a permanent dual recordkeeping system be maintained.

(5) The pharmacy shall maintain records in accordance with WAC 246-945-020.

(6) Electronic prescriptions for prescription drugs must be maintained by the pharmacy in a system that meets the requirements of 21 C.F.R. Sec. 1311.

(7) HCEs or HPACs that maintain an electronic record system must be done in accordance with subsections (2) through (7) of this section.

NEW SECTION

WAC 246-945-418 Paper recordkeeping procedure. If an HPAC or HCE does not maintain an electronic recordkeeping system their manual records must contain all information required in WAC 246-945-417. The record system consists of the hard copy of the original prescription and a card or filing procedure that contains all data on new and refill prescriptions for a patient. This data must be organized in such a fashion that information relating to all prescription drugs used by a patient will be reviewed each time a prescription is filled.

NEW SECTION

WAC 246-945-420 Facility inventory requirements. (1) A facility shall conduct its own separate inventory of prescription drugs when it closes in accordance WAC 246-945-480.

(2) A facility shall conduct an inventory of controlled substances every two years.

(3) A facility shall conduct its own separate inventory of controlled substances in the following situations:

(a) Within thirty days of designating a responsible pharmacy manager. The incoming responsible pharmacy manager, or designee, shall conduct a complete controlled substance inventory.

(b) On the effective date of an addition of a substance to a schedule of controlled substances. Each facility that possesses the substance shall take an inventory of the substance on hand, and thereafter, include the substance in each inventory.

(4) A pharmacy that exclusively stores, dispenses or delivers legend drugs, including controlled substances, without a pharmacist on-site shall maintain a perpetual inventory.

(5) A pharmacy that exclusively stores, dispenses or delivers prescription drugs without pharmacy ancillary personnel physically on-site shall maintain a perpetual inventory.

NEW SECTION

WAC 246-945-425 Shared pharmacy services. Pharmacy services may be provided off-site at one or more locations. When the services being performed are related to prescription fulfillment or processing, the pharmacy or pharmacist must comply with the following:

(1) Long term care shared pharmacy services in accordance with RCW 18.64.570.

(2) Central fill shared pharmacy services in accordance with the following conditions:

(a) The originating pharmacy shall have written policies and procedures outlining the off-site pharmacy services to be provided by the central fill pharmacy, or the off-site pharmacist or pharmacy technician, and the responsibilities of each party;

(b) The parties shall share a secure real-time database or utilize other secure technology, including a private, encrypted connection that allows access by the central pharmacy or off-site pharmacist or pharmacy technician to the information necessary to perform off-site pharmacy services; and

(c) A single prescription may be shared by an originating pharmacy and a central fill pharmacy or off-site pharmacist or pharmacy technician. The fulfillment, processing and delivery of a prescription by one pharmacy for another pursuant to this section will not be construed as the fulfillment of a transferred prescription or as a wholesale distribution.

NEW SECTION

WAC 246-945-430 Pharmacies storing, dispensing and delivering drugs to patients without a pharmacist on-site. (1) The following requirements apply to pharmacies storing, dispensing and delivering drugs to patients without a pharmacist on-site and are in addition to applicable state and federal laws applying to pharmacies.

(2) The pharmacy is required to have adequate visual surveillance of the full pharmacy and retain a high quality recording for a minimum of thirty calendar days.

(3) Access to a pharmacy by individuals must be limited, authorized, and regularly monitored.

(4) A visual and audio communication system used to counsel and interact with each patient or patient's caregiver, must be clear, secure, and HIPAA compliant.

(5) The responsible pharmacy manager, or designee, shall complete and retain, in accordance with WAC 246-945-005 a monthly in-person inspection of the pharmacy.

(6) A pharmacist must be capable of being on-site at the pharmacy within three hours if an emergency arises.

(7) The pharmacy must be closed to the public if any component of the surveillance or visual and audio communication system is malfunctioning, and remain closed until system corrections or repairs are completed or a pharmacist is on-site to oversee pharmacy operations.

NEW SECTION

WAC 246-945-435 Provision of emergency department discharge medication when pharmacy services are unavailable. (1) The responsible pharmacy manager of a hospital or free standing emergency department may, in collaboration with the appropriate medical staff committee of the hospital, develop policies and procedures to provide discharge medications to patients released from hospital emergency departments during hours when community or outpatient hospital pharmacy services are not available.

(2) The policies and procedures in subsection (1) of this section shall:

(a) Comply with all requirements of RCW 70.41.480;

(b) Ensure all prepackaged medications are affixed with a label that complies with WAC 246-945-018;

(c) Require oral or electronically transmitted chart orders be verified by the practitioner in writing within seventy-two hours;

(d) The medications distributed as discharge medications are stored in compliance with the laws concerning security and access; and

(e) Ensure discharge medications are labeled appropriately.

(3) The delivery of a single dose for immediate administration to the patient is not subject to this regulation.

NEW SECTION

WAC 246-945-440 Administration of patient owned medications. Facilities shall develop written policies and procedures for the administration of patient owned medications.

NEW SECTION

WAC 246-945-445 Investigational drugs. (1) The responsible pharmacy manager or their designee is responsible for the storage, distribution, and control of approved investigational drugs used in an institutional facility. The pharmacy shall be responsible for maintaining and providing information on approved investigational drugs.

(2) Under the explicit direction of the authorized principal investigator, coinvestigator(s), or per study protocol requirements, investigational drugs must be properly labeled and stored for use. An appropriate medical staff committee,

institution review board, or equivalent committee, shall approve the use of such drugs.

NEW SECTION

WAC 246-945-450 Accessing technology used to dispense—Nursing students. (1) Nursing students may be given access privileges to technology used to dispense medications for patient administration as provided for in this section.

(2) Nursing students must be enrolled in a nursing program approved by the Washington state nursing care quality assurance commission in accordance with WAC 246-840-510.

(3) A facility that provides a clinical opportunity to nursing students must meet the following to grant access to technology used to dispense medications for patient administration:

(a) The facility, in collaboration with the nursing program, shall provide nursing students with orientation and practice experiences that include the demonstration of competency of skills prior to using the dispensing technology;

(b) Nursing programs and participating facilities shall provide adequate training for students accessing dispensing technology;

(c) The nursing programs and participating facilities shall have policies and procedures for nursing students to provide safe administration of medications; and

(d) The nursing program and participating facilities shall develop and have a way of reporting and resolving any nursing student medication errors, adverse events, and alleged diversion.

NEW SECTION

WAC 246-945-455 Drugs stored outside of the pharmacy. (1) In order for drugs to be stored in a designated area outside the pharmacy including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency department at a registered institutional facility, the following conditions must be met:

(a) Drugs stored in such a manner shall remain under the control of, and be routinely monitored by, the supplying pharmacy;

(b) The supplying pharmacy shall develop and implement policies and procedures to prevent and detect unauthorized access, document drugs used, returned and wasted, and regular inventory procedures;

(c) Access must be limited to health care professionals licensed under the chapters specified in RCW 18.130.040 acting within their scope, and nursing students as provided in WAC 246-945-450;

(d) The area is appropriately equipped to ensure security and protection from diversion or tampering; and

(e) The facility is able to possess and store drugs.

(2) For nursing homes and hospice programs an emergency kit or supplemental dose kit must comply with RCW 18.64.560.

NEW SECTION

WAC 246-945-460 Staffing and supervision of pharmacy staff. (1) The ratio of pharmacy technicians to pharmacist(s) on duty is to be determined by the responsible pharmacy manager.

(2) The responsible pharmacy manager will ensure that the number of pharmacy technicians on duty can be satisfactorily supervised by the pharmacist(s) on duty.

NEW SECTION

WAC 246-945-480 Facility reporting requirements. (1) The outgoing and incoming responsible pharmacy manager must report in writing to the commission a change in a responsible manager designation within ten business days of the change.

(2) Unless otherwise specified, when permanently closing a facility, the facility must:

(a) Report to the commission in writing, no later than thirty calendar days prior to closing:

(i) The date the facility will close;

(ii) The names and addresses of the persons who shall have custody of the prescription files, bulk compounding records, repackaging records, invoices and controlled substances inventory records of the pharmacy to be closed; and

(iii) The names and addresses of any person(s) who will acquire any legend drugs from the facility to be closed, if known at the time the notification is filed.

(b) Provide notification to customers noting the last day the pharmacy will be open, name and address of the pharmacy to which prescription records will be transferred and instructions on how patients can arrange for transfer of their prescription records to a pharmacy of their choice and the last day a transfer may be initiated. Notification should include:

(i) Distribution by direct mail; or

(ii) Public notice in a newspaper of general circulation in the area served by the pharmacy; and

(iii) Posting a closing notice sign in a conspicuous place in the public area of the pharmacy.

(c) No later than fifteen days after closing:

(i) Return the facility license;

(ii) Confirm that all legend drugs were transferred or destroyed. If the legend drugs were transferred, provide the names and addresses of the person(s) to whom they were transferred;

(iii) Confirm if controlled substances were transferred, including the date of transfer, names, addresses, and a detailed inventory of the drugs transferred;

(iv) Confirm return of DEA registration and all unused DEA 222 forms to the DEA;

(v) Confirm all pharmacy labels and blank prescriptions were destroyed; and

(vi) Confirm all signs and symbols indicating the presence of the pharmacy have been removed.

(3) The commission may conduct an inspection to verify all requirements in subsection (2) of this section have been completed.

(4) The facility shall immediately report to the commission any disasters, accidents and emergencies which may affect the strength, purity, or labeling of drugs, medications,

devices or other materials used in the diagnosis or the treatment of injury, illness, and disease.

(5) Any facility credentialed by the commission must report to the commission any disciplinary action, including denial, revocation, suspension, or restriction to practice by another state, federal, or foreign authority.

NEW SECTION

WAC 246-945-485 Destruction or return of drugs or devices—Restrictions. (1) A dispensed drug or prescription device must only be accepted for return and reuse as follows:

(a) Noncontrolled legend drugs that have been maintained in the custody and control of the institutional facility, dispensing pharmacy, or their related facilities under common control may be returned and reused if product integrity can be assured.

(b) Those that qualify for return under the provisions of chapter 69.70 RCW.

(2) A dispensed drug or prescription device may be accepted for return and destruction if:

(a) The dispensed drug or prescription device was dispensed in a manner inconsistent with the prescriber's instructions;

(b) The return is in compliance with the Washington state safe medication return program laws and rules, chapters 69.48 RCW and 246-480 WAC; or

(c) The return and destruction is in compliance with the facility's policies and procedures.

NEW SECTION

WAC 246-945-490 Nuclear pharmacies. (1) The commission shall issue a permit to operate a nuclear pharmacy providing radiopharmaceutical services to a qualified nuclear pharmacist. The qualified nuclear pharmacist shall:

(a) Supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals.

(b) Be responsible for all operations of the licensed area.

(c) Designate one or more qualified health care professionals licensed under the chapters specified in RCW 18.130.040, to have access to the licensed area in emergency situations and in the nuclear pharmacist's absence. These individuals may obtain radiopharmaceuticals for the immediate emergency and must document such withdrawals in the control system.

(2) A nuclear pharmacy shall have adequate space that is appropriate with the scope of services provided, including meeting the following requirements:

(a) The nuclear pharmacy area shall be separate from the pharmacy areas for nonradiopharmaceuticals and shall be secured from access by unauthorized personnel;

(b) A nuclear pharmacy handling radiopharmaceuticals exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the commission; and

(c) Detailed floor plans shall be submitted to the commission and the state radiation control agency before approval of the pharmacy license.

(3) A nuclear pharmacy shall prepare, compound, and dispense radiopharmaceuticals in accordance with USP <800> and <825>.

(4) The preparation of nuclear pharmaceuticals requires the compounding skills of the nuclear pharmacist and shall be done to assure that the final drug product meets USP <800> and <825>.

(5) A nuclear pharmacy shall maintain records of acquisition and disposition of all radiopharmaceuticals in accordance with applicable regulations of the commission, the state radiation control agency and other state and federal agencies.

(6) For a nuclear pharmacy handling radiopharmaceuticals exclusively, the commission may waive regulations pertaining to the pharmacy permits for nonradiopharmaceuticals for requirements that do not pertain to the practice of nuclear pharmacy.

(7) Radiopharmaceuticals are to be dispensed only upon a prescription from a practitioner authorized to possess, use and administer radiopharmaceuticals. A nuclear pharmacy may also furnish radiopharmaceuticals for office use to these practitioners. In absence of a prescription for an individual identified patient, the statement "Office Use Only" should be applied.

(8) A nuclear pharmacist may transfer to authorized persons radioactive materials not intended for drug use, in accordance with regulations of the state radiation control agency.

(9) In addition to labeling requirements of WAC 246-945-015 through 246-945-017 for nonradiopharmaceuticals, the immediate outer container of the radiopharmaceutical to be dispensed shall also be labeled with:

(a) Standard radiation symbol;

(b) The words "caution-radioactive material";

(c) Radionuclide and chemical form (generic name);

(d) Activity dispensed with units (millicuries or microcuries) at calibration date and time;

(e) If a liquid, the volume in milliliters;

(f) Calibration date and time for the dose;

(g) BUD and special storage and handling instructions for nonimmediate use;

(h) Specific concentration of radioactivity; and

(i) The patient name/identifier, and number of dosage units dispensed, for all therapeutic and blood-products.

(10) The immediate container of the radiopharmaceutical to be dispensed shall be labeled with:

(a) The standard radiation symbol;

(b) The words "caution-radioactive material";

(c) The name of the nuclear pharmacy;

(d) The prescription number;

(e) Radionuclide and chemical form (generic name)";

(f) The date;

(g) Activity dispensed with units (millicuries or microcuries) at calibration date and time; and

(h) The patient name/identifier for all therapeutic and blood-products.

(11) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately prior to dispensing.

(12) A nuclear pharmacy may redistribute NDA approved radiopharmaceuticals if the pharmacy does not pro-

cess the radiopharmaceuticals in any manner or violate the product packaging.

(13) The nuclear pharmacy shall have readily available the current applicable state laws and regulations of the commission and state radiation control agency.

(14) The nuclear pharmacy shall maintain, and submit to the commission and state radiation control agency, a library commensurate with the level of radiopharmaceutical service to be provided before approval of the license.

NEW SECTION

WAC 246-945-492 Nuclear pharmacies—Equipment requirements. (1) A nuclear pharmacy shall have adequate equipment appropriate with the scope of radiopharmaceutical services to be provided. The nuclear pharmacy shall submit to the commission and the radiation control agency a detailed list of equipment and description of use before approval of the license.

(2) The commission may, for good cause shown, waive regulations pertaining to the equipment and supplies required for a nuclear pharmacy handling radiopharmaceuticals exclusively.

Subpart B - Registrations

NEW SECTION

WAC 246-945-500 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Designated person. (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall have a designated person.

(2) The designated person is responsible for:

(a) Ordering, possession, safe storage and use of all approved drugs;

(b) Maintaining all records required by WAC 246-945-510; and

(c) Ensuring all records required by WAC 246-945-510 are available for inspection by the commission or its designee.

(3) A registered humane society, animal control agency, or department of fish and wildlife chemical capture program shall notify the commission within ten calendar days of a change in the designated person.

NEW SECTION

WAC 246-945-503 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Authorized personnel. (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall ensure only authorized personnel possess or administer approved legend drugs and approved controlled substances at the registered location.

(2) For registered humane societies and animal control agencies, authorized personnel are those individuals who have:

(a) Completed a commission-approved training program or training that is substantially equivalent; and

(b) Been approved by the designated person.

(3) For registered department of fish and wildlife chemical capture programs, authorized personnel are those individuals who have:

(a) Completed a commission-approved training program or training that is substantially equivalent;

(b) Been approved by the department of fish and wildlife; and

(c) Are a department of fish and wildlife officer, biologist, or veterinarian.

(4) A commission-approved training program shall include didactic and practical training under the direction of a licensed veterinarian. The commission-approved training program should ensure that authorized personnel shall be able to demonstrate adequate knowledge of the potential hazards and proper techniques used in administering approved legend and controlled substances.

NEW SECTION

WAC 246-945-505 Humane societies and animal control agencies—Approved legend drugs and approved controlled substances. (1) The following legend drugs are designated as "approved legend drugs" for use by registered humane societies and animal control agencies for pre-euthanasia sedation:

(a) Acetylpromazine;

(b) Dexmedetomidine;

(c) Medetomidine; and

(d) Xylazine.

(2) Registered humane societies and animal control agencies may only use sodium pentobarbital to euthanize injured, sick, homeless or unwanted domestic pets, and domestic or wild animals.

(3) Any approved drug used by the registered humane society and animal control agency shall be marked "for veterinary use only."

(4) Staff of registered humane societies and animal control agencies may administer legend drugs and controlled substances which have been prescribed by a licensed veterinarian for a specific animal, which have been dispensed by a pharmacy or a veterinarian and are properly labeled in accordance with either RCW 18.64.246 or 69.41.050 and WAC 246-945-015 through 246-945-017.

NEW SECTION

WAC 246-945-507 Department of fish and wildlife chemical capture programs—Approved legend drugs and approved controlled substances. (1) The following legend drugs are designated as "approved legend drugs" for use by registered department of fish and wildlife chemical capture programs:

(a) Acetylpromazine;

(b) Atipamezole;

(c) Azaperone;

(d) Detomidine;

(e) Dexmedetomidine;

(f) Isoflurane;

(g) Medetomidine;
(h) Naltrexone;
(i) Tolazoline;
(j) Xylazine; and
(k) Yohimbine.

(2) The following controlled substances are controlled substances approved for use by registered department of fish and wildlife chemical capture programs:
(a) Butorphanol;
(b) Diazepam;
(c) Diprenorphine;
(d) Carfentanil;
(e) Fentanyl;
(f) Ketamine;
(g) Midazolam;
(h) Tiletamine; and
(i) Zolazepam.

(3) Staff of registered department of fish and wildlife chemical capture programs may administer legend drugs and controlled substances which have been prescribed by a licensed veterinarian for a specific animal or management group of animals, which have been dispensed by a pharmacy or a veterinarian and are properly labeled in accordance with either RCW 18.64.246 or 69.41.050 and WAC 246-945-015 through 246-945-017 or 246-933-340 (5)(a) and (b).

NEW SECTION

WAC 246-945-510 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Recordkeeping and reports. (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall record the receipt, use, and disposition of approved drugs in a logbook or electronic record. An electronic record can meet the requirements of this section if the electronic record is legible and in a readily retrievable format, provided federal law does not require them to be kept in a hard copy format.

(2) The logbook or electronic record must have sufficient detail to allow an audit of the drug usage to be performed and must include:
(a) Date and time of administration;
(b) Route of administration;
(c) Identification number or other identifier assigned to the animal;
(d) Estimated weight of the animal;
(e) Estimated age and breed or species of the animal;
(f) Name of drug used;
(g) Dose of drug administered;
(h) Amount of drug wasted; and
(i) Initials of the primary person administering the drug.

(3) The logbook or electronic record may omit subsection (2)(b), (d), and (e) of this section if the information is recorded in other records cross-referenced by the animal identification number or other assigned identifier.

(4) Authorized personnel of the registered entity shall document any errors or discrepancies in the drug inventory in the logbook or electronic record and report to the registered entity for investigation.

(5) The registered entity shall report any unresolved discrepancies in writing to the commission within seven calendar days and to the DEA if the loss includes a controlled substance.

(6) The designated person shall perform a physical inventory or count of approved drugs every twelve months. The physical inventory must be reconciled with the logbook or electronic record.

(7) The designated person or designee shall destroy or waste noncontrolled legend drugs that are unfit for administration. A second member of the staff shall witness the destruction or waste of drugs. The destruction or waste of noncontrolled legend drugs will be documented in the logbook or electronic record with the date of the event and signatures of the individuals involved.

(8) A registered entity shall return all unwanted or unused approved controlled substances to the manufacturer or destroy them in accordance with the rules and requirements of the commission, the DEA, and the department of ecology. The return or destruction of controlled substances will be documented in the logbook or electronic record with the date of the event and signatures of the individuals involved.

(9) A registered entity must maintain a readily retrievable list of all authorized personnel who have demonstrated the qualifications to possess and administer approved drugs.

(10) All records of the registered entity must be available for inspection by the commission or its designee.

(11) The registered entity must maintain the logbook and other related records in accordance with WAC 246-945-020.

NEW SECTION

WAC 246-945-515 Human societies, animal control agencies, and department of fish and wildlife chemical capture programs—Drug storage and field use. (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location must store all approved legend drugs, and approved controlled substances in a substantially constructed securely locked cabinet or drawer.

(2) Only authorized personnel as defined in WAC 246-945-503 (2) and (3) shall have access to the drug storage cabinet or drawer at the registered location.

(3) A registered humane society and animal control agency may allow the possession of approved drugs for field use under the following conditions:

(a) The individual meets the requirements of an authorized person in WAC 246-945-503(2);

(b) The individual is either:

(i) A humane officer;

(ii) An animal control enforcement officer;

(iii) An animal control authority; or

(iv) A peace officer authorized by the chief of police, sheriff, or county commissioner.

(c) The approved drugs are stored in a locked metal box securely attached to a vehicle;

(d) A drug inventory is completed at the beginning and end of each shift, and recorded in a logbook or electronic

record that meets the requirements of WAC 246-945-510; and

(e) All receipts and use of approved drugs are recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510.

(4) A registered department of fish and wildlife chemical capture program may allow the possession of approved drugs for field use under the following conditions:

(a) The individual meets the requirements of an authorized person in WAC 246-945-503(3);

(b) The approved drugs are stored in a locked metal box securely attached to a vehicle;

(c) A drug inventory is completed on a monthly basis and recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510; and

(d) All receipts and use of approved drugs are recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510.

Subpart C - Drug Distributors

NEW SECTION

WAC 246-945-550 Manufacturers—Minimum standards. (1) Manufacturers shall comply with the applicable requirements in 21 C.F.R., Part 210, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs"; and 21 C.F.R., Part 211, "Current Good Manufacturing Practice for Finished Pharmaceuticals; General."

(2) Manufacturers required to register with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b(d)(4)(A), shall also comply with FDA guidance document.

(3) Virtual manufacturers shall ensure its own drugs are manufactured in compliance with this section.

NEW SECTION

WAC 246-945-553 Teat dip containers. The reuse of teat dip containers and closures shall be allowed under the following circumstances:

(1) Teat dip containers for reuse must have attached a labeling panel bearing product name, brand name and distributor address if marketed by other than the manufacturer, manufacturer name and address, product strength, quantity, expiration date, directions for use, and appropriate cautionary statements for the product contained within.

(2) All reusable teat dip containers will be hot stamped for permanent identification as teat dip containers. The hot stamp shall imprint on the plastic container, in an immutable manner, the words "teat dip only" and the manufacturer's name. Teat dip manufacturers may only refill containers bearing their company name.

(3) With cooperation from dairy producers, dairy sanitarians will take random samples of teat dip in reusable containers while on regular farm inspections. The samples, along with appropriate label information, will be forwarded to the board of pharmacy for analysis to ensure that the product meets label specifications and is free of contamination.

(4) Reusable teat dip containers shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quantity, or purity of the product.

(5) Upon return to the manufacturer, reusable teat dip containers shall be cleaned and sanitized. To ensure adequate cleaning occurs, the board of pharmacy may require a manufacturer to submit and have approved a cleaning procedure. Containers showing structural damage, or any signs of being used for substances or materials other than teat dip shall not be reused as teat dip containers.

NEW SECTION

WAC 246-945-555 Wholesaler—Minimum standards—Scope. (1) WAC 246-945-560 through 246-945-600 establish the minimum standards for facilities licensed as wholesalers, their officers, designated representatives, agents, and employees.

(2) Virtual wholesalers shall ensure drugs they purchase or sell are stored and distributed in compliance with WAC 246-945-560 through 246-945-600.

NEW SECTION

WAC 246-945-560 Wholesaler—Facility standards. (1) Facilities used for wholesale drug distribution must:

(a) Be of suitable size, construction, and location to accommodate cleaning, maintenance, and proper operations;

(b) Have storage areas that provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security;

(c) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed secondary containers that have been opened;

(d) Be maintained in a clean and orderly condition;

(e) Be free from infestation of any kind;

(f) Be a commercial location and not a personal dwelling or residence;

(g) Provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of information; and

(h) Provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting, or diversion of drugs.

(2) Facilities used for wholesale drug distribution must be secure from unauthorized entry, as follows:

(a) Access from outside the premises must be kept to a minimum and well controlled;

(b) The outside perimeter of the premises must be well lit;

(c) Entry into areas where drugs are held must be limited to authorized personnel;

(d) Facilities must be equipped with an alarm system to detect entry after hours; and

(e) Facilities must be equipped with security systems sufficient to protect against theft, diversion, or record tampering.

NEW SECTION

WAC 246-945-565 Wholesaler—Drug storage. (1) Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by the requirements of the 43rd edition of USP and 38th edition of the National Formulary (USP/NF), to preserve product identity, strength, quality, and purity. The USP/NF is available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

(2) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Temperature and humidity recording equipment, devices, and/or logs shall be used to document proper storage of drugs.

(4) Controlled substance drugs should be isolated from noncontrolled substance drugs and stored in a secured area.

(5) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor.

(6) Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined.

(7) Drugs must be quarantined under any condition that causes doubt as to a drug's safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards.

NEW SECTION

WAC 246-945-570 Wholesaler—Drug shipment inspection. (1) Each outside shipping container must be visually examined on receipt for identity and to avoid acceptance of drugs that are contaminated or otherwise unfit for distribution.

(2) Outgoing shipments must be inspected to verify the accuracy and product integrity of the shipment contents.

NEW SECTION

WAC 246-945-575 Wholesaler—Recordkeeping. (1) Wholesalers and other entities engaged in wholesale drug distribution must establish and maintain inventories and records of transactions pertaining to the receipt and distribution or other disposition of drugs. The records must include at least:

(a) The source of the drugs, including the name and principal address of the seller or transferor;

(b) The identity and quantity of the drugs received and distributed or disposed of; and

(c) The dates of receipt and distribution or other disposition of the drugs.

(2) Records must be retained in a readily retrievable manner in accordance with WAC 246-945-020.

NEW SECTION

WAC 246-945-580 Wholesaler—Personnel. (1) A wholesaler must establish and maintain a list of officers, directors, managers, a designated representative, and other persons responsible for wholesale drug distribution, storage, and handling and must include a description of each individual's duties and a summary of their qualifications.

(2) A wholesaler must employ personnel in sufficient numbers and with adequate education, training, and experience to safely and lawfully engage in wholesale drug distribution activities.

NEW SECTION

WAC 246-945-585 Wholesaler—Suspicious orders and due diligence. (1) Wholesalers shall design and operate a system to identify and report suspicious orders of controlled substances and drugs of concern to the commission.

(a) Suspicious orders shall be submitted electronically through a commission approved system or to the commission or within five business days of the order being identified as suspicious by the wholesaler, and must include, but not necessarily limited to:

(i) Customer name;

(ii) Customer address;

(iii) Customer DEA registration number;

(iv) State license number(s);

(v) Transaction date;

(vi) Drug name;

(vii) NDC number;

(viii) Quantity ordered; and

(ix) Indication of whether the drug was shipped, and if not, the factual basis for the refusal to supply.

(b) Zero reports shall be submitted if no suspicious orders have been identified in a calendar month, and such reports shall be submitted within fifteen business days of the end of the calendar month.

(c) Wholesalers may apply to the commission for an exemption from the reporting requirements if they do not distribute controlled substances or drugs of concern.

(2) Except as provided in subsection (3) of this section, a wholesaler shall exercise due diligence to identify customers ordering or seeking to order controlled substances or drugs of concern, and establish the normal and expected transactions conducted by those customers, as well as to identify and prevent the sale of controlled substances or drugs of concern that are likely to be diverted from legitimate channels. Such due diligence measures shall include, but are not limited to, the following, which shall be conducted prior to an initial sale and on a regular basis, as necessary:

(a) Questionnaires and affirmative steps by the wholesaler to confirm the accuracy and validity of the information provided, it shall be considered illegal for a customer to provide false or misleading information;

(b) For a customer who is a prescriber, confirmation of prescriber type, specialty practice area, and if the prescriber personally furnishes controlled substances or drugs of concern, the quantity furnished;

(c) Review of drug utilization reports; and

(d) Obtaining and conducting a review of the following:

(i) Methods of payment accepted and in what ratios;

(ii) The ratio of controlled versus noncontrolled prescriptions and overall sales;

(iii) Orders for controlled substances or drugs of concern from other wholesalers U.S. DEA's Automation of Reports and Consolidated Orders System (ARCOS); and

(iv) The ratio of out-of-state patients served compared to in-state patients.

(3) A wholesaler receiving a request for an initial sale of a controlled substance or drugs of concern may conduct the sale before complying with subsection (2) of this section if all of the following apply:

(a) The sale is to a new customer;

(b) The wholesaler documents that the order is to meet an emergent need;

(c) The wholesaler completes the requirements of subsection (2) of this section no later than sixty business days from the date of sale.

(4) A wholesaler receiving a request from an existing customer to purchase a controlled substance or drug of concern, the size/quantity of which exceeds the established algorithm limitations or quota restrictions for such customer, may sell the drug of concern or controlled substance provided the customer submit documentation explaining the request.

(5) Any customer that is believed to be engaged in potential diversion activity, including those to whom a wholesaler refuses to sell, shall be electronically reported to the commission. Such reports shall include:

(a) Customer name;

(b) Customer address;

(c) DEA number;

(d) State license number(s);

(e) A detailed explanation of why the wholesaler identified the customer as a possible diversion risk; and

(f) Such reports shall be submitted within thirty days of refusal, cessation, or identification by wholesaler.

(6) All licensed wholesalers shall submit all reports to the commission in a DEA ARCOS format where applicable.

NEW SECTION

WAC 246-945-590 Wholesaler—Policies and procedures. Wholesalers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, and shipping and wholesale distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesalers shall include the following in their written policies and procedures:

(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

(a) Any action initiated at the request of FDA or any other federal, state, or local law enforcement or other government agency, including the commission; or

(b) Any volunteer action by the manufacturer to remove defective or potentially defective drugs from the market.

(2) A procedure to ensure that wholesalers prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of a strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed in accordance with federal and state laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated drugs.

(4) A procedure for the destruction of outdated drugs in accordance with federal and state laws.

(5) A procedure for the disposing and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers, or containers in accordance with all applicable federal and state requirements.

(6) A procedure for identifying, investigating, and reporting significant drug inventory discrepancies involving counterfeit, suspect of being counterfeit, contraband, or suspect of being contraband, in the inventory and reporting of such discrepancies as required to the FDA, commission and/or appropriate federal or state agency upon discovery of such discrepancies.

(7) A procedure for reporting criminal or suspected criminal activities involving the inventory of drug(s) as required to the commission, FDA, and if applicable, DEA.

(8) Procedures addressing:

(a) The design and operation of the suspicious order monitoring and reporting system;

(b) Mandatory annual training for staff responsible for identifying and reporting suspicious orders and potential diversion activities. Such training must include the following:

(i) The wholesaler's suspicious order monitoring system;

(ii) The process to collect all relevant information on customers in accordance with WAC 246-960-330; and

(iii) The requirement and process for submission of suspicious order and information on customers who engage in potential diversion activities.

(9) A procedure for timely responding to customers who submit purchase orders for patients with emergent needs.

NEW SECTION

WAC 246-945-595 Wholesaler and manufacturer—Prohibited acts. It is unlawful for a wholesaler or manufacturer to perform, cause the performance of, or aid and abet any of the following acts in Washington state:

(1) The manufacture, repackaging, sale, delivery, or holding or offering for sale any drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution or wholesale distribution;

(2) The adulteration, misbranding, or counterfeiting of any drug;

(3) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the product labeling of

a drug or the commission of any other act with respect to a drug that results in the drug being misbranded;

(4) The forging, counterfeiting, simulating, or falsely representing of any drug without the authority of the manufacturer, or using any mark, stamp, tag, label, or other identification device without the authorization of the manufacturer;

(5) The purchase or receipt of a drug from a person that is not authorized to distribute drugs to that purchaser or recipient;

(6) The sale or transfer of a drug to a person who is not legally authorized to receive a drug;

(7) The sale or transfer of a drug from pharmacies to distributors for resale;

(8) The failure to maintain or provide records as required by laws and rules;

(9) Providing the commission or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of these laws and rules;

(10) The obtaining of or attempting to obtain a drug by fraud, deceit, misrepresentation or engaging in misrepresentation or fraud in the distribution or wholesale distribution of a drug;

(11) The distribution of a drug to the patient without a prescription from a practitioner licensed by law to use or prescribe the drug; and

(12) The distribution or wholesale distribution of a drug that was previously dispensed by a pharmacy or distributed by a practitioner.

NEW SECTION

WAC 246-945-600 Salvaging and reprocessing. Wholesalers shall be subject to the provisions of any applicable federal, state, or local laws or rules that relate to prescription drug salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211k of the Code of Federal Regulations.

WSR 20-03-145
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed January 20, 2020, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-19-074.

Title of Rule and Other Identifying Information: Registered tow trucks—Business office hours and records and fees.

Hearing Location(s): On February 28, 2020, at 9:00 a.m., at 106 11th Avenue S.W., Room 4022, Olympia, WA 98504.

Date of Intended Adoption: March 3, 2020.

Submit Written Comments to: Kimberly Mathis, Rules Coordinator, 106 11th Avenue S.W., Olympia, WA 98504, email wsprules@wsp.wa.gov, by February 27, 2020.

Assistance for Persons with Disabilities: Contact Kimberly Mathis, phone 360-596-4017, email wsprules@wsp.wa.gov, by February 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: With the passage of SHB 1218 during the 2017 legislative session, the bill changed the starting time for calculation of storage fees and the time is charged in fifteen minute increments and may not exceed an hour.

Reasons Supporting Proposal: The proposed changes will ensure the rules reference and will comply with current laws in the state of Washington.

Statutory Authority for Adoption: RCW 46.37.005, 46.55.050, 46.55.115.

Statute Being Implemented: RCW 46.37.005, 46.55.050, 46.55.115.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt pursuant to RCW 34.05.328 (5)(b)(v).

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.

January 20, 2020
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 15-19-105, filed 9/18/15, effective 10/19/15)

WAC 204-91A-120 Business office hours and records. (1) Business hours will be in accordance with RCW 46.55.060(6). Businesses that close for an hour between 11:00 a.m. and 1:00 p.m. must:

(a) Designate the hour that they intend to use on a daily basis and notify the patrol of the designated hour annually at the time of inspection. The designated hour may be:

(i) Changed by providing notice to the patrol at least seventy-two hours in advance. Electronic notification to the inspector will be considered an acceptable form of providing notice.

(ii) Adjusted the same day if a customer transaction occurs during the designated hour or an emergent business need arises provided that:

(A) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(B) The total amount of time the business office is closed does not exceed one hour; and

(C) Notice is provided:

(I) At the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(II) To the inspector electronically within twenty-four hours if adjusted for an emergent business need.

(b) Notify the public of the designated hour that they intend to be closed, which must be posted on the door with a telephone number at which personnel can be reached as required by RCW 46.55.060.

(c) Remain accessible to law enforcement or department of licensing if they are in the process of performing an inspection or investigation. Adjustments to the designated hour may be made if an investigation or inspection occurs during the designated hour provided that:

(i) The adjusted time is taken between 11:00 a.m. and 1:00 p.m.;

(ii) Notice is provided at the door regarding the return time with a telephone number at which personnel can be reached as required per RCW 46.55.060; and

(iii) The total amount of time the business office is closed does not exceed one hour.

(2) The owner/operator must have personnel at the place of business during business hours to answer phone calls and to release vehicles and personal property. Persons from adjoining or neighboring businesses may not be used to meet this requirement. Phones may not be forwarded to an answering service during normal business hours.

(3) When ((~~an~~)) a tow operator is not open for business and does not have personnel present at the place of business, the tow operator must post a clearly visible telephone number at the business location to advise the public how to make contact for the release of vehicles or personal property.

(4) The owner/operator must maintain personnel who must be:

(a) Available twenty-four hours a day to release impounded vehicles within a sixty-minute period of time. If personnel are contacted during the hour the business has designated to be closed under subsection (1) of this section, personnel must:

(i) Log the time of the call;

(ii) Return to the business within no more than one-half hour;

(iii) Calculate the storage fees based on the time of the call. If the vehicle's legal or registered owner or the owner's authorized representative does not redeem the vehicle at the time the tow operator returns to the business, the vehicle storage fees will accrue as if charges had not ceased at the time of the call.

(b) Identifiable as representing the company.

(5) All billing invoices must be numbered and must contain the following information:

(a) Business name, business address, and phone number.

(b) Date of service and tow truck ((~~operator's~~)) driver's first initial and last name.

(((~~b~~))) (c) Time of departure in response to the call.

(((~~c~~))) (d) Time tow truck arrived at the scene.

(e) Time tow truck departed the scene.

(f) Time tow truck arrived at the yard.

(g) Time ((~~service~~)) the vehicle is unloaded and the necessary and required paperwork is completed.

(((~~d~~))) (h) Class of tow truck used.

(((~~e~~))) (i) If the ((~~towing call is for~~)) tow was in response to a Washington state patrol request((~~, another police agency, a private impound, or the result of a private citizen request.~~

~~(f) All fees for service must be itemized~~)).

(((~~g~~))) (j) The date and time the vehicle was released.

(((~~6~~))) (k) The number of storage spaces used, and if more than one storage space is used, the size of vehicle as measured in feet from front bumper to rear bumper.

(6) All fees for service must be itemized on the invoice, including each item of additional labor, ancillary equipment, or removal of debris, cargo, or other items.

(7) Yard cards containing the information in subsection (5) of this section may be used for internal control of vehicles by the tow operator until the vehicle is released, sold, or otherwise disposed of. Yard cards are supplemental to, and do not replace the invoice required above.

(((~~7~~))) (8) A copy of the invoice must be filed by invoice number at the business location and a copy of any voided invoice must be retained in this same file. Another copy of the invoice must be included with the transaction file items identified in RCW 46.55.150.

AMENDATORY SECTION (Amending WSR 14-17-104, filed 8/19/14, effective 9/19/14)

WAC 204-91A-140 Fees. (1) Towing fees must be based on a flat, hourly rate only and will apply without regard to the hour of day, day of the week or whether the service was performed on a Saturday, Sunday, or state recognized holiday. The hourly rate for each class of truck must be charged for services performed for initial tows and secondary tows performed during business hours. Charges for secondary tows performed during nonbusiness hours, on weekends or state recognized holidays, if different from the hourly rate, must be negotiated and agreed upon with the vehicle owner/agent before the tow is made.

The tow inspector will investigate allegations of overcharging. Intentional overcharging or a pattern of overcharging will be cause for suspension. The tow operator's failure to reimburse the aggrieved customer(s) may be cause for suspension, after a tow inspector has determined that overcharging occurred and may result in the suspension or revocation of the tow operators letter of appointment. The suspension will remain in effect until the tow operator has presented to the patrol sufficient proof that the aggrieved customer(s) has been fully reimbursed.

(2) The chief or designee will, prior to October 15th of each year, establish maximum hourly towing rates for each class of tow truck and maximum daily storage rates that tow operators may charge for services performed as a result of state patrol calls. The maximum rates will be determined after consultation with members of the towing industry, review of current private towing rates, and such other economic factors as the chief deems appropriate.

When signed by the chief or designee and the tow operator, a contractual agreement to charge no more than the maximum rates will become part of the operator's letter of appointment. The tow operator may, however, adopt a rate schedule charging less than the maximum rates established by the chief.

The hourly rate must:

(a) Apply when a call for a tow is made by the state patrol, except as outlined under subsection (6) of this section.

This includes, but may not be limited to, collisions and impound requests.

(b) Include all ancillary activities including, but not limited to, removal of glass, debris, and vehicle fluids less than one gallon from the roadway and areas referred to as the "scene or incident location," necessary winching, dolly service, drive line removal, installation of chains on the tow truck, installation of portable lights, vehicle hookup for towing or transporting, tire replacement and standby time. Before leaving any collision or incident location, the tow company must advise the department of transportation, the patrol, local law enforcement road department of all fluid spills greater than one gallon remaining.

(c) Include the labor of one person per truck. When responding with a class "C" or an S-1 rotator truck to a major collision or incident location; a second person is allowed at the hourly labor rate per contract for an extra registered tow truck operator employee. Any charges for additional labor or ancillary vehicles, or both, or for removing debris, cargo, or other items at the collision or incident location must have prior authorization from the legal or registered owner/agent, or a member of the patrol at the scene, and must have documentation in the vehicle transaction file for inspection purposes. Documentation must include:

(i) The first and last name of the person who requested the additional labor, ancillary vehicle, or removal of debris, cargo, or other items at the collision or incident location.

(ii) How and when the approval was obtained.

(d) Be computed from the actual time the truck departs in response to a call until the truck returns to its tow zone, responds to another call, returns to the storage area, or returns to the place of business of the registered tow truck operator. Billing invoices must have the time of day and date a vehicle arrives at the storage area or place of business of the registered tow truck operator.

(i) The hourly rate must be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes. ((~~The operator may charge the hourly rate for the first hour or any fifteen minute portion thereof.~~))

(ii) After returning to the storage area, the tow operator may charge for the total amount of time in fifteen minute increments not to exceed a total of sixty minutes.

(e) Be evenly divided between customer vehicles transported when class "E" trucks are used for multiple towing/recovery services (one on bed, one in tow) from the same service call or incident location.

(3) The basic storage fee:

(a) Must be calculated using bumper to bumper measurements for vehicles, and using tongue to bumper measurements for trailers; and

(b) Must be calculated on a twenty-four-hour basis and must be charged to the nearest half day from the time the vehicle arrives at the secure storage area. Vehicles stored over twelve hours on any given day within the twenty-four-hour period may be charged a full day's storage. Vehicles stored less than twelve hours on any given day, may only be charged for twelve hours of storage; and

(c) Must be the same for all three and four-wheel vehicles twenty feet or less in length; and

(d) For vehicles or combinations exceeding twenty feet, the storage fee must be computed by multiplying each twenty feet of vehicle length, or any portion thereof, by the basic storage fee; and

(e) For motorcycles, operators may charge the basic storage fee for vehicles.

(4) To charge fees for ancillary equipment, additional labor, or removal of cargo and commodities that must be offloaded after placed in the storage area or registered tow truck operator's place of business for the purpose of disposal or storage, the operator must provide written notification of such fees to the legal owner, registered owner or owner's agent of the vehicle and must make a good faith attempt to gain prior authorization for estimated charges.

(a) Notification must include an itemized list of the estimated charges for any ancillary equipment, additional labor, or removal of cargo and commodities that must be offloaded after placed in the storage area or registered tow truck operator's place of business for the purpose of disposal or storage.

(b) Documentation must include:

(i) A copy of the written notification made to the legal owner, registered owner, or owner's agent.

(ii) Full name of the individual(s) contacted or attempted to be contacted for authorization for completion of additional labor, ancillary equipment, or removal of cargo or commodities for the purpose of disposal or storage.

(iii) The company representing the legal owner, registered owner, or owner's agent if applicable.

(iv) Date and time of each contact.

(v) Phone number and any other contact information that was available at the time of the contact.

(c) The patrol will provide the insurance information by request of the operator, if available.

(5) After hours release fee may be assessed if the tow operator or employee must be at the business location specifically for the purpose of releasing the vehicle and/or property on any weekday after 5 p.m. and before 8 a.m.; Saturday or Sunday; or on any state recognized holiday. After hour fees must:

(a) Be based on a flat, hourly rate;

(b) Be applied to the resulting net time and, after the first hour, must be rounded to the nearest fifteen minutes; and

(c) Be no more than one-half of the class "A" rate.

(6)(a) Any tow operator who charges the general public (i.e., private citizens) rates lower than those identified in the contractual agreement for the following services must charge the same lower rate for similar services performed as a result of patrol initiated calls:

(i) Roadside mechanical service including, but are not limited to, fuel transfer, tire and belt changes;

(ii) Disabled vehicle tow/transportation;

(iii) Storage;

(iv) After hours release fees.

(b) The price requirement in subsection (a)(i) through (iii) of this section does not apply to unoccupied vehicle situations in which the owner/operator has had no prior contact with either the state patrol or the tow operator.

(7) Upon redemption of a vehicle, an additional charge may not be assessed for moving or relocating any stored vehi-

cle from inside a tow operator's storage yard to the front of the business establishment.

(8) Tolls and ferry fares paid by the tow operator or employee as a result of charges attributed to services provided during travel to and from a service call while using the shortest reasonable route, may be added as a separate line item to the tow bill. Added charges must be evidenced by a receipt or highlighted (i.e., "Good to Go" or "Wave to Go") on the transaction document and kept in the vehicle transaction file for inspection purposes.

WSR 20-03-146
WITHDRAWAL OF PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER
[Filed January 20, 2020, 3:56 p.m.]

The insurance commissioner is withdrawing the CR-102 Proposed rule making of intent for R 2019-03 Confidential Communications, published by the code reviser in WSR 19-24-080 on December 3, 2019.

We will contact individuals that provided comments during the CR-101 comment period as soon as we resume this rule making.

January 20, 2020
Mike Kreidler
Insurance Commissioner

WSR 20-03-149
PROPOSED RULES
BOARD OF PILOTAGE COMMISSIONERS
[Filed January 21, 2020, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-106.

Title of Rule and Other Identifying Information: WAC 363-116-082 Limitations on new pilots.

Hearing Location(s): On March 19, 2020, at 10:00 a.m., at 2901 3rd Avenue, 4th Floor, Rainer Conference Room.

Date of Intended Adoption: March 19, 2020.

Submit Written Comments to: Sheri Tonn, Chair, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by March 12, 2020.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by March 12, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to limited training opportunities in the Puget Sound Pilotage District, the board will limit the license for first-year pilots in the Duwamish Waterway. The license restriction will prohibit first-year pilots from piloting vessels greater than three thousand gross tons in the Duwamish Waterway. The restriction will be lifted through the license upgrade program developed by the board's trainee evaluation committee (TEC) for second year pilots.

Reasons Supporting Proposal: This WAC change is necessary due to the advanced level of piloting skill required to navigate the Duwamish Waterway and lack of opportunities to obtain the required number of observation, training, and evaluation trips, as required by the board's pilot training program.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 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 board received a recommendation from the TEC favoring the implementation of this license restriction based on a review of traffic patterns in the Duwamish Waterway.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jaimie C. Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; and Enforcement: Board of Pilotage Commissioners, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3904.

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

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

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

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

January 21, 2020
Jaimie C. Bever
Executive Director

AMENDATORY SECTION (Amending WSR 19-06-007, filed 2/22/19, effective 3/25/19)

WAC 363-116-082 Limitations on new pilots. (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels	Waterways
1	Piloting on vessels of any size prohibited	38,000 GT (ITC) except for passenger vessels which may only have a maximum size of 5000 GT (ITC)	Prohibited in the Duwamish Waterway on vessels greater than 3,000 GT
2	32,000 GT (ITC)	48,000 GT (ITC)	No restrictions
3	40,000 GT (ITC)	60,000 GT (ITC)	No restrictions
4	50,000 GT (ITC)	70,000 GT (ITC)	No restrictions
5	65,000 GT (ITC)	95,000 GT (ITC)	No restrictions

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section. As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	32,000 GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed 25,000 GT (ITC)
2	15,000 GT (ITC)	42,000 GT (ITC)
3	32,000 GT (ITC)	52,000 GT (ITC)
4	42,000 GT (ITC)	62,000 GT (ITC)
5	52,000 GT (ITC)	72,000 GT (ITC)

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River Bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of 32,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of 15,000 GT (ITC) and two trips on other vessels in excess of 42,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the two upgrade trips upon other vessels in excess of 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make two license upgrade trips on tank vessels in excess of 32,000 GT (ITC) and two trips on other vessels in excess of 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 42,000 GT (ITC) and two trips on other vessels in excess of 62,000 GT (ITC).

(e) Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on tank vessels in excess of 52,000 GT (ITC) and two trips on other vessels in excess of 72,000 GT (ITC).

(f) If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with (a) through (e) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

WSR 20-03-156
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed January 21, 2020, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-091.

Title of Rule and Other Identifying Information: Title 98 WAC, Department of licensing (cemetery board), and Title 308 WAC, Department of licensing.

Hearing Location(s): On February 25, 2020, at 10:30 a.m., at the Radission [Radisson] Hotel SeaTac, 18118 International Boulevard, Room: Orcas, Seattle, WA 98188; and on February 26, 2020, at 10:30 a.m., at The Davenport Grand, 333 West Spokane Falls Boulevard, Room: 1, Spokane, WA 99201.

Date of Intended Adoption: March 30, 2020.

Submit Written Comments to: Julie Konnersman, P.O. Box 9020, Olympia, WA 98507-9020, email jkonnersma@dol.wa.gov, fax 360-570-7098, 360-664-1507, by February 25, 2020.

Assistance for Persons with Disabilities: Contact Kim Hall, phone 360-664-1564, fax 360-570-7098, TTY 711, email khall@dol.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The funeral and cemetery board is promulgating rule making to incorporate ESSB 5001 which was passed during the 2019 legislative session. These rules will cover the two new dispositions: Alkaline hydrolysis and natural organic reduction. In addition to ESSB 5001 changes, the board is repealing Title 98 WAC in its entirety and is rewriting and merging all relevant funeral and cemetery rules into Title 308 WAC for ease of use.

Reasons Supporting Proposal: New statutory requirements for new dispositions will require rules to be promulgated related to licensing and facility operations. In addition to new rules, Title 98 WAC is being repealed and Title 308 WAC will include rewriting current rules to include relevant information from Title 98 WAC. Having all of the rules under one title, Title 308 WAC, will be more efficient and easier to use for licensees and the public. Also, some rules will be written to codify current policies and complete housekeeping.

Statutory Authority for Adoption: RCW 68.05.105, 18.39.175.

Statute Being Implemented: Chapter 18.39 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: Pamela Griese, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1553; Implementation and Enforcement: Rick Storvick, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1387.

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 large portions of the rules were promulgated as a result of 2019 legislation or are codifying long standing policies and practices; other changes being considered will be incorporated into the implementation of the agency's new business technology efforts so will not incur new additional costs to the state.

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.

Explanation of exemptions: Portions of the rule making resulted in the passage of ESSB 5001 (2019) creating two new license types for new disposition methods. These portions are exempt from the small business economic impact statement requirements.

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 department identified new costs to small businesses associated with the new licensure requirement for individual operators of crematories, alkaline hydrolysis equipment and natural organic reduction equipment. The new requirements for licensure of individual operators includes proof of training for the equip-

ment used in the facility with an initial application fee of $135 (annual renewal will be $100). There are various options available for the training with costs ranging from $100 and up to $695 at a national conference; this provides facilities and operators with options that best meet their needs and budgets. The potential total cost for a facility is less than the one percent of average annual payroll or .3 percent average annual revenue for funeral homes and funeral services (approximately $2,110) and cemeteries and crematories (approximately $1,800) according to United States economic census data. The full cost impact analysis will be included with the rule file and can be requested per the below contact.

A copy of the detailed cost calculations may be obtained by contacting Julie Konnersman, P.O. Box 9020, Olympia, WA 98507-9020, phone 360-664-1507, fax 360-570-7098, TTY 711, email jkonnersma@dol.wa.gov.

January 21, 2020
Damon Monroe
Rules Coordinator

Chapter 308-47 WAC

((~~RULES OF PROCEDURE FOR~~)) CREMATION, ALKALINE HYDROLYSIS, AND NATURAL ORGANIC REDUCTION

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-47-010 Definitions. (1) **"Alkaline hydrolysis"** or **"hydrolysis"** means the reduction of human remains to bone fragments and essential elements in a licensed hydrolysis facility using heat, pressure, water and base chemical agents.

(2) **"Authorizing agent"** means the person(s) legally entitled to control the disposition of the human remains.

(((~~(2) **"Crematory authority or endorsement"** the legal entity and their authorized representatives, licensed to perform cremations.~~

~~(3) **"Cremation chamber"** means the enclosed space in a crematory in which the cremation process takes place.~~

~~(4) **"Pulverization"** is the reduction of identifiable bone fragments to unidentifiable dimensions by manual or mechanical means following cremation.~~

~~(5) **"Processing"** is the removal of foreign objects from cremated human remains and may include pulverization.~~

~~(6) **"Cremation container"** means the container in which the human remains must be enclosed before being placed in the cremation chamber for cremation. A cremation container must:~~

~~• Be composed of a combustible material. If the remains are delivered to a crematory in a noncombustible container, the authorizing agent must be informed of the disposition of the container, if the container is not actually used in the cremation process. Any transfer of human remains to combustible containers at the crematory must be in accordance with chapter 18.39 RCW, Title 308 WAC, and applicable public health laws.~~

~~• Be rigid enough for placement into the cremation chamber.~~

~~• Assure protection to the health and safety of the crematory operators and others.~~

~~• Provide a proper covering for the human remains.~~

~~• Be resistant to leakage or spillage of body fluids.~~

~~(7) **"Sealable container"** means any container in which cremated human remains can be placed and closed to prevent leakage or spillage of cremated human remains.~~

~~(8) **"Holding facility"** means an area designated for the care, storage and holding of human remains prior to disposition. A holding facility must:~~

~~• Comply with any applicable public health laws.~~

~~• Preserve the dignity of the human remains.~~

~~• Recognize the personal integrity, health and safety of employees and others.~~

~~• Be secure from access by anyone other than authorized personnel.~~

~~(9) **"Cadaver"** means human remains or any part thereof, which have been donated to science for medical research purposes.~~

~~(10) **"Body parts"** means limbs and other portions of human anatomy that have been removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy or medical research.~~

~~(11) **"Commingling"** means the mixing of cremated human remains of more than one deceased person.~~

~~(12) **"Residue"** means the cremation products that may unavoidably remain in the cremation chamber after manual sweeping techniques are performed.~~))

(3) **"Body parts"** means limbs and other portions of human anatomy that have been removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research.

(4) **"Cadaver"** means human remains or any part thereof, which have been donated to science for medical research purposes.

(5) **"Commingling"** means the mixing of human remains following cremation, alkaline hydrolysis, or natural organic reduction of more than one deceased person.

(6) **"Cremation"** means the reduction of human remains to bone fragments in a crematory by means of incineration.

(7) **"Cremation container"** means a rigid, combustible container which encloses human remains for cremation.

(8) **"Crematory"** means a building or area of a building that houses one or more cremation chambers, to be used for the cremation of human remains.

(9) **"Crematory authority, alkaline hydrolysis authority, or natural organic reduction authority"** means the legal entity and their authorized representatives, licensed to reduce human remains through cremation, alkaline hydrolysis, or natural organic reduction.

(10) **"Effluent"** means the liquid end-product following alkaline hydrolysis.

(11) **"Funeral establishment"** means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care,

shelter, transportation, preparation, and embalming of human remains.

(12) **"Holding facility"** means an area designated for the care, storage, and holding of human remains prior to disposition.

(13) **"Human remains"** means the body of a deceased person, including remains following the process of cremation, alkaline hydrolysis, or natural organic reduction.

(14) **"Hydrolysis facility"** means a structure, room, or other space in a building or structure containing one or more hydrolysis vessels, to be used for alkaline hydrolysis.

(15) **"Natural organic reduction"** means the contained, accelerated conversion of human remains to soil.

(16) **"Natural organic reduction facility"** means a structure, room, or other space in a building or real property where natural organic reduction of a human body occurs.

(17) **"Processing"** is the removal of foreign objects from human remains following cremation, alkaline hydrolysis, or natural organic reduction and may include pulverization.

(18) **"Pulverization"** is the reduction of identifiable bone fragments to unidentifiable dimensions by manual or mechanical means during or following cremation, alkaline hydrolysis, or natural organic reduction.

(19) **"Reduced human remains"** means human remains after the reduction process.

(20) **"Reduction"** means an accelerated conversion of human remains into bone fragments, essential elements, or soil by cremation, alkaline hydrolysis, or natural organic reduction.

(21) **"Reduction chamber"** means the enclosed space in a crematory, alkaline hydrolysis vessel, or natural organic reduction facility in which the reduction process takes place.

(22) **"Reduction facility"** means a crematory, or hydrolysis facility, or natural organic reduction facility that is solely devoted to the reduction of human remains.

(23) **"Reduction facility operator"** means the person(s) registered with the board who operates a crematory, alkaline hydrolysis equipment, or natural organic reduction facility.

(24) **"Residue"** means the products that may unavoidably remain in the reduction chamber after manual cleaning techniques are performed.

(25) **"Shroud"** means a leak resistant covering for human remains prior to alkaline hydrolysis, or natural organic reduction to ensure privacy and respectful handling of human remains.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-47-020 Receipt and identification of human remains. ((~~A crematory must not take custody of unidentified human remains. Before accepting human remains, the crematory must verify that identification is attached to the cremation container. Upon accepting human remains for cremation, the crematory must make a permanent record of the following:~~

~~• Name of deceased.~~

~~• Date of death.~~

~~• Place of death.~~

~~• Name and relationship of authorizing agent.~~

~~• Name of firm engaging crematory services.~~

~~• Description of the cremation container to be consumed with the human remains.~~

~~• An identification number assigned each human remains and inscribed on a metal disc or metal tag. The metal identification disc or tag must identify the crematory and accompany the human remains through each phase of the cremation, processing and packaging. The disc or tag identification number must be recorded on all paperwork regarding a human remains.~~)) (1)(a) A reduction facility must not take custody of unidentified human remains. Before accepting human remains, the reduction facility must verify that identification is attached to the container, shroud, or human remains.

(b) A reduction facility operator may unwrap human remains prior to reduction for the sole purpose of verifying identification. If any action beyond identification is required, that action must be performed by a properly licensed individual.

(2) The reduction facility must assign an identification number for each human remains to be inscribed on a metal disc or metal tag.

(3) The metal identification disc or tag must include the name of the facility and accompany the human remains through each phase of the reduction, processing, and packaging.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-47-030 Holding human remains for cremation. (1) A crematory must not accept ((~~and~~)) or hold human remains ((~~for cremation~~)) unless the human remains are contained in a cremation container which meets the following requirements:

(a) Assure protection to the health and safety of the crematory operator;

(b) Provide proper covering for the human remains; and

(c) Be resistant to leakage or spillage of bodily fluids.

(2) ((~~A crematory must not accept human remains in a cremation container having evidence of body fluid leakage.~~

~~(3) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, or as determined by chapter 246-500 WAC.~~)) The holding facility must:

(a) Comply with WAC 246-500-020 and all applicable public health laws;

(b) Preserve the dignity of the human remains;

(c) Recognize the health and safety of crematory operators and others; and

(d) Be secure from access by anyone other than authorized personnel.

(3) If human remains are delivered to a crematory in a noncombustible container, the transfer of the remains to a combustible container must be performed by a properly licensed individual and in accordance with WAC 308-48-030.

(4) When a container is delivered and shows evidence of bodily fluid leakage, it must be returned to the contracting funeral establishment or transferred to a new container by a properly licensed individual.

(5) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, and otherwise meet the requirements of chapter 246-500 WAC.

(6) If the crematory requires the removal of implanted devices, the devices must be removed by an embalmer or embalmer intern prior to delivery of the human remains to the crematory.

NEW SECTION

WAC 308-47-035 Holding human remains for alkaline hydrolysis or natural organic reduction. (1) A hydrolysis facility or natural organic reduction facility must not accept or hold human remains unless the human remains are in a container or shroud that is resistant to leakage or spillage of bodily fluids.

(2) The holding facility must:

(a) Comply with WAC 246-500-020 and all applicable public health laws;

(b) Preserve the dignity of the human remains;

(c) Recognize the health and safety of the hydrolysis facility or natural organic reduction facility operators and others; and

(d) Be secure from access by anyone other than authorized personnel.

(3) If human remains are delivered to a hydrolysis facility or natural organic reduction facility in a container or shroud that is not suitable for placement in the reduction vessel, the transfer of the remains to the vessel must be performed by a properly licensed individual and in accordance with WAC 308-48-030.

(4) When a container or shroud is delivered and shows evidence of bodily fluid leakage, it must be returned to the contracting funeral establishment or transferred to a new container or shroud by a properly licensed individual.

(5) Human remains that are not embalmed must be held only within a mechanically or commercially acceptable refrigerated facility of adequate capacity, with a maximum temperature of 48 degrees Fahrenheit, and otherwise meet the requirements of chapter 246-500 WAC.

(6) If the hydrolysis facility or natural organic reduction facility requires the removal of implanted devices, the devices must be removed by an embalmer or embalmer intern prior to delivery of the human remains to the facility.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-040 ((~~Cremation~~)) Reduction of human remains. (1) ((~~Cremation~~)) Reduction must not take place until the burial transit permit and authorization for ((~~cremation~~)) the reduction method are obtained.

(2) Immediately prior to being placed within the ((~~cremation~~)) reduction chamber, the identification of the human remains must be verified by the ((~~crematory~~)) reduction facility operator. Appropriate identification of the human remains will be placed near the ((~~cremation~~)) reduction chamber in such a way as to identify the human remains being ((~~cremated~~)) reduced. The metal identification disc or metal tag must be placed in the ((~~cremation~~)) reduction chamber, with the human remains.

(3) Simultaneous ((~~cremation~~)) reduction of more than one human remains within the same ((~~cremation~~)) reduction chamber is not permitted, unless written authorization is obtained from the authorizing agent(s) ((~~of each human remains to be cremated simultaneously~~)). Such written authorization will exempt the ((~~crematory~~)) reduction facility from all liability for commingling the products of the ((~~cremation~~)) reduction process.

(4) Simultaneous ((~~cremation~~)) reduction of more than one human remains within the same ((~~cremation~~)) reduction chamber may be performed without the authorizations required in subsection (3) of this section, if:

((~~•~~)) (a) Equipment, techniques, and other devices are employed that keep the human remains separate and distinct, before and during the ((~~cremation~~)) reduction process((~~.~~

~~•~~)):

(b) Recoverable ((~~cremated~~)) human remains following reduction are kept separate and distinct after the ((~~cremation~~)) reduction process.

(5) ((~~Crematories~~)) Reduction facilities licensed by the state funeral and cemetery board ((~~or the board of funeral directors and embalmers, will only~~)) will not be used for any other purpose than the ((~~cremation~~)) reduction of human remains, cadavers, or human body parts.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-050 Processing ((~~of cremated~~)) human remains following reduction. (1) Upon completion of the ((~~cremation~~)) reduction process, the end products ((~~of the cremation process~~)) must be removed from the ((~~cremation~~)) reduction chamber, with the exception of residue.

(2) The ((~~cremation~~)) end products must be placed within an individual container or tray in such a way that will ((~~insure against~~)) prevent commingling with other ((~~cremated~~)) human remains following reduction.

(3) Identification must be attached to the container or tray.

(4) All ((~~cremated~~)) human remains following reduction must undergo processing to comply with applicable legal requirements.

(5) Processing ((~~or pulverization of cremated~~)) of human remains following reduction may not be required if ((~~cremated~~)) human remains are ((~~to be~~)) placed in a cemetery, mausoleum, or columbarium, or ((~~building devoted exclusively to religious purposes, or where~~)) if religious or cultural beliefs oppose the practice.

(6) All body prostheses, bridgework, or similar items removed from the ((~~cremated~~)) human remains following reduction during processing will be disposed of by the ((~~crematory~~)) reduction facility, as directed by the authorizing agent.

(7) If the reduction facility recycles metals or implants found during processing, the authorizing agent(s) must be advised in writing prior to reduction.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-47-060 Packaging and storage of ((~~cremated~~)) human remains following reduction. (1) ((~~The cremated~~)) Human remains following reduction must be ((~~placed~~)) packaged in a sealable container((~~, or in such~~)) or containers as may have been ordered or supplied by the authorizing agent or the reduction facility.

(2) The packaged ((~~cremated~~)) human remains will be identified. The metal identification disc or metal tag must stay with the ((~~cremated~~)) human remains.

(3) If the ((~~cremated~~)) entire human remains ((~~do~~)) will not ((~~completely fill the~~)) fit within the designated container, the ((~~remaining space may be filled with suitable packing material. The container must then be securely closed.~~

~~(4) If the entire cremated human remains will not fit within the designated container, the remainder of the cremated~~)) remainder of the human remains must be returned to the authorizing agent in ((~~a second~~)) additional containers, clearly identified as being part of, and together with((~~,~~)) the designated container. Upon written consent of the authorizing agent, excess ((~~cremated~~)) human remains may be disposed of in any legal manner.

NEW SECTION

WAC 308-47-065 Recordkeeping requirements. (1) A crematory, hydrolysis facility, or natural organic reduction facility must keep a permanent record of all reductions performed and the disposition or release of the human remains following cremation, alkaline hydrolysis, or natural organic reduction. The record must include the following information:

(a) Name of deceased;

(b) Date of death;

(c) Place of death;

(d) Burial transit permit disposition date;

(e) Date of delivery of human remains to the reduction facility;

(f) Name(s) of authorizing agent;

(g) Relationship of authorizing agent(s);

(h) Name of entity that contracts with the reduction facility;

(i) Starting date of reduction process;

(j) Name of reduction facility operator;

(k) Name of person performing packaging;

(l) Date of packaging human remains following reduction;

(m) Date of release of the reduced human remains following reduction and the name of the individual(s) to whom the human remains were released; and/or

(n) Date and location of disposition of the human remains.

(2) In addition to the recordkeeping requirements listed above, natural organic reduction facilities must also keep a permanent record of:

(a) The ending date of the reduction process; and

(b) The daily temperature data for each natural organic reduction process, including records showing that the minimum temperature of 131 degrees Fahrenheit was reached for seventy-two consecutive hours.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-47-070 Disposition of ((~~cremated~~)) unclaimed reduced human remains. (1) ((~~A crematory must keep a permanent record of all cremations performed and the disposition or release of the cremated human remains. The record must include the following information:~~

~~• Date of death.~~

~~• Date burial transit permit was issued.~~

~~• Date of delivery of human remains to the crematory.~~

~~• Date of cremation.~~

~~• Name of crematory operator performing the cremation.~~

~~• Name of person performing packaging, and date of packaging.~~

~~• Date of release of the cremated human remains and the name of the individual(s) to whom the cremated human remains were released; or~~

~~• Date of disposition of the cremated human remains.~~

~~(2) When cremated human remains have been in the possession of a crematory, funeral establishment or cemetery for a period of ninety days or more, the entity holding the cremated human remains may arrange for disposition in any legal manner, provided the entity:~~

~~• Attempts to contact the authorizing agent for disposition instructions by registered mail.~~

~~• Informs the authorizing agent(s) of the procedures that will be followed if disposition instructions are not received.~~

~~• Informs the authorizing agent(s) that disposition will take place if disposition instructions are not received within sixty days of initiation of the contact process.~~

~~• Informs the authorizing agent(s) that recovery of the cremated human remains, after the disposition, may or may not be possible.~~

~~• Maintains a permanent record of the location of the disposition.~~

~~(3)~~)) When reduced human remains have been in the possession of a reduction facility, funeral establishment or cemetery for a period of ninety days or more, the entity holding the human remains following reduction may arrange for disposition in any legal manner, provided the entity:

(a) Attempts to contact the authorizing agent for disposition instructions by U.S. mail to the last known address;

(b) Informs the authorizing agent(s) of the procedures that will be followed if disposition instructions are not received;

(c) Informs the authorizing agent(s) that disposition will take place if disposition instructions are not received within sixty days of initiation of the contact process;

(d) Informs the authorizing agent(s) that recovery of the human remains following reduction, after the disposition, may or may not be possible; and

(e) Maintains a permanent record of the location of the disposition.

(2) No entity making disposition of ((~~cremated~~)) human remains following reduction under subsection (((~~(2)~~))) (1) of this section will be liable for the disposition or nonrecoverability of ((~~cremated~~)) the human remains.

NEW SECTION

WAC 308-47-075 Reduction facility requirements. (1) Crematory facilities must:

(a) Only use a commercially produced crematory unit(s); and

(b) Employ a licensed crematory operator or operators.

(2) Hydrolysis facilities must:

(a) Only use a purpose built vessel as a reduction chamber which meets generally accepted standards of the death care profession;

(b) Employ a licensed alkaline hydrolysis operator or operators; and

(c) Comply with all other applicable local, state, and federal laws and regulations.

(3) Natural organic reduction facilities must:

(a) Only use a contained reduction vessel that is designed to promote aerobic reduction and minimizes odors and vectors;

(b) Employ a licensed natural organic reduction facility operator;

(c) Comply with all other applicable local, state, and federal laws and regulations; and

(d) Reach a minimum temperature of 131 degrees Fahrenheit for seventy-two consecutive hours during the reduction process.

NEW SECTION

WAC 308-47-080 Facility licensure requirements for crematories, hydrolysis facilities, and natural organic reduction facilities. (1) A license or endorsement is required in order to operate a crematory, hydrolysis facility, or natural organic reduction facility. Each applicant shall:

(a) Submit an application on a form approved by the funeral and cemetery board; and

(b) Pay a fee as determined by the director per RCW 43.24.086.

(2) The annual license renewal date for reduction facilities is January 31st.

(3) The regulatory fees for reduction facilities are collected at the time of renewal.

(4) All licenses must be posted at the reduction facility.

NEW SECTION

WAC 308-47-090 Operator licensure for those who conduct cremations, alkaline hydrolysis, or natural organic reduction. (1) Licenses are required for operators of each method of reduction. In order to operate a crematory, a hydrolysis facility, or a natural organic reduction facility, applicants must submit:

(a) An application on a form prescribed by the board;

(b) A nonrefundable application fee as defined in WAC 308-48-800; and

(c) A certificate of completion of operator training provided by the equipment manufacturer, or other provider generally accepted by the death care profession, or as approved by the board.

(2) Each operator license will expire annually on the operator's birth date and may be renewed by paying the renewal fee.

(3) Operators of equipment used to perform cremation, alkaline hydrolysis, or natural organic reduction must provide proof of current operator training every five years at the time of the license renewal.

(4) All licenses must be posted at the reduction facility.

NEW SECTION

WAC 308-47-100 Reduction facilities—Inspections. (1) Crematories, alkaline hydrolysis facilities, and natural organic reduction facilities regulated under the authority of chapters 18.39 and 68.05 RCW are subject to inspection at least once each year by the inspector of funeral establishments, crematories, alkaline hydrolysis, and natural organic reduction facilities, funeral directors, and embalmers to ensure compliance with Washington state laws and regulations related to health or the handling or disposition of human remains.

(2) Inspections shall cover compliance with applicable statutes and rules. Reduction facilities will be open for inspection during normal business hours. If the facility is not open, the ownership must identify someone to the department that can open the facility for an unannounced inspection, or provide a method of access to the inspector.

NEW SECTION

WAC 308-47-110 Regulatory fees due for change of ownership for reduction facilities. (1) The regulatory fees for crematories, alkaline hydrolysis facilities, and natural organic reduction are calculated per disposition and collected at the time of renewal of the license, permit, or endorsement.

(2) For a change of ownership, the selling entity is required to submit the regulatory fee for all dispositions performed by reduction facilities up to the date of transfer of ownership.

(3) Seller must pay the regulatory fees within thirty days after the date of the transfer of ownership.

Chapter 308-47A WAC

FINAL DISPOSITION PERMIT

NEW SECTION

WAC 308-47A-010 Definitions. (1) "Authorizing agent" means the person(s) legally entitled to control the disposition of the human remains.

(2) "Final disposition" means burial, entombment, inurnment or scattering.

NEW SECTION

WAC 308-47A-020 Final disposition of reduced human remains—Permit. (1) An authorizing agent or person or persons who have the right to control final disposition of reduced human remains under RCW 68.50.160(3) to dispose of human remains may do so without a permit.

(2) The authorizing agent may designate another person or entity to dispose of the reduced human remains. Where the designee regularly or occasionally disposes of reduced human remains for others, the designee must register to obtain a disposition permit to dispose of reduced human remains by land, sea, or air, where such disposition is made outside dedicated cemetery property.

(3) Reduced human remains may be scattered in any legal manner including:

(a) National parks, after receiving permission from the chief park ranger.

(b) State trust uplands, after receiving permission from the regional manager for each scattering.

(c) Public navigable waters under state control, including Puget Sound, Strait of Juan de Fuca, rivers, streams, and lakes.

(d) The Pacific Ocean beyond the mean lower low water mark. These scatterings must follow U.S. Environmental Protection Agency's General Permit for Burial at Sea. This includes reporting the burial within thirty days to the regional administrator of the U.S. Environmental Protection Agency, Region 10.

(e) Private land, with the permission of the landowner.

NEW SECTION

WAC 308-47A-030 Final disposition permit application procedure. (1) Designees who regularly or occasionally dispose of reduced human remains must submit an application for a final disposition permit on a form prescribed by the board and pay the application fee.

(2) All final disposition permits issued under this rule shall be issued for the calendar year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any permit holder is transferred or sold.

(3) The final disposition permit fees shall be as set forth in chapter 308-48 WAC and the department shall collect in advance the fees required for licensing.

NEW SECTION

WAC 308-47A-040 Final disposition of reduced human remains—Records and documentation. (1) Final disposition permit holders must provide a certificate of disposition of human remains to the authorizing agent or person authorizing the disposition. The certificate shall identify:

(a) The name of the deceased;

(b) The location and date of the disposition of the human remains;

(c) The manner of disposition (boat, air, or other);

(d) The name of the authorizing agent; and

(e) The name of the funeral home, crematory, hydrolysis facility, natural organic reduction facility, or cemetery arranging the service, if applicable.

(2) Final disposition permit holders must:

(a) Maintain copies of records required under subsection (1) of this section for seven years from the date of disposition; and

(b) Make records available for inspection by the board.

(3) Final disposition permit holders shall report the number of dispositions performed in the previous year on the annual renewal form supplied by the department.

(a) Failure to provide such a report shall automatically suspend the permit.

(b) Such permit may be restored by making the proper report to the department.

Chapter 308-48 WAC

FUNERAL DIRECTORS ((~~AND~~)), EMBALMERS, CREMATORIES, ALKALINE HYDROLYSIS FACILITIES, AND NATURAL ORGANIC REDUCTION FACILITIES

AMENDATORY SECTION (Amending WSR 09-06-043, filed 2/25/09, effective 3/28/09)

WAC 308-48-010 Definitions. For the purpose of these rules, the following terms will be construed as follows:

(1) **"Arrangements"** means the discussion(s) that take place between the funeral director and person(s) with the right to control disposition, or their designated representative of the deceased, during which the funeral director provides options for the preparation of the body, use of facilities and staff, and selection of merchandise including the associated prices; and after which the funeral director provides a signed written summary of the services and/or merchandise selected to be provided by the funeral establishment.

(2) **"Authorizing agent"** means the person(s) legally entitled to control the disposition of the human remains.

(3) **"Board"** means the funeral and cemetery board.

(4) **"Embalmer"** means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(5) **"Embalmer intern"** is a person engaged in the study and supervised practical training of embalming under the instruction of a qualified sponsor.

(6) **"Final disposition"** means burial, entombment, inurnment, or scattering.

(7) **"Funeral director"** means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(8) **"Funeral director intern"** is a person engaged in the study and supervised practical training of funeral directing under the instruction of a qualified sponsor.

((~~**"In its employ"** as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis and~~

~~be in service at a specific location and involved in the execution of the daily activities of the business.~~))

(9) **"Funeral establishment"** means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(10) **"Internship"** means a course of required practical training, for a specified period of time, as a prerequisite for obtaining a license to practice the profession of funeral directing or embalming.

AMENDATORY SECTION (Amending WSR 09-06-043, filed 2/25/09, effective 3/28/09)

WAC 308-48-015 Retired status certificate of registration. Any individual who has been issued a license, in accordance with chapter 18.39 RCW, as a funeral director and/or embalmer having reached at least the age of sixty-two and having discontinued active practice may be eligible to obtain a "retired certificate of registration." If granted, further certificate of registration renewal fees and continuing education are waived. For the purpose of this provision, active practice has the same meaning as funeral director and/or embalmer under RCW 18.39.010 ((~~(1) and (2)~~)) (3) and (4).

(1) Applications. Those persons wishing to obtain the status of a retired registration shall complete an application form, as provided by the board((~~, and pay the required application fee~~)). The retired status would become effective upon the filing of a complete application.

(2) Privileges. In addition to the waiver of the renewal fee and continuing education, a retired registrant is permitted to:

(a) Retain and display the board-issued wall certificate of registration;

(b) Use the title funeral director and/or embalmer, provided that it is supplemented by the term "retired";

(c) Offer consultant services relative to funeral directing and embalming;

(d) Provide references for persons seeking licensure under 18.39 RCW;

(e) Serve as a volunteer in an instructional capacity on funeral directing and/or embalming topics; and

(f) Provide services as a technical expert before a court, or in preparation for pending litigation, on matters directly related to funeral directing and/or embalming work performed by the registrant prior to being granted a retired registration.

(3) Restrictions. A retired registrant is not permitted to: Perform any duties of a funeral director and/or embalmer on a full-time, part-time or occasional basis.

(4) Certificate of registration reinstatement. A retired registrant, upon written request to the board and payment of the current renewal fee, may resume active practice as a funeral director and/or embalmer. At that time, the retired registrant shall be removed from retired status and placed on valid/active status in the records of the board.

(5) Exemptions. Under no circumstances shall a registrant be eligible for a retired certificate of registration if ((~~his/her~~)) their license(s) has been revoked, surrendered, or in any way permanently terminated by the board under chapter 18.39 RCW. Registrants who are suspended from practice and/or who are subject to terms of a board order at the time they reach age sixty-two, shall not be eligible for a retired registration until such time that the board has removed the restricting conditions.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-030 Care of human remains. (1) Funeral establishments, funeral directors, embalmers, interns, employees or agents while providing for the care and handling of human remains shall:

(a) Comply with all applicable Washington state laws, rules and regulations related to health or the handling, transportation or disposition of human remains. This rule includes compliance with OSHA/WISHA standards specifically defined in OSHA 29 C.F.R. 1910.1030 with regard to the handling of human remains and infectious materials.

(b) Not perform any act which will tend to affect adversely the dignity, individual integrity or the respectful and reverential handling and burial or other ((~~customary~~)) lawful disposition of human remains.

(c) Upon receipt of the human remains, obtain the identity of the human remains as established by the institution, agency, or individual releasing the remains and place an identification bracelet or tag on the ankle or wrist of the remains. In the case of a remains that must be placed in a protective pouch due to the condition of the remains, an identification bracelet or tag should be placed inside the pouch and a second bracelet or tag attached to the exterior of the pouch.

(d) Follow the directions of the individual or individuals that has/have the right to control the disposition of the human remains.

(e) Record and maintain the following information:

(i) Name of deceased;

(ii) Date of death;

(iii) Place of death;

(iv) Name and relationship of person(s) having the right to control the disposition;

(v) Date and time of receipt of remains;

(vi) Date and time of refrigeration and/or embalming;

(vii) Date and time of removal of remains from refrigeration;

(viii) Method, date and location of disposition.

(f) Not separate any organs, viscera or appendages of a human remains from any other portion of the remains for a separate or different disposition. ((~~The entire noncremated human remains that the funeral establishment has received and has possession of must be maintained and disposed of as one entity.~~))

(g) Provide refrigerated holding of a human remains for which embalming has not been authorized. In addition to these regulations, the handling and refrigeration of human remains shall be governed by chapter 246-500 WAC.

(2) The care and preparation for burial or other disposition of all human remains shall be private. No one shall be allowed in the embalming or preparation rooms while a human remains is being embalmed or during the course of an autopsy except the licensee, ((~~his authorized~~)) their licensed employees, and public officials in the discharge of their duties. This rule shall not apply to ((~~duly authorized~~)) medical personnel employed in a ((~~case~~)) situation requiring medical expertise or those authorized to be present by the decedent's next of kin.

(3) Every licensee shall provide a written itemization of any property, money, jewelry, possessions or other items ((~~of significant value~~)) found on a human remains in the licensee's care, custody or control to the decedent's next of kin or the proper authorities.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-031 Funeral establishment facility, equipment, and embalming and preparation room standards. A funeral establishment or branch establishment shall:

(1) Have an exclusive area/office at an identified location for conducting the business which is accessible to the public.

(2) Provide private and secure area(s) for holding human remains which will include:

(a) A mechanically or commercially acceptable refrigerated holding area of adequate capacity for unembalmed remains with a maximum temperature of 48 degrees Fahrenheit or as determined by chapter 246-500 WAC;

(b) A sink with hot and cold running water;

(c) Covered receptacles for soiled linens, bandages, refuse and other waste materials which meet OSHA, WISHA, department of health and any other applicable regulations;

(d) Adequate chemicals for the disinfection of human remains and the equipment used in handling and caring for human remains;

(e) Chemical storage that meets OSHA, WISHA, department of health and any other applicable regulations.

(3) Provide rest rooms that are available for staff and the public.

(4) In the case where the holding of human remains is not provided at this facility, provide the identification of the facility upon request to the board and the individual or individuals that has/have the right to control the disposition of the human remains where this establishment or branch provides for the holding and/or preparation of the human remains entrusted to its care (this ((~~offsite~~)) off-site facility must meet the requirements of subsection (2) of this section).

(5) Provide for the privacy of uncasketed human remains in vehicles used for transportation of the remains by screening, curtains, or adequately tinted windows.

(6) Provide ((~~that if embalming is performed at the establishment or branch, no embalming of a human remains shall be performed in a funeral establishment or branch establishment except in a room set aside exclusively for embalming of~~)) a room used exclusively for embalming human remains if embalming is performed at the establishment or branch. Such room shall be maintained and kept in a clean sanitary condition((~~, and~~)). Every embalming and preparation room shall be constructed, equipped, and maintained as follows:

(a) The surfaces of the floor, walls, and ceiling shall be covered with tile or other hard, smooth, impervious washable material.

(b) The room shall be adequately lighted and adequately ventilated. The ventilation shall be provided by an exhaust fan and shall comply with OSHA/WISHA standards.

(c) The room shall be equipped and provided with hot and cold running water, a utility sink, and cabinets, closets or shelves for instruments and supplies.

(d) The room shall be equipped with adequate sewage and waste disposal and drainage facilities and systems and comply with OSHA/WISHA standards.

(e) The doors shall be tight closing and rigid and any windows of the room shall be so maintained as to obstruct any view into such room. The room's entry door(s) must be labeled "Private" or "Authorized Entry Only," and must be locked at all times.

(f) The embalming or preparation table shall be nonporous.

(g) The room shall be equipped with proper and convenient covered receptacles for biohazard refuse.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-040 Control of human remains. No licensee will, directly or indirectly, assume control of any human remains without having first obtained authority from the person(s) having the right to control the disposition of the human remains under RCW 68.50.160, as to matters relating to the preparation, handling and final disposition of the human remains (including steps in preparation, autopsy, embalming, dressing, viewing, videotaping, photographing((~~:~~)), funeral, ((~~burial and cremation~~)) disposition merchandise, and disposition arrangements).

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-050 ((~~Confidence~~)) Confidentiality. No licensee will divulge any information as to illness, cause of death, financial affairs or transactions, and any other information customarily considered confidential, obtained while serving in such licensed capacity.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-060 Against concealment of crime. (1) No licensee will remove, embalm, or perform other preparation of a human remains when ((~~he/she has~~)) they have information indicating crime or violence in connection with the cause of death, until permission is obtained from a coroner, medical examiner or other qualified official.

(2) Any licensee having or obtaining, as a result of providing services, any information in relation to a possible

crime must communicate such information to a properly qualified official.

(3) No licensee will perform any act knowing that it will conceal evidence of crime.

AMENDATORY SECTION (Amending WSR 87-11-063, filed 5/20/87)

WAC 308-48-075 Display of licenses. (1) A licensee must display a license in each location where ((~~he/she is~~)) they are employed. ((~~Legal duplicates provided by the department at a fee to be determined by the director will be displayed when a licensee is employed at more than one location. The display of photocopies is prohibited.~~))

(2) If licensed work is provided by an agent at the funeral establishment or branch, a copy of the license will be displayed in each location where the licensed work occurs.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-080 Improper use of license. No licensee shall lend, place, permit or authorize the placement of ((~~his/her~~)) their license in any establishment or place of business unless the licensee is an owner, part owner or bona fide employee of such place of business, nor shall a funeral establishment or place of business to pretend or represent that it is legally qualified to perform funeral directing or embalming by any such improper use of ((~~his/her~~)) their license.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-48-085 Funeral establishments and ((~~crematories~~)) branch establishments—Inspections. (1) Funeral establishments and ((~~crematories~~)) branch establishments licensed under the provisions of chapter 18.39 RCW will be inspected at least once each year by the duly appointed department inspector.

(2) Inspections shall cover compliance with applicable statutes and rules. Funeral establishments and ((~~crematories~~)) branch establishments will be open for inspection during normal business hours. If the establishment or ((~~crematory~~)) branch establishment is not open, the ownership must identify someone to the department that can open the establishment or ((~~crematory~~)) branch establishment for an unannounced inspection, or provide a method of access to the inspector.

NEW SECTION

WAC 308-48-132 Funeral director licensure requirements. An applicant for a license as a funeral director shall meet the following requirements:

(1) Be at least eighteen years of age;

(2) Complete the following education requirements at an accredited institution approved by the board:

(a) Obtain an associate of arts degree in mortuary science; or

(b) Complete two years of college course work as follows:

(i) Obtain sixty semester credits or ninety quarter credits of college-level instruction with a minimum 2.0 grade point, or a grade of C or better, in courses listed in (b)(ii) of this subsection.

(ii) Credits shall include one course in psychology, one in mathematics, two courses in English composition, two courses in social science, and three courses selected from the following subjects: Behavioral sciences, public speaking, counseling, business administration and management, computer science, and first aid.

(3) Complete a one-year internship with a licensed funeral director; and

(4) Pass an examination in the funeral arts and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains and the contents of chapter 18.39 RCW.

(5) An applicant's military training or experience may satisfy some or all of the education and training requirements for licensure as determined by the board on a case-by-case basis.

NEW SECTION

WAC 308-48-135 Embalmer licensure requirements. An applicant for a license as an embalmer must meet the following requirements:

(1) Be at least eighteen years of age.

(2)(a) Obtain an associate of arts degree in mortuary science; or

(b) Complete a course of instruction in an accredited mortuary science college program and other college courses that total sixty semester hours or ninety quarter hours.

(3) Complete a two-year internship under a licensed embalmer.

(4) Pass an examination in the funeral sciences and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains, and the contents of chapter 18.39 RCW.

(5) An applicant's military training or experience may satisfy some or all of the education and training requirements for licensure as determined by the board on a case-by-case basis.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-160 Course of training—Embalmer interns. (1) For the purposes of RCW 18.39.035, the term "two year course of training" shall include the embalming of at least ((~~fifty~~)) twenty-five human remains under the supervision of a licensed embalmer.

(2) The term "two year" shall consist of at least thirty-six hundred hours of employment and cannot be completed in a period of time less than two calendar years.

(3) Registered embalmer interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the embalmings the intern has assisted with or performed during the required term of internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the prog-

ress of the intern toward the skill level required to work independently.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-180 Renewal of licenses((~~, registrations, endorsements and permits~~))—Funeral directors, embalmers, funeral director interns and embalmer interns. (1) The annual license ((~~or registration~~)) renewal date for embalmers, funeral directors and interns is the licensee's birth date. Individuals making application and fulfilling requirements for initial license and examination will be issued a license ((~~or registration~~)), which will expire on their next birth date.

(2) All licensees, with the exception of academic intern, must renew annually.

(3) Before the expiration date of the license, the director will mail a notice of renewal. The licensee must return such notice along with current renewal fees prior to the expiration of the license. Failure to renew the license prior to the expiration date will require payment of ((~~the penalty~~)) a late fee.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-200 Report of internship registration, termination, transfer and credit. (1) The responsibility for notifying the director, department of licensing of internship registration and termination rests with the ((~~employing funeral establishment~~)) licensee sponsor. In order to protect the status of the intern in cases where the employing licensee fails to initiate the required report of registration or termination, the affected intern should initiate and ensure submission of same. The notification shall be certified by signature of the sponsor.

(2) No credit for internship will be allowed for any period during which the intern is not registered pursuant to RCW 18.39.120. In the event an intern's sponsor dies or is otherwise incapable of certifying internship credit, such credit may be given by certification by another licensed funeral director or embalmer who has knowledge of the work performed and the credit due or by documentation or reasonable proof of such credit as determined by the board.

NEW SECTION

WAC 308-48-205 Abandoned licensure applications. If a licensing applicant fails to complete the licensing process and their records show no activity for six consecutive years, the board will consider the application abandoned. No activity includes, but is not limited to:

(1) Failure to submit the required documents within six consecutive years from the receipt of the most recent information submitted.

(2) Failure to provide the board with any written communication during six consecutive years indicating the applicant is attempting to complete the licensing process.

(3) If the application is considered abandoned, it may be archived or destroyed, and the applicant will be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-210 Establishment licensure. (1) ((~~It is the intent of the board that the establishment licensure process serve to protect consumers by identifying to the department all locations subject to regulation.~~)) Any provider of any aspect of the care, shelter, transportation, embalming, other preparation and arrangements for the disposition of human remains must be licensed as a funeral establishment. Establishments must obtain a funeral establishment or branch license for each location.

(2) The establishment license requirement does not apply to a facility whose sole function is to perform reduction of human remains.

(3) Branches of an establishment may operate under the general license of the establishment, pursuant to RCW 18.39.145 and 18.39.148 and the following terms and conditions:

(a) Branch(es) must operate under the same name as the establishment.

(b) Branch(es) must display a current branch license.

(c) Branch(es) must have a licensed funeral director in its employ and available to provide any services requiring the professional skills of a licensee.

(d) The failure of a branch to meet the standards of an establishment may result in cancellation of the establishment license, pursuant to RCW 18.39.148.

NEW SECTION

WAC 308-48-220 Designated funeral directors—Qualifications and responsibilities. (1) For the purposes of RCW 18.39.145 each funeral establishment and branch establishment must employ a designated funeral director. The designated funeral director must:

(a) Have a minimum of one year of practical experience as a licensed funeral director in the state of Washington.

(b) Be involved in the execution of the daily activities of the business.

(c) Complete and submit the designated funeral director form when beginning and leaving the position of designated funeral director.

(2) The designated funeral director may be held responsible for the funeral establishment's compliance with state law or other regulation affecting the handling, custody, care, transportation, or disposition of human remains.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-530 Continuing education ((~~basic~~)) requirements((~~—Amount~~)). (((~~(1) Every individual licensed as a funeral director and/or embalmer or registered as a funeral director intern and/or embalmer intern, shall be required to complete ten hours of approved continuing education every two years as a condition of renewal of such licenses or registrations.~~

~~(2) Continuing education credits in excess of the required hours earned in any renewal period may not be carried forward to a subsequent renewal period.~~

~~(3) The department shall not renew a license or registration or issue a new license or registration to any person who has failed to submit evidence of completion of ten hours of approved continuing education for the prior two-year period.~~)) To meet the statutory continuing education requirement for renewing licenses for funeral directors, embalmers, funeral director interns and embalmer interns, the board requires the following:

(1) To maintain active practice, licensees must accumulate five hours of continuing education hours (CE) for the upcoming one year renewal period.

(a) The five hours of CE must include one hour of OSHA/WISHA training.

(b) Credits in excess of five hours cannot be carried forward to another renewal period.

(2) The CE accumulated is subject to audit by the board.

(3) Licensees are responsible to seek out qualifying CE that can be demonstrated to the board as relevant to professional development.

(a) Activities are not preapproved by the board.

(b) Activities must be relevant to the practice of funeral directing (for licensed funeral directors and funeral director interns) or embalming (for licensed embalmers and embalmer interns) and may include technical, ethical, or managerial content.

(c) All activities must have a clear purpose and objective that will maintain, improve, or expand skills and knowledge relevant to the practice of the profession(s).

(4) The board is the final authority with respect to claimed CE and the respective CE credit.

(5) The CE becomes eligible for credit upon completion of the given activity.

(6) Licensees must maintain the records of the CE and have the records available for inspection at their place of employment. The records must include the date of the activity, the provider's name, a description of activity and the number of CE hours.

(7) Licensees must keep their records for the cumulative time in the current renewal period plus the two years before the last renewal (three years total).

(8) By renewing a professional funeral director license, embalmer license, funeral director intern license or embalmer intern license, the licensee attests they have completed the required continuing education for that renewal period.

(9) The board will audit a random sample of licensees yearly. If a licensee is selected for an audit, the board will provide instructions about how to respond.

(10) Licensees may face disciplinary action for failing to complete the continuing education requirement or falsifying CE records.

(11) If an audit disqualifies credits that a licensee reported to the board and results in them failing to complete the CE requirements, the board may require the shortage to be made up over a period of time established by the board.

AMENDATORY SECTION (Amending WSR 90-24-056, filed 12/3/90, effective 1/3/91)

WAC 308-48-540 Continuing education requirement to reinstate lapsed license ((~~or registration~~)). Any person seeking to reinstate a license ((~~or registration~~)) which has lapsed for less than one year must comply with the continuing education requirements for regular renewal of the license ((~~or registration~~)). Any person seeking to reinstate a license ((~~or registration~~)) which has lapsed for one year or longer must present satisfactory evidence of having completed at least ((~~ten~~)) five hours of approved continuing education activities for the ((~~two-year~~)) period prior to ((~~his or her~~)) their reinstatement.

AMENDATORY SECTION (Amending WSR 85-01-077, filed 12/19/84)

WAC 308-48-570 Continuing education discretionary exception for emergency situation. In emergency situations, such as personal or family sickness, the funeral and cemetery board ((~~of funeral directors and embalmers~~)) may waive, for good cause shown, all or part of the continuing education requirement for a ((~~particular two-year~~)) renewal period for an individual licensee ((~~or registrant~~)). The board will require such verification of the emergency as is necessary to prove its existence.

AMENDATORY SECTION (Amending WSR 85-01-077, filed 12/19/84)

WAC 308-48-580 ((~~Board approval of continuing education activities.~~)) Transfer of ownership or control—New licenses required. ((~~All continuing education activities, to satisfy the licensure/registration requirements, must be approved by the board of funeral directors and embalmers. Further, the board shall certify the number of hours to be awarded for participation in each approved continuing education activity.~~)) A new license must be obtained following the sale or transfer of ownership or a controlling interest in a cemetery authority, reduction facility, funeral establishment, or branch establishment. All licenses are nontransferable.

AMENDATORY SECTION (Amending WSR 14-24-067, filed 11/26/14, effective 1/1/15)

WAC 308-48-800 ((~~Funeral director/embalmer~~)) Fees. ((~~(1) **Suspension of fees.** Effective January 1, 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:~~

~~Title of Fee~~	~~Fee~~
~~Embalmer:~~	
~~Renewal~~	~~$135.00~~
~~Late renewal penalty~~	~~32.00~~
~~Embalmer intern:~~	
~~Intern renewal~~	~~90.00~~
~~Funeral director:~~	
~~Renewal~~	~~135.00~~

~~Title of Fee~~	~~Fee~~
~~Late renewal penalty~~	~~32.00~~
~~Funeral director intern:~~	
~~Intern renewal~~	~~90.00~~
~~Funeral establishment:~~	
~~Renewal~~	~~295.00~~
~~Branch renewal~~	~~295.00~~
~~Preneed renewal~~	~~205.00~~
~~Crematory endorsement renewal~~	~~7.20~~
~~Charge per cremation performed during previous calendar year:~~	
~~Charge per cremation~~	~~7.20~~
~~Certificate of removal registration:~~	
~~Renewal~~	~~14.00~~

~~The fees set forth in this section shall revert back to the fee amounts shown in this section on January 1, 2017.~~

~~(2) **Fees.**~~

~~Title of Fee~~	~~Fee~~
~~Embalmer:~~	
~~State examination application~~	~~$100.00~~
~~Renewal~~	~~150.00~~
~~Late renewal penalty~~	~~35.00~~
~~Duplicate~~	~~25.00~~
~~Embalmer intern:~~	
~~Intern application~~	~~135.00~~
~~Application for examination~~	~~100.00~~
~~Intern renewal~~	~~100.00~~
~~Duplicate~~	~~25.00~~
~~Funeral director:~~	
~~State examination application~~	~~100.00~~
~~Renewal~~	~~150.00~~
~~Late renewal penalty~~	~~35.00~~
~~Duplicate~~	~~25.00~~
~~Funeral director intern:~~	
~~Intern application~~	~~135.00~~
~~Application for examination~~	~~100.00~~
~~Intern renewal~~	~~100.00~~
~~Duplicate~~	~~25.00~~
~~Funeral establishment:~~	
~~Original application~~	~~400.00~~
~~Renewal~~	~~325.00~~
~~Branch registration~~	~~350.00~~
~~Branch renewal~~	~~325.00~~
~~Preneed application~~	~~250.00~~
~~Preneed renewal:~~	~~225.00~~
~~Crematory endorsement registration~~	~~210.00~~
~~Crematory endorsement renewal~~	~~8.00~~
~~Charge per cremation performed during previous calendar year:~~	
~~Charge per cremation performed before 1/1/2011.~~	~~6.50~~
~~Charge per cremation performed on or after 1/1/2011.~~	~~8.00~~
~~Academic intern~~	~~No fee~~
~~Certificate of removal registration:~~	
~~Application~~	~~30.00~~
~~Renewal~~	~~15.00~~
~~Retired status certificate~~	~~No fee~~))

(1) **Funeral fees.**

Title of Fee	**Fee**
Embalmer:	
State examination application	$100.00
Renewal	150.00
Late renewal fee	35.00
Duplicate	25.00
Embalmer intern:	
Intern application	135.00
Application for examination	100.00
Intern renewal	100.00
Late renewal fee	35.00
Duplicate	25.00
Funeral director:	
State examination application	100.00
Renewal	150.00
Late renewal fee	35.00
Duplicate	25.00
Funeral director intern:	
Intern application	135.00
Application for examination	100.00
Intern renewal	100.00
Late renewal fee	35.00
Duplicate	25.00
Funeral establishment:	
Original application	400.00
Renewal	325.00
Branch license	350.00
Branch renewal	325.00

Title of Fee	Fee
Preneed application	250.00
Preneed renewal	225.00
Academic intern	No fee
Certificate of removal license:	
Application	30.00
Renewal	15.00
Retired status certificate	No fee

(2) **Cemetery fees.**

Title of Fee	Fee
Certificate of authority:	
Application	$300.00
Renewal:	6.20
Charge per each interment, entombment and inurnment during preceding calendar year collected at renewal or change of ownership	
Prearrangement sales license	
Application	250.00
Renewal	225.00
Exemption from prearrangement sales license	
Application	70.00
Renewal	35.00
Disposition permit for human remains following cremation, alkaline hydrolysis, or natural organic reduction	
Application	70.00
Renewal	35.00

(3) **Reduction facility fees.**

Title of Fee	Fee
Crematory license application	$210.00
Alkaline hydrolysis license application	210.00
Natural organic reduction license application	210.00
Renewal:	8.00
Regulatory fee for crematories, alkaline hydrolysis facilities, and natural organic reduction facilities collected at time of renewal per cremation, hydrolysis, or natural organic reduction performed during previous calendar year	
Crematory operator license:	
Application	135.00
Renewal	100.00
Alkaline hydrolysis operator license:	
Application	135.00
Renewal	100.00
Natural organic reduction facility operator license:	
Application	135.00
Renewal	100.00

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-840 Funeral director and embalmer interns. (1) ((~~Registration~~)) A license as a funeral director intern or embalmer intern shall not exceed a time period of five years ((~~from the date of initial registration~~)) cumulative. Following completion of the internship program:

((~~• The registration~~)) (a) The license for internship will not be renewed.

((~~•~~)) (b) The intern must qualify for licensure as a funeral director, embalmer or funeral director and embalmer.

(2) Interns must be eighteen years of age and registered under the sponsorship and supervision of a licensed funeral director, embalmer or funeral director and embalmer.

(3) Interns whose job duties require that they perform work at multiple funeral establishment locations may do so and receive training from their sponsor and other licensees as approved by the sponsor.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-850 Intern sponsors—Qualifications, limitations and responsibilities. Licensees who supervise interns:

((~~•~~)) (1) Must be working and located in the same licensed establishment as the intern, provided: Sponsors may permit interns to perform work at ((~~multiple funeral~~)) branch establishment locations if required by their job duties.

((~~•~~)) (2) Each sponsor can supervise a maximum of three interns.

((~~•~~)) (3) Sponsors of funeral director interns must have a minimum of one year of practical experience as a licensed funeral director in the state of Washington.

((~~•~~)) (4) Sponsors of embalmer interns must have a minimum of one year of practical experience as a licensed embalmer in the state of Washington.

((~~•~~)) (5) Sponsors are responsible for work performed by interns registered under the supervision of the sponsor.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-870 Leave of absence—Interns. A leave of absence from internship requirements may be granted by the board with the following provisions:

((•)) (1) The intern submits an appeal to the board for a leave of absence.

((•)) (2) The intern is enlisted in military service of the United States or called to active duty in the United States armed forces and resumes internship within one year of release from military service.

((•)) (3) The intern is enrolled as a full-time student in a funeral service education program accredited by the American Board of Funeral Service Education (ABFSE).

((•)) (4) The board reserves the right to make a determination to waive internship requirements for extenuating circumstances.

AMENDATORY SECTION (Amending WSR 07-18-030, filed 8/28/07, effective 9/28/07)

WAC 308-48-880 ((~~Transporting~~)) Transportation of human remains. ((~~For the purpose of RCW 18.39.010(1), the board has determined that~~)) (1) Transportation of human remains may be performed by ((~~unregistered~~)) unlicensed persons who are employed by licensed funeral establishments in accordance with WAC 246-500-040.

(2) A business established for the sole purpose of removals and/or transportation of human remains is required to obtain a funeral establishment license in accordance with RCW 18.39.145.

(3) All transportation of human remains shall be in accordance with chapter 246-500 WAC and RCW 70.58.230.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 308-48-350	AIDS prevention and information education requirements.
WAC 308-48-510	Continuing education requirements—Purpose.
WAC 308-48-520	Effective date of continuing education requirement.
WAC 308-48-550	Continuing education reporting requirement.
WAC 308-48-560	Continuing education documentation may be required.
WAC 308-48-590	Qualification for board approval of continuing education activities.
WAC 308-48-600	Procedure for obtaining board approval of continuing education activity.
WAC 308-48-780	Crematories—Inspections.
WAC 308-48-810	Brief adjudicative proceedings—When they can be used.
WAC 308-48-815	Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings.
WAC 308-48-860	Registered intern examination.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-100 Purpose. The purpose of this chapter is to implement the provisions of RCW 18.39.240 through 18.39.345 ((~~and 18.39.360, by establishing~~)) and to establish rules for the registration of funeral establishments which enter into prearrangement funeral service contracts and to establish uniform minimum requirements for such contracts and prearrangement trust funds.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-130 Definitions. ((~~Unless the text in this chapter clearly states or requires otherwise, definitions shall be as set forth in RCW 18.39.010.~~)) (1) "Board" means the funeral and cemetery board created pursuant to RCW 18.39.-173.

(2) "Director" means the director of licensing.

(3) "Embalmer" means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(4) "Funeral director" means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(5) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(6) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(7) "Licensee" means any person or entity holding a license, registration, endorsement, or permit under this chapter issued by the director.

(8) "Method of disposition" means burial, entombment, cremation, alkaline hydrolysis, natural organic reduction, anatomical donation or removal from state.

(9) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(10) "Public depositary" means a public depositary defined by RCW 39.58.010 or a state or federally chartered credit union.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-140 Registration of establishments. (1) Each funeral establishment entering into prearrangement funeral service contracts in which one or more of the following conditions exist must be registered with the board before entering into such contracts:

(a) The sales price of the contract, using either trust or insurance as a method of funding, guarantees a final price for merchandise and services. The guarantee assures the purchaser that there will be no additional charges for the merchandise and services disclosed within the agreement.

(b) The sales price of the contract using a trust as a method of funding plus accruals will be applied toward the cost of merchandise and services at the time of need. Should the cost of merchandise and services selected at the time of need exceed the sales price of the contract plus accruals, the purchaser will pay the difference. Should the cost of merchandise and services selected at the time of need be less than the sales price of the contract plus accruals, the purchaser will receive a refund for the difference.

(((~~(c) Insurance is used as a method of funding guaranteeing a final price for merchandise and services. Such guarantee assures the purchaser that there will be no additional charges for merchandise and services disclosed in the agreement.~~))

(2) Before entering into any prearrangement funeral service contracts in this state, a funeral establishment shall first obtain a certificate of registration from the board. To apply for registration, a funeral establishment must file an application on forms approved by the board of funeral directors and embalmers, which includes:

(a) The name, address, and telephone number of the funeral establishment;

(b) A statement of the establishment's current financial condition and an explanation of how the establishment plans to offer, market and service prearrangement contracts including:

(i) The type of business organization which operates the funeral establishment, e.g., sole proprietorship, partnership, or corporation and a list of all officers, directors, partners and managers by name and title, and any person owning more than ten percent of the business;

(ii) ((~~A balance sheet and a profit and loss statement for the most recently concluded fiscal year and/or~~)) Other ((~~such~~)) fiscal documents as the board may require((~~:~~)).

(c) The prearrangement funeral service contract forms the establishment proposes to use need not be in final printed form when submitted; however, a copy of the final printed form shall be filed with the board before the form is used;

(d) Identification of the trustee(s) of the prearrangement funeral service trust, including address and telephone number((~~.~~)); and

(e) A copy of the prearrangement funeral service trust agreement and the prearrangement funeral service trust depository agreement.

(3) Upon review of the application, the board may require additional information or explanation prior to registration or refusing to register the funeral establishment.

(4) The application shall be accompanied by a check payable to the state treasurer in the amount required by the director for issuance of the certificate of registration.

AMENDATORY SECTION (Amending WSR 02-19-019, filed 9/9/02, effective 10/10/02)

WAC 308-49-150 Prearrangement funeral service contract form requirements. (1) The terms of prearrangement funeral service contracts are of substantial importance to both consumers and the establishment. Prearrangement funeral service contracts must be approved by the board before being used by a funeral establishment.

(2) Contracts must be written in language that can be easily understood by all parties and printed or typed in easily readable type size and style.

(((~~(2)~~)) (3) Every prearrangement funeral service contract must include the following information:

(a) The name of the purchaser and the beneficiary of the contract;

(b) A description of the services and merchandise to be provided((~~, if specific merchandise and services are to be furnished, and a statement clearly setting forth whether the purchase price fully pays for such services and merchandise or if the purchase price is to be applied toward the cost of such services and merchandise when they are provided;~~

~~(c) The total purchase price to be paid under the contract and the manner and terms which will govern payment;~~

~~(d) That all funds placed in trust plus net accruals are subject to refund.~~

~~(3)~~));

(c) A statement that if specific merchandise and services are not available, merchandise and services of equal or better value will be furnished;

(d) A statement clearly setting forth whether the purchase price fully pays for such services and merchandise or if the purchase price is to be applied toward the cost of such services and merchandise when they are provided;

(e) The total purchase price to be paid under the contract and the manner and terms which will govern payment;

(f) If funded by a trust, that all funds placed in trust plus net accruals are subject to refund; and

(g) If funded by insurance that the amounts paid for by insurance may not be refundable.

(4) Such contract shall be dated and be executed by the purchaser and by the funeral establishment through its owner, officer or managing agent.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-49-168 Trust fund depository agreement requirements. (1) Each prearrangement funeral trust shall enter into an agreement with one or more depositories in which the responsibilities of the depository are set forth. The agreement shall contain language which:

(a) Sets forth the terms and conditions under which deposits and withdrawals are made;

(b) States that instruments of deposit shall be an insured account in a public depository or shall be invested in ((~~instruments issued or insured by an agency of the federal govern-~~

~~ment,~~)) accordance with the provisions of RCW 11.100.020 and sets forth the conditions for termination and transfer of the prearrangement trust fund depository agreement.

(2) Prearrangement trust fund depository agreements are an integral part of the prearrangement funeral service contract agreement and shall be approved by the board prior to use. Amendments to or changes in the agreement shall be filed with the board prior to incorporation. The board shall be advised prior to termination of any depository agreement.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-49-170 Annual statement requirements. (1) Each funeral establishment registered to sell funeral prearrangement contracts must file ((~~with the board annually, ninety days after the end of its fiscal year,~~)) a statement of its ((~~financial condition,~~)) transactions and affairs for the preceding fiscal year. The statement is due to the board ninety days after the end of its fiscal year.

(2) ((~~The statement shall include a balance sheet and a profit and loss statement for the preceding fiscal year and/or other such fiscal documents as the board may require.~~

~~(3)~~)) The funeral establishment shall list any changes in its officers, directors, managers or partners or any change in ownership greater than ten percent which have occurred in the preceding fiscal year.

(((~~(4)~~))) (3) With respect to each prearrangement funeral service contract trust fund, the following information must be provided:

(a) The name of ((~~the depository~~)) all trust depositories and the account numbers;

(b) ((~~The number of outstanding contracts at the beginning of the fiscal year;~~

~~(c) The total amount paid in by the holders of such contracts pertinent to the trust fund;~~

~~(d) The total amount deposited in the trust account;~~

~~(e)~~)) Third-party verification of all prearrangement trust assets;

(c) The total amount deposited in the trust account during the fiscal year;

(d) The number of new contracts ((~~issued~~)) and the contract amount sold during the fiscal year;

(((~~(f) The amount paid in on such new contracts and the amount deposited in the trust fund for such contracts;~~

~~(g)~~)) (e) The total amount received for contracts during the fiscal year;

(f) The number of ((~~withdrawals~~)) contracts withdrawn from trust and amounts withdrawn from the trust due to contract cancellations and/or instances where the funeral merchandise and services covered by prearrangement contracts have been furnished and delivered. Withdrawals will include principal and earnings;

(((~~(h)~~))) (g) The number of outstanding contracts as of the end of the fiscal year and the amount being held in trust for such contracts.

(((~~(5)~~))) (4) The annual report form must include a ((~~year-end statement from the depository as to~~)) copy of the depository(ies) statement(s) to verify the amount of money held in funeral prearrangement trust ((~~as of the reporting date~~)) as well as the monthly deposit and withdrawal activity during the fiscal year.

(5) If the funeral establishment sells funeral prearrangement contracts funded with insurance that guarantees the final price of merchandise and services, the funeral establishment will:

(a) Report the number of insurance funded contracts sold during the fiscal year;

(b) Report the total number of insurance funded contracts;

(c) Report the total current face amount of all outstanding insurance funded contracts at the end of the fiscal year; and

(d) Provide a statement from the insurance provider(s) to verify the total face amount of all active insurance policies at the end of the fiscal year.

NEW SECTION

WAC 308-49-175 Trust fund deposit requirements. All payments received must be deposited directly into the appropriate trust fund and may not be offset by the amounts due from the trust prior to deposit. Such deposits must be made on or before the 20th day of the month following receipt of each payment due.

NEW SECTION

WAC 308-49-185 Inability to provide method of disposition. If human remains do not meet the reduction facility criteria for the method of disposition specified on a prearrangement funeral service contract, an alternate method of disposition shall be determined by the person(s) having the right to direct disposition per RCW 68.50.160.

NEW SECTION

WAC 308-49-190 Changing funeral establishments. Authorizing agents or persons having the right to direct disposition may change funeral establishments without conflict to the "place and method of disposition," as defined in RCW 68.50.160 (1) and (2). Licensees must permit the release of human remains to another funeral establishment if requested by the authorizing agent or person(s) having the right to direct disposition, even when a prearrangement contract exists.

Prearrangement contract trust or insurance funds must be made available to the funeral establishment designated by the authorizing agent.

AMENDATORY SECTION (Amending WSR 90-17-148, filed 8/22/90, effective 9/22/90)

WAC 308-49-200 Telephone solicitation. (1) The use of telephones for solicitation of prearrangements is prevalent. This form of communication offers unique benefits, but entails special risks and poses potential for abuse. The board finds that any impropriety in telephone solicitation is a matter vitally affecting the public interest. For the general welfare of the public and in order to protect the integrity of the funeral

industry, the use of telephones in solicitation of prearrangements must be defined by the board.

(2) Definitions:

(a) "Telephone solicitor" means any person who engages in telephone solicitation on behalf of a holder of an establishment license.

(b) "Telephone solicitation" means an unsolicited telephone call to a person and conversation for the purpose of inducing the person to make funeral prearrangements made without previous invitation, expressed or implied, by the person called.

(3) Time limits:

(a) No licensee may knowingly cause a telephone solicitation to be made to any person more often than once in every six months.

(b) A telephone solicitor shall not place calls which will be received before 8:00 a.m. or after 9:00 p.m.

(4) Unfair/deceptive practices. A telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(5) Identification. Within the first thirty seconds of the telephone call, a telephone solicitor or salesperson shall:

(a) Identify ((~~himself or herself~~)) themselves, the company on whose behalf the solicitation is being made, the property, goods, or services being represented; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates ((~~he or she does~~)) they do not wish to continue the conversation.

(6) Termination of contact. If at any time during the telephone contact, the purchaser states or indicates that ((~~he or she does~~)) they do not wish to be called again by the telephone solicitor or wants to have ((~~his or her~~)) their name and individual telephone number removed from the telephone lists used by the telephone solicitor, the telephone solicitor shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year.

(7) Enforcement. In the event that the board discerns a pattern of violation of these standards the board may act against the registrant's prearrangement registration as provided by chapter 18.39 RCW.

Chapter 308-50A WAC

CEMETERIES—ENDOWMENT CARE FUNDS

NEW SECTION

WAC 308-50A-005 Cemetery endowment care funds. Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name.

NEW SECTION

WAC 308-50A-007 Use and care of endowment care funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established.

Endowment care funds shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery.

Only income and not principle from the endowment care funds may be used for the above described cemetery care.

Endowment care funds shall be kept separate and distinct from all assets of the cemetery authority. Endowment care principal shall remain inviolable and may not be reduced in any way not found within chapter 11.100 RCW.

NEW SECTION

WAC 308-50A-010 Definitions. For the purposes of this chapter, the following terms will be construed as follows:

(1) **"Board"** means the funeral and cemetery board.

(2) **"Capital gains"** means an increase in principal and is excluded from ordinary income and net ordinary income.

(3) **"Cemetery authority"** means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board.

(4) **"Endowment care cemetery"** means a cemetery required to establish an endowment care fund in accordance with chapter 68.40 RCW.

(5) **"Fiduciary responsibility"** means the trustee(s) will manage the endowment care fund in accordance with RCW 11.100.020.

(6) **"Gross sales price,"** in determining "ten percent of the gross sales price" pursuant to RCW 68.40.010, gross sales price shall not include the endowment care fund portion. Endowment care shall be added to the gross sales price and separately identified as endowment care on any contract.

For example: Grave gross sales price - $100.00. Endowment care requirement - $10.00. Total contract price - $110.00.

(7) **"Income"** means ordinary income, that is, interest, dividends, rents and other amounts received by the fund as current returns on investments, but excludes realized or unrealized capital gains or losses.

(8) **"Net ordinary income"** means the ordinary income of the fund reduced by the expenses of operating the fund.

(9) **"Trustee(s)"** means the bank, trust company or persons appointed by the cemetery authority or association of lot owners to hold fiduciary responsibility in managing the endowment care fund in accordance with chapter 68.44 RCW and subject to the direction of the cemetery authority.

NEW SECTION

WAC 308-50A-040 Records of endowment care funds. Any cemetery authority maintaining an endowment care fund shall maintain a current accounting system in accordance with generally accepted accounting principles.

The system shall track sales, receipts, and disbursements and include the following:

(1) An individual contract or agreement with each individual purchasing a right of interment with reference numbering.

(2) A record of:

(a) Payments received and the amount due or paid to the endowment care fund;

(b) Reconciliation of payments to and from the fund; and

(c) All supporting bank and investment statements.

(3) All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall:

(a) Be retained and available for inspection for a period of seven years; and

(b) Be understandable to the cemetery board examiner or other persons reasonably having cause to access them.

NEW SECTION

WAC 308-50A-050 Endowment care fund contribution for scattering, or additional rights of interment, entombment or inurnment. A cemetery authority not exempt per RCW 68.05.400 must make a deposit to the endowment care fund, for scattering, or additional rights of interment, entombment or inurnment, as required in RCW 68.40.010.

NEW SECTION

WAC 308-50A-060 Computing income from improved commercial or real estate. In determining the trust fund income for the purpose of RCW 68.44.020 and 68.44.170, an allowance for depreciation on the improved real estate will be used as a determining factor in computing fund income. The cemetery authority must document how depreciation is determined.

NEW SECTION

WAC 308-50A-070 Trust fund deposit requirements. All payments received must be deposited directly into the appropriate trust fund and may not be offset by amounts due from the trust prior to deposit. Such deposits must be made on or before the 20th day of the month following receipt of each payment due.

Chapter 308-50B WAC

CEMETERIES—ENDOWMENT CARE TOTAL RETURN DISTRIBUTION

NEW SECTION

WAC 308-50B-010 Definitions. For the purposes of this chapter, the following terms will be construed as follows:

(1) "Average fair market value" means the average of the fair market values of assets held by the endowment care fund on the first day of the current fiscal year and the first day of each of the two preceding fiscal years, or the average of the fair market value for the entire term of the fund if there are less than two preceding years.

(2) "Board" means the funeral and cemetery board.

(3) "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board.

(4) "Endowment care cemetery" means a cemetery required to establish an endowment care fund in accordance with chapter 68.40 RCW.

(5) "Extraordinary distributions" means distributions from the endowment care fund pursuant to written consent of the board.

(6) "Fair market value" means the fair market value of the assets held by the fund, reduced by all known noncontingent liabilities.

(a) The fair market value of real estate will be established by the county assessor's valuation on the first day of the current fiscal year.

(b) The fair market value of fractional ownership interests in real estate will be determined by generally accepted valuation methods.

(c) The fair market value of the endowment care fund assets that are not publicly traded on a stock or other regulated securities exchange shall be determined by written valuation certified by a qualified independent public appraiser or qualified independent certified public accountant not affiliated with the cemetery authority or its principals within twelve months of the first day of the fiscal year. If the valuation is not provided, the asset(s) will be assigned a zero value for the purpose of determining fair market value.

(7) "Fiduciary responsibility" means the trustee(s) will manage the endowment care fund in accordance with RCW 11.100.020.

NEW SECTION

WAC 308-50B-020 Application for total return distribution. (1) An application for implementation of the total return distribution method shall be submitted at least sixty days prior to the effective date of the election to use total return. The cemetery authority shall provide the board with the following:

(a) A written investment and distribution policy in which future distributions from the endowment care fund will be total return distribution amounts rather than net ordinary income distribution amounts. The investment goals shall be to achieve principal growth through investments including, but not limited to, equity investments, as well as achieve current income through investments including, but not limited to, income investments.

(b) An amended endowment care trust agreement to clearly show intent to use the total return distribution method.

(c) A written document establishing the average fair market value signed by the cemetery authority and/or trustee(s), and supporting documents.

(d) Completed application form indicating the total return percentage and signed by the cemetery authority.

(2) The application shall be considered approved unless the cemetery authority or trustee is notified otherwise by the board within thirty days of receipt. Such notification shall

contain details of the information needed to remedy any deficiencies in the application.

(3) The maximum total return percentage for the first year will be four percent. The cemetery authority or trustee may submit a written request to the board to modify the total return percentage twelve months after implementation of the total return distribution method.

(4) If the cemetery authority or trustee alters the total return percentage, the cemetery authority or trustee shall send written notice to the board. This notification shall be made before the first distribution is taken based on the new total return percentage and shall contain the revised total return percentage and the reason for the revision.

(5) The trustee shall distribute income to the cemetery authority at least annually or in more frequent installments agreed to by the trustee and the cemetery authority.

(6) A cemetery authority that converts the endowment care fund to a total return fund may elect to reconvert the fund to a net ordinary income fund by submitting written documentation to the board in support of the reconversion at least sixty days before the proposed effective date of the reconversion, including a copy of the trust agreement, notification on the proposed effective date of the reconversion, and any additional information required by the board.

(7) Unless an application and required documents for conversion to the total return distribution method have been received and approved by the board, a cemetery authority or trustee(s) may distribute only the net ordinary income from the endowment care fund for the general care, maintenance, and embellishment of the cemetery.

NEW SECTION

WAC 308-50B-030 Calculation of the average fair market value. The cemetery authority or trustee shall calculate the average fair market value of the fund at the beginning of each fiscal year. Appraisal methods and/or sources utilized to determine fair market value to establish the initial value must remain the same in each reporting year.

(1) When calculating the average fair market value, if assets have been added to the fund during the years used to determine the average, the amount of each addition is added to all years in which such addition was not included. If extraordinary distributions were taken during any of the years used to determine the average, the amount of each distribution is subtracted from all years in which the distribution was not included.

(2) The cemetery authority or trustee shall exclude from the fair market value calculations any asset for which the fair market value cannot be established.

(3) The cemetery authority or trustee shall use the fair market value to calculate the average fair market value.

NEW SECTION

WAC 308-50B-040 Limitation of total return distribution. (1) The board may take corrective measures including reducing the total return percentage under one or more of the following circumstances:

(a) If the average fair market value of the endowment care fund declines by ten percent or more over a two-year period;

(b) The fair market value of the fund at the beginning of a fiscal year is less than eighty percent of the fair market value of the fund the first day of the fiscal year when the endowment care fund started making distributions based on the total return distribution method; or

(c) There is an uncorrected endowment care deficiency as determined by the board's audit of the endowment care funds.

(2) The board may evaluate the endowment care fund conditions and choose not to impose corrective measures if it finds that:

(a) The reasons are due to unusual or temporary factors not within the control of the cemetery authority or the trustee and which could not have been reasonably anticipated;

(b) The current investment policy of the fund is reasonably designed to protect the fund from further declines in fair market value; or

(c) The exception appears to be both necessary and appropriate for the continued protection of the endowment care fund.

(3) The cemetery authority or trustee(s) shall not utilize the total return distribution method for part of the endowment care assets and concurrently distribute net income for part of the endowment care assets. Endowment care distributions may only be taken as net ordinary income or the total return distribution method.

NEW SECTION

WAC 308-50B-050 Fees and taxes. (1) In the event that the fees paid by the endowment care fund exceed one percent of the average fair market value, the amount in excess of one percent shall be paid from the distribution.

(2) Taxes may be paid from the corpus.

NEW SECTION

WAC 308-50B-060 Annual reporting requirements for total return distribution method. The cemetery authority will provide the board with a report that includes the average fair market value used to determine distribution for the following year and maintain a record of the fair market value each year while using the total return distribution method.

As part of the cemetery endowment care annual report required by RCW 68.05.180 and 68.05.235, cemetery authorities approved to use the total return distribution method must file an addendum to the annual report which details the following:

(1) The asset allocation;

(2) The annual distribution to the cemetery authority;

(3) Any changes to the investment and distribution policy;

(4) Calculation of the average fair market value to determine the current year's distribution and supporting documents; and

(5) Any other information the board deems pertinent.

Chapter 308-51B WAC

CEMETERIES PREARRANGEMENT CONTRACTS

NEW SECTION

WAC 308-51B-005 Cemetery prearrangement trust funds. Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement trust funds for the benefit of beneficiaries of prearrangement contracts.

NEW SECTION

WAC 308-51B-010 Definitions. All definitions of chapter 68.46 RCW apply to this chapter. In addition, the following definition applies:

"Direct cost" for the purpose of chapter 68.46 RCW, direct cost includes actual labor cost and other costs associated with delivery of the service. For example: Direct cost of providing an opening and closing may include labor, materials, fuel, equipment maintenance, and a share of overhead including benefits and insurance.

NEW SECTION

WAC 308-51B-020 Itemization of charges. In addition to all other requirements of the law relating to consumer contracts, cemetery prearrangement contracts must have:

(1) A specific itemization of charges and descriptions for each merchandise or service to be furnished or delivered.

(2) An itemization of services to be performed on delivered merchandise such as marker installation and care.

(3) An itemization of charges and descriptions for each grave niche or crypt sold with endowment care listed separately.

NEW SECTION

WAC 308-51B-025 Trust fund deposit requirements. All payments received must be deposited directly into the appropriate trust fund and may not be offset by amounts due from the trust prior to deposit. Such deposits must be made on or before the 20th day of the month following receipt of each payment due.

NEW SECTION

WAC 308-51B-030 Form of delivery. All cemetery prearrangement contracts must state on the contract what form or forms of delivery of merchandise will constitute "delivery" to satisfy the requirements of RCW 68.46.050.

NEW SECTION

WAC 308-51B-040 Performance of services. Prearrangement services, including shipment and installation of cemetery prearrangement merchandise, shall not be deemed to have been furnished within the meaning of RCW 68.46.-050(1) until performance of such services has actually occurred.

NEW SECTION

WAC 308-51B-050 Determination of delivery. Cemetery prearrangement merchandise and services will be delivered within the meaning of RCW 68.46.050(1) when:

(1) Actual delivery of the merchandise is made to the contract beneficiary;

(2) Delivery of the merchandise is made to the cemetery authority for the contract beneficiary and the merchandise is permanently affixed to real property, columbarium or mausoleum; or

(3) Delivery of the merchandise to the cemetery authority for the contract beneficiary with the storage provided by the cemetery authority, provided:

(a) That fifty percent of the service charge of the installation and other services to be performed upon the merchandise is maintained in the prearrangement trust fund; and

(b) An insurance provision is maintained when merchandise is stored in a building or on cemetery grounds.

(4) The cemetery authority has paid its supplier for prearrangement merchandise, and the supplier has caused the merchandise to be manufactured and stored, and has caused title to the merchandise to be transferred to the contract beneficiary, and has agreed to ship the merchandise upon his request or the request of the cemetery authority; provided:

(a) That fifty percent of the service charge of delivery, installation and other costs are maintained in the prearrangement trust fund by the cemetery authority. The delivery and installation cost must be itemized on the prearrangement contract, in accordance with WAC 308-51B-020.

(b) This subsection will apply to the manufacture and storage of merchandise such as, but not limited to, vaults, liners, urns and marker bases.

NEW SECTION

WAC 308-51B-060 Suppliers. No person, firm or corporation will be deemed a supplier for purposes of this chapter, unless it:

(1) Permanently and unalterably identifies all merchandise with the name of the contract beneficiary;

(2) Submits, upon request of the board, a report of all merchandise which has been purchased through a Washington cemetery authority and has been placed in storage;

(3) Permits the board or its designee, at any time, to examine stored merchandise which was purchased through a Washington cemetery authority and to examine any document pertaining thereto;

(4) Submits evidence of a bond ensuring the existing and good title of any merchandise due any contract beneficiary purchased through a Washington cemetery authority; and

(5) Submits evidence ensuring that all merchandise purchased through a Washington cemetery authority and being stored by the supplier is insured for casualty, theft or other loss.

Subsection (1) of this section will not apply to merchandise that is manufactured and stored without being permanently labeled or engraved with the beneficiaries' name. Suppliers must maintain an inventory equal to the amount sold.

NEW SECTION

WAC 308-51B-070 Securities for loans. In any instance where a prearrangement contract containing undelivered merchandise or services is sold, pledged, or otherwise encumbered as security for a loan by cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

NEW SECTION

WAC 308-51B-080 Development plan for unconstructed, undeveloped property. (1) Any cemetery authority selling undeveloped graves, unconstructed crypts or niches in accordance with chapter 68.46 RCW must make available to the purchaser a statement of the estimated completion date of the development or construction at the time the prearrangement contract is signed.

(2) The estimated completion date must also:

(a) Be submitted to the cemetery board annually with the financial reports required by RCW 68.46.090.

(b) Be made available to holders of prearrangement contracts affected by the development or construction in the offices of the cemetery authority.

(3) A cemetery authority must maintain an equivalent inventory of constructed crypts, niches and developed graves, equal to ten percent of the unconstructed crypts, niches and undeveloped graves sold through prearrangement contracts. The equivalent inventory must be located within the cemetery or an adjacent cemetery under common ownership.

(4) Trust fund deposits required for the prearrangement contract sales of undeveloped property, will be in accordance with RCW 68.46.030.

NEW SECTION

WAC 308-51B-090 Records of cemetery prearrangement trust funds. Any cemetery authority maintaining a prearrangement trust fund shall maintain a current accounting system in accordance with generally accepted accounting principles. The system shall track sales, receipts and disbursements, and include the following:

(1) An individual contract or agreement with each individual establishing a prearrangement trust agreement.

(2) A record of payments received and the amount due or paid to the prearrangement trust fund.

(3) Reconciliation of payments to and from the fund.

(4) All supporting bank and investment statements.

(5) Documentation to verify all other assets of the prearrangement trust.

(6) All records required to be maintained pursuant to this rule and Title 68 RCW, whether maintained manually or by computer, shall:

(a) Be retained and available for inspection for a period of seven years.

(b) Be understandable to the cemetery board examiner or other persons reasonably having cause to access them.

NEW SECTION

WAC 308-51B-100 Qualifications of applicant for cemetery prearrangement sales license. To qualify as an applicant for a prearrangement sales license as set forth in RCW 68.05.155 and 68.46.150, applicant must hold a valid and unsuspended certificate of authority to operate a cemetery issued by the state funeral and cemetery board.

NEW SECTION

WAC 308-51B-200 Telephone solicitation. (1) The use of telephones for solicitation of prearrangements is prevalent. This form of communication offers unique benefits, but entails special risk and poses potential for abuse. The board finds that any impropriety in telephone solicitation is a matter vitally affecting the public interest. For the general welfare of the public and in order to protect the integrity of the cemetery industry, the use of telephones in solicitation of prearrangements must be defined by the board.

(2) Definitions:

(a) "Telephone solicitation" means an unsolicited telephone call to a person and conversation for the purpose of inducing the person to make cemetery prearrangements made without previous invitation, expressed or implied, by the person called.

(b) "Telephone solicitor" means any person who engages in telephone solicitation on behalf of a holder of a certificate of authority to operate.

(3) Time limits:

(a) No licensee may knowingly cause a telephone solicitation to be made to any person more often than once in every six months.

(b) A telephone solicitor shall not place calls which will be received before 8:00 a.m. or after 9:00 p.m.

(4) Unfair/deceptive practices. A telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(5) Identification. Within the first thirty seconds of the telephone call, a telephone solicitor or salesperson shall:

(a) Identify themselves, the company on whose behalf the solicitation is being made, the property, goods, or services being represented; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates they do not wish to continue the conversation.

(6) Termination of contact. If at any time during the telephone contact, the purchaser states or indicates that they do not wish to be called again by the telephone solicitor or wants to have their name and individual telephone number removed from the telephone lists used by the telephone solicitor, the telephone solicitor shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year.

(7) Enforcement. In the event that the board discerns a pattern of violation of these standards the board may act against the licensee's prearrangement license as provided by Title 68 RCW.

NEW SECTION

WAC 308-51B-250 Hybrid unit. A hybrid unit shall mean any combination "casket-vault" that is designed, intended, or represented to function as a substitute for a casket and/or a vault, or intended to serve the same purpose as a casket or a vault or in lieu thereof.

NEW SECTION

WAC 308-51B-260 Hybrid unit—Disclosure of support or service items. Hybrid units specified as cemetery merchandise or services in cemetery prearrangement contracts must be itemized, and must disclose and describe all items of support or services which are required or may be required for the future or intended use of hybrid units. "Support or service" as used herein means any function, activity, or object, and their availability, required or that may be required to meet a buyer's expectations for necessary cemetery merchandise or services and/or funeral merchandise or services. Whether items of support or services are included in the immediate purchase price or are reserved for future sale at the time of need, must be clearly set forth in the cemetery prearrangement contract, and in all advertising or representations pertaining to preneed or prearrangement contract sales of hybrid units.

Chapter 308-52A WAC

ABANDONED CEMETERIES

NEW SECTION

WAC 308-52A-030 Allowing burials in an abandoned cemetery. The definitions found in chapters 68.04 and 68.60 RCW apply to this section.

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

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

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

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

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

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

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

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

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-08-001	Model rules of procedure.
WAC 98-08-005	Brief adjudicative proceedings—When they can be used.
WAC 98-08-015	Objections to brief adjudicative proceedings and conversion to formal adjudicative hearings.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-11-010	Financial responsibility requirements for nonendowment care cemeteries.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-12-020	Improved commercial or real estate income.
WAC 98-12-030	Definitions.
WAC 98-12-040	Records of endowment care funds.
WAC 98-12-050	Endowment care trust fund contribution for additional rights of interment, entombment or inurnment.
WAC 98-12-051	Application for total return distribution.
WAC 98-12-052	Calculation of the average fair market value.
WAC 98-12-053	Limitation of total return distribution.
WAC 98-12-054	Fees and taxes.
WAC 98-12-055	Annual reporting requirements for total return distribution method.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-14-010	Definitions.
WAC 98-14-020	Itemization of charges.
WAC 98-14-030	Form of delivery.
WAC 98-14-040	Performance of services.
WAC 98-14-050	Determination of delivery.
WAC 98-14-060	Suppliers.

WAC 98-14-070	Securities for loans.
WAC 98-14-080	Development plan for unconstructed, undeveloped property.
WAC 98-14-090	Records of prearrangement trust funds.
WAC 98-14-100	Qualifications of applicant for prearrangement sales license.
WAC 98-14-200	Telephone solicitation.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-15-010	Crematory inspections.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-16-010	Hybrid unit.
WAC 98-16-030	Disclosure of support or service items.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-20-020	Definitions—Sale or transfer of ownership or control of any cemetery.
WAC 98-20-030	Allowing burials in an abandoned cemetery.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-60-010	Definitions.
WAC 98-60-020	Permits and endorsements.
WAC 98-60-030	Compliance with all laws.
WAC 98-60-040	Records and documentation.
WAC 98-60-050	Permits and endorsements—Terms—Fees.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-70-010	Fees.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 98-80-010	Definitions.
WAC 98-80-020	Identification of human remains.
WAC 98-80-030	Holding human remains for cremation.
WAC 98-80-040	Cremation of human remains.
WAC 98-80-050	Processing of cremated human remains.
WAC 98-80-060	Packaging and storage of cremated human remains.
WAC 98-80-070	Disposition of cremated human remains.

WSR 20-03-159
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 21, 2020, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-132.

Title of Rule and Other Identifying Information: Repealing WAC 230-05-001 Prorating or refunding fees, 230-05-005 Fees for review of gambling equipment, supplies, services or games, 230-05-010 Returned payments, 230-05-015 Two-part payment plan for license fees, 230-05-016 Exceeding license class, 230-05-017 Failing to apply for license class upgrade, 230-05-018 Partial refund of license fees if gambling receipts limit not met, 230-05-020 Charitable or nonprofit organization fees, 230-05-025 Commercial stimulant fees, 230-05-030 Fees for other businesses, 230-05-035 Individuals license fees, 230-05-102 All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter, 230-06-124 Online filing required with waivers available upon request for good cause, 230-06-150 Defining "gross gambling receipts," 230-06-170 Defining "net win," 230-07-155 Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses, 230-07-160 Reporting annual activity for agricultural fairs, 230-09-056 Activity reports for fund raising events, 230-10-331 Activity reports for Class D and above bingo prize providers, 230-10-457 Activity reports for linked bingo prize providers, 230-13-169 Annual activity reports for commercial amusement game licensees, 230-14-284 Activity reports for punch board and pull-tab licensees, 230-15-200 Reporting card game activity, 230-15-205 Card tournament licenses, 230-16-220 Activity reports by manufacturers and distributors, and 230-11-095 Recordkeeping requirements for licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year and unlicensed raffles.

Hearing Location(s): On March 12, 2020, at 9:00 a.m., at the Hilton Garden Inn, 2101 Henderson Park Lane S.E., Olympia, WA 98501. Hearing will take place at the March commission meeting. The meeting date and time is tentative. Visit our website at www.wsgc.wa.gov about seven days prior to the meeting, select "March Commission Meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: March 12, 2020.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3624, by February 28, 2020.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, by February 8, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2017-18, the gambling commission amended its rules to simplify its reporting and licensing fee structure. All licensees have now completed the transition from the old reporting and licensing fee structure to the new reporting and licensing fee structure, thus the rules related to the old reporting and licensing fee structure are no longer relevant.

Reasons Supporting Proposal: These rules are no longer relevant and should be repealed as to avoid confusion for licensees trying to comply.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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 per RCW 34.05.328 (5)(a)(i), furthermore, the purpose of this proposal is to repeal rules that are no longer relevant.

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. There is no cost associated with the repeal of these rules.

January 15, 2020
Ashlie Laydon
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-05-001	Prorating or refunding of fees.
WAC 230-05-005	Fees for review of gambling equipment, supplies, services, or games.
WAC 230-05-010	Returned payments.
WAC 230-05-015	Two-part payment plan for license fees.
WAC 230-05-016	Exceeding license class.
WAC 230-05-017	Failing to apply for license class upgrade.
WAC 230-05-018	Partial refund of license fees if gambling receipts limit not met.
WAC 230-05-020	Charitable or nonprofit organization fees.
WAC 230-05-025	Commercial stimulant fees.
WAC 230-05-030	Fees for other businesses.
WAC 230-05-035	Individuals license fees.
WAC 230-05-102	All licensed organizations report activity quarterly beginning with the July 1, 2018, through September 30, 2018, quarter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-06-124	Online filing required with waivers available upon request for good cause.
WAC 230-06-150	Defining "gross gambling receipts."
WAC 230-06-170	Defining "net win."

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-07-155	Reporting annual activity for raffles, enhanced raffles, amusement games, Class A, B, or C bingo, or combination licenses.
WAC 230-07-160	Reporting annual activity for agricultural fairs.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-09-056	Activity reports for fund-raising events.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-10-331	Activity reports for Class D and above bingo licensees.
WAC 230-10-457	Activity reports for linked bingo prize providers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-11-095	Recordkeeping requirements for licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year and unlicensed raffles.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-13-169	Annual activity reports for commercial amusement game licensees.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-14-284	Activity reports for punch board and pull-tab licensees.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-15-200	Reporting card game activity.
WAC 230-15-205	Card tournament licenses.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-16-220	Activity reports by manufacturers and distributors.

WSR 20-03-163
PROPOSED RULES
OFFICE OF ADMINISTRATIVE HEARINGS

[Filed January 21, 2020, 2:52 p.m.]

Supplemental Notice to WSR 19-21-148.

Preproposal statement of inquiry was filed as WSR 19-12-047.

Title of Rule and Other Identifying Information: WAC 10-08-110 Adjudicative proceedings—Filing and service of papers.

Hearing Location(s): On February 27, 2020, at 2:00 - 3:00 p.m., at 2420 Bristol Court S.W., Large Hearing Room, Olympia, WA 98502.

Date of Intended Adoption: February 27, 2020.

Submit Written Comments to: Donald Capp, Deputy Chief ALJ, P.O. Box 42488, Olympia, WA 98504, email rulemaking@oah.wa.gov, fax 360-664-8721, by February 26, 2020.

Assistance for Persons with Disabilities: Contact Johnette Sullivan, Assistant Chief ALJ and ADA Coordinator, phone 360-407-2700, fax 360-664-8721, email Johnette.sullivan@oah.wa.gov, by February 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 10-08-110 is being updated to allow for electronic filing of appeal records on existing cases with the office of admininstrative hearings (OAH). The proposed amendment is intended to implement provisions of the State Administrative Procedures [Procedure] Act, chapter 34.05 RCW, relating to electronic service of notices and orders in administrative adjudications, specifically RCW 34.05.010(19), 34.05.434(5), and 34.05.461 (8)(a).

Statutory Authority for Adoption: RCW 34.12.080.

Statute Being Implemented: Chapter 34.12 RCW.

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

Name of Proponent: OAH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Donald Capp, 2420 Bristol Court S.W., Olympia, WA 98502, 360-407-2700.

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 proposed rule does not involve rules of any of the agencies identified in RCW 34.05.328(5) for which a cost-benefit analysis is required.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This proposed rule making does not result in any economic impact on small business or fiscal impact on school districts.

January 21, 2020
Lorraine Lee
Chief Administrative Law Judge

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-08-110 Adjudicative proceedings—Filing and service of ((~~papers~~)) documents. (1) Filing.

(a) ((~~Papers required~~)) Documents to be filed with the agency shall be deemed filed ((~~upon actual receipt during office~~)) when received during regular business hours at any office of the agency. ((~~Papers required~~)) Documents to be filed with the presiding officer shall be deemed filed ((~~upon actual receipt during office~~)) when received during regular business hours at the office of the presiding officer. Documents received outside of regular business hours shall be considered filed the following business day.

(b) ((~~The following conditions apply for filing papers with the presiding officer~~)) Filing documents by fax:

(i) As used in this chapter, "fax" means electronic telefacsimile transmission.

(ii) ((~~Papers~~)) Documents may be filed by fax with the ((~~presiding officer~~)) agency. Filing by fax is perfected when a complete and legible copy of the ((~~papers is reproduced on the presiding officer's fax machine during normal working hours, excluding weekends and holidays. If a transmission of papers commences after these office hours, the papers shall be deemed filed on the next succeeding~~)) documents is reproduced on the agency's fax machine during regular business hours. A transmission of documents after regular business hours shall be considered filed on the following business day.

(iii) Any ((~~papers~~)) documents filed by fax ((~~with the presiding officer should~~)) must be accompanied by a cover page or other form identifying the party making the transmis-

sion, listing the address, telephone, and fax number of the party, identifying the adjudicative proceeding to which the ((~~papers~~)) documents relate, and indicating the date of and the total number of pages included in the transmission.

(iv) ((~~Papers filed by fax should not exceed fifteen pages in length, exclusive of any cover page.~~

~~(v)~~)) The party attempting to file the ((~~papers~~)) documents by fax bears the risk that the ((~~papers~~)) documents will not be timely received or legibly printed, regardless of the cause. If the fax is not received in legible form, ((~~it will be considered as if it had never been sent.~~

~~(vi) The original of any papers filed by fax should be mailed to the presiding officer within twenty-four hours of the time that the fax was sent. The presiding officer has discretion to require this~~)) filing will not be perfected.

(c) The filing of ((~~papers~~)) documents with the presiding officer by electronic mail ("email") is not authorized without the express approval of the presiding officer and under such circumstances as the presiding officer allows.

(2) Service.

(a) All notices, pleadings, and other ((~~papers~~)) documents filed with the ((~~presiding officer~~)) agency shall be served upon all ((~~counsel and~~)) representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(b) Methods of service permitted. Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax ((~~and same-day mailing of copies~~)); or by commercial parcel delivery company. Service by email or electronic filing is permitted if expressly assented to by the receiving party.

(c) Service by mail ((~~shall be regarded as~~)) is completed upon deposit in the United States mail properly stamped and addressed. Service by fax ((~~shall be regarded as~~)) is completed upon production by the fax machine of confirmation of a successful transmission. Service by commercial parcel delivery ((~~shall be regarded as~~)) is completed upon delivery to the parcel delivery company, properly addressed with charges prepaid. Service by email is completed upon receipt by the receiving party. Service by electronic filing is completed upon successful uploading of the document to that party's designated system.

(3) Proof of service. Where proof of service is required by statute or rule, filing the ((~~papers with the presiding officer~~)) documents with the agency, together with one of the following, shall constitute proof of service:

(a) An ((~~acknowledgement~~)) acknowledgment of service.

(b) A certificate that the person signing the certificate served the ((~~papers~~)) documents upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the ((~~papers~~)) documents upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax((~~, and on the same day mailing a copy,~~)) to each party to the proceeding or his or her ((~~attorney or~~)) authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial parcel delivery company; or

(iv) If agreed to by the parties, emailing or uploading to an electronic case management system a copy of the document. The certificate of service must include verification of receipt of the document by the recipient, which may include a read receipt or confirmation of successful upload.

(4) Electronic filing with the office of administrative hearings (OAH).

(a) Documents may be filed electronically with OAH through the use of the agency's portal.

(b) Filing documents through the OAH portal:

(i) As used in this chapter, "electronically" means successfully uploading documents through the OAH portal.

(ii) Filing electronically is perfected when a complete and legible copy of the documents is successfully uploaded to OAH's portal during regular business hours. A document uploaded after regular business hours is considered filed on the following business day. Regular business hours for the purposes of electronic filing with OAH are Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, excluding weekends and state holidays.

(iii) For any documents filed electronically through the OAH portal, the party attempting to file bears the risk that the documents will not be timely received or will not be legible, regardless of the cause. If the uploaded document is not received in legible form, filing will not be perfected.

(c) All service requirements as outlined in subsections (2) and (3) of this section apply to documents electronically filed through the OAH portal.

WSR 20-03-164
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 21, 2020, 3:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-132.

Title of Rule and Other Identifying Information: Amending WAC 230-03-085 Denying, suspending, or revoking an application, license or permit, 230-03-265 Applying for a card room employee license, 230-05-112 Defining "gross gambling receipts," 230-05-138 Returned payments, 230-05-142 Fees for review of gambling equipment, supplies, services, or games, 230-07-090 Keeping and depositing all gambling funds separate from other funds, and 230-11-100 Recordkeeping requirements for licensees with gross gambling receipts over fifty thousand dollars in their previous license year and raffles using alternative drawing formats.

Hearing Location(s): On March 12, 2020, at 9:00 a.m., at the Hilton Garden Inn, 2101 Henderson Park Lane S.E., Olympia, WA 98501. Hearing will take place at the March commission meeting. The meeting date and time is tentative. Visit our website at www.wsgc.wa.gov about seven days

prior to the meeting, select "March Commission Meeting" to confirm the hearing date, location, and start time.

Date of Intended Adoption: March 12, 2020.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3624, by February 28, 2020.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, by February 28, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2017-18, the gambling commission amended its rules to simplify its reporting and licensing fee structure. After a year of implementation, amendments are needed to ensure reporting, licensing, and recordkeeping requirements are met. Specifically, the following amendments are recommended: WAC 230-03-085 includes the failure to pay a quarterly license fee on time as a reason that the gambling commission may deny, suspend, and/or revoke an application, license, or permit; WAC 230-03-265 clarifies when a card room employee license is required; WAC 230-05-112 includes "bingo paper or bingo cards" to the list of authorized activities of which gross gambling receipts may be due; WAC 230-05-138 clarifies that administrative action may be taken against a gambling license(s) for returned payments; WAC 230-05-142 includes language from repealed rule (WAC 230-05-005) that one must apply to submit gambling equipment, supplies, services, or games for our review; WAC 230-07-090 includes requirements for licensees conducting raffles with gross gambling receipts over fifty thousand dollars in their initial license year and those offering prizes that require approval per WAC 230-11-067; and WAC 230-11-100 combines rules pertaining to recordkeeping requirements for raffle licensees and includes recordkeeping requirements for licensees with gross gambling receipts over fifty thousand dollars in their initial license year and those offering prizes that require approval per WAC 230-11-067.

Reasons Supporting Proposal: Amendments are needed to provided clarification for licensees and to ensure that all reporting, licensing, and recordkeeping requirements are met.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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 per RCW 34.05.328 (5)(a)(i).

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. A small business economic impact statement was triggered by the proposed amendments to WAC 230-11-100 Recordkeeping requirements for raffle licensees, which proposing [proposes] additional recordkeeping requirements that would affect licensees with gross gambling receipts over fifty thousand dollars in their initial license year and licensees offering prizes that require approval per WAC 230-11-067. Minor cost threshold was calculated using the North American Industry Classification System code for membership associations and organizations which most accurately reflects the nonprofit organizations that conduct raffles in Washington. Minor cost is defined in RCW 19.85.020(2) as a cost per business that is less than one percent of annual payroll or the greater of either 0.3 percent of annual revenue or $100. One percent of annual payroll for membership associations and organizations in Washington is $488.96, which was calculated using data from employment security department's 2019-1 average quarterly wages. Cost of in-house compliance was calculated at between $108.34 and $183.34 depending on the amount of time and experience the nonprofit had with recordkeeping, while the cost of contracted compliance was calculated at between $75 and $125. Therefore, this proposed amendment is unlikely to impose more-than-minor costs [on] licensees.

A copy of the detailed cost calculations may be obtained by contacting Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, phone 360-486-3473, fax 360-486-3624, TTY 360-486-3637, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov.

January 15, 2020
Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit. We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) Has failed to pay a quarterly license fee or submit a quarterly license report or has failed to pay a late fee assessed

as a result of failure to pay a quarterly license fee or submit a quarterly license report; or

(6) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(7) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us; or

(9) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or

(b) Criminal record; or

(c) Reputation; or

(d) Habits; or

(e) Associations; or

(10) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-03-265 Applying for a card room employee license. You must apply for a card room employee license:

(1) If you will be involved in the operation of a:

(a) Commercial nonhouse-banked card room((,)) charging a fee to play;

(b) Class F endorsed nonhouse-banked card room((,)); or

(c) House-banked card room; and

(2) You perform any of the following functions:

(a) Collecting fees; or

(b) Dealing; or

(c) Supervising any card game or other card room employee, such as acting as a pit boss, floor person, or section supervisor; or

(d) Selling or redeeming chips; or

(e) Performing cashier or cage duties such as counting and handling chips or cash, completing credit slips, fill slips, or inventory slips, or accounting for other card room receipts in the cage; or

(f) Observing dealers and card games to detect cheating or control functions; or

(g) Controlling card room funds including keys to secure locations; or

(h) Taking part in the operation of a card game.

(3) A Class B card room employee license is required to work at a house-banked card room and Class F endorsed nonhouse-banked card room.

(4) A Class A card room employee license is required to work at a nonhouse-banked card room.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-112 Defining "gross gambling receipts." (1) "Gross gambling receipts" means the amount due to any operator of an authorized activity as described in subsection (5) of this section.

(2) The amounts must be stated in U.S. currency.

(3) The value must be before any deductions for prizes or other expenses, such as over/short.

(4) "Gross gambling receipts" does not include fees from players to enter player-supported jackpots. However, any portion of wagers deducted for any purpose other than increasing current prizes or repayment of amounts used to seed prizes are "gross gambling receipts."

(5) Gross gambling receipts for authorized activities:

Activity:	Gross gambling receipts include amounts due to any operator for:
(a) **Punch board and pull-tab**	Purchasing chances to play.
(b) **Raffles and enhanced raffles**	Purchasing chances to enter.
(c) **Bingo**	Fees or purchase of cards to participate.
(d) **Amusement games**	Amounts paid to play amusement games.
(e) **Card games**	• "Net win" from house-banked card games; • Tournament entry fees; • Administrative fees from player-supported jackpots; • Fees to participate in nonhouse-banked card games.
(f) **Manufacturers and distributors**	(i) Fees from sales, rentals, leases, royalties, and service fees collected for the following gambling equipment in Washington to include, but not limited to: • Bingo paper or bingo cards; • Punch boards and pull-tabs; • Devices for dispensing pull-tabs; • Electronic devices for conducting, facilitating or accounting for the results of gambling activities; • Cards; • Dice; • Gambling chips; • Cash exchange terminals; • Progressive meters; • Gambling software; • License agreements; • Card shuffling devices; • Graphical game layouts for table games; • Ace finders or no-peek devices;

Activity:	Gross gambling receipts include amounts due to any operator for:
	• Roulette wheels; • Keno equipment; • Tables manufactured exclusively for gambling purposes; • Bet totalizers; • Electronic devices for reading or displaying outcomes of gambling activities; • Tribal lottery systems and components thereof. (ii) Fees from the service, repair and modification of gambling equipment in Washington to include, but not limited to: • Charges for labor and parts for repairing gambling equipment; • Service fees related to gambling operations; • Training or set-up fees; • Maintenance contract fees related to gambling equipment and operations.
(g) **Gambling service suppliers**	Fees from gambling-related services provided in or to be used in Washington to include, but not limited to: • Consulting, advisory or management services related to gambling; • Interest from financing the purchase or lease of gambling equipment, infrastructure or facilities or equipment that supports gambling operations; • Acting as a lending agent, loan services or placement agent; • Assembly of components for gambling equipment to be used under a contract with a licensed manufacturer; • Ongoing financial arrangements for gambling related software with a licensed manufacturer; • Installing, integrating, maintaining, or servicing digital surveillance systems that allow direct access to the operating system; • Training individuals to conduct authorized gambling activities;
	• Performing testing and certification of tribal lottery systems in meeting requirements specified in the tribal-state compacts; • Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators; • Ownership of proprietary games or equipment.
(h) **Punch board/pull-tab service businesses**	Providing nonmanagement related recordkeeping or storage services for punch board and pull-tab operators.
(i) **Fund-raising event distributors**	Fees from contracts to organize and conduct recreational gaming activities.
(j) **Fund-raising events and agricultural fairs**	Fees received from the operation of bingo, amusement games, raffles, lotteries, contests of chance, and/or net win from table games operated at a fund-raising event.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-138 Returned payments. (1) If your bank returns your payment to us for any reason, you must:

(a) Pay us in full, by certified check, money order, or cash, within five days of notification; and

(b) Reimburse our processing costs which would include, but not be limited to, time spent notifying you and seeking payment.

(2) If you fail to pay within five days of notification:

(a) We will administratively close your application; or

(b) Your license expires and all gambling activity must stop; or

(c) Administrative action may be taken against your license(s).

(3) If we administratively close your application or your license expires, you must give us a new application with fees paid by certified check, money order, or cash in order to be considered for a license.

AMENDATORY SECTION (Amending WSR 18-05-026, filed 2/9/18, effective 5/1/18)

WAC 230-05-142 Fees for review of gambling equipment, supplies, services, or games. (1) You must apply to us if you want to submit gambling equipment, supplies, services, or games for our review.

(2) You must pay the application deposit before we perform the review.

(3) You must also reimburse us for any additional costs of the review.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-07-090 Keeping and depositing all gambling funds separate from other funds. Charitable or nonprofit licensees must protect all funds generated from gambling activities and keep these funds separate from their general funds.

(1) Licensees must:

(a) Keep a separate gambling receipts account(s) in a recognized Washington state bank, mutual savings bank, or credit union; and

(b) Deposit only gambling receipts into that account. Licensees may deposit receipts from nongambling activities operated in conjunction with bingo games into the gambling receipts account if the licensee keeps detailed receipting records of the nongambling receipts; and

(c) Deposit all gambling receipts first into the account before spending or transferring them into other accounts, except for prize pay outs; and

(d) Deposit funds received from commercial amusement game operators operating amusement games on their premises in the licensee's gambling receipts account no later than the second banking day after they receive the receipts; and

(e) Make all deposits of net gambling receipts from each activity separately from all other deposits, and keep the validated deposit receipt as a part of their records. Deposit receipts are a part of the applicable daily or monthly records and licensees must make them available for our inspection; and

(f) Deposit all net gambling receipts which they are holding, pending pay out:

(i) From bingo, no later than the second banking day after they receive them. Licensees may withhold bingo receipts from deposits for "jar," "pig," or other special game prizes if the total of all such prize funds does not exceed two hundred dollars, enter the amount withheld each session in the bingo daily record, and record the reconciliation of the special game fund on the bingo daily record. "Reconcile" means the licensee must compare the two balances, resolve any differences, and document the comparison and the differences in writing. Licensees must keep the reconciliation as part of their records; and

(ii) From raffles ((~~and amusement games~~)), at least once a week. This includes those raffles:

(A) With gross gambling receipts over fifty thousand dollars in their initial year;

(B) With gross gambling receipts over fifty thousand dollars in their previous license year((~~, at least once each week~~)); and

(C) Offering prizes that require approval per WAC 230-11-067; and

(iii) From amusement games with gross gambling receipts over fifty thousand dollars in their previous license year, at least each week; and

(((~~iii~~))) (iv) From punch board and pull-tabs, including cost recovery for merchandise prizes awarded, no later than two banking days after they remove the board or series from play; and

(g) Record the Washington state identification number assigned to the punch board or pull-tab series and the amount of net gambling receipts on the deposit slip/receipt. Licensees may record the number and the receipts on a separate record if they record the bank validation number and maintain the record with the deposit slip/receipt; and

(2) These requirements do not apply to organizations who:

(a) Conduct only one or more of the following activities:

(i) Raffles under the provisions of RCW 9.46.0315;

(ii) Bingo, raffles, or amusement games under the provisions of RCW 9.46.0321;

(iii) Bingo, raffle, and amusement game licensees with gross gambling receipts of fifty thousand dollars or less in their previous license year; and

(b) Do not have any other license(s) from us.

AMENDATORY SECTION (Amending WSR 18-05-029, filed 2/9/18, effective 7/1/18)

WAC 230-11-100 Recordkeeping requirements for raffle licensees ((~~with gross gambling receipts over fifty thousand dollars in their previous license year and raffles using alternative drawing formats~~)). (1) Licensees conducting raffles with gross gambling receipts of fifty thousand dollars or less in their previous license year and organizations conducting unlicensed raffles under the authority of RCW 9.46.0315 or 9.46.0321 must keep a record by month of the following:

(a) Gross receipts; and

(b) Prizes paid; and

(c) Net income; and

(d) Documentation of expenses; and

(e) Documentation of how the proceeds were used.

(2) Licensees conducting raffles with gross gambling receipts over fifty thousand dollars in their initial license year, with gross gambling receipts over fifty thousand dollars in their previous license year, offering prizes that require approval per WAC 230-11-067, or conducting raffles using alternative drawing formats must prepare a detailed record for each raffle they conduct. Licensees must:

(((~~1~~))) (a) Record all data required in the standard format we provide; and

(((~~2~~))) (b) Maintain the following:

(((~~a~~))) (i) Validated deposit receipts for each deposit of raffle proceeds; and

(((~~b~~))) (ii) All winning tickets; and

(((~~c~~))) (iii) Name, address, and telephone number of all winners of a prize with a fair market value of more than fifty dollars; and

(((~~d~~))) (iv) All ticket stubs for raffles that participants are not required to be present at the drawing; and

(((~~e~~))) (v) All unsold tickets for individual raffles for which gross gambling receipts exceed five thousand dollars; and

(((~~f~~))) (vi) Invoices and other documentation recording the purchase or receipt of prizes; and

(((~~g~~))) (vii) Invoices and other documentation recording the purchase of tickets and other expenses of the raffle; and

(((~~3~~))) (c) Complete all records no later than thirty days following the drawing.

WSR 20-03-167
PROPOSED RULES
UNIVERSITY OF WASHINGTON
[Filed January 21, 2020, 3:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-24-009.

Title of Rule and Other Identifying Information: WAC 478-121-135, student conduct code for the University of Washington, Hazing, and 478-124-037, general conduct code for the University of Washington, conduct on campus code—Hazing.

Hearing Location(s): On March 2, 2020, at 10:00 - 11:00 a.m., at the University of Washington, Gerberding Hall Room 142, Seattle, WA 98105.

Date of Intended Adoption: April 9, 2020.

Submit Written Comments to: Barbara Lechtanski, University Policy and Rules Office, Box 351210, Seattle, WA 98195-1210, email rules@uw.edu, by March 2, 2020, end of business.

Assistance for Persons with Disabilities: Contact disability services office, phone 206-543-6450, fax 206-685-7264, TTY 206-543-6452, email dso@uw.edu, by February 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments intend to bring the two WAC sections into alignment with each other to clarify the process by which a person could be held accountable for a violation. Additionally, this will provide an opportunity to update the examples given in each WAC to reflect current best practices around hazing prevention.

Reasons Supporting Proposal: The two WAC sections need to be aligned and the university needs to update each WAC in order to be clear and updated in best practices.

Statutory Authority for Adoption: RCW 28B.20.130 and 28B.10.900 through 28B.10.903.

Statute Being Implemented: RCW 28B.10.900 through 28B.10.903.

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

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Lewis, Director for Community Standards and Student Conduct, Schmitz Hall, Room 447, Seattle, Washington, 206-685-6194; Implementation: Glenna Chang, Associate Vice President for Student Life, Gerberding Hall, Seattle, Washington, 206-543-4630; and Enforcement: Denzil Suite, Vice President for Student Life, Gerberding Hall, Seattle, Washington, 206-543-4972.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the university, and the university has not voluntarily decided to apply it.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule has no impact on small businesses. The proposed rule only impacts students and student organizations at the University of Washington.

January 21, 2020
Barbara Lechtanski
Director of the University
Policy and Rules Office

AMENDATORY SECTION (Amending WSR 17-15-068, filed 7/14/17, effective 8/18/17)

WAC 478-121-135 Hazing. All student organizations and living groups are prohibited from hazing.

(1) Hazing includes ((~~any method of~~)):

(a) Conduct associated with initiation or admission into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes((~~,~~)) or is likely to cause((~~,~~)) bodily danger or physical harm((~~,~~)) or serious ((~~mental~~)) psychological or emotional harm((~~,~~)) to any student or other person. ((~~Hazing activities may~~)) This conduct includes, but ((~~are~~)) is not limited to((~~, encouraging or promoting the abuse of alcohol~~)):

(i) Humiliation by ritual act;

(ii) Striking another person whether by use of any object or any part of one's body;

(iii) Causing someone to experience excessive fatigue or physical and/or psychological shock; ((~~or~~))

(iv) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious ((~~mental~~)) psychological, emotional, and/or physical harm((~~.~~)); or

(v) Encouraging or promoting the unlawful possession, forced or coerced use, or competitive or ritualistic consumption of alcohol, drugs or other substances.

(b) Hazing also includes conduct that is not a violation of (a) of this subsection and is associated with initiation or admission into a student organization or living group, or any pastime or amusement engaged in with respect to a student organization or living group such as:

(i) Subtle hazing: Activities or situations created that emphasize a direct or indirect power imbalance between members. This includes, but is not limited to, physical or mental manipulation, or causing someone to believe that they may be required to participate in degrading or humiliating games or activities that create psychological, emotional, or physical harm;

(ii) Harassment hazing: Activities that cause confusion, frustration, or physical discomfort that are directly or indirectly required, in order to become a member of the student organization or living group. This includes, but is not limited to, sleep deprivation, verbal abuse, or being expected to harass others; or

(iii) Interference hazing: Activities that do not allow reasonably adequate time for study or that otherwise unreasonably interferes with academic obligations.

(2) Hazing does not include customary athletic or cultural events or other similar contests or competitions.

(3) Consent ((~~of a victim or victims~~)) is not a defense to ((~~an allegation of~~)) hazing.

(4) Any student organization or living group that knowingly permits hazing as defined in subsection (1)(a) of this section shall be deprived of official recognition, approval, or registration granted by the university.

Any student organization or living group that knowingly permits hazing as defined in subsection (1)(b) of this section shall either be deprived of official recognition, approval, or registration or be placed on disciplinary probation for a period specified by the university.

(5) Students found responsible for violations of this section shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time determined by the university.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-124-037 Conduct on campus code—Hazing. All ((~~university~~)) student organizations((~~, associations and student~~)) and living groups are prohibited from hazing.

(1) Hazing includes:

(a) ((~~Any method of~~)) Conduct associated with initiation or admission into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group that causes((~~,~~)) or is likely to cause((~~,~~)) bodily danger or physical harm((~~,~~)) or serious ((~~mental~~)) psychological or emotional harm to any student or other person ((~~attending the university; and~~)). This conduct includes, but is not limited to:

(i) Humiliation by ritual act;

(ii) Striking another person whether by use of any object or any part of one's body;

(iii) Causing someone to experience fatigue or physical and/or psychological shock;

(iv) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm; or

(v) Encouraging or promoting the unlawful possession, forced or coerced use, or competitive or ritualistic consumption of alcohol, drugs, or other substances.

(b) Hazing also includes conduct that is not a violation of (a) of this subsection associated with initiation or admission into a student organization or living group, or any pastime or amusement engaged in with respect to ((~~an~~)) a student organization or living group ((~~not amounting to a violation of (a) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation~~)) such as:

(i) Subtle hazing: Activities or situations created that emphasize a direct or indirect power imbalance between members. This includes, but is not limited to, physical or mental manipulation, or causing someone to believe that they may be required to participate in degrading or humiliating games or activities that create psychological, emotional, or physical harm;

(ii) Harassment hazing: Activities that cause confusion, frustration, or physical discomfort that are directly or indirectly required, in order to become a member of the student organization or living group. This includes, but is not limited to, sleep deprivation, verbal abuse, or being expected to harass others; or

(iii) Interference hazing: Activities that do not allow reasonably adequate time for study or that otherwise unreasonably interferes with academic obligations.

(2) Hazing does not include customary athletic or cultural events or other similar contests or competitions.

(3) Consent is ((~~no~~)) not a defense to hazing. ((~~Hazing does not include customary athletic events or other similar contests or competition.~~

~~(2)~~)) (4) Any ((~~university~~)) student organization((~~, association~~)) or student living group that knowingly permits hazing as defined in subsection (1)(a) of this section shall be deprived of official recognition ((~~or~~)), approval, or registration granted by the university. Any ((~~university~~)) student organization((~~, association or student~~)) or living group that knowingly permits hazing as defined in subsection (1)(b) of this section shall either be deprived of official recognition, approval, or registration or be placed on disciplinary probation for a period specified by the university.

(5) Students found responsible for violations of WAC 478-121-135 shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time determined by the university.

WSR 20-03-170
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed January 22, 2020, 6:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-20-126.

Title of Rule and Other Identifying Information: WAC 415-104-225 Am I a LEOFF member?

Hearing Location(s): On February 26, 2020, at 10:00 a.m., at the Department of Retirement Systems (DRS), 6835 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: February 27, 2020.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by February 25, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify what positions are eligible for membership in the law enforcement officers' and fire fighters' (LEOFF) retirement system.

Reasons Supporting Proposal: Examples in the rule will provide a better understanding of which positions are eligible for membership in LEOFF Plan 2.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.030, 41.26.040.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

January 22, 2020
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-007, filed 3/24/16, effective 4/24/16)

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Firefighters.**

(a) You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed.

Example A: A full-time position in a fire department of an employer is responsible for preventing, controlling, and extinguishing fires. The employer rarely has fires. The position spends the majority of its time performing other fire protection activities. The position is a firefighter.

Example B: A fire department of an employer has a full-time fire marshal position or firefighter trainer position. The position requires the legal authority and responsibility to perform fire protection activities. The position is a firefighter.

Example C: An employer's community development department has a fire marshal position. The community development department is not a fire department and its purpose is not fire protection activities. The position is not a firefighter.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protec-

tion activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.

(b) "Director of public safety" - WAC 415-104-011.

(c) "Employer" - RCW 41.26.030.

(d) "Firefighter" - RCW 41.26.030.

(e) "Full time" - WAC 415-104-011.

(f) "Fully compensated" - WAC 415-104-011.

(g) "Law enforcement officer" - RCW 41.26.030.

(h) "Member" - RCW 41.26.030.

(i) "Public safety officer" - WAC 415-104-011.

(j) "Uniformed firefighter position" - WAC 415-104-011.

WSR 20-03-171
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS

[Filed January 22, 2020, 6:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-18-098.

Title of Rule and Other Identifying Information: WAC 415-02-380 How will my retirement benefit be affected if I choose a benefit option with a survivor feature?, 415-103-215 What are the WSPRS Plan 1 retirement benefit options?, 415-103-225 What are my WSPRS Plan 2 retirement benefit options?, 415-104-202 Survivor benefit options—LEOFF Plan 1, 415-104-211 Married LEOFF Plan 2 member's benefit selection—Spousal consent required, 415-104-215 What are my retirement benefit options—LEOFF Plan 2?, 415-106-500 PSERS disability benefits, 415-106-600 What are my retirement benefit options?, 415-106-610 How do I apply for retirement benefits?, 415-108-324 Married LEOFF Plan 2 member's benefit selection—Spousal consent required, 415-108-326 What are my retirement benefit options?, 415-108-436 PERS Plans 2 and 3 disability benefits, 415-110-324 Married member's benefit selection—Spousal consent required, 415-110-436 SERS Plans 2 and 3 disability benefits, 415-110-610 What are my retirement benefit options?, 415-112-504 What are the benefit options for Plan 1 members?, 415-112-505 What are the benefit options for Plan 2 and 3 members?, and 415-112-507 How do I apply for retirement benefits?

Hearing Location(s): On February 26, 2020, at 10:30 a.m., at the Department of Retirement Systems (DRS), 6835 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: February 27, 2020.

Submit Written Comments to: Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by February 25, 2020.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implementing chapter 102, Laws of 2019 (HB 1408), revising the written consent requirement for survivor benefit options; and clarifying the impact to the benefit if a survivor predeceases the retiree.

Reasons Supporting Proposal: These amendments bring the rules into alignment with recent statutory changes identifying additional retirement options with survivor benefits that can be selected without spousal consent. The amendments also clarify how the member's benefit will be recalculated following the survivor's death, to increase understanding and allow for better retirement planning.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.164, 41.26.460, 41.40.188, 41.40.660, 41.40.845, 41.37.170, 41.35.220, 41.32.530, 41.32.785, 41.32.851, 43.43.278, 43.43.271.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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 (5)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS' rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

January 22, 2020
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-02-380 How will my retirement benefit be affected if I choose a ((~~benefit option with a survivor feature~~)) survivor option? ((~~This section applies to LEOFF Plans 1 and 2; PERS Plans 1, 2, and 3; PSERS; SERS Plans 2 and 3; TRS Plans 1, 2, and 3; and WSPRS Plans 1 and 2.~~)) If you choose a survivor benefit option, your benefit will be affected as described in this section.

(1) **What is a survivor ((~~feature~~)) benefit option?** A survivor ((~~feature is a~~)) benefit option ((~~that provides~~)) will pay a lifetime monthly benefit ((~~for~~)) to your survivor beneficiary after your death.

(2) **What is a survivor beneficiary?** A survivor beneficiary is the person you ((~~name at the time of retirement~~)) designate to receive a lifetime monthly benefit after your death.

(3) **What benefit options ((~~include a survivor feature~~)) are available?** All available benefit options, including survivor benefit options, are described in detail for each system and plan in the following state laws and ((~~regulations~~)) agency rules:

LEOFF Plan 1:	RCW 41.26.164	WAC 415-104-202
LEOFF Plan 2:	RCW 41.26.460	WAC 415-104-215
PERS Plan 1:	RCW 41.40.188	WAC 415-108-326
PERS Plan 2:	RCW 41.40.660	WAC 415-108-326
PERS Plan 3:	RCW 41.40.845	WAC 415-108-326
PSERS:	RCW 41.37.170	WAC 415-106-600
SERS Plans 2 and 3:	RCW 41.35.220	WAC 415-110-610
TRS Plan 1:	RCW 41.32.530	WAC 415-112-504
TRS Plan 2:	RCW 41.32.785	WAC 415-112-505
TRS Plan 3:	RCW 41.32.851	WAC 415-112-505
WSPRS Plan 1:	RCW 43.43.278	WAC 415-103-215
WSPRS Plan 2:	RCW 43.43.271	WAC 415-103-225

(4) **How will selecting a survivor benefit option ((~~with a survivor feature~~)) affect my monthly retirement benefit?** If you select a survivor benefit option ((~~that has a survivor feature,~~)) your monthly retirement benefit will be ((~~actuarially~~)) reduced to offset the cost of ((~~the survivor feature~~)) potentially paying the benefit for a longer period of time. The reduction will be based on survivor option factors that are available on the DRS website.

(5) **Does my survivor beneficiary's age affect how much my monthly retirement benefit will be reduced?** Yes. Your survivor beneficiary's age is used in determining the amount of your monthly retirement benefit and the benefit of your survivor beneficiary. The younger the survivor beneficiary, the longer ((~~he or she is~~)) they are expected to receive a benefit. Your monthly benefit will be reduced accordingly.

(a) **Example:**

Kendra, a PERS Plan 2 member, chooses Option 3 (joint and 50 percent survivorship) at retirement. Her monthly Option 1 nonsurvivor benefit amount ((~~before adding a survivor option feature~~)), which would stop at the time of her death, is $2,000.00. She names her nephew, Steve, as her survivor beneficiary. This means, if Kendra dies before Steve, Steve will receive a monthly benefit equal to half the amount Kendra was receiving. Steve is 30 years younger than Kendra. The department will ((~~calculate the adjustment to~~)) reduce Kendra's monthly retirement benefit ((~~by~~)) using the survivor option factor ((~~associated with a 30-year age difference in which the member is~~)) for a member who is 30 years older than the beneficiary. For illustration purposes in this example only, we will use 0.776 as the corresponding Option 3 benefit factor (actuarial factors change periodically). As a result, Kendra's Option 3 monthly benefit amount will be $1,552.00 ($2,000.00 x 0.776).

(b) **Example:**

Mark, a LEOFF Plan 2 member, chooses Option 2 (joint and 100 percent survivorship) at retirement. His monthly Option 1 nonsurvivor benefit amount ((~~before adding a survivor option feature~~)), which would stop at the time of his death, is $2,000.00. He names his wife, Susan, as his survivor beneficiary. This means, if Mark dies before Susan, Susan will receive a monthly benefit equal to the amount Mark was

receiving. Mark is five years younger than Susan. The department will ((~~calculate the adjustment to~~)) reduce Mark's monthly retirement benefit ((~~by~~)) using the survivor option factor ((~~that corresponds with a 5-year age difference in which the member is~~)) for a member who is five years younger than the beneficiary. For illustration purposes in this example only, we will use 0.898 as the corresponding Option 2 benefit factor (actuarial factors change periodically). As a result, Mark's Option 2 monthly benefit amount will be $1,796.00 ($2,000.00 x 0.898).

(6) **What if my survivor beneficiary passes away before I do?** If you are receiving a reduced benefit with a survivor option and your survivor passes away before you do, you may request to have your benefit increased to the Option 1 nonsurvivor amount. Your benefit increase will be effective the first of the month following your survivor's passing. DRS may require a copy of your survivor's certified death certificate.

(a) **How will my new benefit amount be calculated?**

(i) If you retired on or after January 1, 1996, and are not a member of LEOFF Plan 1, or if you are a member of WSPRS Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Your original Option 1 nonsurvivor benefit amount
+ the sum of Cost of Living Adjustments (COLAs) added to your benefit prior to your survivor's death

(ii) If you retired prior to January 1, 1996, and are not a member of WSPRS Plan 1, or if you are a member of LEOFF Plan 1 regardless of your retirement date, your new benefit amount will be calculated as follows:

Benefit Amount ÷ the Administrative Factor

The "benefit amount" is your retirement benefit as of July 1, 1998, or as of the date of your survivor's death, whichever is later.

The "administrative factor" is the rate that was used to calculate your reduced benefit for the continuing survivor option. If you retired prior to January 1, 1996, the administrative factor is the rate that was in effect on July 1, 1998, and is available for reference on the DRS website.

(b) If you are a PERS Plan 1 member receiving "state-funded long-term care services" as defined in RCW 41.40.189, you are not eligible for the increase described in this subsection if it would make you ineligible for the state-funded long-term care services. You must notify DRS to waive the increase if this applies to you.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-103-215 What are the WSPRS Plan 1 retirement benefit options? This section only applies to members commissioned before January 1, 2003.

(1) When retiring for service, a married member can choose either Option A (historic retirement option) under RCW 43.43.260 and 43.43.270 or Option B under RCW 43.43.278. Both options include a survivor ((~~feature~~)) option that entitles the eligible surviving spouse and any eligible children to receive a monthly benefit after the retiree dies.

(2) **Option A (historic retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit in accordance with RCW 43.43.260 (Benefits). The department pays survivor benefits in accordance with RCW 43.43.270 (Retirement allowances).

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree, or a benefit equal to fifty percent of the average final salary (AFS) used to determine the retiree's benefit, whichever is less.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of eighteen years, each child shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement. The combined benefits to the surviving spouse and all children cannot exceed sixty percent of the retiree's AFS.

(3) **Option B (actuarially equivalent retirement option and survivor benefit).** The department pays the retiree a monthly retirement benefit that is actuarially reduced from the benefit calculated under Option A. The department pays survivor benefits in accordance with RCW 43.43.278 using an actuarial reduction. See WAC 415-02-380 for more information on how your benefit is affected by choosing an optional survivor ((~~feature~~)) option.

(a) **Surviving spouse.** When the retiree dies, the department pays the retiree's surviving spouse a monthly retirement benefit equal to the gross monthly benefit then payable to the retiree.

(b) **Surviving children when there is a surviving spouse.** If the retiree has a surviving spouse and surviving unmarried children under the age of eighteen years, each surviving unmarried child under the age of eighteen years shall be entitled to a benefit equal to five percent of the retiree's average final salary (AFS) at retirement.

(4) **Benefits included in Option A and Option B.**

(a) **Cost-of-living adjustment.** The retiree's annual adjustment every July is based upon the provisions in RCW 43.43.260(5). The annual adjustment applies to the eligible surviving spouse and any eligible children, who receive a monthly benefit after the retiree dies.

(b) **Surviving spouse eligibility.** To be eligible for a benefit, the surviving spouse of a retiree must either:

(i) Have been married to the retiree prior to his or her retirement and continuously thereafter until the retiree's death; or

(ii) Have been married to the retiree for at least two years prior to the retiree's death.

(c) **Remarriage of surviving spouse.** If a surviving spouse who is receiving benefits under this subsection marries another member of WSPRS and that retiree dies before the spouse, the spouse will receive only the higher of the two survivors' benefits for which he or she qualifies. The surviving spouse cannot receive more than one survivor benefit at a time under this subsection.

(d) **Surviving children when there is no surviving spouse.** If there is no surviving spouse or the surviving spouse dies, the unmarried child or children under the age of eighteen years shall be entitled to a benefit equal to thirty per-

cent of the retiree's AFS for one child and an additional ten percent of AFS for each additional child. The combined benefits to the surviving children cannot exceed sixty percent of the retiree's AFS. Benefit payments under this subsection will be divided equally among the children.

(e) **End of benefits.** All benefits end when the surviving spouse dies or the youngest unmarried child reaches age eighteen, whichever occurs last.

(f) **Distribution of remaining contributions.** Any remaining balance of the retiree's accumulated contributions will be paid to:

(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or

(ii) To the retiree's legal representative, if no person or entity designated in (f)(i) of this subsection is living or in existence at the time of the retiree's death.

(5) **Pop-up provision.**

(a) This subsection only applies to members retiring on or after July 1, 2000, who select Option B.

(b) If the retiree and spouse divorce, or if the spouse dies before the retiree, the ((~~retiree's monthly retirement benefit increases, effective the first day of the following month, to:~~

~~(i) The amount that the retiree would have received had the retiree chosen Option A at retirement; plus~~

~~(ii) Any cost of living adjustments (COLA) the retiree received prior to the divorce or the spouse's death.~~

~~(c) Pop-up recalculation example:~~

~~Option B: When Bob retired in September 2010, his Option A monthly benefit was $3,000. He selected Option B so that his spouse, Linda, would receive his monthly benefit and COLA after he dies. Bob is 5 years younger than Linda. For illustration purposes in this example, 0.967 is being used as the Option B actuarial reduction factor (actuarial factors change periodically). As a result, the department calculated Bob's Option B benefit amount by multiplying $3,000 (Option A) by 0.967. Bob's Option B monthly benefit amount at retirement was $2,901. Bob received his first COLA on July 1, 2012, in the amount of $87.03. Bob's monthly benefit amount with the COLA was $2,988.03.~~

~~Linda died in September 2012. Under the "pop up" provision, Bob's monthly benefit increased in October 2012 to a total of $3,087.03. His new benefit amount included the $3,000 he would have received had he originally chosen Option A, plus the COLA he received in 2012 ($87.03).~~

~~(d) If a retiree whose benefit increases under this subsection dies and there is no eligible child, all benefit payments end. Any remaining balance of the retiree's accumulated contributions will be paid to:~~

~~(i) The person(s), trust, organization, or retiree's estate specified by the retiree on the appropriate department designated form, duly executed and properly on file with the department on or before the retiree's death; or~~

~~(ii) To the retiree's legal representative, if no person or entity designated in (d)(i) of this subsection is living or in existence at the time of the retiree's death.~~

~~(6) See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses factors and schedules to calculate retirement benefits.~~

~~(7) Terms used in this section:~~

~~"Pop-up" - See WAC 415-02-030~~)) retiree may request to have their benefit increased as described in WAC 415-02-380 (6)(a)(i).

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-103-225 What are my WSPRS Plan 2 retirement benefit options? This section applies to WSPRS Plan 2 members. Upon retirement for service under RCW 43.43.250, you must choose to have your monthly retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor ((~~feature~~)) option. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly ((~~allowance~~)) benefit for the duration of his or her life. Your monthly retirement ((~~allowance~~)) benefit will be actuarially reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance~~)) benefit is affected by choosing a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance~~)) benefit (((~~no survivor~~)) nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your life. Your monthly ((~~allowance~~)) benefit will cease upon your death.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the~~)) fifty percent of your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(d) **Option four: Joint and two-thirds ((~~allowance~~)) survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667 percent) of ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must submit your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 43.43.271(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit ((~~option~~)) with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:~~

~~(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus~~

~~(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

~~**Example:**~~

~~John retired from WSPRS in 2008. John chose a benefit option with a survivor feature and named Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance was reduced from $2,000 (standard allowance) to $1,750. Beatrice died in 2013. John's monthly allowance will increase to $2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~2008~~	~~2,000.00~~	~~1,750.00~~		~~0.00~~
~~2009~~		~~1,750.00~~	~~.02~~	~~35.00~~
~~2010~~		~~1,785.00~~	~~.03~~	~~53.55~~
~~2011~~		~~1,838.55~~	~~.025~~	~~45.96~~
~~2012~~		~~1,884.51~~	~~.03~~	~~56.54~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~2013~~	~~2,000.00~~	~~1,941.05~~	—	—
			~~Total COLAs~~	~~191.05~~
~~Original Monthly Allowance~~		~~+ Total COLAs~~		~~= New Monthly Allowance~~
~~$2000~~		~~+ $191.05~~		~~= $2,191.05*~~

~~* In the future, John's COLA will be based on his increased monthly allowance.~~))

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ((~~feature~~)) option and name your current spouse as survivor, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ((~~feature~~)) option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount

of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 43.43.271.

AMENDATORY SECTION (Amending WSR 17-02-033, filed 12/28/16, effective 1/28/17)

WAC 415-104-202 ((~~Survivor benefit options — LEOFF Plan 1.~~)) What are my LEOFF Plan 1 retirement benefit options? (1) ((~~**To whom does this section apply?** This section applies to you if you are a retiree of LEOFF Plan 1.~~

~~(2)~~)) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

((~~(3)~~)) (2) **How will my monthly retirement benefit be affected by selecting a flexible survivor option?** Your monthly retirement benefit will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

((~~(4)~~)) (3) **What are the flexible survivor option choices?**

(a) **Joint and ((~~whole~~)) one hundred percent survivor benefit ((~~option~~)).** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly benefit equal to the gross monthly retirement benefit you were receiving.

(b) **Joint and ((~~one-half~~)) fifty percent survivor benefit ((~~option~~)).** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your surviving spouse will receive a gross monthly benefit equal to ((~~one-half of the~~)) fifty percent of your gross monthly ((~~retirement~~)) benefit ((~~you were receiving~~)).

(c) **Joint and two-thirds survivor benefit ((~~option~~)).** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your surviving spouse will receive a gross monthly benefit equal to two-thirds (66.667%) of ((~~the~~)) your gross monthly ((~~retirement~~)) benefit ((~~you were receiving~~)).

((~~(5)~~)) (4) **Do I qualify to add a flexible survivor option?** You may select a flexible survivor option if:

(a) Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;

(b) Some portion of your monthly retirement benefit is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670; and

(c) You meet the deadline and application requirements in subsection ((~~(6)~~)) (5) of this section.

((~~(6)~~)) (5) **How do I add a flexible survivor option?** You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

(a) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage, or as otherwise authorized by law;

(b) You provide a copy of your certified marriage certificate to the department;

(c) You provide proof, satisfactory to the department, of your current spouse's birth date; and

(d) You file the properly completed forms with the department in a timely manner.

((~~(7)~~)) (6) **May I remove the flexible survivor option in the future?** ((~~Your choice of a~~)) You may remove your flexible survivor option ((~~is irrevocable with the following exceptions~~)) under the following circumstances:

(a) Your spouse dies before you((~~; or~~)). Your benefit may be increased as described in WAC 415-02-380 (6)(a)(ii).

(b) You and your spouse divorce.

((~~See subsection (8) of this section.

(8) **What happens if my spouse dies before me, or if we divorce?** If your spouse dies before you, or if you divorce, your monthly retirement benefit will increase, effective the first day of the following month. Your increased monthly benefit will be~~)) If you choose to remove your former spouse as your survivor, your benefit will increase to the amount you would have received had you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) you received prior to ((~~your spouse's death~~)) removing your survivor.

((~~(9)~~)) (7) **What happens to my eligible surviving children's share if I select a flexible survivor option?** There is ***no*** impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if you select a flexible survivor option.

((~~(10)~~)) (8) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate retirement benefits.

(9) **Terms used in this section:**

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options((~~— LEOFF Plan 2~~))? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly ((~~allowance~~)) benefit for duty disability under RCW 41.26.-470, you must choose to have your monthly retirement

((~~allowance~~)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is~~)) benefit will be affected ((~~by choosing~~)) if you choose a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance (no survivor feature)~~)) benefit (nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~allowance~~)) benefit will cease upon your death.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the~~)) fifty percent of your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(d) **Option four: Joint and two-thirds ((~~allowance~~)) benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.~~

(a) **Members who retire on or after January 1, 1996.** Your increased monthly allowance will be:

(i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(ii) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death based on your original option selection.

Example:

Agnes retires in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from $2,000 (standard allowance) to $1,750. Beatrice dies in January 2001. Agnes's monthly allowance will increase to $2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	$ Increase
1996	2,000.00	1,750.00		0.00
1997		1,750.00	.02	35.00
1998		1,785.00	.03	53.55
1999		1,838.55	.025	45.96
2000		1,884.51	.03	56.54
2001	2,000.00	1,941.05	—	—
			Total COLAs	191.05

Original Option One Monthly Allowance	+ Total COLAs	= New Monthly Allowance
$2000	+ $191.05	= $2,191.05*

* In the future, Agnes's COLA will be based on her increased monthly allowance.

(b) **Members who retired before January 1, 1996.** Your monthly retirement allowance will be adjusted accord-

~~ing to the provisions of RCW 41.26.460(3).~~)) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ((~~feature~~)) option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ((~~feature~~)) option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-104-211	Married LEOFF Plan 2 member's benefit selection—Spousal consent required.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-500 PSERS disability benefits. This section covers disability benefits provided for in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-the-job or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for disability benefits if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as a monthly disability allowance?**

(a) If you have at least ten years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty.** Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than ten years of service credit, you will receive a monthly allowance[1] equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age **sixty-five.** Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

[1] *You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than fifty dollars. See RCW 41.37.200.*

See WAC 415-02-320 for early retirement factors and examples.

(3) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. ((~~You must complete and sign the application.~~)) If you are married, your ((~~spouse must sign consent to the benefit option you select. You, and your spouse if you are married, must have your signatures notarized~~)) spouse's consent may be required as described in WAC 415-106-600.

(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.

(6) **Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to subsection (3) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(7) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(8) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(9) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(10) **Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.

(11) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(12) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.

(13) **Is it possible to lose my monthly disability allowance after I begin receiving it?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010(4), at a comparable compensation.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(14) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in

your future retirement benefit. See RCW 41.50.165 and 41.37.200.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-106-600 What are my retirement benefit options? Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is~~)) benefit will be affected ((~~by choosing~~)) if you choose a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance (no survivor feature)~~)) benefit (nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~retirement allowance~~)) benefit will cease upon your death.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary ((~~a monthly allowance~~)) will receive a gross monthly benefit equal to ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary ((~~a~~)) will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the~~)) fifty percent of your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(d) **Option four: Joint and two-thirds ((~~allowance~~)) survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the gross monthly retirement allowance you were receiving~~)) your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.37.170(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit ((~~option~~)) with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will accrue from the first day of the month following the death. Your increased monthly allowance will be:~~

~~(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus~~

~~(b) Any cost of living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

~~Example: John retires from PSERS in 2006. John chooses a benefit option with a survivor feature and names Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance is reduced from $2,000 (standard allowance) to $1,750. Beatrice dies in 2011. John's monthly allowance will increase to $2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~2006~~	~~2,000.00~~	~~1,750.00~~		~~0.00~~

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	$ Increase
2007		1,750.00	.02	35.00
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLAs	191.05

Original Option One Monthly Allowance	+ Total COLAs	= New Monthly Allowance
$2000	+ $191.05	= $2,191.05))

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.37.050(3).

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ((~~with a survivor feature~~)) and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((~~with a survivor feature~~)) and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

AMENDATORY SECTION (Amending WSR 16-21-059, filed 10/14/16, effective 11/14/16)

WAC 415-106-610 How do I apply for retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed, signed and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's ((~~notarized signature indicating consent to the retirement option you selected.~~

~~(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).~~

~~(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date~~)) consent may be required as described in WAC 415-106-600.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-108-324 I am married—Do I need my spouse's consent on the retirement option I choose?

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is affected by choosing~~)) benefit will be affected if you choose a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance (no survivor feature)~~)) benefit (nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~allowance~~)) benefit will cease upon your death.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the gross monthly retirement allowance you were receiving~~)) your gross monthly benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the gross monthly retirement allowance you were receiving~~)) fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds ((~~allowance (available to members retiring on or after January 1, 1996).~~)) survivor benefit.**[1] The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the gross monthly retirement allowance you were receiving~~)) your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement ((~~allowance~~)) benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit ((~~option~~)) with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.~~

(a) **Members who retired on or after January 1, 1996.** Your increased benefit will be:

(i) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(ii) Any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.

Example:

Agnes retires from PERS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from $2,000 (standard allowance) to $1,750. Beatrice dies in 2001. Agnes's monthly

~~allowance will increase to $2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~1996~~	~~2,000.00~~	~~1,750.00~~		~~0.00~~
~~1997~~		~~1,750.00~~	~~.02~~	~~35.00~~
~~1998~~		~~1,785.00~~	~~.03~~	~~53.55~~
~~1999~~		~~1,838.55~~	~~.025~~	~~45.96~~
~~2000~~		~~1,884.51~~	~~.03~~	~~56.54~~
~~2001~~	~~2,000.00~~	~~1,941.05~~	~~—~~	~~—~~
			~~Total COLAs~~	~~191.05~~

~~Original Monthly Allowance~~	~~+ Total COLAs~~	~~= New Monthly Allowance~~
~~$2000~~	~~+ $191.05~~	~~= $2,191.05*~~

~~* In the future, Agnes's COLA will be based on her increased monthly allowance.~~

~~(b) **Members who retire before January 1, 1996.** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.40.188(3) (Plan 1) or RCW 41.40.660(3) (Plan 2).~~)) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ((~~with a survivor feature~~)) and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((~~with a survivor feature~~)) and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ((~~allowance~~)) benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

1 Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-108-436 PERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.40.670 and 41.40.825 for members of PERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a PERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total

incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-108-326. If you choose an option with a survivor ((~~feature~~)) benefit, your monthly benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete((~~,~~)) and sign ((~~and have notarized~~)) the application. If you are married, your ((~~spouse must sign consent of the benefit option you choose~~)) spouse's consent may be required as described in WAC 415-108-326.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PERS employment.

(i) If you are continuing to perform the duties of your position or another PERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.40.052(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.40.-054.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010 (4)(b), at a comparable compensation.

(b) If you return to employment and reenter PERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of PERS Plan 2, see RCW 41.40.625.

(ii) If you are a member of PERS Plan 3, see RCW 41.40.815.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-110-324 Married member's benefit selection—Spousal consent required.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-110-436 SERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses. Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a SERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-110-326. If you choose an option with a survivor ((~~feature~~)) benefit, your monthly benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete((~~,~~)) and sign ((~~and have notarized~~)) the application. If you are married, your ((~~spouse must sign~~)) spouse's consent ((~~of the benefit option you choose~~)) may be required as described in WAC 415-110-610.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a SERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.35.100(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.35.-110.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.35.010(4), at a comparable compensation.

(b) If you return to employment and reenter SERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to SERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-110-610 What are my retirement benefit options? Upon retirement for service under RCW 41.35.420 or 41.35.680, or for disability under RCW 41.35.440 or

41.35.690, you must choose to have the defined benefit portion of your retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b) through (d) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is~~)) benefit will be affected ((~~by choosing~~)) if you choose a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance (no survivor feature~~)) benefit (nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~retirement allowance~~)) benefit will cease upon your death.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the gross monthly retirement allowance you were receiving~~)) your gross monthly benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the~~)) fifty percent of your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(d) **Option four: Joint and two-thirds ((~~allowance~~)) survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.35.220.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death. Your increased monthly allowance will be:~~

~~(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus~~

~~(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

~~Example:~~

~~Agnes retires from SERS Plan 2 in 2006. Agnes chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from $2,000 (standard allowance) to $1,750. Beatrice dies in 2011. Agnes's monthly allowance will increase to $2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~2006~~	~~2,000.00~~	~~1,750.00~~		~~0.00~~
~~2007~~		~~1,750.00~~	~~.02~~	~~35.00~~
~~2008~~		~~1,785.00~~	~~.03~~	~~53.55~~
~~2009~~		~~1,838.55~~	~~.025~~	~~45.96~~
~~2010~~		~~1,884.51~~	~~.03~~	~~56.54~~
~~2011~~	~~2,000.00~~	~~1,941.05~~	~~—~~	~~—~~
			~~Total COLAs~~	~~191.05~~

~~Original Option One Monthly Allowance~~	~~+ Total COLAs~~	~~= New Monthly Allowance~~
~~$2000~~	~~+ $191.05~~	~~= $2,191.05*~~

~~* In the future, Agnes's COLAs will be based on her increased monthly allowance.~~))

If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.35.060.

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option ((~~with a survivor feature~~)) and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-01-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((~~with a survivor feature~~)) and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ((~~allowance~~)) benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.35.220.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-112-504 What are ((~~the~~)) my TRS Plan 1 retirement benefit options ((~~for Plan 1 members~~))? Upon retirement from Plan 1 for service under RCW 41.32.480 or disability under RCW 41.32.550 (1)(c), you must choose to have your retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section. You may also select an optional supplemental cost-of-living (COLA) adjustment.

(1) **May I withdraw any of my contributions?** You may withdraw some or all of your accumulated contributions as follows:

(a) If you retire according to the provisions of RCW 41.32.498, you may withdraw some or all of your accumulated contributions at the time of retirement. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced according to the amount you withdraw.

(b) If you terminate service due to a disability under the conditions of RCW 41.32.550 (1)(a), you may withdraw all your accumulated contributions in a lump sum payment. You will receive no monthly retirement ((~~allowance~~)) benefit.

(2) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (3)(c) through (e) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is~~)) benefit will be affected ((~~by choosing~~)) if you choose a survivor ((~~feature~~)) option.

(3) **What are my benefit options?**

(a) **Maximum benefit ((~~allowance (no survivor feature~~)) (nonsurvivor option).** The department will pay you the maximum benefit allowed by statute. Under this option you will receive a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~allowance~~)) benefit will cease upon your death, and any remaining balance of accumulated contributions will be:

(i) Retained by the retirement fund if you retired for service under RCW 41.32.497 or 41.32.498; or

(ii) Paid according to subsection (9) of this section if you retired because of disability and were receiving a monthly retirement ((~~allowance~~)) benefit under RCW 41.32.550 (1)(c).

(b) **Option one: Standard ((~~allowance~~)) benefit for service retirement (((~~no survivor feature~~)) nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~allowance~~)) benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (9) of this section.

(i) This benefit option has a lower monthly ((~~allowance~~)) benefit than the **maximum benefit ((~~allowance~~))** in (a) of this subsection because, with this option, any remaining accumulated contributions will be paid to your beneficiaries upon your death.

(ii) If you are retiring because of disability under RCW 41.32.550 (1)(c), you will not benefit from this option because your beneficiaries will receive any remaining accumulated contributions under the maximum benefit ((~~allowance~~)) in (a) of this subsection.

(c) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(d) **Option three: Joint and ((~~one-half allowance~~)) fifty percent benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the gross monthly retirement allowance you were receiving~~)) fifty percent of your gross monthly benefit.

(e) **Option four: Joint and two-thirds ((~~allowance~~)) benefit** (((~~available to members retiring on or after January 1, 1996~~))).[1] The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(4) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you select~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.530(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (5) of this section, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(5) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(6) **What is the supplemental COLA option?** In addition to choosing a retirement benefit option described in subsection (3) of this section, you may choose a supplemental annual COLA. If you select this option, your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of this benefit.

(7) **What happens if I choose a benefit option with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.~~

~~(a) **Members who retire on or after January 1, 1996:** Your increased monthly allowance will be:~~

~~(i) The amount you would have received had you chosen the maximum benefit at the time of retirement;~~

~~(ii) Minus any reduction in the maximum allowance resulting from a withdrawal of contributions;~~

~~(iii) Plus any COLAs you received prior to your survivor beneficiary's death, based on your original option selection.~~

~~**Example:**~~

~~Lucinda retires from TRS Plan 1 in 1996. Lucinda withdraws some of her contributions, which actuarially reduces her maximum monthly allowance from $2,000 to $1,963.86. She chooses a benefit option with a survivor feature, and names Garth, her husband, as her survivor beneficiary. As a result, Lucinda's monthly allowance is further reduced from $1,963.86 to $1,846.03. Garth dies in January 2001. Lucinda's monthly allowance will increase to $1,963.86, the amount she would have received had she chosen the maximum benefit option (after reduction for her withdrawals). The total amount of the COLAs she received (based on her prior monthly allowance) will be added to the $1,963.86.~~

~~(b) **Members who retired before January 1, 1996:** Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.530(3).~~)) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(8) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the maximum benefit option or the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ((~~feature~~)) option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option ((~~with a survivor feature~~)) and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(9) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the ((~~annuity payments~~)) retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid according to this subsection.

(i) Except as provided in (a)(ii) of this subsection, any remaining balance will be paid to the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you retired for service and chose the maximum benefit option, any remaining balance will be retained by the retirement fund.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid to the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(10) For more information, see RCW 41.32.530 and 41.32.550.

[1] Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-112-505 What are ((~~the~~)) my TRS Plan 2 or Plan 3 retirement benefit options ((~~for Plan 2 and 3 members~~))? Upon retirement for service under RCW 41.32.765 or 41.32.875, or disability under RCW 41.32.790 or 41.32.880, you must choose to have the defined benefit portion of your retirement ((~~allowance~~)) benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly ((~~allowance~~)) benefit after my death?** Options described in subsection (2)(b), (c), and (d) of this section ((~~include a survivor feature~~)) will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly ((~~allowance~~)) benefit after your death is referred to as your "survivor beneficiary." ((~~Upon~~)) After your death, your survivor beneficiary will ((~~be entitled to~~)) receive a monthly ((~~allowance~~)) benefit for the duration of ((~~his or her~~)) their life. Your monthly retirement ((~~allowance~~)) benefit will be ((~~actuarially~~)) reduced to offset the cost of the survivor ((~~feature~~)) option. See WAC 415-02-380 for more information on how your monthly ((~~allowance is~~)) benefit will be affected ((~~by choosing~~)) if you choose a survivor ((~~feature~~)) option.

(2) **What are my benefit options?**

(a) **Option one: Standard ((~~allowance~~)) benefit for service retirement (((~~no survivor feature~~)) nonsurvivor option).** The department will pay you a monthly retirement ((~~allowance~~)) benefit throughout your lifetime. Your monthly ((~~allowance~~)) benefit will cease upon your death, and any remaining balance of accumulated contributions will be paid according to subsection (7) of this section.

(b) **Option two: Joint and ((~~whole allowance~~)) one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(c) **Option three: Joint and ((~~one-half allowance~~)) fifty percent survivor benefit.** The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to ((~~one-half of the gross monthly retirement allowance you were receiving~~)) fifty percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds ((~~allowance (available to members retiring on or after January 1, 1996)~~)) survivor benefit**.[1] The department will pay you a reduced monthly retirement ((~~allowance~~)) benefit throughout your lifetime. After your death, ((~~the department will pay~~)) your survivor beneficiary will receive a gross monthly ((~~allowance~~)) benefit equal to two-thirds (66.667%) of ((~~the~~)) your gross monthly ((~~retirement allowance you were receiving~~)) benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must ((~~submit~~)) provide your spouse's notarized ((~~signature indicating~~)) consent ((~~to the retirement option you selected~~)). If you do not provide spousal consent, the department will pay you a monthly retirement ((~~allowance~~)) benefit based on option three (joint and ((~~one-half allowance) and record~~)) fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide notarized spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and fifty percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.32.785(2) and 41.32.851(2).

(d) If your survivor beneficiary has been designated by a dissolution order under RCW 41.50.790, which was filed with the department at least thirty days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor ((~~feature~~)) option and my survivor beneficiary dies before I do?** ((~~Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will begin accruing the first day of the month following the death.~~

(a) **~~Members who retire on or after January 1, 1996:~~** ~~Your increased monthly allowance will be:~~

~~(i) The amount you would have received had you chosen the standard allowance option; plus~~

~~(ii) Any cost of living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.~~

~~Example:~~

~~Agnes retires from TRS Plan 2 in 1996. She chooses a benefit option with a survivor feature and names Beatrice, her daughter, as her survivor beneficiary. As a result, Agnes's monthly allowance is reduced from $2,000 (standard allowance) to $1,750. Beatrice dies in 2001. Agnes's monthly allowance will increase to $2,191.05, which equals the amount she would have received had she chosen the standard allowance option, plus the COLAs she has received (based on her prior monthly allowance).~~

~~Year~~	~~Standard Allowance~~	~~Survivor Option plus COLAs~~	~~COLA incr. (3% max)~~	~~$ Increase~~
~~1996~~	~~2,000.00~~	~~1,750.00~~		~~0.00~~
~~1997~~		~~1,750.00~~	~~.02~~	~~35.00~~
~~1998~~		~~1,785.00~~	~~.03~~	~~53.55~~
~~1999~~		~~1,838.55~~	~~.025~~	~~45.96~~
~~2000~~		~~1,884.51~~	~~.03~~	~~56.54~~
~~2001~~	~~2,000.00~~	~~1,941.05~~	~~—~~	~~—~~
			~~Total COLAs~~	~~191.05~~

~~Original Monthly Allowance~~	~~+ Total COLAs~~	~~= New Monthly Allowance~~
~~$2000~~	~~+ $191.05~~	~~= $2,191.05*~~

~~* In the future, Agnes's COLA will be based on her increased monthly allowance.~~

(b) **~~Members who retired before January 1, 1996:~~** ~~Your monthly retirement allowance will be adjusted according to the provisions of RCW 41.32.785(3).~~)) If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement. See RCW 41.32.044.

(b) **Postretirement marriage option.** If you select the standard ((~~allowance~~)) benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor ((~~feature~~)) option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department;

(iv) You provide proof of your current spouse's birth date; and

(v) You exercise this option one time only.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor ((~~feature~~)) option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard ((~~allowance~~)) benefit. You may exercise this option one time only.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 2:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement ((~~allowance~~)) benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement ((~~allowance~~)) benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(8) For more information, see RCW 41.32.785 and 41.32.790 (Plan 2) and RCW 41.32.851 (Plan 3).

[1] Available to members retiring on or after January 1, 1996.

AMENDATORY SECTION (Amending WSR 16-21-059, filed 10/14/16, effective 11/14/16)

WAC 415-112-507 How do I apply for TRS retirement benefits? You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed, signed, and notarized retirement application, including:

(a) Your selection of one of the benefit options described in WAC 415-112-493.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's ((~~notarized signature indicating~~)) consent ((~~to the retirement option you selected. See WAC 415-112-015(10).~~

~~(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-112-504 (3)(d) for Plan 1 or WAC 415-112-505 (2)(c) for Plan 2 and 3 members, option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.32.530(2), 41.32.785(2), and 41.32.851(2).~~

~~(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date~~)) may be required as described in WAC 415-112-504 (Plan 1) or WAC 415-112-505 (Plan 2 or Plan 3).

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

WSR 20-03-172
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed January 22, 2020, 8:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-090.

Title of Rule and Other Identifying Information: WAC 246-933-310 Definitions and new WAC 246-933-345 Client communication, the veterinary board of governors (board) is proposing to add a definition related to facilities and practice management standards and to create a new section to establish requirements for veterinarians when communicating with clients regarding evaluation and treatment.

Hearing Location(s): On March 2, 2020, at 10:00 a.m., at the Department of Health, Creekside Two at Center Point, 20425 72nd Avenue South, Room 307, Kent, WA 98032.

Date of Intended Adoption: March 2, 2020.

Submit Written Comments to: Loralei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, by February 21, 2020.

Assistance for Persons with Disabilities: Contact Loralei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to establish minimum requirements for information provided to clients when evaluating and treating animal patients. The board proposes to amend an existing rule and create a new rule in order to take a more holistic approach to requirements for client communication. The proposed rule includes expanded or new communication requirements for proposed diagnostic tests, possible and definitive diagnoses, common side effects or adverse outcomes of diagnostics and treatment, estimated cost, prognosis and treatment options, communication that is timely and prior to treatment (except during emergencies or when the client cannot be reached), communication that enables the clients to understand the problem and options, and written or verbal consent from the clients.

Reasons Supporting Proposal: This proposal is intended to ensure care provided promotes the health and safety of animal patients based on client decisions and emphasizes the importance of consultation with clients.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: Chapter 18.92 RCW.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Loralei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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 Loralei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email loralei.walker@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. License holders, not businesses, must meet the proposed rules.

January 21, 2020
Kirk Breuninger, VMD MPH DACVPM
Chair, Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

WAC 246-933-310 Definitions. The definitions in this section apply in WAC 246-933-310 through 246-933-350 unless the context clearly requires otherwise.

(1) ((~~**Veterinary medical facility:** Any premise, unit, structure or vehicle where any animal is received and/or confined to be examined, diagnosed or treated medically, surgically or prophylactically, as defined in RCW 18.92.010.~~

~~(2) **Mobile clinic:** A vehicle, including a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.~~

~~(3) **Aseptic surgery:** Aseptic surgical technique exists when everything that comes in contact with the wound is sterile and precautions are taken to ensure such sterility during the procedure. These precautions include, but are not limited to, such things as the surgery room itself, sterilization procedures, scrubbing hands and arms, sterile gloves, caps and masks, sterile long-sleeved gowns, and sterile draping and operative techniques.~~

~~(4)~~)) "Antiseptic surgery((~~: Antiseptic surgical~~))" means the technique ((~~exists~~)) used when care is taken to avoid bacterial contamination but the precautions are not as thorough and extensive as in aseptic surgery. Surgeons and surgical assistants ((~~shall~~)) wear clean attire and sterile gloves, and the patient ((~~shall be~~)) is appropriately draped. A separate sterile surgical pack shall be used for each animal.

(2) "Aseptic surgery" means the technique used when everything that comes in contact with the wound is sterile and precautions are taken to ensure such sterility during the procedure. These precautions include, but are not limited to, such things as the surgery room itself, sterilization procedures, scrubbing hands and arms, sterile gloves, caps and masks, sterile long-sleeved gowns, and sterile draping and operative techniques.

(3) "Client" means the patient's owner, owner's agent, or other person presenting the patient for care.

(4) "Mobile clinic" means a vehicle, including a camper, motor home, trailer or mobile home, used as a veterinary medical facility. A mobile clinic is not required for house calls or farm calls.

(5) "Treatment" means any action or procedure taken to impact an animal's physical, mental, or behavioral health in the pursuit of preventing or resolving disease, maintaining or improving quality of life, or providing end of life care. This includes, but is not limited to, the prescription, recommendation, issuance, or administration of any drug, veterinary feed directive, vitamins, minerals, or supplements.

(6) "Veterinary medical facility" means any premise, unit, structure or vehicle where any animal is either received or confined, or both, to be examined, diagnosed or treated medically, surgically or prophylactically, as defined in RCW 18.92.010.

NEW SECTION

WAC 246-933-345 Client communication regarding evaluation and treatment. (1) The veterinarian must communicate when appropriate to the client the following:

(a) Proposed diagnostic tests;

(b) Differential diagnoses;

(c) Definitive diagnoses;

(d) Proposed treatments;

(e) Common side effects or adverse outcomes from proposed diagnostic testing or treatment;

(f) Most likely side effects or adverse outcomes from proposed diagnostic testing or treatment based on patient signalment and disease status. Patient signalment may include, but is not limited to, species, breed, age, and sex;

(g) Estimated cost;

(h) Prognosis; and

(i) Alternate diagnostic and treatment options for the patient.

(2) Such communications must be timely and sufficient to enable the client to understand clearly the problem and the choices that must be made, and provide written or verbal consent for a proposed diagnostic and treatment plan. If other staff is involved in the communication process, it is the responsibility of the veterinarian to ensure that such communications are appropriate. All communications must be made prior to rendering treatment, except in cases of emergencies as described in WAC 246-933-050 or when a client cannot be reached for consultation within a reasonable time frame as dictated by the patient's condition.

(3) Client communication required in subsection (1) of this section must be documented in the patient medical record.

WSR 20-03-173
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed January 22, 2020, 9:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-076.

Title of Rule and Other Identifying Information: WAC 246-933-990 Veterinarian fees and renewal cycle and 246-935-990 Veterinary technician fees and renewal cycle, the department of health (department) is proposing to add a fee to provide access to the University of Washington's (UW) Health Science Library online clinical resources, a web portal

referred to as "HEAL-WA." The proposed fee would implement SB 5000 (chapter 140, Laws of 2019) which added veterinarians and veterinary technicians to the list of health profession licensees participating in HEAL-WA. The department is also proposing a reduction in fees for duplication and verification services.

Hearing Location(s): On February 28, 2020, at 9:00 a.m., at the Department of Health, Town Center 2, 111 Israel Road S.E., Room 166/167, Tumwater, WA 98504.

Date of Intended Adoption: March 6, 2020.

Submit Written Comments to: Cori Tarzwell, P.O. Box 47850, Olympia, WA 98504, email https://fortress.wa.gov/doh/policyreview, fax 360-236-4738, HSQAfeerules@doh.wa.gov, by February 28, 2020.

Assistance for Persons with Disabilities: Contact Cori Tarzwell, phone 360-236-4981, TTY 360-833-6388 or 711, email HSQAfeerules@doh.wa.gov, by February 21, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is twofold. First, the department is proposing to add a required fee to the initial and renewal licenses for veterinarians and veterinary technicians that will allow access to the HEAL-WA web portal. This change is responsive to SB 5000, passed in the 2019 legislative session. Secondly, the department is proposing to reduce the service fees for a license duplication or verification in order to align and standardize those fees across the licenses for all health professions.

Reasons Supporting Proposal: As dictated by statute, rule making is required to establish the HEAL-WA fee for veterinarians and veterinary technicians. The HEAL-WA web portal supports public health by providing the participating practitioners with access to the latest evidence based health care information. Having access to current, peer reviewed, clinical information improves a practitioner's ability to respond to patient questions, develop treatment plans, and deliver quality care to their patients. Fee reductions for duplication and verification of a license is part of the department's effort to standardize these fees across health professional licenses given the amount and type of work is the same.

Statutory Authority for Adoption: RCW 43.70.112, 43.70.250, 43.70.280, and SB 5000 (chapter 140, Laws of 2019).

Statute Being Implemented: SB 5000 (chapter 140, Laws of 2019) and RCW 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Cori Tarzwell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4981; Implementation and Enforcement: Loralei Walker, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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)(vi) exempts rules that set or adjust fees or rates pursuant to legislative 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 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

January 17, 2020
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 16-21-062, filed 10/14/16, effective 2/1/17)

WAC 246-933-990 Veterinarian fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

Title of Fee	Fee
((~~Original application~~))	
Initial state license	
State jurisprudence examination (((~~initial/retake~~)) initial or retake)	$210.00
((~~Initial state license~~)) Application	145.00
UW online access surcharge (HEAL-WA)	16.00
Total*	370.00
Initial specialty license	((~~140.00~~))
Application	140.00
UW online access surcharge (HEAL-WA)	16.00
Total*	155.00
Temporary permit	215.00
State or specialty license renewal	
Renewal	160.00
Impaired veterinarian assessment	25.00
UW online access surcharge (HEAL-WA)	16.00
Total*	200.00
Late renewal penalty	80.00
Expired license reissuance	90.00
Retired active license and renewal	
Renewal	70.00
Impaired veterinarian assessment	25.00
UW online access surcharge (HEAL-WA)	16.00
Total*	110.00
Late renewal penalty	50.00

Title of Fee	Fee
Duplicate license	((~~30.00~~)) 10.00
Verification of license	((~~30.00~~)) 25.00

* Totals are rounded up or down to the nearest $5.00.

AMENDATORY SECTION (Amending WSR 11-20-092, filed 10/4/11, effective 12/1/11)

WAC 246-935-990 Veterinary technician fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged:

((

~~Title of Fee~~	~~Fee~~
~~State examination (initial/retake)~~	~~$160.00~~
~~Initial license~~	~~110.00~~
~~Renewal~~	~~75.00~~
~~Late renewal penalty~~	~~80.00~~
~~Expired license reissuance~~	~~80.00~~
~~Duplicate license~~	~~30.00~~
~~Certification of license~~	~~30.00~~

))

Title of Fee	Fee
Initial state license	
State jurisprudence examination (initial or retake)	$160.00
Application	110.00
UW online access surcharge (HEAL-WA)	16.00
Total*	285.00
License renewal	
Renewal	75.00
UW online access surcharge (HEAL-WA)	16.00
Total*	90.00
Late renewal penalty	80.00
Expired license reissuance	80.00
Duplicate license	10.00
Verification of license	25.00

* Totals are rounded up or down to the nearest $5.00.

WSR 20-03-176
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed January 22, 2020, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-041.

Title of Rule and Other Identifying Information: WAC 314-55-101 Quality assurance sampling protocols, 314-55-102 Quality assurance testing (effective until August 31, 2020), new WAC 314-55-1021 Quality assurance and quality control (Effective September 1, 2020) until February 28, 2021, new WAC 314-55-1022 Quality assurance and quality control (effective March 1, 2021), and 314-55-1025 Proficiency testing. The Washington state liquor and cannabis board (board) proposes amendments and new sections to current marijuana product testing standards that would require the addition of pesticide and heavy metal testing for all marijuana products produced, processed, and sold in Washington state.

Hearing Location(s): On March 18, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: April 1, 2020.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by March 18, 2020.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by March 11, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments revise and update current marijuana quality assurance sampling protocols described in WAC 314-55-101, and marijuana proficiency testing described in WAC 314-55-1025.

This proposal also provides that as of March 2021, in addition to the currently required suite of tests, all marijuana products produced, processed, and sold in Washington state be tested for pesticides and heavy metals. This is accomplished by revising and updating existing WAC 314-55-102 by way of a phase-in plan, as follows:

- The first proposed revisions, if adopted, would be effective until August 31, 2020.
- On September 1, 2020, WAC 314-55-102 would be repealed, and WAC 314-55-1021 would become effective until February 28, 2021, adding pesticide testing to the current suite of required product testing for all marijuana products produced and sold in Washington state.
- Finally, on February 28, 2021, WAC 314-55-1021 would be repealed, and effective March 1, 2021, WAC 314-55-1022 would become effective, requiring both pesticides *and* heavy metals to the current suite of required product testing for all marijuana products produced and sold in Washington state.

As a technical matter, this proposal renames and more appropriately refers to marijuana *quality control* sampling protocols and marijuana *quality control* and assurance testing standards. While quality control is a set of activities designed to evaluate a product, quality assurance pertains to activities that are designed to ensure that a *process* is adequate and the system meets its objectives. In contrast, quality control focuses on finding defects or anomalies in a product or deliverable, and checks whether defined requirements are the right

requirements. Testing is one example of a quality control activity, but there are many more such activities that make up quality control. For these reasons, this proposal renames these sections.

Other proposed revisions include streamlined, clarified language; section reorganization to increase readability, along with reduction and removal of passive language where appropriate.

Reasons Supporting Proposal: Current testing requirements for recreational marijuana are intended to ensure that products for sale are safe and have accurate potency levels. However, Washington state recreational marijuana products are not required to be tested for pesticides and heavy metals, and although not precluded from doing so, many producers and processors do not test for either. Based on a number of elements, including consumer concern and national best practices, it has become evident that standardized testing for *all* marijuana products produced, processed, and sold in Washington state is necessary. Washington state is the only state with both recreational and medical programs that does not require such testing for all products.

There is no guidance available to the Washington state liquor control board (WSLCB) or any other state agency regulating marijuana from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule I drug, and federally illegal. This presents regulatory challenges to the WSLCB, regulators throughout the country, and the industry since there is limited funding to support research on how marijuana tainted with potential toxins affects humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, the overarching goal of the WSLCB is to protect public health and safety, and to assure that all products sold within the I-502 market are safe for ***all*** consumers.

Recently, concern around the composition and safety of marijuana concentrates for inhalation has highlighted the need to assure that all marijuana products are tested for the presence of harmful compounds and other contaminants. The proposed rule amendments and phase-in plan offer a reasonable time frame that provides both licensees and accredited labs the opportunity to adjust business models where necessary, and offers options to prepare for additional fields of testing either immediately or over an extended, but finite period of time.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Statute Being Implemented: RCW 69.50.345 and 69.50.348.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Rules Coordinator, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Kendra Hodgson, Marijuana Examiners Unit Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-4555; Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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 Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98502 [98501], phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

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

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

Is exempt under RCW 19.85.025 (4)(d): WAC 314-55-101, 314-55-1025.

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

Small Business Economic Impact Statement (SBEIS)

What is the scope of the rule package? Compliance with the proposed, specific requirements described [in] WAC 314-55-102,314-55-1021, and 314-55-1022 will likely result in additional compliance costs. This includes the incremental, phased-in requirement to test all marijuana products for pesticides and heavy metals. The remainder of the rule revisions are exempt.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds? The NAICS code, business description, and minor cost thresholds are described and calculated below:

Type of Business	# of Businesses In Washington	Percentage of Businesses Considered Small[3]	Average Annual Revenues[4,5]	Minor Cost Threshold (0.3% Average Annual Revenues)
Marijuana Producer, Processor	341[1]	98%	$1,418,224	$4,255
Cannabis Testing Laboratory	14[2]	100%	$1,997,000	$5,990

Notes:
[1]Represents the number of marijuana producer/processors that reported revenue, lab tests, and employment between 2018-05 and 2019-04.
[2]Represents the number of labs certified to conduct testing on cannabis products in Washington state.
[3]Defined as having fifty or fewer employees. Producer/processor employment information provided by the employment security department for the third quarter of 2018. Laboratory businesses employment determined through interviews with labs and LinkedIn business profiles accessed 2019-04 and 2020-01.
[4]Average annual revenues for producer/processors based on total sales divided by the number of business that reported sales, lab tests, and employment.
[5]For testing laboratories, minor cost threshold based on average annual revenues from the 2010 economic census of the United States for businesses in the "Testing Laboratories" category (NAICS 541380) (WA State Auditor's Office 2019).

Does the rule have a disproportionate impact on small businesses? In particular, in order to calculate annual costs, we require information on a per entity basis describing the number of samples being tested per year. While we have some limited anecdotal information on the numbers of samples tested per year by individual producer/processors, we lack information on the myriad business models that could lead to a wide range in the number of samples tested per year, and thus a wide range of per entity compliance costs per year. Developing reliable estimates would require a comprehensive survey with a *reasonable* response rate, and even then, given the wide variability of business models and documented inconsistency in responses from licensees, per entity costs is [are] difficult to determine.

Did the agency make an effort to reduce the impact of the rule? The proposed rule changes include provisions that are intended to reduce the compliance costs for small businesses. These include:

- An incremental phase-in period that contemplates full compliance by March, 2021; and
- Allowing labs to subcontract pesticide and heavy metals testing for a period of time.

It is difficult to accurately assess if small businesses will be disproportionately impacted by this rule proposal when there is both significant overlap and variance between the groups evaluated. As noted above, and throughout this SBEIS, most of the businesses impacted are small as defined by RCW 19.85.030.

Did the agency involve small businesses in the rule development process? Throughout the rule development process, the WSLCB has engaged with businesses likely to be affected by the rule, and who volunteered to participate in the process. To support development of the SBEIS, a subset of six producer/processors spanning a range of both tiers and types of producers was contacted; interviews were conducted with two producers, one processor, and one producer/processor. In addition, interviews were conducted with three testing laboratories. Additional opportunity for public comment will be available when the proposed rule is published. Indoor and outdoor farmers, including sun growers, were included in the interviews.

During the rule development process, the WSLCB hosted two "Listen and Learn" sessions, one in April 2019 and the second in August 2019, inviting industry discussion and feedback on the proposed rules, and discuss potential mitigation strategies. The WSLCB's stakeholder process encouraged interested parties and industry partners to:

- Identify burdensome areas of existing and proposed rules;
- Proposed initial or draft rule changes; and
- Refine those changes.

Although the WSLCB broadly messaged these sessions (messaging went directly to *all* licensees, as well as over ten thousand GovDelivery subscribers), few processors and producers attended the sessions. This rule project was the first employing the "Listen and Learn" model, and attendees were initially unfamiliar with not only the model, but the process, although detailed agendas were provided well in advance of each meeting.

These heavily facilitated sessions followed two thought streams: the first asked attendees to review draft conceptual rules offered well in advance of the meeting and provide feedback or specific rule language, specifically indicating what they liked, didn't like, and what they proposed in the way of a solution. No rule language revisions were offered by attendees at either session. Solutions ranged from suggesting that figures and language be more concise in general without offering example, to unsupported assertions that adding pesticides and heavy metals to the suite of required tests would put certain producers out of business.

All comments received during these sessions were curated to the extent possible, although developing themes from sessions was difficult based on the broad range of comments. The proposed rules went through several stages of edits, review, discussion, and then further refinement before arriving at the initial proposal. The end result of this process are proposed rules that are offered as a framework and guidance for testing marijuana products that supports the overarching WSLCB goal of public health and safety.

A summary of the description of issues related to the proposed rule set and how the agency collaborated with stakeholders and industry partners to mitigate potential burden associated with rule compliance is more fully described in the significant analysis prepared consistent with RCW 34.05.328, including a phase-in plan, and offered as part of this initial rule proposal.

Will businesses have to hire or fire employees because of the requirements in the rule? While the impacts to individual producer[/]processors may depend on their ability to pass on increased testing costs (in the form of higher prices to retailers), the proposed rule is not expected to affect the

amount of marijuana produced. Thus, the proposed rule is unlikely to affect the overall number of employees of producer/processors or retailers. For example, if increased testing costs lead some smaller entities to cease production, other entities may produce larger volumes.

While it would be an indirect effect, the proposed rule may result in some limited additional employment in the labs conducting testing. In order to conduct the testing, a lab adding this testing capability may need to hire one or two additional scientists or technicians to operate equipment and conduct tests. The extent of potential employment gains are uncertain, but given the small number of labs in the industry (currently fifteen certified labs) any employment gains would likely be limited.

A copy of the statement may be obtained by contacting Katherine Hoffman 1025 Union Avenue, Olympia, WA 98501, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

January 22, 2020
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-101 Quality ((~~assurance sampling protocols~~)) control sampling. (1) ((~~To ensure quality assurance samples submitted to certified third-party laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section.~~

(2) **~~Sampling protocols for all marijuana product lots and batches:~~**

~~(a) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:~~

~~(i) Adulterating the sample with kief, concentrates, or other extracts;~~

~~(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; or~~

~~(iii) Pregrinding a flower lot sample.~~

~~(b) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

~~(c) Persons collecting samples must wash their hands prior to collecting a sample from a lot or batch, wear appropriate gloves while preparing or deducting the lot or batch for sample collection, and must use sanitary utensils and storage devices when collecting samples.~~

~~(d) Samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.~~

~~(e) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.~~

~~(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:~~

~~(i) The sixteen digit~~)) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent with RCW 69.50.348. Noncompliance may result in enforcement action as described in this chapter and applicable law.

(2) **Sample collection.** All samples of marijuana, usable marijuana, or marijuana-infused products submitted to an accredited lab for testing consistent with this chapter must be collected or deducted in a way that is most representative of the lot or batch, and maintains the structure of the marijuana sample.

(a) Facilities must be constructed and maintained consistent with applicable rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(b) To ensure the sample integrity, samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents contamination and degradation, such as a secure, low-light, cool and dry location.

(c) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

(d) Each quality control sample must be clearly marked "quality control sample" and labeled with the following information:

(i) The identification number generated by the traceability system;

(ii) The license number and name of the certified lab receiving the sample;

(iii) The license number and trade name of the licensee sending the sample;

(iv) The date the sample was collected; and

(v) The weight of the sample.

(3) **((~~Additional sampling protocols~~)) Sample collection for flower lots:**

(a) Licensees or certified labs must collect a minimum of four separate ((~~samples~~)) subsamples from each marijuana flower lot up to five pounds. Licensees or certified labs may collect more samples or subsamples than this minimum, but must not collect less. The ((~~samples~~)) subsamples must be of roughly equal weight not less than one gram each.

(b) The four separate ((~~samples~~)) subsamples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. Dividing a lot into quadrants prior to collecting samples must be done in a man-

ner that ensures the ((~~samples~~)) subsamples are collected from four evenly distributed areas of the flower lot and may be done visually or physically.

(c) The ((~~four samples~~)) subsamples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. Certified labs may also return or destroy any unused portion of the samples.

(5) **Adulterated or altered samples.** All licensees, certified labs, or agents of a licensee or certified labs will not adulterate or alter, or attempt to adulterate or alter any marijuana samples for the purpose of circumventing contaminant testing detection limits or potency testing requirements such as, but not limited to:

(a) Adulterating the sample with kief, concentrates, or other extracts;

(b) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the board; or

(c) Pregrinding a flower lot sample.

(6) **Sample rejection or failure.** Certified labs ((~~may~~)) must reject or fail a sample if the lab ((~~has reason to~~)) believes the sample was not collected in the manner required by this section, adulterated ((~~in any way~~)), contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

(((~~(6) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license the licensed producer or processor, or certification of the certified lab.~~)))

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-102 Quality assurance ((~~testing~~)) and quality control.

(Effective until August 31, 2020)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party ((~~testing~~)) lab must ((~~be certified by the WSLCB or the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to~~)) meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality ((~~assurance~~)) control tests required under this section.

(((~~(1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below, with the exception of mycotoxin, heavy metal, or pesticide residue screening. Certification to perform mycotoxin, heavy metals and pesticides may be obtained but is not required to obtain certification as a testing lab. A lab must become certified in all fields of testing prior to conducting any testing or screening in that field of testing, regardless of whether the test is required under this section.~~)) (a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this chapter if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred or sold until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the ((~~WSLCB~~)) board when testing for potency:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Potency analysis for flower lots.**

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101 (3) for the following required cannabinoids:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(c) Certified labs ((~~may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.~~)) must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality ((~~assurance~~)) control testing for moisture analysis if the results exceed the following limits:

(A) Water activity rate of more than 0.65 a_w; ((~~and~~)) or

(B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality ((~~assurance~~)) control testing for foreign matter screening if the results exceed the following limits:

(A) Five percent of stems 3 mm or more in diameter; ((~~and~~)) or

(B) Two percent of seeds or other foreign matter; or

(C) One insect fragment, one hair, or one mammalian excreta sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality ((~~assurance~~)) control testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	***E. coli* (pathogenic strains) and *Salmonella spp.***
Unprocessed Plant Material	10^4	Not detected in 1g
Extracted or processed Botanical Product	10^3	Not detected in 1g

(iv) **Mycotoxin screening.** ((~~The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:~~

~~(A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and~~

~~(B) Ochratoxin A: 20 µg/kg of substance.~~)) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	**Specification**
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
Ochratoxin A	≤20 µg/kg of substance

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality ((~~assurance~~)) control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality ((~~assurance~~)) control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	**ppm**
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality ((~~assurance~~)) control testing for heavy metals if the results exceed the limits provided in the table below.

((~~**Metal**~~	~~**µ/daily dose (5 grams)**~~
~~Inorganic arsenic~~	~~10.0~~
~~Cadmium~~	~~4.1~~
~~Lead~~	~~6.0~~
~~Mercury~~	~~2.0~~

~~(2) **Quality assurance testing required.**~~))

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality ((~~assurance~~)) control tests are ((~~the minimum~~)) required ((~~tests~~)) for each of the ((~~following~~)) marijuana products((~~, respectively~~)) described below. Licensees and certified labs may ((~~elect to do multiple~~)) opt to perform additional quality ((~~assurance~~)) control tests on the same lot ((~~or testing for mycotoxin, pesticides, or heavy metals pursuant to chapter 246-70 WAC~~)).

(a) ((~~**General quality assurance testing requirements for certified labs.**~~

~~(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.~~

~~(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion of the test(s).~~

~~(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.~~

~~(b)~~)) **Marijuana flower lots ((~~and other material lots~~)).** Marijuana flower lots ((~~or other material lots~~)) require the following quality ((~~assurance~~)) control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture ((~~content~~)) analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening

(((~~(c)~~))) (b) **Intermediate products.** Intermediate products must meet the following requirements related to quality ((~~assurance~~)) control testing:

(i) All intermediate products must be homogenized prior to quality ((~~assurance~~)) control testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and

(iv) All batches of intermediate products require the following quality ((~~assurance~~)) control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture ((~~content*~~)) analysis 2. Potency analysis 3. Foreign matter inspection((*)) 4. Microbiological screening 5. Mycotoxin screening
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test
Concentrate or extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Mycotoxin screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening

Product	Test(s) Required Intermediate Products
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening((*)) - Field of testing is only required if using lots of marijuana flower that have not passed QA testing

((* Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

((d))) (c) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality ((assurance)) control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	Potency analysis

(((c))) (d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(((3) No lot of)) (5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality ((assurance)) control testing ((as required in this section)), except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations ((under the same UBI number prior to quality assurance testing)); and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality ((assurance)) control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section, unless failed for tests that require immediate destruction.

(((4) **Samples, lots, or batches that fail quality assurance testing.**)) (6) **Failed test samples.**

(a) Upon approval by the ((WSLCB)) board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality ((assurance)) control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** ((At the request of the)) A producer or processor((, the WSLCB)) must request retesting. The board may authorize ((a)) the requested retest to validate a failed test result on a case-by-case basis. ((All costs of the retest will be borne by)) The producer or the processor requesting the retest((. Potency retesting will generally not be authorized)) must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed ((harvests,)) lots, ((or)) batches, or both so long as the remediation method does not impart any toxic or ((deleterious)) harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products ((to));

(C) A licensed retailer carrying marijuana products derived from the remediated ((harvest,)) lot((,)) or batch; or

(D) A consumer upon request.

(ii) The entire ((harvest,)) lot((,)) or batch from which the failed sample(s) were deducted ((from)) must be remediated ((using the same remediation technique)).

(iii) No remediated ((harvest,)) lots ((or)), batches, or both may be sold or transported until ((the completion and successful passage of quality assurance testing as required in this section)) quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(((5))) (7) **Referencing.** Certified labs may reference samples for ((mycotoxin)) terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

(((6))) (8) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this ((section)) chapter.

(((~~(7) Upon the request of the WSLCB~~)) (9) The board or its designee((~~,~~)) may request that a licensee or a certified lab ((~~must~~)) provide an employee of the ((~~WSLCB~~)) board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, and chemical residues, unsafe levels of heavy metals, and used for other quality ((~~assurance~~)) control tests deemed necessary by the ((~~WSLCB~~)) board.

NEW SECTION

WAC 314-55-1021 Quality assurance and quality control.

(Effective September 1, 2020, until February 28, 2021)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Potency analysis for flower lots.**

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101 (3) for the following required cannabinoids:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(c) Certified labs must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

(A) Water activity rate of more than 0.65 a_w; or

(B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

(A) Five percent of stems 3 mm or more in diameter; or

(B) Two percent of seeds or other foreign matter; or

(C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	*E. coli* (pathogenic strains) and *Salmonella spp.*
Unprocessed Plant Material	10^4	Not detected in 1g
Extracted or Processed Botanical Product	10^3	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
Ochratoxin A	≤20 µg/kg of substance

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality control testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and

(iv) All batches of intermediate products require the following quality control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening

Product	Test(s) Required Intermediate Products
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening

(c) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) **Failed test samples.**

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or

(D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) **Referencing.** Certified labs may reference samples for terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

(8) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) The board or its designee may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, chemical residues, unsafe levels of heavy metals, and used for other quality control tests deemed necessary by the board.

NEW SECTION

WAC 314-55-1022 Quality assurance and quality control.

(Effective March 1, 2021)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the board when testing for potency:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(iii) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Potency analysis for flower lots.**

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:

(A) THCA;

(B) THC;

(C) Total THC;

(D) CBDA;

(E) CBD; and

(F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: M total delta-9 THC = M delta-9 THC + (0.877 x M delta-9 THCA).

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: M total CBD = M CBD + (0.877 x M CBDA).

(c) Certified labs must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

(A) Water activity rate of more than 0.65 a_w; or

(B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

(A) Five percent of stems 3 mm or more in diameter; or

(B) Two percent of seeds or other foreign matter; or

(C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	***E. coli* (pathogenic strains) and *Salmonella spp.***
Unprocessed Plant Material	10^4	Not detected in 1g
Extracted or Processed Botanical Product	10^3	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
Ochratoxin A	≤20 µg/kg of substance

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality control testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality control testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	**ppm**
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

*And isomers thereof.

**Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	**µg/g**
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana prod-

ucts described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality control testing;

(ii) For the purposes of this section, a batch is defined as a single run through the extraction or infusion process;

(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and

(iv) All batches of intermediate products require the following quality control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals screening
Concentrate or extract made with hydrocarbons (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening 6. Heavy metals screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening 5. Heavy metals screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening 5. Heavy metals screening

(c) **End products.** All marijuana, marijuana-infused products, marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality control tests:

Product	Test(s) Required End Products
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis

Product	Test(s) Required End Products
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) **Failed test samples.**

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize the requested retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failure may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to:

(A) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or

(D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) **Referencing.** Certified labs may reference samples for terpenes, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, and receiving personnel.

(8) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) The board or its designee may request that a licensee or a certified lab provide an employee of the board or their designee samples of marijuana or marijuana products or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water for random compliance checks. Samples may be screened randomly for pesticides, chemical residues, unsafe levels of heavy metals, and used for other quality control tests deemed necessary by the board.

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the ((~~WSLCB~~)) board to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The ((~~WSLCB~~)) board or its vendor determines the sufficiency of PTs and maintains a list of approved PT pro-

grams. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from ((~~WSLCB or WSLCB's~~)) the board or board's vendor prior to conducting PT. The ((~~WSLCB~~)) board may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the ((~~WSLCB or WSLCB's~~)) board or board's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by ((~~WSLCB or WSLCB's~~)) the board or board's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to ((~~WSLCB or WSLCB's~~)) the board or board's vendor.

(11) The ((~~WSLCB~~)) board may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The ((~~WSLCB~~)) board may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by ((~~WSLCB~~)) the board.

(13)(a) The ((~~WSLCB~~)) board will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The ((~~WSLCB~~)) board may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a ((~~WSLCB or WSLCB's~~)) board or board's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The ((~~WSLCB~~)) board will suspend a laboratory's certification if the laboratory fails two consecutive rounds of PT. ((~~WSLCB~~)) The board may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the ((~~WSLCB~~)) board a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a ((~~WSLCB or WSLCB's~~)) board or board's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.