

WSR 20-06-006
PERMANENT RULES
SOUTHWEST CLEAN
AIR AGENCY

[Filed February 20, 2020, 9:00 a.m., effective March 22, 2020]

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

Purpose: SWCAA 476-010 Purpose. The proposed rule change removes encapsulation from the list of regulated activities.

SWCAA 476-030 Definitions. The proposed rule change reorders two definitions and makes formatting changes to existing definitions.

SWCAA 476-040 Asbestos Project Requirements. The proposed rule change corrects sectional references, replaces the term Agency with the term SWCAA, removes the Exceptions paragraph, revises bulk sampling requirements and makes minor text edits.

SWCAA 476-050 Notification Requirements and Fees. The proposed rule change clarifies the need for SWCAA approval for project notices, replaces the term Agency with the term SWCAA and makes minor text edits.

SWCAA 476-060 Procedures for Asbestos Projects. The proposed rule change adds a requirement for worker certification and identification cards and replaces the term Agency with the term SWCAA.

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material. The proposed rule change replaces the term Agency with the term SWCAA.

Citation of Rules Affected by this Order: Amending SWCAA 476-010, 476-030, 476-040, 476-050, 476-060, 476-070.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 19-22-040 on October 31, 2019.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: February 6, 2020.

Uri Papish
Executive Director

AMENDATORY SECTION (Amending WSR 01-05-065 filed 2/15/01, effective 3/18/01)

SWCAA 476-010 Purpose

The purpose of this regulation is to control asbestos emissions from the removal, (~~encapsulation~~) salvage, disposal, or disturbance of asbestos-containing materials in order to protect public health.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-030 Definitions

(1) **"Adequately wet"** means sufficiently mixed, saturated, penetrated, or coated with a fine mist of water or aqueous solution to prevent emissions.

(2) **"AHERA accredited building inspector"**(~~(2)~~) means a person who has successfully completed the training requirements for a building inspector established by the Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan; Interim Final Rule (40 CFR 763, Appendix C to Subpart E, I.B.3) and whose certification is current. (Asbestos Hazard Emergency Response Act-AHERA)

~~((3)) "Asbestos project designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763 Subpart E, Appendix C) and whose certification is current.)~~

~~((4))~~ (3) **"Asbestos"** means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentine), crocidolite (riebeckite), or anthophyllite.

~~((5))~~ (4) **"Asbestos-containing material"**(~~(2)~~) means any material containing greater than one percent (1%) asbestos as determined by polarized light microscopy using the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1. This term does not include nonfriable asbestos-containing roofing materials, regardless of asbestos content, when the following conditions are met:

(a) The asbestos-containing roofing material is in good condition and is not peeling, cracking, or crumbling; and

(b) The binder is petroleum based, the asbestos fibers are suspended in that base, and individual fibers are still encapsulated; and

(c) The binder still exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing it; and

(d) The building, vessel, or structure containing the asbestos-containing roofing material, will not be demolished by burning or mechanical renovation/demolition methods that may release asbestos fibers.

~~((6))~~ (5) **"Asbestos-containing waste material"**(~~(2)~~) means any waste that contains, or is contaminated with, asbestos-containing material. This term includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material(s) collected for disposal, or asbestos-containing waste, debris, containers, bags, protective clothing, or HEPA filters. This term does not include samples of asbestos containing material taken for testing or enforcement actions.

~~((7)) "Asbestos project" means the construction, demolition, maintenance, repair, remodeling, or renovation of any public or private building(s), vessel, structure(s), or component(s) involving the demolition, removal, salvage, disposal,~~

~~or disturbance of any asbestos-containing material or presumed asbestos-containing 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. Nor does this include routine maintenance and other non-abatement projects that may minimally disturb asbestos-containing materials.)~~

~~((8)) (6) "Asbestos inspection" means an inspection performed by an AHERA accredited building inspector using the procedures contained in 40 CFR 763. 85 and 86, or an alternate method that has received prior approval from (the Agency) SWCAA, to determine whether materials or structures to be worked on, removed, remodeled, renovated or demolished, (including material on the outside of structures) contain asbestos.~~

~~(7) "Asbestos project" means the construction, demolition, maintenance, repair, remodeling, or renovation of any public or private building(s), vessel, structure(s), or component(s) involving the demolition, removal, salvage, disposal, or disturbance of any asbestos-containing material or presumed asbestos containing material. It does not include the application of duct tape, re-wettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released. Nor does this include routine maintenance and other non-abatement projects that may minimally disturb asbestos-containing materials.~~

~~(8) "Asbestos project designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763 Subpart E, Appendix C) and whose certification is current.~~

~~(9) "Agency" means the Southwest Clean Air Agency (SWCAA).~~

~~((10)) (9) ((")) "Certified asbestos contractor"((")) means any partnership, firm, association, corporation or sole proprietorship, registered under chapter 18.27 RCW, that submits a bid, or contracts to remove asbestos for another and is certified by the Washington Department of Labor & Industries to remove asbestos.~~

~~((11)) (10) "Certified asbestos worker/supervisor"((")) means a person who is certified by the Washington State Department of Labor and Industries under WAC 296-65-010 and 012, and 030 to undertake an asbestos project or, for federal employees working in a federal facility, trained in an equally effective program approved by the United States Environmental Protection Agency.~~

~~((12)) (11) "Collected for disposal"((")) means sealed in a leak-tight container while adequately wet.~~

~~((13)) (12) "Component" means any equipment, pipe, structural member, or other item covered with, coated with, or containing asbestos-containing material.~~

~~((14)) (13) "Controlled area" means an area with access restricted to allow only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA). For owner-occupied, single-family residence dwellings, the controlled area is the area where the asbestos-containing material is being removed.~~

~~((15)) (14) "Demolition" means the wrecking, dismantling, removal of any load-supporting structural member on, or the intentional burning of((:)) any building, vessel, structure, or portion thereof((:)), rendering the structure uninhabitable. Demolition includes the removal of a facility from its foundation followed by relocation of the facility onto a new foundation at a different location.~~

~~((16)) (15) ((")) "Emergency asbestos project"((")) means an unplanned asbestos project necessitated by a sudden and unexpected event. Such events may include earthquakes, water damage, fire damage, non-routine failure or malfunction of equipment, or identification of additional asbestos-containing material discovered during an asbestos project.~~

~~((17)) (16) ((")) "Facility"((")) means all or part of any institutional, commercial, public, industrial, agricultural or residential structure, and marine vessels. This term does not include recreational vehicles such as campers, trailers, motorhomes or personal watercraft.~~

~~((18)) (17) "Friable asbestos-containing material" means asbestos-containing material that, when dry, can be crumbled, disintegrated, 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.~~

~~((19)) (18) "HEPA filter" means a high efficiency particulate air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.7% efficiency or greater.~~

~~((20)) (19) "Leak tight container" means a dust and liquid tight container that encloses the 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 polyethylene plastic used to wrap asbestos covered components.~~

~~((21)) (20) ((")) "Negative pressure enclosure"((")) means any enclosure of an asbestos abatement project where the air pressure outside the enclosure is greater than the air pressure inside the enclosure and the air inside the enclosure is changed at least four times an hour by exhausting it through a HEPA filter.~~

~~((22)) (21) "Nonfriable asbestos-containing material" means asbestos-containing material that, when dry, cannot be crumbled, disintegrated, 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.~~

~~((23)) (22) ((")) "Notification period"((")) means the 10-day period from the date that all required submittals and fees are received ((&)) by SWCAA.~~

~~((24)) (23) "Owner" or "Operator" means any person who owns, leases, operates, controls, or is responsible for activities at a project site, or a project operation, or both.~~

~~((25)) (24) ((")) "Owner occupied residential dwelling"((")) means any single-family housing unit which is permanently or seasonally occupied by the owner of the unit both prior to and after renovation ((or demolition)). This term includes houses, mobile homes, houseboats, houses with a 'mother-in-law apartment' or 'guest rooms', and associated structures located on the property.((:)) This term does not include structures that are to be demolished or renovated as part of a commercial or public project; nor does this term~~

include any mixed-use building, structure or installation that contains a residential unit, or any building that is leased, used as a rental, or for commercial purposes.

~~((26))~~ **(25) "Person"** means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((27))~~ **(26) "Presumed asbestos-containing material"** means any suspect asbestos containing material not evaluated or sampled by an AHERA accredited building inspector and is therefore presumed to be greater than 1% asbestos and shall be treated as such.

~~((28))~~ **(27) "Renovation"** means the modification of any existing building, vessel, structure, component, or portion thereof, not including demolition.

~~((29))~~ **(28) (")Structure"(")** means something built or constructed, in part or whole. Examples include, but are not limited to, the following in part or whole: houses, garages, commercial/industrial/municipal buildings, storage tanks and vessels, mobile homes, bridges, pole buildings, canopies and lean-tos. The term does not include normally mobile equipment (including but not limited to automobiles, recreational vehicles and boats), wood decks and fences.

~~((30))~~ **(29) "Suspect asbestos-containing material"** means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, mastics and cement siding regardless of year installed.

~~((31))~~ **(30) (")Temporary asbestos storage facility"(")** means a controlled facility for the storage of asbestos-containing waste materials longer than 10 days after collection and prior to transfer to a permanent disposal site.

~~((32))~~ **(31) "Visible emissions"** means emissions to the atmosphere that are visually detectable without the aid of instruments(-), including deposition and track out of asbestos containing material outside of the controlled area. This term does not include condensed uncombined water vapor.

~~((33))~~ **(32) "Waste generator"** means any owner or operator of a source whose act or process produces asbestos-containing waste material.

~~((34))~~ **(33) "Waste shipment record"** means the shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos-containing waste material.

~~((35))~~ **(34) "Working Day"** means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Southwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-040 Asbestos Project Requirements

(1) Renovation

(a) Prior to performing any renovation activity, the property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials in the work area. If suspect asbestos containing material is present and may be

disturbed during the project, the property owner or owner's agent must:

(i) Treat the suspect asbestos-containing material as presumed asbestos-containing material and handle it as asbestos containing material; or

(ii) Have an asbestos inspection conducted by an AHERA accredited building inspector to determine if asbestos is present. Suspect material shall be analyzed for asbestos content using the procedures in Title 40 Part 763 Subpart E, Appendix E, Section 1.

(iii) For renovations performed by the owner-occupant of a ~~(single)~~ **single**-family residence all suspect materials shall be handled as presumed asbestos-containing materials unless determined otherwise by analyzing for asbestos content using the procedures in 40 CFR Part 763 Subpart E, Appendix E, Section 1. An asbestos inspection is not required to be performed by an AHERA certified building inspector at a ~~(single)~~ **single**-family residence when the renovation project is performed by the owner-~~(/)~~occupant.

(b) The results of any asbestos inspection required under this rule shall be documented and be posted by the property owner or owner's agent.

(2) Demolition

(a) Prior to performing any demolition project, the property owner or the owner's agent shall obtain an asbestos inspection of the structure or part of the structure where the demolition will occur for the presence of asbestos. The asbestos inspection shall be performed by an AHERA accredited building inspector.

(b) Samples of suspect asbestos-containing materials shall be collected by an AHERA accredited building inspector for analysis to determine the amount and type of asbestos present in the material.

(c) Any material presumed to be asbestos-containing material is not required to be sampled by an AHERA accredited building inspector. Any material presumed to be asbestos-containing material shall be handled as though it was an asbestos-containing material.

(d) Only an AHERA accredited building inspector may determine, by performing an asbestos inspection, that a material is not a suspect asbestos-containing material.

(e) Suspect materials collected shall be analyzed for asbestos content using the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(f) A summary of the results of the asbestos inspection shall be documented and shall either be posted by the property owner or owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(g) Prior to demolition all identified or presumed asbestos-containing material must be removed as an asbestos project in accordance with SWCAA 476-060~~((080))~~.

(h) Regardless of the amount of asbestos-containing material present (including none), a Notification of Demolition must be submitted to ~~((the Agency))~~ **SWCAA** on **SWCAA** ~~((Agency))~~ approved forms and include a copy of the asbestos inspection report prior to commencing a demolition project in accordance with SWCAA 476-050(2). In no event shall a project or activity proceed on a date other than the date indicated on the notification.

(i) If the facility is to be demolished by intentional burning, all asbestos-containing material shall be removed as an asbestos project in accordance with SWCAA 476-080.

(j) ~~((Underground Storage Tanks))~~ An asbestos survey is not required prior to demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the demolition of an underground storage tank, work shall cease until it is determined whether or not the suspect asbestos-containing material is asbestos-containing material by the procedures and methods in 40 CFR Part 763 Subpart E, Appendix E, Section 1.

(3) Asbestos Inspection Procedures

(a) The required number of bulk asbestos samples must be collected per the sampling procedures detailed in EPA regulation 40 CFR Part 763.86

(b) An AHERA accredited building inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing material that is not presumed to be asbestos-containing material, and shall collect the samples as follows:

(i) At least three (3) bulk samples shall be collected from each homogeneous area that is 1,000 square feet or less.

(ii) At least five (5) bulk samples shall be collected from each homogeneous area that is greater than 1,000 square feet but less than or equal to 5,000 square feet.

(iii) At least seven (7) bulk samples shall be collected from each homogeneous area that is greater than 5,000 square feet.

(c) Except as provided for in 40 CFR 763.86 (b)(2)-(4), an AHERA accredited building inspector shall collect, in a statistically random manner, at least three (3) bulk samples from each homogeneous area of thermal system insulation that is not presumed to be asbestos-containing material.

(d) An AHERA accredited building inspector shall collect; at least one (1) bulk sample from each homogenous area of any miscellaneous material that is less than 100 square feet and at least three (3) bulk samples from each homogeneous area of any miscellaneous material that is greater than or equal to 100 square feet not presumed to be asbestos-containing material.

(e) Except for wallboard, bulk samples shall not be composited for analysis.

(f) Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, or a more effective method as approved or required by EPA.

(4) **Asbestos Inspection Report Requirements.** Asbestos inspection reports shall contain, at a minimum, all of the following information:

(a) General Information.

(i) Date the inspection was performed;

(ii) AHERA accredited building inspector name and signature, certification number, date certification expires, and name and address of entity providing AHERA accredited building inspector certification;

(iii) Site address/location where the inspection was performed;

(iv) Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

(v) The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage), if known;

(vi) Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area);

(vii) Identify and describe all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

(viii) Identify materials presumed to be asbestos-containing material;

(ix) Exact location where each bulk asbestos sample was taken (e.g., schematic or other detailed description sufficient for any person to match the material(s) sampled and tested to the material(s) on site);

(x) Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

(A) Laboratory name, and address

(B) Bulk sample numbers;

(C) Bulk sample descriptions;

(D) Bulk sample results showing asbestos content; and

(E) Name of the person at the laboratory that performed the analysis.

(b) Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

(i) Describe the color of each asbestos-containing material;

(ii) Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g. using schematics, detailed description, or both);

(iii) Provide the approximate quantity of each asbestos-containing material in square feet or linear feet and;

(iv) Describe the condition of each asbestos-containing material (good or damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, or fire damage).

(5) **Asbestos Inspection Posting.** Except as provided for in SWCAA 476-040((-))(7), a complete copy of an asbestos inspection report must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by SWCAA and all persons at the work site. This applies even when the asbestos inspection performed by an AHERA accredited building inspector states there are no asbestos-containing materials in the work area. During demolition, if it is not practical to post the asbestos inspection report, it must be readily accessible and made readily available for inspection by SWCAA and all persons at the demolition site.

(6) **Asbestos Survey Retention.** The property owner or owner's agent, and the AHERA accredited building inspector that performed the asbestos inspection (when the asbestos inspection has been performed by an AHERA accredited building inspector), shall retain a complete copy of the asbestos inspection for at least 24 months from the date the inspec-

tion was performed and provide a copy to ~~((the Agency))~~ SWCAA upon request.

~~((7))~~ **Exceptions.** An asbestos inspection is not required for renovation of an owner-occupied, single-family residence performed by the owner-occupant. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

~~((8))~~ **(7) Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.** It is not required that an AHERA accredited building inspector sample any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy to ~~((the Agency))~~ SWCAA upon request.

~~((9))~~ **(8) Alternate Asbestos Inspection.** A written alternate asbestos inspection method shall be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 CFR 763.86 cannot be exclusively performed. All other asbestos inspection requirements of this regulation apply. For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g. when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by ~~((the Agency))~~ SWCAA. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos inspection methodology must be used alone or, when possible, in combination with conventional inspection methodology. An alternate asbestos inspection methodology typically includes random sampling according to a grid pattern (e.g. random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, *Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies*, EPA/600/R-92/128, July 1992.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-050 Notification Requirements and Fees

(1) **Applicability.** No person shall cause or allow work on an asbestos project or demolition activity unless the owner or owner's agent has submitted a complete notification to

~~((the Agency))~~ SWCAA on ~~((Agency))~~ SWCAA approved forms, in accordance with the advance notification period requirements and fees as provided in the current SWCAA Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(a) A SWCAA approved Notice of Intent to Remove Asbestos is required for all asbestos projects. A Notice of Intent to Remove Asbestos is not required for removal of nonfriable roofing material. The owner/operator shall maintain documentation to substantiate qualification for the exemption.

(b) A SWCAA approved Notification of Demolition ~~must be submitted to the Agency on Agency approved forms~~ is required prior to commencing any demolition activity.

(c) The approval date to perform a project will be the date that all required submittals and fees are received at SWCAA.

(i) For asbestos and demolition projects that are subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 working days following submittal of a complete notification.

(ii) For asbestos and demolition projects that are not subject to Title 40 Code of Federal Regulations, Part 61, Subpart M, the notification period shall be 10 days following submittal of a complete notification.

(iii) The asbestos or demolition project may commence on the day following the notification period. Asbestos projects performed by the owner-occupant are not subject to this requirement but must provide prior notification.

(d) In no event shall a project or activity proceed on a date other than the date indicated on the notification.

(e) The duration of the asbestos project, maintenance activity, renovation, or demolition activity or project shall not exceed one (1) year beyond the original project starting date.

(f) The notification shall expire on the project completion date as specified by the owner or owner's agent unless amended prior to the completion date.

(g) A copy of the notification, all amendments and the asbestos inspection report shall be available for inspection at the project site at all times until completion of the project.

(h) For an asbestos project or demolition activity that will begin or end on a date other than the date(s) contained in the original notification, the owner or the owner's agent shall notify SWCAA ~~((in writing))~~ as soon as possible before the original start or end date. In no event shall a project or activity begin or end on a date other than the date indicated in the revised notification.

(2) **Advance Notification Period and Fee.** Any notification required by SWCAA 476-050(1) shall be considered incomplete until all the information required by SWCAA 476-050(1) is received by ~~((the Agency))~~ SWCAA and accompanied by the appropriate fee. The advance notification period and appropriate fee shall be determined as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(3) **Annual notification.** In lieu of the notification requirements of SWCAA 476-050(1) the owner or operator of a facility may submit to ~~((the Agency))~~ SWCAA, on the ~~((Agency's))~~ SWCAA approved form, an annual notification to conduct asbestos removal projects on one or more build-

ings, vessels, or structures at the facility during each calendar year for the purpose of scheduled maintenance or emergency repairs for removal of small quantities of asbestos-containing material as identified below. The requirements of SWCAA 476-050(1) shall not apply to asbestos projects undertaken during the calendar year at the applicable facility if all of the following conditions are met:

(a) Annual notifications shall be submitted to ~~((the Agency))~~ SWCAA for approval before commencing work on any asbestos projects specified in an annual notification.

(b) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section shall be limited to less than 260 linear feet on pipes and 160 square feet on other components.

(c) Any asbestos project involving at least 260 linear feet on pipes or 160 square feet or more on other components for each building, vessel, or structure at the facility shall be subject to ~~((-))~~ the notification requirements of SWCAA 476-050(1) and 476-050(2) and not the annual notification requirements.

(d) A copy of the annual notice shall be available for inspection at the property owner's or operator's office until the end of the calendar year.

(e) Asbestos-containing waste material generated from asbestos projects filed under an annual notification may be stored for disposal at the facility if all of the following conditions are met:

(i) All asbestos-containing waste material shall be treated in accordance with SWCAA 476-070(1);

(ii) Accumulated asbestos-containing waste materials collected from each asbestos project shall be kept in a controlled storage area posted with one (1) or more highly visible asbestos warning signs and accessible only to authorized persons; and

(iii) For storage of asbestos-containing waste material longer than 10 days, the owner/operator or owner's agent shall apply to SWCAA for a Temporary Asbestos Storage Facility Authorization unless the asbestos-containing waste material is handled as dangerous waste in accordance with WAC 173-303. Asbestos-containing waste material shall only be disposed of at sites operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction.

(f) Annual notifications shall be submitted by the facility owner or operator on forms provided by ~~((the Agency))~~ SWCAA. Notifications shall be submitted to ~~((the Agency))~~ SWCAA at least 10 days in advance of the start date and shall be accompanied by the annual fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(g) The facility owner or operator shall submit quarterly reports to ~~((the Agency))~~ SWCAA within fifteen (15) days after the end of each calendar quarter. Each quarterly report shall be submitted on forms provided by ~~((the Agency))~~ SWCAA or an alternate format approved by ~~((the Agency))~~ SWCAA.

(4) **Amendments.** An amended notification shall be submitted to ~~((the Agency))~~ SWCAA prior to deviating from any of the information contained in a notification as detailed

below. Amended notifications addressed by this section shall be filed by the original applicant, received by ~~((the Agency))~~ SWCAA no later than the asbestos project date, and are limited to the following revisions:

(a) A change in the job size category because of identification of additional asbestos-containing material. In this case, the fee shall be increased accordingly and the total fee shall be equal to, but not exceed, the fee amount provided for the new job size category as specified in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098;

(b) The project starting or completion date, provided the total duration of the work does not exceed one (1) calendar year beyond the original starting date. The commencement date of the original advance notification period shall apply with no additional waiting period required for amended notifications. If an amended notification results in a job size category that requires a waiting period and the original notification did not require a waiting period, the advance notification period shall commence on the date the original application was submitted;

(c) Name, mailing address, and telephone number of the owner or operator of the asbestos project site or operation;

(d) Waste disposal site, provided the revised waste disposal site is operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction;

(e) Method of removal or compliance procedures, provided the revised work plan meets the asbestos emission control and disposal requirements of SWCAA 476-060 and 450-070;

(f) Description, size (total square feet or number of floors), and approximate age of the building, vessel, or structure at the original address or location; and

(g) An amendment fee shall be incurred after the second revision to the original notification and for every subsequent revision thereafter in accordance with the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(5) Emergencies.

(a) ~~((The Agency))~~ SWCAA may waive the required advance notification period if the property owner or owner's agent demonstrates in writing to ~~((the Agency))~~ SWCAA that an asbestos project or demolition must be conducted immediately because of any of the following:

(i) There was a sudden, unexpected event that resulted in a public health or safety hazard; or

(ii) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; or

(iii) Asbestos-containing materials were encountered that were not identified during the asbestos inspection; or

(iv) The project must proceed to avoid imposing an unreasonable financial burden.

(b) Each emergency waiver request shall include a fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(c) If the emergency asbestos project occurs during ~~((non))~~ non-business hours, notification to SWCAA must occur no later than the next business day.

(6) **Abandoned Asbestos-Containing Material.** ((The Agency)) SWCAA may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

(7) **State of Emergency.** If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, ((the Agency)) SWCAA may temporarily waive part or all of the project fee(s) and notification period by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Southwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-060 Procedures for Asbestos Projects

(1) **Project requirements.** No person shall cause or allow work on an asbestos project unless the following are met, except as provided in SWCAA 476-060(2):

(a) Any work on an asbestos project shall be performed by a certified asbestos abatement contractor with certified asbestos workers under the direct, on-site supervision of a certified asbestos supervisor. Asbestos workers and asbestos supervisors must have a valid certification and identification card on-site. This requirement shall not apply to asbestos projects conducted in accordance with SWCAA 400-060(2) for owner-occupied, single-family dwellings performed by the owner/occupant.

(b) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. This includes asbestos projects performed by the owner-occupant at owner-occupied, single family dwellings.

(c) All asbestos containing material shall be kept adequately wet while being removed from any structure, building, vessel, or component.

(d) No visible emissions, including fallout or track out, shall result from an asbestos project.

(e) All asbestos-containing material that has been removed or may have fallen off components during the course of an asbestos project shall be:

- (i) Kept adequately wet until collected for disposal;
- (ii) Collected for disposal at the end of each working day;
- (iii) Contained in a controlled area at all times until transported to a temporary asbestos storage site or waste disposal site;
- (iv) Placed into a leak-tight container before removal from containment area; and
- (v) Carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise handled in such a manner

that may risk further damage to them; or transported to the ground via dust tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as a unit or in sections.

(f) Mechanical assemblies or components covered with, coated with, or containing asbestos-containing material, removed as a unit or in sections, shall be contained in a leak-tight wrapping after wetting and shall be labeled in accordance with SWCAA 476-070 (1)(a)(iii).

(i) For large components such as boilers, steam generators, and large tanks, the asbestos-containing material is not required to be removed or stripped if the component can be removed, stored, transported, and deposited at a waste disposal site or reused without disturbing or damaging the asbestos.

(ii) Metal components such as valves, fire doors, and reactor vessels that have internal asbestos-containing material do not require wetting and leak tight wrapping if:

(A) All access to the asbestos-containing material is welded shut; or

(B) The component has mechanical seals in place that separate the asbestos-containing material from the environment and these seals cannot be removed by hand.

(g) Local exhaust ventilation and collection systems used on an asbestos project shall:

(i) Be maintained to ensure the integrity of the system; and

(ii) When feasible, have one or more transparent plastic or glass viewing ports installed on the walls of the enclosure in such a manner that will allow for viewing inside the enclosure. When available, existing windows may be utilized for viewing ports.

(h) Local exhaust ventilation and collection systems, control devices, and vacuum systems, used on an asbestos project shall be equipped with a HEPA exhaust filter, maintained in good working order, and shall allow no visible emissions.

(2) **Exemptions for Owner-Occupied, Single-Family Residence.** The requirements of SWCAA 476-060 (1)(a) shall not apply to asbestos projects conducted in an owner-occupied, single-family residence by the resident owner of the residence.

(3) Alternate Means of Compliance.

(a) **Friable Asbestos-Containing Material Alternative Removal Methods** An alternate asbestos removal method may be employed for friable asbestos-containing material if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to ((the Agency)) SWCAA that the planned control method will be effective as the work practices contained in SWCAA 476-060(1) in controlling asbestos emissions. The property owner or the owner's agent shall document through air monitoring at the exhaust from the controlled area that the asbestos fiber concentrations outside the controlled area do not exceed 0.01 fibers/cc, ((& hour)) 8-hour average. ((The Agency)) SWCAA may require additional conditions be included in the alternate removal

method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternate removal method for cause.

(b) **Nonfriable Asbestos-Containing Material Alternative Removal Methods** An alternate asbestos removal method may be employed for nonfriable asbestos-containing material if an AHERA Project Designer has evaluated the work area, the type of asbestos-containing material, the projected work practices, and the engineering controls, and demonstrates to ~~((the Agency))~~ SWCAA that the planned control method will be equally as effective as the work practices in SWCAA 476-060(1) in controlling asbestos emissions. ~~((The Agency))~~ SWCAA may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the planned control method is as effective as wetting, and may revoke the alternative removal method for cause.

(c) **Leaving Nonfriable Asbestos-Containing Material in Place During Demolition** Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer (who is also qualified as a Certified Hazardous Materials Manager, Certified Industrial Hygienist, Registered Architect, or Professional Engineer) has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates to ~~((the Agency))~~ SWCAA that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. No asbestos-containing material shall remain in place if the demolition involves burning or other activities that would result in the potential release of asbestos-containing material to the ambient air. ~~((The Agency))~~ SWCAA may require additional conditions be included in the alternate removal method that are reasonably necessary to assure the asbestos-containing material remains nonfriable.

(4) **Exceptions for Hazardous Conditions.** Asbestos-containing material need not be removed prior to a demolition if the property owner or owner's agent demonstrates to ~~((the Agency))~~ SWCAA that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and may immediately collapse, or other conditions that are dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures as prepared by an AHERA project designer that will be followed for controlling asbestos emissions, including run off, during the demolition and disposal of the asbestos-containing waste material.

AMENDATORY SECTION (Amending WSR 18-13-053 filed 6/13/18, effective 7/14/18)

SWCAA 476-070 Disposal of Asbestos-Containing Waste Material

(1) **Disposal Requirements.** No person shall cause or allow work on an asbestos project unless the following procedures are employed during the collection, processing, packaging, or disposal of any asbestos-containing waste material:

(a) Treat all asbestos-containing waste material as follows:

(i) Adequately wet all asbestos-containing waste material;

(ii) After wetting, seal all asbestos-containing waste material in leak tight containers or wrapping to ensure that they remain adequately wet when deposited at a waste disposal site;

(iii) Permanently (indelible markers or labels made with indelible ink) label wrapped materials and each container with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the Occupational Safety and Health Administration. Permanently mark the label with the date the material was collected for disposal, the name of the waste generator, the name and affiliation of the certified asbestos supervisor~~((;))~~ (unless performed by owner-occupant at residential structure), and the location at which the waste was generated prior to removal from the controlled area;

(iv) Ensure that the exterior of each container is free of all asbestos residue;

(v) Exhibit no visible emissions during any of the operations required by this section; and

(vi) Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of, at a waste disposal site approved to accept asbestos-containing waste material.

(b) All asbestos-containing waste material shall be deposited within 10 days after collection at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154 or 61.155 and approved by the health department with jurisdiction. Asbestos-containing waste material may remain onsite longer than 10 days if the facility has a current Temporary Asbestos Storage Facility Authorization and the asbestos-containing waste material is stored within that temporary storage facility as provided in SWCAA 476-070(3).

(c) All asbestos-containing waste material, handled as dangerous waste in accordance with WAC 173-303, shall be excluded from the requirements of SWCAA 476-070 (1)(a) (iii) and 476-070 (1)(b).

(2) **Waste Tracking Requirements.** No person shall cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

(a) Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

(i) The name, address, and telephone number of the waste generator

(ii) The approximate quantity in cubic meters or cubic yards.

(iii) The name and telephone number of the disposal site operator.

(iv) The name and physical site location of the disposal site.

(v) The date transported.

(vi) The name, address, and telephone number of the transporter.

(vii) A certification from the waste generator that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper

condition to transport by highway according to applicable waste transport regulations.

(b) Provide a copy of the waste shipment record to the transfer station/disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the Alternate Work Plan or written determination as specified pursuant to SWCAA 476-060(3) shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

(c) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, the waste generator shall contact the transporter or the owner or operator of the disposal site to determine the status of the waste shipment.

(d) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to ~~((the Southwest Clean Air Agency))~~ SWCAA. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(e) Retain a copy of all waste shipment records for 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of waste shipment records shall be provided to ~~((the Agency))~~ SWCAA upon request.

(3) Alternative Storage Method - Temporary Asbestos Storage Facility. The owner or operator of a licensed asbestos abatement company or disposal facility may apply to ~~((the Agency))~~ SWCAA to establish a temporary facility for the purpose of collecting and temporarily storing asbestos-containing waste material.

(a) No person shall cause or allow the operation of a temporary asbestos storage facility without the prior written approval of ~~((the Agency))~~ SWCAA.

(b) The owner or operator must submit a complete application for establishment of a temporary asbestos storage facility on forms provided by ~~((the Agency))~~ SWCAA. When approved, an Asbestos Storage Facility Authorization will be returned to the owner or operator by SWCAA to be posted at the entrance to the facility or on file at the facility office.

(c) A temporary asbestos storage facility shall meet the following general conditions:

(i) Asbestos-containing waste material must be stored in a leak tight container in a secured building or in a secured exterior enclosure; and

(ii) The secured building or enclosure must be locked except during transfer of asbestos-containing waste material.

(4) Alternative Disposal Method - Asbestos-Cement Water Pipe. Asbestos-cement pipe used on public right-of-ways or public easements shall be excluded from the disposal requirements of SWCAA 476-070 (1)(b) if the following condition is met:

(a) The asbestos-cement pipe is maintained intact, not crushed or broken, and is left in place under at least 3 feet of

backfill and the location noted on deeds, easements and other applicable property and legal documents. Prior written approval from ~~((the Agency))~~ SWCAA is required. If the asbestos-cement pipe has been crushed or broken and left in place, the location shall be subject to the active waste disposal site requirements of 40 CFR 61.154.

WSR 20-07-005

PERMANENT RULES

OFFICE OF

ADMINISTRATIVE HEARINGS

[Filed March 4, 2020, 3:22 p.m., effective April 4, 2020]

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

Purpose: WAC 10-08-110 was updated to allow for electronic filing of appeal records on existing cases with and the office of administrative hearings (OAH). The amendment implements 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).

Citation of Rules Affected by this Order: Amending WAC 10-08-110.

Statutory Authority for Adoption: RCW 34.12.080.

Adopted under notice filed as WSR 20-03-163 on January 21, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 10-08-110 (1)(b)(iv) and (vi) were deleted to remove the limitation on number of faxed pages and mailing hard copies after faxing. Subsection (3)(c)(iv) was added to allow for emailing or uploading to an electronic case management system. Section 4 was added to allow for electronic filing with OAH.

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

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

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

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

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

Date Adopted: February 27, 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 deemed 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 be accompanied by a cover page or other form identifying the party making the transmission, 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 com-

pany. 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 when the email is successfully sent. 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))~~ all parties of record.

(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 successful sending or uploading 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 unless the cause is due to an OAH por-

tal malfunction. 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 20-07-008

PERMANENT RULES

STUDENT ACHIEVEMENT COUNCIL

[Filed March 5, 2020, 9:27 a.m., effective April 5, 2020]

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

Purpose:

- Develops new section for the development and implementation of a tuition recovery trust fund for degree-granting institutions operating in Washington state.
- Adds a requirement that institutions must demonstrate a commitment to academic excellence and student success.
- Creates a definition of "student loan product."
- Amends the requirement for institutions discontinuing operations to provide at least ten official transcripts to each student who is currently enrolled or who was enrolled at any point in the preceding term, at no cost to students.
- Adds disclaimer information that institutions not yet accredited by a recognized accrediting agency must provide to prospective students.

Citation of Rules Affected by this Order: New WAC 250-61-145; and amending WAC 250-61-020, 250-61-040, 250-61-050, 250-61-080, 250-61-090, 250-61-100, 250-61-110, 250-61-120, 250-61-151, 250-61-160, and 250-61-170.

Statutory Authority for Adoption: RCW 28B.85.020.

Adopted under notice filed as WSR 20-01-122 on January 2, 2020 [December 16, 2019].

Changes Other than Editing from Proposed to Adopted Version:

- The adopted rule clarifies that private vocational schools offering both nondegree programs and degree programs shall contribute to the fund based only on the tuition and fee revenue generated from degree programs. WAC 250-61-145(4).
- The adopted rule clarifies that the obligation to contribute to the fund for institutions offering degree programs and academic credit courses exclusively from outside the state through individual and private interstate communication shall become reestablished following a significant change of ownership or control. WAC 250-61-145(7).

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, Repealed 0.

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

Date Adopted: March 3, 2020.

Michael Meotti
Executive Director

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-020 Applicability. A degree-granting institution shall not operate, conduct business, grant or offer to grant any academic courses or degree programs unless the institution has obtained authorization from the council, been granted a waiver of the requirements of authorization, or been determined by the council to be exempt.

The act applies to:

- (1) Institutions granting or offering to grant degree programs and/or academic credit courses either at or from a location within the state; and
- (2) Institutions maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose other than contact with the institution's former students; and
- (3) Institutions specifically targeting Washington citizens with promotion of their degree programs and/or academic credit courses.

The act does not apply to degree programs and academic credit courses offered exclusively from outside the state through individual and private interstate communication except as specified in WAC 250-61-145.

AMENDATORY SECTION (Amending WSR 15-02-021, filed 12/30/14, effective 1/30/15)

WAC 250-61-040 Duties of executive director. In addition to other administrative responsibilities vested in the executive director of the Washington student achievement council under the act and this chapter, the executive director shall carry out the following administrative responsibilities:

- (1) Process authorization applications, fee payments, bonds or security deposits, to include the denial and issuance of authorization, signed by the executive director or designee.
- (2) Cause the payment of any unsatisfied final judgment against an authorized institution, from the resources available through the tuition recovery trust fund or the institution's surety bond or other security deposit.
- (3) Upon written notice from an authorized institution, release the surety on the institution's bond or return the institution's security deposit, as prescribed in RCW 28B.85.070.
- (4) In the event of impaired liability of the security, notify the institution of suspension until the security liability in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(5) To the extent that there is a payment, release the security to the extent of the payment.

(6) Establish and maintain all records called for under the provisions of the act and this chapter.

(7) Maintain a current inventory of degree-granting institutions authorized or exempted under this chapter, including student complaints against such institutions.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the council and the Secretary of the U.S. Department of Education.

(2) "Accrediting association" means a national or regional accrediting association that is recognized by the council and the Secretary of the U.S. Department of Education.

(3) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(4)(a) "Administrative capability" means that both administrative services and educational instruction take place at an authorized location.

(b) "Additional site" means a site with administrative capability that is not currently authorized.

(5) "Adverse action" means a warning or other sanction issued by the institution's accrediting association, the United States Department of Education or a state regulatory entity; a judgment against an institution that may impact ongoing operations; or any action, decision, or finding that impacts the institution's financial solvency.

(6) "At-risk" means a designation made by the council based on an adverse action or other findings that indicate a heightened potential of closure or other negative impacts on students.

(7) "Authorization" means the authority to operate in Washington state as a degree-granting institution.

(a) "Standard authorization" means authorization granted to institutions seeking to operate in Washington, but does not include institutions seeking field placement authorization only.

(b) "Field placement authorization" means authorization granted to institutions seeking authorization solely to offer required field placements at locations in Washington as part of distance learning programs.

(8) "Council" means the student achievement council, a Washington state agency, as established under chapter 28B.77 RCW.

(9) "Credit" generally means the unit by which an institution measures its course work. The number of credits assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of

laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(10) "Degree" means any designation, appellation, letters, or words including, but not limited to, "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(a) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(b) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(c) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(d) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(11) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(a) "College" means an institution which offers programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(b) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(c) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(12) "Distance learning" means a form of educational instruction other than classroom instruction to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(13) "Executive director" means the executive director of the council or the executive director's designee.

(14) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a council-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the council; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the council.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a council-recognized accrediting association; authorized by the council; or that has been exempted or granted a waiver by the council.

(16) "Field placement" means a student learning experience comprised primarily of the practical application of previously studied theories and skills. Examples include, but are not limited to, clinicals, student teaching, and practica.

(17) "Operate" means, but is not limited to, the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose other than contact with the institution's former students for any legitimate purpose related to their previous attendance.

(d) Maintaining or advertising an application for enrollment or a mechanism to collect prospective student data in any advertisement, publication, web site, software application, or other media, if the institution maintains a Washington location.

(e) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(18) "Oversight entity" includes, but is not limited to, the following:

(a) Any federal or state entity that provides financial aid to students of the institution or approves the institution for participation in a financial aid program;

(b) Any state or federal attorney general's office or department of justice;

(c) Any regulator that approves the operation of a postsecondary degree-granting institution;

(d) The federal consumer financial protection bureau or the federal securities and exchange commission; and

(e) Any accrediting agency.

(19)(a) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(b) "Additional program" means a degree program that:

(i) Differs in title and curriculum from any currently authorized program; or

(ii) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(20) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(21) "State authorization reciprocity agreement (SARA)" means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.

(22) "Student loan product" means a loan or income share agreement solely for personal use to finance postsecondary education. A student loan product includes a loan made to refinance a student loan product. A student loan product does not include a payment plan or accounts receivable during the time of a student's enrollment in the degree-granting institution.

(23) "Suspend" means that, due to deficiencies, the council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the council.

~~((23))~~ (24) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-080 Authorization standards. These standards form the basis for the review of an institution and guide the decisions of the council. To receive authorization, the institution shall meet all of the specific requirements of this chapter.

Degree-granting institutions authorized to operate under this chapter shall demonstrate a commitment to academic excellence and student success.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-090 Administrative requirements. (1) Name. The official name of the institution shall be consistent with, and appropriate to, the program(s) of study offered.

(2) Purpose. The institution shall clearly define its purpose or mission in an official statement which describes its role in higher education. The statement shall reflect the practices of the institution.

(3) Administration and governance. The institution shall be governed by bylaws or policies defining a chain of authority and responsibility.

(a) Administrators shall normally be graduates of accredited institutions and have academic credentials and prior higher education administrative experience for their area of responsibility.

(b) The main campus of the institution shall have, as a minimum, personnel to adequately staff the following roles: A chief executive officer, academic officer, registrar, business officer, student services officer, library director, and, if financial aid services are offered, financial aid officer. These

officers shall be accessible to students, faculty, and other personnel located at the main campus and at educational sites or centers in Washington. In the event that the proposed Washington site is a branch campus of an out-of-state institution, the branch campus shall also have sufficient personnel to adequately serve the students at that location.

(i) The chief executive and academic officers shall have at least a master's degree from an accredited institution and experience in college-level management, teaching, and academic administration, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(ii) The registrar shall have at least a baccalaureate degree from an accredited institution and college-level experience in admissions and student records, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(iii) The business, student services, and financial aid officers and library director shall have at least a baccalaureate degree from an accredited institution and experience in their assigned areas, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(c) The institution shall specify an individual who will serve as the principal contact person for each educational site or academic center in Washington.

(d) The institution shall have policies and provisions for the involvement of faculty in the academic affairs, curriculum development, and governance of the institution.

(e) The institution shall have policies and provisions for faculty selection, orientation, teaching load, supervision, evaluation, and professional development.

(4) The following conditions shall disqualify an individual as an administrator of a degree-granting institution:

(a) Conviction of a felony that is related to the administration of a degree-granting institution or any standard contained in this chapter within the past ten years;

(b) Involuntary surrender of authorization or a license to operate a school as the result of any action by the council or an oversight entity;

(c) Having been served with a cease and desist order for activities in violation of any applicable law or regulation; or

(d) Withdrawal of a license to operate an institution or denial of a renewal of authorization because of violation of any applicable law or regulation; or

(e) Having been found in violation of any law or regulation applicable to the operation of a postsecondary institution.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the council and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of Washington's direct transfer agreement associate degree.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education requirements for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(c) Distance learning program(s) shall meet the following guidelines:

(i) Online learning is appropriate to the institution's mission and purposes;

(ii) The institution's plans for developing, sustaining, and, if appropriate, expanding online learning offerings are integrated into its regular planning and evaluation processes;

(iii) Online learning is incorporated into the institution's systems of governance and academic oversight;

(iv) Curricula for the institution's online learning offerings are coherent, cohesive, and comparable in academic rigor to programs offered in traditional instructional formats;

(v) The institution evaluates the effectiveness of its online learning offerings, including the extent to which the online learning goals are achieved, and uses the results of its evaluations to enhance the attainment of the goals;

(vi) Faculty responsible for delivering the online learning curricula and evaluating the students' success in achieving the online learning goals are appropriately qualified and effectively supported;

(vii) The institution provides effective student and academic services to support students enrolled in online learning offerings;

(viii) The institution provides sufficient resources to support and, if appropriate, expand its online learning offerings; and

(ix) The institution assures the integrity of its online offerings.

(f) Prior experiential learning.

(i) Credit for prior experiential learning may be awarded when validated through a portfolio or similar assessment procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process.

(ii) Credit awarded for prior experiential learning at the undergraduate and graduate level must be consistent with the minimum standards as published by the institution's accrediting association. This subsection applies to institutions that meet WAC 250-61-085 (1), (2), or (3).

(iii) Prior experiential learning credit shall constitute no more than twenty-five percent of an undergraduate or graduate degree program. This subsection applies to institutions that meet WAC 250-61-085(4).

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have, as a minimum, a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have, as a minimum, a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) The institution's educational offerings shall be limited to students located in the United States and its territories until such time as it has achieved accreditation by an accrediting association recognized by the council and the U.S. Department of Education.

(6) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or

implied in the statute. The results of those evaluations shall be submitted to council staff upon request.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-110 Student services and instructional resources requirements. (1) Student services. The institution shall provide (~~adequate~~) reasonable and appropriate services for students in addition to formal instruction. These services shall normally include admissions, advising and guidance, financial assistance, student records, and disability accommodation.

(a) Advising and guidance services shall be readily available to students to assist them in program planning, course selection, and other academic activities.

(b) Student records shall be maintained in accordance with the guidelines established by the U.S. Department of Education.

(c) Students with disabilities shall have access to, and reasonable accommodations in, all programs for which they are qualified consistent with the provisions of the Americans with Disabilities Act.

(d) Placement services and employment opportunities, if provided, shall be accurately described.

(e) The institution's policies and practices are fair, reflect sound and ethical practices, and encourage student retention and success.

(2) Financial aid.

(a) Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.

(b) The institution shall not market, sell, or induce students to obtain loan products that financially benefit any owner or agent of the institution, unless it demonstrates that the student has exhausted all federal aid options and has been denied private commercial loan products. This rule shall apply to any institution with one hundred fifty or more students enrolled in the state in any given year or that has been operating in the state for less than two consecutive years.

(c) The institution shall disclose to the council, upon request, all information relating to loan products that are marketed, sold, or otherwise provided to any current or prospective student, as well as all communications with students regarding such loan products.

(3) Facilities for site-based instruction.

(a) The institution shall have adequate space, facilities and equipment, instructional materials, and staff to support quality education and services.

(b) The institution shall comply with all applicable ordinances, laws, codes, and regulations concerning the safety, health, and access of all persons on its premises.

(c) The council may conduct a site visit at any time. The fee for a site visit shall be five hundred dollars, payable to the Washington student achievement council.

(4) Disability accommodations. The institution shall provide reasonable accommodations for students and employees with disabilities. To the extent practicable, the institution must consider diagnosis, assessments, and accommodation plans received from prior secondary and postsecondary edu-

cational institutions or employers. The institution shall inform students and employees of local, state, and federal laws regarding discrimination against people with disabilities.

(5) Library. The institution shall provide adequate and accessible library resources and facilities to support the educational needs of students and faculty. If the institution, educational site, or academic center does not maintain its own library on site, it must demonstrate that it can provide sufficient library resources to meet the needs of the program(s) through a written agreement with another institution or organization, or through other mechanisms.

(6) Financial resources.

(a) The institution shall have adequate financial resources necessary to sustain its purpose and commitment to students.

(b) In the case of an institution seeking initial authorization, it shall have sufficient financial resources to sustain itself for one full academic year without the assistance of revenue from tuition and fees.

(7) Financial records.

(a) The institution shall maintain financial records in conformity to generally accepted accounting principles.

(b) The institution shall be audited annually by an independent certified public accountant according to generally accepted auditing standards.

(c) Such records shall be made available to the council upon request.

(8) Transcripts and academic credentials. The institution shall provide accurate and appropriate transcripts of credit for enrolled students and diplomas for graduates.

(a) For each student, the institution shall maintain and make available a transcript that specifies the name of the institution, the name of the student, all courses completed and academic credentials awarded, and an explanation of the institution's evaluation system. Each course entry shall include a title, the number of credits awarded, and a grade or written evaluation. The transcript shall distinguish credits awarded by transfer, for prior learning experience, and credit by examination.

(b) The institution shall not be required to make copies of transcripts available unless all tuition and fees and other expenses owed by the student to the institution have been paid.

(c) In addition to transcripts, the institution shall maintain records to document the performance and progress of each student, including, but not limited to: Financial transactions, admissions records, and records of interruption for unsatisfactory progress or conduct. Transcripts shall be kept permanently after a student has discontinued enrollment. All other records and accounts shall be kept for a minimum of six years after a student has discontinued enrollment.

(d) The institution shall maintain physical or electronic copies of all transcripts at a secure off-site facility.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supple-

mented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

~~(2) ((Any catalog or web site that is made available to students describing the educational services offered shall prominently feature the following statement upon the granting of authorization: "(Name of institution) is authorized by the Washington student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The council may be contacted for a list of currently authorized programs. Authorization by the council does not carry with it an endorsement by the council of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the council at P.O. Box 43430, Olympia, WA 98504-3430 or by email at degreeauthorization@wsac.wa.gov."~~

~~(3) An institution granted authorization shall make the following statement regarding transferability available to all students: "The transferability of credits earned at (name of institution) is at the discretion of the receiving college, university, or other educational institution. Students considering transferring to any institution should not assume that credits earned in any program of study at (name of institution) will be accepted by the receiving institution. Similarly, the ability of a degree, certificate, diploma, or other academic credential earned at (name of institution) to satisfy an admission requirement of another institution is at the discretion of the receiving institution. Accreditation does not guarantee credentials or credits earned at (name of institution) will be accepted by or transferred to another institution. To minimize the risk of having to repeat coursework, students should contact the receiving institution in advance for evaluation and determination of transferability of credits and/or acceptability of degrees, diplomas, or certificates earned."~~

~~(4))~~ The catalog shall include elements as required by the council in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

NEW SECTION

WAC 250-61-145 Tuition recovery trust fund requirements. (1) Purpose. The fund is established to provide relief to students impacted by the voluntary or involuntary closure of authorized institutions and may be used for:

- (a) Providing refunds to students affected by school closures;
- (b) Securing and administering student records; and
- (c) Any other response the council determines is necessary to mitigate impacts of a potential or actual school closure.

(2) Institutions authorized to operate under this chapter shall make the following contributions to the fund:

(a) One initial contribution in the amount of one thousand dollars. Institutions that become authorized to operate after January 1, 2020, shall make the initial contribution prior to enrollment of any student.

(b) Annual contributions to the fund for a period of at least five years in an amount specified in subsection (9) of this section. For institutions whose primary location is outside Washington, the contribution shall be based on tuition income collected from Washington state residents.

(c) The council shall provide notice to an institution that it is no longer required to contribute to the fund once it has made at least five annual contributions, provided none of the factors in subsection (5) of this section apply.

(3) Institutions offering degree programs and academic credit courses exclusively from outside the state through individual and private interstate communication shall make the following contributions to the fund upon enrollment of students located in the state of Washington:

(a) One initial contribution in the amount of one thousand dollars.

(b) At least five contributions in an amount specified in subsection (9) of this section. The contribution shall be based on tuition income collected from students located in the state of Washington.

(c) The council shall provide notice to an institution that it is no longer required to contribute to the fund once it has made at least five annual contributions, provided none of the factors in subsection (5) of this section apply.

(d) Institutions participating in an interstate reciprocity agreement with the council shall be exempt from this requirement.

(4) For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees.

(5) An institution's obligation to contribute to the fund may continue beyond five years or become reestablished under any of the following circumstances:

(a) The institution's authorization to operate has been suspended or withdrawn;

(b) The institution is currently designated at risk of closure under WAC 250-61-155;

(c) The institution is currently subject to heightened monitoring by the department of education;

(d) The institution is not in good standing with its accreditor or is subject to disciplinary action, including a show cause order;

(e) The institution has been found in violation of the Degree-Granting Institutions Act within the preceding twelve months;

(f) A valid claim against the institution has resulted in a disbursement from the fund; or

(g) The balance of the fund is reduced below one million dollars due to disbursements made to settle claims.

(6) An institution's obligation to contribute to the fund in accordance with subsection (2) of this section shall become reestablished if a new authorization is granted following a significant change of ownership or control.

(7) An institution's obligation to contribute to the fund in accordance with subsection (3) of this section shall become reestablished following a significant change of ownership or control.

(8) If disbursements made to settle claims reduce the operating balance below one million dollars, the council shall require assessments under subsection (9) of this section until the balance of the fund has been restored to one million dollars.

(9) Fund contributions. In order to remain authorized under this chapter, the institution shall remit to the council a fund contribution upon assessment. Institutions shall make annual deposits based on the following assessments:

If the school's total annual tuition income is:	The school shall make the following contribution:
Less than \$100,000	\$500
\$100,000 - \$250,000	\$1000
\$250,001 - \$500,000	\$1500
\$500,001 - \$750,000	\$2000
\$750,001 - \$1,000,000	\$2500
\$1,000,001 - \$1,500,000	\$3500
\$1,500,001 - \$2,000,000	\$4000
\$2,000,001 - \$2,500,000	\$4500
\$2,500,001 - \$3,000,000	\$5000
\$3,000,001 - \$4,000,000	\$6000
\$4,000,001 - \$5,000,000	\$7000
\$5,000,001 - \$6,000,000	\$8000
\$6,000,001 - \$7,000,000	\$9000
\$7,000,001 - \$8,000,000	\$10000
\$8,000,001 - \$10,000,000	\$11000
Over \$10,000,000	\$12000

(10) The council will send, to the address of record, annual notices of the due date and amount of deposit required under subsection (9) of this section. The burden of keeping current contact information with the council falls to the institution.

(11) The institution shall provide clear and accurate information required by the council to determine the amount of the institution's contributions to the fund.

(12) Late contributions. The fee for late contributions to the fund shall be ten percent of the amount due. Failure to make a deposit within thirty days of the due date may result in suspension or withdrawal of the institution's authorization. The institution's failure to provide information required by the council to determine the institution's assessment amount shall not impact the due date to contribute to the fund or the penalties described herein.

(13) If the institution demonstrates that the fund contribution is a hardship for the institution, the council may grant an alternate payment schedule.

(14) The fund's liability with respect to each participating institution commences on the date of the initial deposit

into the fund made on its behalf and ceases one year from the date the institution is no longer authorized under this chapter.

(15) Settlement of claims. A student with a complaint against an institution that has contributed to the fund and that is related to the purposes of this section may submit a written claim against the fund. If the complaint is supported by evidence and found by council staff to be actionable, the council may make disbursements from the fund consistent with subsection (1) of this section. A complainant is not bound by the council's determination and may pursue any other legal remedy.

(16) No liability accrues to the state from claims made against the fund.

(17) No vested right or interest in deposited funds is created or implied for the depositor at any time during the operation of the fund or at any such future time that it may be dissolved. All funds deposited are payable to the state for the purposes described under this section. Institutions have no right to reimbursement or recoupment of deposited funds at any time or for any reason.

(18) The council may replenish the fund with payments received from another form of security the institution is required to maintain if such payment is permitted under RCW 28B.85.070 and is related to the purposes of the fund.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-151 Disclosure requirements. (1) The institution shall make the following disclosures to the council.

(a) The institution shall disclose to the council any adverse action against the institution and any investigation by an oversight entity within thirty days of the institution's first knowledge of the action or investigation.

~~((a))~~ (i) The disclosure must include information about the nature of the adverse action or investigation and any additional documents or materials requested by the council.

~~((b))~~ (ii) Failure to report an adverse action or an investigation by an oversight entity may result in suspension or withdrawal of the authorization granted.

~~((2))~~ (b) The institution shall disclose to the council any changes in the institution's operations that are inconsistent with the requirements of this chapter or that may impair the institution's ability to satisfy any requirement of this chapter within thirty days of the institution's first knowledge of the change.

~~((a))~~ (i) The disclosure must include information about the nature of the changes in the institution's operations and any additional documents or materials requested by the council.

~~((b))~~ (ii) The institution shall have a reasonable opportunity to address or correct any deficiencies within a time period specified by the council.

~~((3))~~ (2) The institution shall make the following disclosures to current and prospective students.

(a) Any catalog or website that is made available to students describing the educational services offered shall prominently feature the following statement upon the granting of authorization: "(Name of institution) is authorized by the

Washington student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The council may be contacted for a list of currently authorized programs. Authorization by the council does not carry with it an endorsement by the council of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the council at P.O. Box 43430, Olympia, Washington 98504-3430 or by email at degreeauthorization@wsac.wa.gov."

(b) An institution granted authorization shall make the following statement regarding transferability available to all students: "The transferability of credits earned at (name of institution) is at the discretion of the receiving college, university, or other educational institution. Students considering transferring to any institution should not assume that credits earned in any program of study at (name of institution) will be accepted by the receiving institution. Similarly, the ability of a degree, certificate, diploma, or other academic credential earned at (name of institution) to satisfy an admission requirement of another institution is at the discretion of the receiving institution. Accreditation does not guarantee credentials or credits earned at (name of institution) will be accepted by or transferred to another institution. To minimize the risk of having to repeat coursework, students should contact the receiving institution in advance for evaluation and determination of transferability of credits and/or acceptability of degrees, diplomas, or certificates earned."

(c) The institution shall disclose the availability of the student complaint portal in all sections of the institutional catalog and web site containing information about complaints or complaint processes, or in a manner and location otherwise directed by the council.

((4)) (d) The institution shall disclose the availability of the student loan advocate in all sections of the institutional catalog and web site containing information about financial aid, or in a manner and location otherwise directed by law or by the council.

(e) Programs leading to licensure. The institution shall provide written disclosure to students and prospective students whether courses or programs potentially leading to licensure or post-licensure requirements meet such requirements in the state in which the student or prospective student is located. After making all reasonable efforts to make such a determination, the institution, if unsuccessful, may notify the student or prospective student in writing that the institution cannot confirm whether the course or program meets the requirements for licensure in the state in which the student or prospective student is located, provide the student or prospective student with current contact information for any applicable licensing boards, and advise the student or prospective student to determine whether the program meets licensure requirements in the state in which the student or prospective student is located.

(f) An institution granted a temporary waiver of the requirement for accreditation that has not yet acquired candidacy status with an accrediting association recognized by the

council and the U.S. Department of Education shall affirm that prospective students have read and understood the following statement prior to any student enrollment: "(Name of institution) is not accredited by an accrediting association recognized by the United States Department of Education and the Washington student achievement council. (Name of institution) has been granted a temporary waiver from Washington state's accreditation requirement based on submission of a plan for accreditation with (name of accrediting agency)."

(g) An institution granted a temporary waiver of the requirement for accreditation that has acquired candidacy status with an accrediting association recognized by the council and the U.S. Department of Education shall affirm that prospective students have read and understood the following statement prior to any student enrollment: "(Name of institution) has been granted Candidate for Accreditation status by (name of accrediting association). Candidacy is not accreditation nor does it ensure eventual accreditation. "Candidate for Accreditation" is a status of affiliation with the (name of accrediting association) which indicates that the institution has achieved initial recognition and is progressing towards accreditation." An alternate statement required by the institution's accrediting association may be substituted with the council's prior approval.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-160 Discontinuance or closure requirements. (1) In the event an institution plans to discontinue a program and/or site currently available to Washington residents, but maintain other operations, it shall notify the council immediately and submit alternative opportunities for program completion, acceptable to the council, that allow currently enrolled students a reasonable opportunity to complete their studies. Institutions may be subject to additional reporting requirements as specified by the council.

(2) In the event an institution plans to discontinue all its operations in Washington, the chief administrative officer of the institution shall:

(a) Notify the council immediately by certified mail and email;

(b) Furnish enrolled students with a written notice explaining the reasons for closure and what procedures they are to follow to secure refunds and their official records, and what arrangements have been made for providing continuing instruction at other institutions;

(c) Provide current students with alternative opportunities, acceptable to the council, to complete their studies; and

(d) Submit to the council the following:

(i) A timeline for the planned discontinuance of operations including the planned closure date;

(ii) A list of all students currently enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, and number of credits remaining for program completion;

(iii) The total number of students currently enrolled in each program of study for each site at which the program is offered;

(iv) The alternative opportunities for program completion, acceptable to the council, that are provided by the institution for students currently enrolled in programs of study;

(v) A copy of all information regarding the closure that is provided to students, administrators, and faculty at the Washington locations;

(vi) A copy of all documents provided by the institution's accrediting agency related to the closure;

(vii) A copy of any signed transfer agreement;

(viii) A copy of any signed teach-out agreement;

(ix) Electronic copies of transcripts for all current and past students;

(x) An account ledger for each student that includes, at a minimum, clear and correct information about student charges, payments, and the source for each payment; and

(xi) A plan for the maintenance of student records.

(3) Upon discontinuance of all Washington operations, the institution shall:

(a) Submit to the council a list of all students enrolled in program(s) of study at the Washington locations showing student name, contact information, program name, number of credits completed, number of credits remaining for program completion, and the alternative opportunities selected for program completion by each student;

(b) Provide at least ~~((one))~~ ten official transcripts to each student who is currently enrolled or who was enrolled at any point in the preceding term, at no cost to such students;

(c) Provide for the permanent maintenance of official records; and

(d) Submit the following:

(i) Contact information for the location where records for Washington students will be maintained; and

(ii) A description of the method and language used to inform students as to how final transcripts may be obtained.

(4) In the event it appears to the council that the official records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the students and the council, the council may seek a court order to take possession of the records and provide for their permanent maintenance.

AMENDATORY SECTION (Amending WSR 19-03-020, filed 1/4/19, effective 2/4/19)

WAC 250-61-170 Application requirements. (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the council staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by council staff. The application packet will not be considered complete until all required elements have been received by the council.

(c) For standard authorization, the initial application fee shall be two thousand dollars, plus one thousand dollars for each proposed program, and shall be submitted along with

the application packet. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, the initial application fee shall be two thousand dollars and shall be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by council staff.

(b) No later than the due date provided by the council, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by council staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, the renewal application fee shall be one thousand dollars, plus two hundred and fifty additional dollars per program. The check is to be made payable to the Washington student achievement council.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(e) Any programs that have been authorized for at least one year prior to the authorization renewal date, but which are not yet made available to students, must be so noted in the renewal application. The authorization granted for these programs will be withdrawn at that time and the institution must seek authorization for these programs through the new program application if it wishes to offer them in the future.

(3) Additional program(s).

(a) If an institution plans to offer additional program(s) of study, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(d) A nonaccredited institution will be limited to no more than two additional programs per calendar year until full accreditation is received.

(4) Additional site(s).

(a) If an institution plans to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Late fees. A late fee for applications for renewal of authorization shall be applied to applications received after the renewal application deadline. The late fee imposed shall

be one thousand dollars and shall be added to all other applicable fees.

(6) All fees submitted to the council are nonrefundable.

(7) Change of ownership or control. A significant change of ownership or control of an institution or its parent entity shall nullify any previous authorization or exemption. The chief administrator, representing the new owner(s), shall notify the council as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the council may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the council no later than sixty days prior to the expiration of the temporary certificate of authorization.

WSR 20-07-042

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed March 10, 2020, 9:03 a.m., effective June 8, 2020]

Effective Date of Rule: June 8, 2020.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to June 8, 2020. Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: March 9, 2020.

Kara Larsen, Director
Risk Management and Legal Services

WSR 20-07-062

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed March 13, 2020, 9:17 a.m., effective April 13, 2020]

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

Purpose: This change updates the qualified applicants for a Gold Star license plate to reflect current law.

Citation of Rules Affected by this Order: Amending WAC 308-96A-545 Gold Star license plates.

Statutory Authority for Adoption: RCW 46.01.110, 46.18.020.

Adopted under notice filed as WSR 20-01-130 on December 17, 2019.

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

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

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

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

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

Date Adopted: March 12, 2020.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-005, filed 4/22/15, effective 5/23/15)

WAC 308-96A-545 Gold Star license plate. (1) **What is a Gold Star license plate?** The Gold Star license plate recognizes the eligible family members of United States armed forces members who have died while in service to their country or as a result of such service.

(2) **Who qualifies as an eligible family member of a member of the United States armed forces?** Eligible family members are listed in RCW 46.18.245. For purposes of this section, a widow or widower includes the surviving member of a registered domestic partnership.

(3) ~~(What is required to purchase a Gold Star plate? A copy of the certification letter to a qualifying widow, widower, parent, or child provided by the Washington state~~

department of veterans affairs (WDVA) is required. The letter will be used in addition to a special plate application to purchase the plate. No other documentation is required.

~~(4))~~ **Can a Gold Star plate be transferred to a new owner?** No. The plate may only be transferred to a vehicle owned by the same registered owner ~~((who was certified as a qualifying widow, widower, parent, or child by WDVA. The plate cannot be transferred to a different registered owner))~~. If the ~~((widow, widower, parent, or child))~~ qualified applicant transfers the plate to a new ~~((ear))~~ motor vehicle registered to them, they are required to pay the plate transfer fee.

~~((5))~~ **What fees are required to purchase the plate?** There is no special plate fee or special plate renewal fee for the Gold Star plate. The registered owner must pay all licensing and filing fees.

~~(6))~~ **(4) Can a Gold Star plate ((background)) be personalized?** Yes. A Gold Star plate ~~((background))~~ can be personalized~~((; however;))~~. The customer is required to pay all fees associated with a personalized plate original purchase or renewal.

~~((7))~~ **Is a commercial vehicle eligible for a Gold Star plate as long as it is in the name of the qualifying widow, widower, parent, or child and not a business name?** Yes.

~~(8))~~ **(5) Can I use a Gold Star plate on a commercial vehicle?** Yes, provided the commercial vehicle is owned by a qualified applicant.

(6) Can a prorated vehicle display a Gold Star plate if the vehicle is under the name of the ((widow, widower, parent, or child)) qualified applicant that is eligible for this plate? No per chapter 46.87 RCW.

WSR 20-07-066

PERMANENT RULES

HORSE RACING COMMISSION

[Filed March 13, 2020, 11:04 a.m., effective April 13, 2020]

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

Purpose: To update the listing and classifications of medications and substances to reflect the current national model rule standards.

Citation of Rules Affected by this Order: Amending WAC 260-12-010 and 260-40-120.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-03-091 on January 13, 2020.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 2, Repealed 0.

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 13, 2020.

Douglas L. Moore
Executive Secretary

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 micro-chipped 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.

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 pari-mutuel 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 acces-

sible 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.

WSR 20-07-074

PERMANENT RULES COMMUNITY ECONOMIC REVITALIZATION BOARD

[Filed March 16, 2020, 8:27 a.m., effective April 16, 2020]

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

Purpose: Amendments to Title 133 WAC to bring community economic revitalization board rules into alignment with policy and statutory changes that have occurred since that [the] last WAC update.

Citation of Rules Affected by this Order: Repealing WAC 133-20-120; and amending WAC 133-10-010, 133-10-020, 133-10-030, 133-20-010, 133-20-020, 133-20-030, 133-20-040, 133-20-050, 133-20-070, 133-20-080, 133-20-090, 133-20-100, 133-20-110, 133-40-010, 133-40-020, 133-40-030, 133-40-040, 133-40-050, 133-40-060, and 133-05-020.

Statutory Authority for Adoption: RCW 43.160.050(8).

Adopted under notice filed as WSR 20-04-069 on February 3, 2020.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 20, Amended 0, Repealed 1.

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

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

Date Adopted: March 13, 2020.

Sarah Coggins
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-24-089, filed 12/5/95, effective 1/5/96)

WAC 133-10-010 Organization and operation of the community economic revitalization board. (1) The community economic revitalization board, hereinafter referred to as the board, is a ~~((nineteen))~~ twenty member board created pursuant to section 3, chapter 40, Laws of 1982 1st ex. sess. and RCW 43.160.030.

(2) ~~((The board consists of eleven persons appointed by the governor, as well as the director of community, trade, and economic development, the director of revenue, the commissioner of employment security, the secretary of transportation and the chair and one minority member of the committee on trade and economic development of the house of representatives and the committee on commerce and trade of the senate, or the equivalent standing committees. The state agency heads shall serve as nonvoting advisory members of the board. The appointive members are as follows: A recognized private or public sector economist; one port district official; one county official; one city official; one representative of small businesses each from: (a) The area west of Puget Sound or the Interstate 5 corridor, (b) the area east of the Cascade range and west of the Columbia River; and (c) the area east of the Columbia River; one executive from large businesses each from the area west of the Cascades and the area east of the Cascades. The appointive members are initially appointed to terms as follows: Three members for one-year terms, three members for two-year terms, and three members for three-year terms, which includes the chair. Thereafter each succeeding term shall be for three years.~~

~~((3))~~ Pursuant to RCW 43.160.030, membership consists of: Twelve members appointed by the director of the department of commerce, four members appointed by legislative leadership: One member of the two major caucuses of the house of representatives and the senate, or designee, and four nonvoting ex-officio members consisting of the director or designee of: Department of revenue, employment security department, and department of transportation.

(3) Voting members appointed by the department of commerce serve three-year terms.

~~((4))~~ The chair of the board ((shall be)) is appointed by the ((governor)) director of the department of commerce.

~~((5))~~ The board may elect such other officers for such terms as it may from time to time deem necessary, in accordance with the board's ((bylaws)) policies.

~~((6))~~ The board's staff ((support)) and office space is provided by the department of ((community, trade, and economic development)) commerce, P.O. Box ~~((48300))~~ 42525, Olympia, Washington ~~((98504-8300; phone (360) 753-2200.~~

~~((5))~~ The overall purpose of the board is to aid the development of economic opportunities in the state of Washington. The board's general objectives include: (a) Strengthening the economies of areas of the state which have experienced or are expected to experience chronically high unemployment rates or below average growth in their economies; (b) encouraging the diversification of the economies of the state and regions within the state in order to provide greater seasonal and cyclical stability of income and employment; and (c) providing incentives for expansion of employment opportunities for groups of state residents that have been less successful relative to other groups in efforts to gain permanent employment.

~~((6))~~ In order to carry out its objectives, the board is authorized to make direct loans to political subdivisions of the state for the purposes of assisting the political subdivisions in financing the cost of public facilities, including the development of land and improvements for public facilities, as well as the acquisition, construction, rehabilitation, alteration, expansion, or improvement of the facilities. Grants may also be authorized for such purposes, but only when grants are uniquely required. Additional powers and duties of the board are as set forth in chapter 40, Laws of 1982 1st ex. sess. and chapter 43.160 RCW, and in particular section 5 thereof, and RCW 43.160.050.) 98504-2525; phone 360-725-3151.

(7) The community economic revitalization board is a unique statewide economic development resource. The board provides awards that help communities to:

(a) Respond rapidly to immediate business siting and expansion needs;

(b) Build feasible industrial sites for future business development;

(c) Target expansions in manufacturing, food processing, assembly, warehousing, industrial distribution, advanced technology, and other key sectors; and

(d) Spur creation and retention of higher wage jobs.

(8) The board provides low-interest loans (and in unique circumstances, grants) to help finance the local public infrastructure necessary to develop or retain stable business and industrial activity in furtherance of economic development. These improvements include industrial water, general-purpose industrial buildings and port facilities, sanitary and storm sewers, industrial wastewater treatment facilities, railroad spurs, telecommunications (broadband), electricity, natural gas, roads, and bridges.

AMENDATORY SECTION (Amending WSR 95-24-089, filed 12/5/95, effective 1/5/96)

WAC 133-10-020 Board meetings. (1) Regular meetings of the board are held on the third Thursday of January,

March, May, July, September and November commencing at 9:00 a.m. Notice of the times and places of the regular meetings will be published annually in a January edition of the *Washington State Register*. ~~((A copy of the schedule of regular meetings may also be obtained upon request from the board.))~~ The meeting schedule is published on the board's website biennially.

(2) Special meetings of the board ~~((may))~~ can be called at any time by the ~~((chair of the board or by a majority of the board members))~~ board. Notice of such meetings will be as provided by law.

~~((3) In addition to the meeting notices specified above, the board will also notify all persons, organizations or agencies whose business is scheduled to come before the board at any regular or special meeting.))~~

AMENDATORY SECTION (Amending WSR 95-24-089, filed 12/5/95, effective 1/5/96)

WAC 133-10-030 Communications with the board.

Any and all written communications with the board ~~((;))~~ including, but not limited to, requests for information or copies of agency records, or submittals of any nature, shall be addressed to the community economic revitalization board, in care of the chair, at the address which appears in WAC 133-10-010 ~~((4.))~~ Telephonic communications may be initiated by calling the phone number also listed in WAC 133-10-010(4)) (6).

AMENDATORY SECTION (Amending WSR 95-24-086, filed 12/5/95, effective 1/5/96)

WAC 133-20-010 Purpose. The purpose of this chapter shall be to insure the compliance by the community economic revitalization board with state public records law ~~((RCW 42.17.250))~~ chapter 42.56 RCW et seq.

AMENDATORY SECTION (Amending WSR 95-24-086, filed 12/5/95, effective 1/5/96)

WAC 133-20-020 Definitions. The following definitions shall apply to this chapter:

(1) "Board" means the community economic revitalization board, created pursuant to chapter 43.160 RCW, and shall also refer to the board's officers and staff, where appropriate.

(2) "Department" means the department of ~~((community, trade, and economic development, and shall also refer to the department's staff, where appropriate))~~ commerce.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-030 Public records available. All public records of the board are deemed to be available for public inspection and copying, except as otherwise provided by RCW ~~((42.17.260 and 42.17.310))~~ 42.56.070 and 42.56.210, as now or may hereafter be amended ~~((; and))~~ by WAC 133-20-090.

AMENDATORY SECTION (Amending WSR 95-24-086, filed 12/5/95, effective 1/5/96)

WAC 133-20-040 Public records officer. The board ~~((chair))~~ shall appoint ~~((the))~~ a public records officer ~~((for the board. The public records officer shall be responsible for implementation of the board's rules and regulations regarding inspection and copying of public records, and for insuring compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW))~~ who shall be responsible for implementing the board's rules regarding disclosure of public records, coordination of staff in this regard, and generally coordinating compliance by the staff and board with public records disclosure requirements per RCW 42.56.580.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-050 Records index. The board will ~~((make available to any person upon request a current index which provides identifying information as to the following records:~~

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statutes and regulations which have been adopted by the board;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the board relating to any regulatory, supervisory or enforcement responsibilities of the board, whereby the board determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(2) The current index promulgated by the board shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection and copying)) maintain and make available for public inspection and copying an index in accordance with RCW 42.56.070(5).

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-070 Requests for public records. ~~((In accordance with the requirements of chapter 42.17 RCW that agencies prevent unreasonable invasions of privacy, and to protect public records from damage or disorganization, and to prevent excessive interference with essential functions of the board, public records may be inspected or copied, or copies of such records may be obtained by members of the public, upon compliance with the following procedures:~~

(1) A request shall be made in writing upon a form prescribed by the board which shall be available at the board's offices, or by writing or calling the board. The form shall be presented or mailed to the public records officer, or to any member of the board's staff, if the public records officer is not available, at the board's offices during normal office hours. The request shall include the following information:

(a) The name, address, and organization represented, if any, of the person requesting the record;

(b) The calendar date on which the request was made, and, when presented in person, the time of day;

(c) The nature of the request;

(d) If the matter requested is referred to within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

(e) If the requested matter is not identifiable by reference to the board's current index, an appropriate description of the record requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to assist the member of the public in appropriately identifying the public record requested. (1) Any person wishing to inspect or copy public records of the board may submit the request in writing to the board, attn: Public Disclosure Officer or via email at ChairCERB Board@commerce.wa.gov. The request should include the following information:

(a) Name of requestor;

(b) Address of requestor;

(c) Other contact information, including telephone number and email address;

(d) Identification of the public records sought adequate for the public disclosure officer to locate the records; and

(e) The date and time of day of the request.

(2) The public disclosure officer may accept public records requests by telephone or in person during the board's normal business hours. However, the requesting party may be asked to submit the request in writing or the public disclosure officer may confirm receipt of the request and restate the substance of the request in writing.

(3) Nothing in this chapter shall be construed to require the board to compile statistics or other information from material contained in public records where doing so would unduly interfere with other essential functions of the board and is not required for litigation by rules of pretrial discovery.

(4) Requests must be for identifiable records. A request for all, or substantially all, of the board's public records is not a valid request.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-080 Copying. No fee shall be charged for the inspection of public records. The board may charge a fee of ~~\$(10)~~ 15 per page for providing copies of public records, when copies of more than ten pages are provided, and for use of the department's copy equipment. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-090 Exemptions. (1) The board reserves the right to determine that a public record requested (~~in accordance with the procedures outlined in WAC 133-20-070~~) is exempt from disclosure under the provisions of RCW 42.17.260 and 42.17.310.

(2) Pursuant to RCW 42.17.260, the board reserves the right to delete identifying details when it makes available or publishes any public record, in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing) is exempt, in whole or in part, under the provisions of chapter 42.56 RCW or other applicable provisions of law.

(2) In addition, there are exemptions outside the Public Records Act that restrict the availability of some documents held by the department for inspection and copying.

(3) All denials of requests for public records shall be accompanied by a written statement specifying the reason for the denial.

AMENDATORY SECTION (Amending WSR 95-24-086, filed 12/5/95, effective 1/5/96)

WAC 133-20-100 Review of denials of public records requests. (1) Any person who objects to the denial of a request for public records may petition for prompt review of such decision by submitting a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Following receipt of a written request for review of a decision denying a request for public records, the public records officer or other authorized staff member denying the request shall refer it to the (~~chair of the board. The chair or designee~~) executive committee. The executive committee shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with the final decision(=) within two business days following receipt of the request for review.

(~~(3) Administrative remedies shall not be considered exhausted until the request has been returned with a decision or until the close of the second business day following the denial of inspection, whichever occurs first.~~)

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-20-110 Protection of public records. (~~In order to properly protect the public records in the custody of the board, the following guidelines shall be adhered to by any person inspecting such public records:~~)

(1) ~~No public records shall be removed from the offices of the board;~~

(2) ~~Inspection of any public records shall be conducted in the presence of a designated board or department employee;~~

(3) ~~No public records may be marked or defaced in any manner during inspection;~~

(4) Public records which are maintained in a file jacket, or in a chronological order, may not be dismantled except for purposes of copying and then only by a designated employee of the board or department.

(5) ~~Access to file cabinets, shelves, vaults, etc., is restricted to board or department personnel.~~) (1) No person shall knowingly alter, deface, or destroy public records of the board.

(2) Original copies of public records of the board shall not be removed from the premises where maintained.

(3) Care and safekeeping of public records furnished pursuant to a request for inspection or copying shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same file sequence or organization as when furnished.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 133-20-120 Adoption of form.

AMENDATORY SECTION (Amending WSR 95-24-088, filed 12/5/95, effective 1/5/96)

WAC 133-40-010 Purpose. (1) Pursuant to chapter 43.160 RCW, the community economic revitalization board may, in its discretion, ~~((make direct loans to political subdivisions of the state of Washington for the purposes of assisting the political subdivisions in financing the cost of public facilities, when such facilities will serve to improve opportunities for the successful maintenance, establishment, or expansion of industrial facilities or will otherwise assist in the creation or retention of long-term economic opportunities, or assist in alleviating unemployment. The board may also make grants for such purposes, when every feasible effort has been made by the board to provide loans and loans are not possible, and when the board finds that unique circumstances exist which require making a grant))~~ provide low-interest loans (and in unique circumstances, grants) to help finance the local public economic development infrastructure necessary to develop or retain stable business and industrial activity.

(2) The purpose of this chapter is to prescribe the form and manner in which ~~((political subdivisions))~~ local governments and federally recognized Indian tribes may make application to the board for ~~((financial))~~ funding assistance ~~((and to provide for the consideration and disposition of such applications))~~.

AMENDATORY SECTION (Amending WSR 95-24-088, filed 12/5/95, effective 1/5/96)

WAC 133-40-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the community economic revitalization board.

(2) ~~((("Public facility" or "facility" means any facility for public purposes financed in whole or in part by any port dis-~~

trict, county, city, town, or special utility district of the state of Washington, including, but not limited to, sewer or other waste disposal facilities, arterials, bridges, access roads, port facilities, or water distribution and purification facilities.

(3) ~~"Public facility costs" means any direct or indirect cost incurred or to be incurred by a political subdivision in financing any public facility, including the cost of acquisition, construction, rehabilitation, alteration, expansion, or improvement of the facilities.~~

(4) ~~"Responsible official" means the person so designated in the resolution of the legislative body of the political subdivision authorizing or approving submittal of the application.)~~ "Local government" means any port district, county, city, town, special purpose district, and any other municipal corporations or quasi-municipal corporations in the state.

(3) "Public infrastructure and planning" or "public economic development infrastructure" means a project of a local government or a federally recognized Indian tribe for the ~~planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of: Bridges; roads; research, testing, training, and incubation facilities in areas designated as innovation partnership zones under RCW 43.330.270; buildings or structures; domestic and industrial water, earth stabilization, sanitary sewer, storm sewer, railroad, electricity, telecommunications (broadband), transportation, natural gas, and port facilities; all for the purpose of job creation, job retention, or job expansion.~~

AMENDATORY SECTION (Amending WSR 95-24-088, filed 12/5/95, effective 1/5/96)

WAC 133-40-030 Loan and grant applications. (1) Applications for ~~((loans and/or grants))~~ funding to assist in financing public ~~((facility))~~ infrastructure and planning costs may be made by any ~~((political subdivision))~~ local government and federally recognized Indian tribe of the state of Washington.

(2) Applications shall be submitted to the board in writing, on ~~((such forms as may be prescribed by and obtained from the board, and shall contain the following information:~~

(a) ~~Name and address of the political subdivision making the application for financial assistance.~~

(b) ~~Complete description of the public facility for which financing assistance is sought.~~

(c) ~~A full and detailed assessment of how the facility or project will improve the opportunities for the successful maintenance, establishment, or expansion of industrial facilities or will otherwise assist in the creation or retention of long-term economic opportunities, or assist in alleviating unemployment.~~

(d) ~~Specific amount and description of the public facility costs for which the loan and/or grant application is being made.~~

(e) ~~If application is being made for a loan, the applicant's proposed repayment schedule.~~

(f) ~~If application is being made for a grant in addition to or in lieu of a loan, a complete explanation as to why the applicant feels a loan would not be feasible and the supporting reasons or circumstances therefor))~~ forms provided by the board, forty-five to sixty days prior to the next board meeting.

(3) Any application for ~~((financial))~~ funding assistance submitted to the board shall ~~((be signed and verified by a responsible official. Such official))~~ submit a signed resolution of the governing body of the applicant approving the submittal of the application. The applicant shall also provide the board with any additional materials or information in support of the application which the board or its staff may request, either prior to or at the board's ~~((deliberations on))~~ consideration of the application.

(4) ~~((Applications for public works funding must be submitted at least forty five calendar days prior to regular meeting dates. Exceptions to this deadline will be determined by decision of the chair (or the vice chair, when acting as chair) or a majority of CERB members.))~~ Once the application has passed a threshold review, staff will work with the applicant to vet the application and the project. Staff will write a staff recommendation to be submitted to the board.

AMENDATORY SECTION (Amending WSR 95-24-088, filed 12/5/95, effective 1/5/96)

WAC 133-40-040 Board deliberations. (1) The board will consider and approve, in whole or in part, or disapprove, all applications for ~~((loans or grants at such))~~ funding assistance at regular or special meetings of the board as it may determine~~((, and the applicant will be notified accordingly. The board is directed to prioritize each proposed project according to relative benefit (RCW 43.160.060(3)). As long as there is more demand for loans or grants than funds available, projects are funded according to priority established in board policy. A responsible official of the applicant political subdivision shall be present during all board deliberations on the application, and shall provide all information regarding the public facility or application for financial assistance which the board may request)).~~

(2) Applicants are required to attend the board meeting at which their project is being considered. For committed private partner applications, the committed private partner identified in the application is also required to attend. RCW 43.160.060 (2)(i).

(3) Attendance under extreme hardship circumstances, approved by the chair, could include electronic attendance.

(4) Applicants will be formally notified in writing regarding any board funding decisions ~~((on whether or not to authorize a public facility loan or grant)).~~

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-40-050 Loan and grant contracts—Terms. ~~((1) If a public facility loan or grant is authorized by the board, the funds will be disbursed to the applicant political subdivision pursuant to a contract therefor, which will be offered to the political subdivision upon such reasonable terms and conditions as the board may determine: Provided, That the interest rate for loans shall not exceed ten percent per annum: Provided further, That loans shall not exceed twenty years in duration.~~

(2) Public facility loan and/or grant contracts offered to political subdivisions shall be executed by the political subdivision and the original thereof returned to the board prior to

~~the disbursement of any funds thereunder.))~~ (1) Upon project approval by the board, an initial offer of funding assistance will be sent to the award recipient. The initial offer must be signed by the recipient by the date stated in the initial offer. If the initial offer is not signed within this time period, it will be assumed that the award recipient has chosen to withdraw from the project.

(2) Prior to execution of a final contract, the award recipients must meet precontract conditions as stated in the initial offer of funding assistance. The award recipient must have all precontract conditions fulfilled within the time period specified in the initial offer of funding assistance.

(3) If an extension of time to meet the precontract conditions is necessary, the award recipient may make a request in writing at least three weeks prior to the precontract conditions due date.

(4) Once CERB funds have been committed to a project and precontract conditions have been met, the board will execute a contract with the award recipient.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-40-060 Requests for reconsideration. (1) Any ~~((political subdivision))~~ local government or federally recognized Indian tribe whose governing body ~~((takes exception to))~~ disagrees with the terms and conditions of the ~~((public facility loan and/or grant contract))~~ funding offered by the board ~~((upon authorization of such loan and/or grant))~~ may request the board in writing to reconsider, amend or modify its offer. ~~((Any such request shall propose specific amendments or modifications, and shall fully substantiate the reasons therefor.))~~

(2) Any ~~((political subdivision))~~ local government or federally recognized Indian tribe whose application for ~~((financial))~~ funding assistance was denied in whole or in part by the board, may petition the board in writing, within fifteen days of notification ~~((thereof may petition the board in writing)),~~ to reconsider its decision. Such requests for reconsideration ~~((shall))~~ will only be ~~((submitted))~~ considered with new or additional information in support of the application that was not available to the board during its initial ~~((deliberations))~~ consideration.

AMENDATORY SECTION (Amending WSR 83-10-041, filed 5/2/83)

WAC 133-50-020 Statement. ~~((Pursuant to WAC 197-10-800, the community economic revitalization board has reviewed its authorized activities and has found them all to be exempt under the provisions of chapter 197-10 WAC.))~~ As a precontract condition the board requires all construction award recipients to attest that the local government or federally recognized Indian tribe has complied with the provisions of the State Environmental Protection Act (SEPA, chapter 43.21C RCW) as applicable. The board provides the attestation for the award recipient.

WSR 20-07-075**PERMANENT RULES****WASHINGTON STATE UNIVERSITY**

[Filed March 16, 2020, 9:31 a.m., effective April 16, 2020]

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

Purpose: The university is modifying, clarifying, and updating the university's standards of conduct for students, chapter 504-26 WAC.

The proposed amendments decrease the number of student conduct board members from five to three and remove the option for storage of student firearms at the Washington State University (WSU) police department.

The rules regarding the composition of a conduct board are updated because the amount of time required for WSU to schedule and complete student conduct hearings with five conduct board members presents potential Title IX (of the Civil Rights Act) compliance concerns and may negatively impact both reporting and responding students awaiting a conduct hearing. Therefore, WSU proposes changes to WAC 504-26-110 to reduce the number of conduct board members required to hear a case. These changes will reduce the difficulty in scheduling cases for a hearing, reduce waiting times, and reduce the risk of noncompliance with Title IX's timely resolution requirements, while also promoting the well-being of reporting and responding students awaiting a conduct board hearing.

WSU's student conduct code regarding firearms is updated to reflect the discontinuation of student firearm storage by the WSU police department. Recent amendments to RCW 9.41.345 made the university's firearms storage program unfeasible and thus the university discontinued the program. Accordingly, WAC 504-26-213 must be amended to reflect this change in university policy.

Citation of Rules Affected by this Order: Amending WAC 504-04-110 and 504-26-213.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 20-02-107 on January 2, 2020.

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

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

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

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

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

Date Adopted: March 16, 2020.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-110 Composition of conduct board. A conduct board must consist of ~~((five))~~ three members. A quorum of ~~((five))~~ three is needed to hear a matter. The presiding officer is not a member of the conduct board and therefore is not considered for purposes of determining whether there is a quorum. A ~~((majority of))~~ minimum of one conduct board member~~((s))~~ hearing a matter must be an enrolled WSU student~~((s))~~ (undergraduate, graduate, or professional) and may be full-time or part-time. The remaining members may be students, or full-time or part-time faculty or staff of any rank or classification. When the complainant or respondent is enrolled at a particular campus, at least one member of the conduct board must be from that campus. No conduct board member may serve on a case if the member previously served on a board in a case involving the same complainant or respondent.

AMENDATORY SECTION (Amending WSR 18-23-083, filed 11/19/18, effective 12/20/18)

WAC 504-26-213 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on university premises or in university-approved housing. Airsoft guns and other items that shoot projectiles are not permitted in university-approved housing. ~~((Students wishing to maintain a firearm on campus for hunting or sporting activities must store the firearm with the Washington State University department of public safety.))~~

WSR 20-07-087**PERMANENT RULES****BOARD OF TAX APPEALS**

[Filed March 16, 2020, 3:53 p.m., effective April 16, 2020]

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

Purpose: The board of tax appeals proposes this new WAC to clarify what is considered a part of the board's official record.

Citation of Rules Affected by this Order: New WAC 456-11-015.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 20-03-096 on January 14, 2020.

Changes Other than Editing from Proposed to Adopted Version: Simplified language.

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

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

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

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

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

Date Adopted: February 28, 2020.

Carol A. Lien
Chair

Chapter 456-11 WAC

HEARINGS—PRACTICE AND PROCEDURE

NEW SECTION

WAC 456-11-015 Record evidence. The board may decline to review the record of a county board of equalization that is unduly large or disorganized, including a record that is not sufficiently numbered to allow for identification.

The board may issue an order requiring a party relying on evidence in a BOE record to resubmit that evidence numbered in a specific format.

WSR 20-07-091

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 17, 2020, 11:24 a.m., effective May 1, 2020]

Effective Date of Rule: May 1, 2020.

Purpose: Chapter 246-341 WAC, Behavioral health administrative requirements, the department of health (department) is adopting rules to create standards for licensure or certification of intensive behavioral health treatment services and mental health peer respite services, as well as making administrative changes to how a facility becomes certified to provide services to individuals on ninety or one hundred eighty day commitment orders to implement 2SHB 1394 (chapter 324, Laws of 2019).

Citation of Rules Affected by this Order: New WAC 246-341-0725 and 246-341-1137; repealing WAC 246-341-1136; and amending WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0700, 246-341-0718, 246-341-1118, and 246-341-1134.

Statutory Authority for Adoption: 2SHB 1394 (chapter 324, Laws of 2019), RCW 71.24.037, 71.24.648, and 71.24.649.

Other Authority: 2SHB 1394 (chapter 324, Laws of 2019), RCW 71.24.648, and 71.24.649.

Adopted under notice filed as WSR 20-01-150 on December 17, 2019.

A final cost-benefit analysis is available by contacting Stephanie Vaughn, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-4617, fax 360-236-2321, TTY 711, email stephanie.vaughn@doh.wa.gov.

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

Recently Enacted State Statutes: New 2, Amended 7, Repealed 1.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 1.

Date Adopted: March 13, 2020.

Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0110 Behavioral health services—Available certifications. A behavioral health agency licensed by the department may become certified to provide one or more of the mental health, substance use disorder, and problem and pathological gambling services listed below:

- (1) Outpatient and recovery support:
 - (a) Individual mental health treatment services;
 - (b) Brief mental health intervention treatment services;
 - (c) Group mental health therapy services;
 - (d) Family therapy mental health services;
 - (e) Rehabilitative case management mental health services;
 - (f) Psychiatric medication mental health services and medication support services;
 - (g) Day support mental health services;
 - (h) Mental health outpatient services provided in a residential treatment facility (RTF);
 - (i) Recovery support: Supported employment mental health services;
 - (j) Recovery support: Supported employment substance use disorder services;
 - (k) Recovery support: Supportive housing mental health services;
 - (l) Recovery support: Supportive housing substance use disorder services;
 - (m) Recovery support: Peer support mental health services;
 - (n) Recovery support: Mental health peer respite center;
 - (o) Recovery support: Wraparound facilitation mental health services;
 - ((+)) (p) Recovery support: Applied behavior analysis (ABA) mental health services;
 - ((+)) (q) Consumer-run recovery support: Clubhouse mental health services;
 - ((+)) (r) Substance use disorder level one outpatient services;
 - ((+)) (s) Substance use disorder level two intensive outpatient services;

- ~~((s))~~ (i) Substance use disorder assessment only services;
- ~~((t))~~ (u) Substance use disorder alcohol and drug information school services;
- ~~((u))~~ (v) Substance use disorder information and crisis services;
- ~~((v))~~ (w) Substance use disorder emergency service patrol services;
- ~~((w))~~ (x) Substance use disorder screening and brief intervention services; and
- ~~((x))~~ (y) Problem and pathological gambling services.
- (2) Involuntary and court-ordered outpatient services:
- (a) Less restrictive alternative (LRA) or conditional release support behavioral health services;
- (b) Emergency involuntary detention designated crisis responder (DCR) mental health and substance use disorder services;
- (c) Substance use disorder counseling services subject to RCW 46.61.5056; and
- (d) Driving under the influence (DUI) substance use disorder assessment services.
- (3) Crisis mental health services:
- (a) Crisis mental health telephone support services;
- (b) Crisis mental health outreach services;
- (c) Crisis mental health stabilization services; and
- (d) Crisis mental health peer support services.
- (4) Opioid treatment program (OTP) services.
- (5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:
- (a) Withdrawal management facility services:
- (i) Withdrawal management services - Adult;
- (ii) Withdrawal management services - Youth;
- (iii) Secure withdrawal management and stabilization services - Adult; and
- (iv) Secure withdrawal management and stabilization services - Youth.
- (b) Residential substance use disorder treatment services:
- (i) Intensive substance use disorder inpatient services;
- (ii) Recovery house services;
- (iii) Long-term treatment services; and
- (iv) Youth residential services.
- (c) Mental health inpatient services:
- (i) Evaluation and treatment services - Adult;
- (ii) Evaluation and treatment services - Youth;
- (iii) Intensive behavioral health treatment services;
- (iv) Child long-term inpatient program services;
- ~~((y))~~ (v) Crisis stabilization unit services;
- ~~((z))~~ (vi) Triage - Involuntary services;
- ~~((aa))~~ (vii) Triage - Voluntary services; and
- ~~((ab))~~ (viii) Competency evaluation and restoration treatment services.

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0200 Behavioral health services—Definitions. The definitions in this section contain words and phrases used for behavioral health services.

"Absentee coverage" means the temporary replacement a clubhouse provides for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.

"Administrator" means the designated person responsible for the operation of either the licensed treatment agency, or certified treatment service, or both.

"Adult" means an individual eighteen years of age or older. For purposes of the medicaid program, adult means an individual twenty-one years of age or older.

"ASAM criteria" means admission, continued service, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Authority" means the Washington state health care authority.

"Background check" means a search for criminal history record information that includes nonconviction data. A background check may include a national fingerprint-based background check, including a Federal Bureau of Investigation criminal history search.

"Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, or problem and pathological gambling disorders.

"Behavioral health agency" or "agency" means an entity licensed by the department to provide behavioral health services.

"Behavioral health organization" or "BHO" means any county authority or group of county authorities or other entity recognized by the health care authority in contract in a defined region.

"Branch site" means a physically separate licensed site, governed by a parent organization, where qualified staff provides certified treatment services.

"Care coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

"Certified" or "certification" means the status given by the department to provide substance use disorder, mental health, and problem and pathological gambling program-specific services.

"Certified problem gambling counselor" is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.

"Change in ownership" means one of the following:

(a) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(b) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(c) The current ownership takes on a new owner of five per cent or more of the organizational assets.

"Chemical dependency professional" or "CDP" means a person credentialed by the department as a chemical dependency professional (CDP) under chapter 246-811 WAC.

"Child," "minor," and "youth" mean:

(a) An individual under the age of eighteen years; or

(b) An individual age eighteen to twenty-one years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age eighteen to twenty-one years who receives EPSDT services is not considered a "child" for any other purpose.

"Child mental health specialist" means a mental health professional with the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children with serious emotional disturbance and their families; and

(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and their families under the supervision of a child mental health specialist.

"Clinical record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

"Clinical supervision" means regular and periodic activities performed by a professional licensed or certified under Title 18 RCW practicing within their scope of practice. Clinical supervision includes review of assessment, diagnostic formulation, treatment planning, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care.

"Clubhouse" means a community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.

"Community mental health agency" means the same as "behavioral health agency."

"Community relations plan" means a plan to minimize the impact of an opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum:

(a) Assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week;

(b) Prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law;

(c) Screening for patients being considered for admission to residential services;

(d) Diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program;

(e) Investigation, legal, and other nonresidential services under chapter 71.05 RCW;

(f) Case management services;

(g) Psychiatric treatment including medication supervision;

(h) Counseling;

(i) Psychotherapy;

(j) Assuring transfer of relevant patient information between service providers;

(k) Recovery services; and

(l) Other services determined by behavioral health organizations.

"Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

"Consent" means agreement given by an individual after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

"Co-occurring disorder" means the ~~(co-existence)~~ coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Critical incident" means any one of the following events:

(a) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;

(b) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;

(c) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;

(d) A bomb threat;

(e) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;

(f) Suicide attempt at the facility;

(g) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and

(h) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

"Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Deemed" means a status that may be given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

"Department" means the Washington state department of health.

"Designated crisis responder" or "DCR" means a mental health professional appointed by the county or the BHO who is authorized to conduct investigations, detain persons up to seventy-two hours at the proper facility, and carry out the other functions identified in chapters 71.05 and 71.34 RCW. To qualify as a designated crisis responder, a person must complete substance use disorder training specific to the duties of a designated crisis responder.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

(a) Has a record of such an impairment; or

(b) Is regarded as having such impairment.

"Early and periodic screening, diagnosis and treatment" or "EPSDT" means a comprehensive child health medicaid program that entitles individuals age twenty and younger to preventive care and treatment services. These services are outlined in chapter 182-534 WAC.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Grievance" means the same as defined in WAC 182-538D-0655.

"HIV/AIDS brief risk intervention" means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"Individual" means a person who applies for, is eligible for, or receives behavioral health services from an agency licensed by the department.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem and pathological gambling treatment programs under RCW 43.20A.890.

"Medical necessity" or "medically necessary" is a term for describing a required service that is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. Course of treatment may include mere observation or, where appropriate, no treatment at all.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician assistant. An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

"Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized health care provider.

"Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

"Mental health professional" or "MHP" means a designation given by the department to an agency staff member or an attestation by the licensed behavioral health agency that the person meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.

"Minor" means the same as "child."

"Off-site" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

"Outpatient services" means behavioral health treatment services provided to an individual in a nonresidential setting. A residential treatment facility (RTF) may become certified to provide outpatient services.

"Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

"Peer counselor" means the same as defined in WAC 182-538D-0200.

"Probation" means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

"Problem and pathological gambling" means one or more of the following disorders:

(a) "Pathological gambling" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of pathological gambling that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

"Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment, progress in recovery, and progress toward intended outcomes.

"Recovery" means the ~~((process in which people are able to live, work, learn, and participate fully in their communities))~~ same as defined in RCW 71.24.025.

"Relocation" means a physical change in location from one address to another.

"Remodeling" means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.

"Secretary" means the secretary of the department of health.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"Short-term facility" means a facility licensed and certified by the department of health under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

"Triage facility" means a short-term facility or a portion of a facility licensed and certified by the department under RCW 71.24.035 that is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility must meet department residential treatment facility standards and may be structured as either a voluntary or involuntary placement facility or both.

"Triage involuntary placement facility" means a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated crisis responder may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for potential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

"Triage voluntary placement facility" means a triage facility where the individual may elect to leave the facility of their own accord, at any time. A triage voluntary placement facility may only accept voluntary admissions.

"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

"Vulnerable adult" has the same meaning as defined in chapter 74.34 RCW.

"Withdrawal management" means services provided during the initial period of care and treatment to an individual intoxicated or incapacitated by substance use.

"Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

"Youth" means the same as "child."

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0365 Agency licensure and certification—Fee requirements. (1) Payment of licensing and specific program certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application fees for agency certification for approved substance use disorder treatment programs	
New agency application	\$1,000
Branch agency application	\$500
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310

Application fees for agency certification for approved substance use disorder treatment programs	
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

(7) The department charges the following fees for approved mental health treatment programs:

Initial licensing application fee for mental health treatment programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual licensing fees for deemed agencies	
Deemed agencies licensed by the department	\$500 annual licensing fee
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the department's current published "Service

Encounter Reporting Instructions for BHOs" and the "Consumer Information System (CIS) Data Dictionary for BHOs."

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) Agencies providing ~~((inpatient))~~ mental health peer respite services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed; and

(b) Ninety dollars annual certification fee, per bed.

SECTION SEVEN—OUTPATIENT AND RECOVERY SUPPORT SERVICES

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0700 Outpatient and recovery support services—General. Outpatient behavioral health services and recovery support services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

(1) Outpatient services include the following:

(a) Individual mental health treatment services;

(b) Brief mental health intervention treatment services;

(c) Group mental health therapy services;

(d) Family therapy mental health services;

(e) Rehabilitative case management mental health services;

(f) Psychiatric medication mental health services and medication support;

(g) Day support mental health services;

(h) Mental health outpatient services provided in a residential treatment facility (RTF);

(i) ~~((Recovery support services including:~~

~~(i) Supported employment mental health and substance use disorder services;~~

~~(ii) Supportive housing mental health and substance use disorder services;~~

~~(iii) Peer support mental health services;~~

~~(iv) Wraparound facilitation mental health services;~~

~~(v) Applied behavior analysis (ABA) mental health services; and~~

~~(vi) Consumer-run clubhouse mental health services.~~

~~((j))~~ (j) Level one outpatient substance use disorder services;

~~((k))~~ (k) Level two intensive outpatient substance use disorder services;

~~((l))~~ (l) Substance use disorder assessment only services;

~~((m))~~ (m) Alcohol and drug information school;

~~((n))~~ (n) Substance use disorder information and crisis services;

~~((o))~~ (o) Substance use disorder emergency service patrol services;

~~((p))~~ (p) Substance use disorder screening and brief intervention services; and

~~((q))~~ (q) Problem and pathological gambling services.

(2) Recovery support services include the following:

(a) Supported employment mental health and substance use disorder services;

(b) Supportive housing mental health and substance use disorder services;

(c) Peer support mental health services;

(d) Wraparound facilitation mental health services;

(e) Applied behavior analysis (ABA) mental health services;

(f) Consumer-run clubhouse mental health services; and

(g) Mental health peer respite services.

(3) A behavioral health agency that provides outpatient or recovery support services must:

(a) Be licensed by the department as a behavioral health agency; and

(b) Meet the applicable program-specific requirements for each ~~((outpatient))~~ behavioral health service~~((s))~~ provided.

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-0718 ~~((Outpatient))~~ Recovery support services—Recovery support—General. Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(1) Recovery support services include:

(a) Supported employment services;

(b) Supportive housing services;

(c) Peer support services;

(d) Mental health peer respite services;

(e) Wraparound facilitation services;

~~((e))~~ (f) Applied behavior analysis (ABA) services; and

~~((f))~~ (g) Consumer-run clubhouse services.

(2) An agency that provides any recovery support service may operate through an agreement with a licensed behavioral health agency that provides certified outpatient behavioral health services listed in WAC 246-341-0700. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements. Subsections (3) through (5) of this section list the abbreviated requirements for assessments, staff, and clinical records.

(3) When providing any recovery support service, a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals;

(b) Refer an individual to a more intensive level of care when appropriate; and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual.

(4) An agency providing recovery support services must ensure:

(a) Each staff member working directly with an individual receiving any recovery support service has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; and

(b) The staff member's personnel record documents the training.

(5) An agency providing any recovery support service must maintain an individual's clinical record that contains:

(a) Documentation of the following:

(i) The name of the agency or other sources through which the individual was referred;

(ii) A brief summary of each service encounter, including the date, time, and duration of the encounter; and

(iii) Names of participant(s), including the name of the individual who provided the service.

(b) Any information or copies of documents shared by, or with, a behavioral health agency certified for outpatient mental health services.

NEW SECTION

WAC 246-341-0725 Recovery support services—Recovery support—Mental health peer respite. (1) Mental health peer respite services are voluntary, holistic, trauma-informed, short-term, noncrisis services, provided in a home-like environment, which focus on recovery and wellness. These services are limited to individuals who are:

(a) At least eighteen years of age;

(b) Experiencing psychiatric distress but who are not detained or involuntarily committed under chapter 71.05 RCW; and

(c) Independently seeking respite services by their own choice.

(2) An agency certified to provide mental health peer respite services must be licensed according to this chapter and meet the general requirements in:

(a) WAC 246-341-0718 for recovery support services; and

(b) WAC 246-341-0724 for peer support services.

(3) An agency certified to provide mental health peer respite services must develop and implement policies and procedures that address how the agency will:

(a) Have a memorandum of understanding with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care;

(b) Be staffed twenty-four-hours per day, seven days a week by certified peer counselors;

(c) Be peer-run. This includes:

(i) Having a managing board, with a majority of members who are peers, that manages the day-to-day operations of the mental health peer respite center and reports to the agency's governing board; and

(ii) Supervision of services by a certified peer counselor who meets the qualifications of a mental health professional.

(d) Limit services to an individual to a maximum of seven nights in a thirty-day period; and

(e) Develop and implement a guest agreement that establishes expectations for individuals receiving mental health

peer respite services, including expectations for things such as: Cooking, cleaning, self-management of medications, and personal hygiene.

(4) An agency certified to provide mental health peer respite services must provide the services in a residence that meets local building and zoning codes and must develop and implement policies and procedures that address the following:

(a) Kitchen environment, including kitchen equipment that is in good working repair and follows general principles of safe food handling;

(b) Food storage, including how the agency will provide each individual with adequate storage for perishable and non-perishable food items;

(c) Laundry facilities, including how the agency will give residents access to laundry facilities and equipment that is clean and in good repair;

(d) Housekeeping, including cleaning, maintenance, and refuse disposal;

(e) Bedding and linens, including how the agency will provide each individual with clean, sanitary bedding and linens that are in good repair;

(f) Secure storage, including how each individual is provided with secure storage for personal belongings including medications;

(g) Furnishings, including how the agency will provide appropriate furniture for bedrooms and common spaces, as well as other furnishings appropriate to create a home-like setting; and

(h) Accessibility needs of individuals with disabilities as it relates to program operations and communications.

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1118 Mental health inpatient services—General. (1) Inpatient services include the following types of behavioral health services certified by the department:

(a) Evaluation and treatment services;

(b) Intensive behavioral health treatment services;

(c) Child long-term inpatient program (CLIP);

~~((+))~~ (d) Crisis stabilization units;

~~((+))~~ (e) Triage services; and

~~((+))~~ (f) Competency evaluation and treatment services.

(2) An agency providing inpatient services to an individual must:

(a) Be a facility licensed by the department under one of the following chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC).

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650;

(d) Meet the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132;

(e) Have policies and procedures to support and implement the specific applicable program-specific requirements; and

(f) If applicable, have policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(3) The behavioral health agency providing inpatient services must document the development of an individualized annual training plan, to include at least:

(a) Least restrictive alternative options available in the community and how to access them;

(b) Methods of individual care;

(c) Deescalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and

(d) The requirements of chapter 71.05 and 71.34 RCW, this chapter, and protocols developed by the department.

(4) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection ~~((4))~~ (3) of this section.

(5) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

AMENDATORY SECTION (Amending WSR 19-09-062, filed 4/16/19, effective 5/17/19)

WAC 246-341-1134 Mental health inpatient services—Evaluation and treatment services. Evaluation and treatment services are provided for individuals who are detained or on fourteen, ninety, or one hundred eighty-day civil commitment orders according to chapter 71.05 RCW. An agency providing evaluation and treatment services may choose to serve individuals on short-term commitment orders (fourteen-day), long-term commitment orders (ninety-day and one hundred eighty-day), or both. Agencies providing evaluation and treatment services may also provide services for individuals who are not detained or committed.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132 an agency providing evaluation and treatment services must ensure:

~~((1))~~ (a) Designation of a physician or other mental health professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility; and

~~((2))~~ (b) A policy management structure that establishes:

~~((a))~~ (i) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;

~~((b))~~ (ii) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that rea-

sonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

~~((c))~~ (iii) Procedures to assure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150;

~~((d))~~ (iv) Procedures to ensure that if the facility releases the individual to the community, the facility informs the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

~~((e))~~ (v) Procedures to document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including a psychosocial evaluation by a mental health professional; and

~~((f))~~ (vi) For individuals who are being evaluated as dangerous mentally ill offenders under RCW 72.09.370(7), the professional person in charge of the evaluation and treatment facility must consider filing a petition for a ninety day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

(2) A facility certified to provide evaluation and treatment services for youth may provide treatment for a child on a one hundred eighty-day inpatient involuntary commitment order only until the child is discharged from the order to the community, or until a bed is available for that child in a child long-term inpatient treatment facility (CLIP).

NEW SECTION

WAC 246-341-1137 Behavioral health inpatient services—Intensive behavioral health treatment services. (1) Intensive behavioral health treatment services are intended to assist individuals in transitioning to lower levels of care, including individuals on a less restrictive alternative order. These services are provided for individuals with behavioral health conditions whose impairment or behaviors do not meet or no longer meet criteria for involuntary inpatient commitment under chapter 71.05 RCW, but whose care needs cannot be met in other community-based settings due to one or more of the following:

(a) Self-endangering behaviors that are frequent or difficult to manage;

(b) Intrusive behaviors that put residents or staff at risk;

(c) Complex medication needs, which include psychotropic medications;

(d) A history or likelihood of unsuccessful placements in other community facilities or settings such as:

(i) Assisted living facilities licensed under chapters 18.20 RCW and 388-78A WAC;

(ii) Adult family homes licensed under chapters 70.128 RCW and 388-76 WAC;

(iii) Permanent supportive housing provided in accordance with chapter 388-106 WAC;

(iv) Supported living certified under chapter 388-101 WAC; or

(v) Residential treatment facilities licensed under chapters 71.12 RCW and 246-337 WAC providing a lower level of services.

(e) A history of frequent or protracted mental health hospitalizations; or

(f) A history of offenses against a person or felony offenses that cause physical damage to property.

(2) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency providing intensive behavioral health treatment services must ensure services are provided:

(a) In a residential treatment facility licensed under chapters 71.12 RCW and 246-337 WAC;

(b) By a multidisciplinary team including clinicians, community supports, and those responsible for discharge planning; and

(c) With twenty-four hour observation of individuals by at least two staff who are awake and on duty.

(3) The agency may:

(a) Only admit individuals at least eighteen years of age whose primary care need is treatment for a mental health disorder that does not include a diagnosis of dementia or an organic brain disorder, but may include individuals who have a secondary diagnosis of intellectual or developmental disabilities;

(b) Only admit individuals who are capable of performing activities of daily living without direct assistance from agency staff; and

(c) Not admit individuals with a diagnosis of dementia or an organic brain disorder who can more appropriately be served in an enhanced services facility licensed under chapters 70.97 RCW and 388-107 WAC or other long-term care facility as defined in RCW 70.129.010.

(4) The agency must follow WAC 246-341-0805 regarding less restrictive alternative services.

(5) In addition to the applicable training requirements in this chapter, the agency must train all direct care staff on how to provide services and appropriate care to individuals with intellectual or developmental disabilities as described in Title 71A RCW, including:

(a) An overview of intellectual and developmental disabilities including how to differentiate intellectual or developmental disabilities from mental illness;

(b) Effective communication including methods of verbal and nonverbal communication when supporting individuals with intellectual or developmental disabilities; and

(c) How to identify behaviors in individuals that constitutes "normal stress" and behaviors that constitute a behavioral health crisis.

(6) The agency must develop and implement policies and procedures that explain how the agency will have sufficient numbers of appropriately trained, qualified, or credentialed staff available to safely provide all of the following services in accordance with an individual's care plan and needs:

(a) Planned activities for psychosocial rehabilitation services, including:

(i) Skills training in activities of daily living; skills training may include teaching and prompting or cueing individuals to perform activities, but does not include directly assisting individuals in performing the activities;

(ii) Social interaction;

(iii) Behavioral management, including self-management and understanding of recovery;

(iv) Impulse control;

(v) Training and assistance for self-management of medications; and

(vi) Community integration skills.

(b) Service coordination provided by a mental health professional;

(c) Psychiatric services, including:

(i) Psychiatric nursing, on-site, twenty-four hours per day, seven days per week;

(ii) Timely access to a psychiatrist, psychiatric advanced registered nurse practitioner, or physician's assistant who is licensed under Title 18 RCW operating within their scope of practice who by law can prescribe drugs in Washington state; and

(iii) A mental health professional on site at least eight hours per day and accessible twenty-four hours per day, seven days per week.

(d) Access to intellectual and developmental disability services provided by a disability mental health specialist as described in WAC 182-538D-0200 or a person credentialed to provide applied behavioral analysis; and

(e) Peer support services provided by certified peer counselors.

(7) The agency must provide access to or referral to substance use disorder services, and other specialized services, as needed.

(8) The agency must provide a system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent a resident from leaving the licensed space on their own accord, except temporary delays as allowed by (a) of this subsection. Such systems include:

(a) Limited egress systems consistent with state building code, such as delayed egress;

(b) Appropriate staffing levels to address safety and security; and

(c) Policies and procedures that:

(i) Are consistent with the assessment of the individual's care needs and plan; and

(ii) Do not limit the rights of a voluntary individual.

(9) The agency must have a memorandum of understanding with the local crisis system, including the closest agency providing evaluation and treatment services and designated crisis responders to ensure timely response to and assessment of individuals who need a higher level of care.

(10) The agency must develop and implement policies and procedures regarding discharge and transfer that:

(a) Allows each individual to stay in the facility and not discharge the individual to another facility type or other level of care unless another placement has been secured, and:

(i) The individual completed their care objectives and no longer needs this level of care;

(ii) The individual has medical care needs that the agency cannot provide or needs direct assistance with activities of daily living;

(iii) The individual needs a higher level of behavioral health care, such as evaluation and treatment services, due to

a change in behavioral health status or because the individual's conditional release or less restrictive alternative order is revoked; or

(iv) The individual is convicted of any gross misdemeanor or felony while being a resident in the facility where the conviction was based on conduct that caused significant harm to another individual residing in the agency or staff member and there is a likelihood the person continues to endanger the safety and health of residents or staff. For the purposes of this subsection, conviction includes all instances in which plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence have been deferred or suspended.

(b) Allows individuals who are discharged in accordance with (a)(ii) or (iii) of this subsection to be accepted back into the facility if and when it is medically, clinically, legally, and contractually appropriate;

(c) Allows each individual to stay in the facility and not transfer to another agency providing intensive behavioral health treatment services unless the individual requests to receive services in a different agency certified to provide intensive behavioral health treatment services;

(d) Follows all transfer and discharge documentation requirements in WAC 246-341-0640(15) and also documents the specific time and date of discharge or transfer. Additionally, the agency must give the following information to the individual, the individual's representative, and family or guardian, as appropriate, before discharge or transfer:

(i) The name, address, and telephone number of the applicable ombuds;

(ii) For individuals with disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(iii) The mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(e) Includes transportation coordination that informs all parties involved in the coordination of care.

(11) The agency must protect and promote the rights of each individual and assist the individual to exercise their rights as an individual, as a citizen or resident of the United States and the state of Washington. To do this, the agency must:

(a) Train staff on resident rights and how to assist individuals in exercising their rights;

(b) Protect each individual's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the agency;

(c) Post names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the relevant ombuds programs, and the protection and advocacy systems;

(d) Provide reasonable access to an individual by the individual's representative or an entity or individual that provides health, social, legal, or other services to the individual, subject to the individual's right to deny or withdraw consent at any time;

(e) Allow representatives of appropriate ombuds to examine a resident's clinical records with the permission of

the individual or the individual's legal representative, and consistent with state and federal law;

(f) Not require or request individuals to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of individual's rights;

(g) Fully disclose to individuals the agency's policy on accepting medicaid as a payment source; and

(h) Inform the individual both orally and in writing in a language that the individual understands of their applicable rights in accordance with this chapter. The notification must be made upon admission and the agency must document the information was provided.

(12) In addition to all other applicable rights, an individual receiving certified intensive behavioral health treatment services has the right to:

(a) Be free of interference, coercion, discrimination, and reprisal from the agency in exercising their rights;

(b) Choose a representative who may exercise the individual's rights to the extent provided by law;

(c) Manage their own financial affairs;

(d) Personal privacy and confidentiality, including the following considerations:

(i) Personal privacy applies to accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups.

(ii) The individual may approve or refuse the release of personal and clinical records to an individual outside the agency unless otherwise provided by law.

(iii) Privacy in communications, including the right to:

(A) Send and promptly receive mail that is unopened;

(B) Have access to stationery, postage, and writing implements; and

(C) Have reasonable access to the use of a telephone where calls can be made without being overheard.

(e) Prompt resolution of voiced grievances including those with respect to treatment that has been furnished as well as that which has not been furnished and the behavior of other residents;

(f) File a complaint with the department of health for any reason;

(g) Examine the results of the most recent survey or inspection of the agency conducted by federal or state surveyors or inspectors and plans of correction in effect with respect to the agency;

(h) Receive information from client advocates, and be afforded the opportunity to contact these advocates;

(i) Access the following without interference:

(i) Any representative of the state;

(ii) The individual's medical provider;

(iii) Ombuds;

(iv) The agencies responsible for the protection and advocacy system for individuals with disabilities, developmental disabilities, and individuals with mental illness created under federal law; and

(v) Subject to reasonable restrictions to protect the rights of others and to the individual's right to deny or withdraw consent at any time, immediate family or other relatives of the individual and others who are visiting with the consent of the resident.

(j) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents;

(k) Secure storage, upon request, for small items of personal property;

(l) Be notified regarding transfer or discharge;

(m) Be free from restraint and involuntary seclusion;

(n) Be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(o) Choose activities, schedules, and health care consistent with the individual's interests, assessments, and plans of care;

(p) Interact with members of the community both inside and outside the agency;

(q) Make choices about aspects of their life in the agency that are significant to the individual;

(r) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(s) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct their own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the individual;

(t) Participate in social, religious, and community activities that do not interfere with the rights of other individuals in the agency;

(u) Reside and receive services in the agency with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other individuals would be endangered; and

(v) Organize and participate in participant groups.

(13) The individual and their representative have the right to:

(a) Access all records pertaining to the individual including clinical records according to requirements in WAC 246-341-0650; and

(b) Be notified, along with interested family members, when there is:

(i) An accident involving the individual which requires or has the potential for requiring medical intervention;

(ii) A significant change in the individual's physical, mental, or psychosocial status; and

(iii) A change in room or roommate assignment.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-341-1136 Mental health inpatient services—
Exception—Long-term certification.

WSR 20-07-102 PERMANENT RULES DEPARTMENT OF REVENUE

[Filed March 17, 2020, 2:31 p.m., effective April 17, 2020]

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

Purpose: The department is amending WAC 458-29A-400 to reflect 2019 legislation that exempts certain leasehold interests in arenas with a seating capacity of more than two thousand from the leasehold excise tax.

Citation of Rules Affected by this Order: Amending WAC 458-29A-400.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 19-21-141 on October 21, 2019.

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

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

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

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

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

Date Adopted: March 17, 2020.

Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-057, filed 12/27/18, effective 1/27/19)

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) Introduction.

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in

effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) Operating properties of a public utility.

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) Student housing at public and nonprofit schools and colleges.

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) Subsidized housing.

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) Nonprofit fair associations.

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) Public employee housing.

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

(b) Examples.

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) Interests held by enrolled Indians.

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or

held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.-451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(9) Leases on Indian lands to non-Indians.

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(10) Annual taxable rent is less than two hundred fifty dollars.

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) Examples.

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays \$125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed \$250 per year in taxable rent.

(11) Leases for a continuous period of less than thirty days. Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(12) Month-to-month leases in residential units to be demolished or removed.

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these

leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(13) Public works contracts.

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(14) Correctional industries in state adult correctional facilities.

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) Examples.

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) Camp facilities for persons with disabilities.

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(16) Public or entertainment areas of certain baseball stadiums.

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(17) Public or entertainment areas of certain football stadiums and exhibition centers. Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection (16) of this rule.

(18) Public facilities districts. All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(19) State route 16 corridor transportation systems. All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(20) Sales/leasebacks by regional transit authorities. All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

(21) Interests consisting of three thousand or more residential and recreational lots. All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and

recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. RCW 82.29A.136.

(22) Historic sites owned by the United States government or municipal corporations. All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(23) Amphitheaters.

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

(24) Military housing.

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) Community colleges and technical colleges.

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

(i) Food services for students, faculty, and staff;

(ii) The operation of a bookstore on campus; or

(iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

(26) Anaerobic digesters.

(a) Beginning July 1, 2018, all leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) Claims for the exemption described in (a) of this subsection must be filed with the department on the form *Leasehold excise tax exemption to operate an anaerobic digester* available at <https://dor.wa.gov>. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department must verify and approve claims as it determines to be justified and in accordance with this subsection. No claims may be filed after December 31, 2024.

(c) For the purposes of this subsection, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment. See RCW 82.08.900.

(27) Exemption for public or entertainment areas of certain arenas. Leasehold interests in the public or entertainment areas of an arena are exempt from the leasehold excise tax if the arena has seating capacity of more than two thousand, and is located on land owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand. For the purpose of this subsection, the term "public or entertainment areas" has the same meaning as set forth in subsection (23) of this rule.

(28) Expiration date for new tax preferences.

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.