

WSR 23-23-011
WITHDRAWAL OF PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed November 2, 2023, 9:33 a.m.]

The office of financial management requests the withdrawal of WSR 23-20-079, which was filed on September 29, 2023. After further consideration, this rule amendment is not necessary; therefore, a decision has been made not to move forward with this rule making at this time.

Should you have any questions regarding this matter, please contact Brandy Chinn at 360-878-2901.

Nathan Sherrard
Assistant Legal Affairs Counsel

WSR 23-23-021

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed November 2, 2023, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-131.

Title of Rule and Other Identifying Information: Chapter 137-56 WAC, Community residential programs, work/training release.

Hearing Location(s): On December 28, 2023, at 2:00 p.m., via Microsoft Teams meeting. Please contact the rules coordinator at vvchebotar@docl.wa.gov to register.

Date of Intended Adoption: January 25, 2024.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections, Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@docl.wa.gov, by December 21, 2023.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, email vvchebotar@docl.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish current and relevant rule violations with progressive discipline for partial confinement settings under the jurisdiction of the department. This process includes adding Graduated reentry—Electronic home monitoring, work/training release facilities and the community parenting alternative—FOSA.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Department of corrections, governmental.

Name of Agency Personnel Responsible for Drafting: Carrie Trogdon-Oster, Department of Corrections Headquarters, 253-377-7636; Implementation and Enforcement: Carrie Stanley, Department of Corrections Headquarters, 360-480-3921.

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

A cost-benefit analysis is not required under RCW 34.05.328.

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

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

Scope of exemption for rule proposal: [No information supplied by agency].

October 17, 2023
Cheryl Strange
Secretary

OTS-4922.3

Chapter 137-56 WAC

~~((COMMUNITY RESIDENTIAL PROGRAMS, WORK/TRAINING RELEASE))~~ PARTIAL CONFINEMENT

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or ((his/her)) their designee.

(2) "Department" is the department of corrections.

(3) (~~("Work/training release facility")~~) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the community parenting program or the graduated reentry program for no more than 18 months, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes reentry center, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(4) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to individuals wherein the individual is confined in a private residence 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the individual is subject to electronic monitoring.

(5) "Administrative termination" is the nondisciplinary reclassification of an individual from partial confinement to total confinement by the administrator/designee if they determine placement is no longer viable and/or if the circumstances of placement create a risk to the community, participant, child, or family, or the individual self-terminates, is no longer suitable, or fails to maintain placement requirements (e.g., no longer has viable housing options, medical condition, financial hardship, failing to maintain an operable telephone line).

(6) "Supervisor" is a staff member assigned by the (~~(community corrections regional))~~ administrators to administer and supervise a specific (~~(work/training release facility))~~ partial confinement program and includes ((his/her)) their designee.

~~((4) "Work/training release community corrections officer"))~~ (7) "Community corrections officer" or "specialist" is a staff member also known as a "case manager" assigned by the (~~(work/training release facility))~~ community corrections supervisor/reentry center manager to supervise and counsel a caseload of (~~(work/training release residents at a specific work/training release facility))~~ individuals assigned to a reentry center or partial confinement program.

~~((5))~~ (8) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and/or monitoring for (~~(work/training release residents))~~ reentry center individuals.

~~((6) "Work/training release offender"))~~ (9) "Partial confinement individual" is any (~~(offender))~~ individual committed to or transferred

to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated ~~((work/training release facility))~~ reentry center or partial confinement program.

~~((7))~~ (10) "Sponsor-escort" is a responsible citizen ~~((as-signed))~~ screened and approved to escort and monitor ~~((a-resident))~~ an individual during official and social activities outside of the ~~((work/training release facility))~~ reentry center.

~~((8) "Work/training release facility"))~~ (11) "Reentry center" is an establishment approved for housing and monitoring of ~~((work/training release residents))~~ reentry center individuals during the ~~((resident's))~~ individual's stay in a ~~((work/training release program))~~.

~~((9) "One working day"))~~ reentry center. It also includes individuals who have been screened and approved for placement on partial confinement programs.

(12) "Business" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

~~((10))~~ (13) "Hearing officer" means an employee of the department authorized to conduct disciplinary/department hearings.

~~((11))~~ (14) "Hearings program administrator" means the administrator of the hearings unit of the department, or the hearing program administrator's designee.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-015 Disposition of earnings. Reasonable payment, as determined by the department ~~((of))~~, for board and room charges will be deducted from the ~~((work/training release residents'))~~ reentry center individual's earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the ~~((work/training release offender))~~ reentry center individual while under ~~((a-work release))~~ an approved partial confinement plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a ~~((work/training release offender))~~ reentry center individual by the department.

AMENDATORY SECTION (Amending WSR 82-08-055, filed 4/5/82)

WAC 137-56-020 Secretary's authority to grant or deny. The secretary or ~~((his or her))~~ their designee may grant or deny ~~((work/training release))~~ placement in partial confinement as authorized by chapters 72.65 and 9.94A RCW subject to the rules of this chapter.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-030 Reasons for placement in a ~~((work release program))~~ reentry center. ~~((Work/training release))~~ Reentry centers may be authorized for one or more of the following:

- (1) To participate in full-time employment or part-time employment at specialized programs;
- (2) To participate in a vocational training program, including attendance at an accredited college.
- (3) To secure services to support transition back to the community.
- (4) As a sanction for violating community (~~(supervision)~~) custody conditions.
- (5) Transfer to a reentry center as a result of violation of conditions of partial confinement programs.
- (6) Incarcerated individuals depending on the program, must apply and go through an investigative process, with a committee determination regarding suitability.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-040 Eligibility criteria. (1) An (~~(offender)~~) individual is eligible for (~~(work/training release)~~) reentry center placement and/or graduated reentry programming provided that:

- (a) (~~(He or she)~~) Individual has a minimum security status for the purpose of reentry center placement;
- (b) (~~(He or she is within the last one hundred eighty days of their confinement.)~~) Individuals who are found eligible for the graduated reentry program must meet program criteria and either:
 - (i) Served at least six months total confinement and may serve no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or
 - (ii) Able to complete the last 12 months of sentence in a reentry center with no more than the last five months of the individual's term of confinement in a department approved release residence on electronic home monitoring; or
 - (iii) Able to serve at least four months total confinement and may serve no more than the last 18 months of the individual's term of confinement in a department approved release residence on electronic home monitoring.

Partial confinement programs.

- (2) (~~(Offenders)~~) Individuals convicted of rape in the first degree shall not be eligible for work/training release reentry centers or graduated reentry program at any time during the first three years of confinement.
- (3) (~~(Offenders)~~) Individuals convicted of murder first degree are not eligible for work/training release reentry centers or graduated reentry program, without the written approval of the secretary or their designee.
- (4) (~~(Offender)~~) Individual who violates condition(s) of community (~~(supervision and is)~~) custody may be sanctioned to a reentry center for a term (~~(less than one hundred eighty days)~~) of 90 days or less.
- (5) Individual who violates condition(s) for partial confinement programs may be sanctioned to a reentry center for a term of 90 days or less, to more restrictive status, or returned to total confinement.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-050 Application—Consideration. (1) Based on the ~~((offender's))~~ individual's request to participate in ~~((a work release))~~ partial confinement programs and/or the ~~((offender's))~~ individual's need to transition through ~~((a work release))~~ partial confinement programs, the ~~((facility classification review team will refer the offender to the appropriate program))~~ department will ensure a process for screening.

(2) The ~~((community corrections officer can))~~ case manager may make recommendation for placement in a ~~((work release program))~~ reentry center as a result of violation of conditions of ~~((supervision in the))~~ community custody or partial confinement programs.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-070 Screening ((referrals)). (1) The ~~((work/training release facility supervisor or his or her designee))~~ supervisor/manager or designee shall screen the ~~((offenders))~~ individuals referred to the programs.

(2) The ~~((work/training release))~~ partial confinement programs participation is subject to a screening process ((will be)) based on established criteria for each program.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-080 Plan—Approval or denial. (1) The ~~((work release))~~ supervisor/manager or designee's or program established committee screening decision will be documented by the ~~((work/training release facility supervisor/designee on the offender tracking system))~~ supervisor/manager or designee in the individual's electronic file indicating the action taken.

(2) Approved ~~((offenders))~~ individuals will be placed in the program based on ~~((priority with high risk offenders being placed first))~~ individual needs. Disapproved ~~((offenders))~~ individuals can obtain the reasons for the denial, as documented ~~((on the offender tracking system))~~ in the individual's electronic file.

(3) An individual who is denied placement in a reentry center or graduated reentry program will be reviewed by a headquarters committee who will uphold, modify, or overturn the denial.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-090 Plan—Restrictions. The work or training site shall be within reasonable commuting distance (in most circumstances not more than ~~((fifty))~~ 50 miles) of the ~~((work/training release fa-~~

ility)) partial confinement program in which the ((offender)) individual is confined.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-095 Orientation. (1) At the time of admission, each ((work/training release offender)) partial confinement individual shall be advised in writing of:

- (a) Program goals and services available.
- (b) Rules governing conduct and program rules.
- (c) ((Disciplinary action which may be taken in the event of a serious infraction or violation of rules or special conditions.)) Incentives earned, as defined in policy, for positive behavior and program completions.
- (d) Conditions for their specified program that is applicable to them and to their success.
- (e) Disciplinary action which may be taken in the event of a serious violation of rules or special conditions. To include, but not be limited to:
 - (i) Remain confined to the ((work/training release)) partial confinement premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any ((work/training release resident)) partial confinement individual approved for placement under a ((work/training release)) partial confinement plan who willfully fails to report to ((his or her)) their designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.
 - (ii) Have employment or other approved resources in order to maintain ((himself or herself)) themselves financially.
 - (iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances, or any mood altering drug or alcoholic beverages.
 - (iv) Report all income to the ((work/training facility supervisor)) reentry center manager or ((his or her)) their designee. All income, for individuals in a reentry center from any source shall be immediately placed in the ((resident's inmate)) individual's banking account by the ((facility supervisor)) reentry center manager or ((his/her)) their designee. A receipt will be issued.
 - (v) Individuals in a partial confinement program, with case manager approval, may enter into contracts for banking accounts that support their transition to the community. Each individual must provide their account information.

(2) All amendments or additions to disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each ((work/training release facility)) reentry center in advance of their effective date if possible and for at least ((thirty)) 30 days after their effective date. ((Work/training release of offenders)) Partial confinement individuals shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all program rules shall be available at each ((work/training release facility for examination)) reentry center and provided to each individual on partial confinement programs for review.

(3) The ~~((work/training release facility supervisor))~~ reentry center manager shall ensure that each ~~((work/training release resident))~~ individual has the opportunity to understand rules which relate to ~~((his/her))~~ their conduct. If the ~~((resident))~~ individual is unable to read or understand English, the rules shall be read to ~~((him/her))~~ them promptly in ~~((his/her))~~ their accustomed language.

(4) All ~~((offenders))~~ individuals will receive orientation within ~~((forty-eight))~~ 48 hours of ~~((arrival))~~ placement in a reentry center program. Orientation must be completed before the ~~((offender))~~ individual can leave the ~~((facility))~~ reentry center or leave the approved partial confinement programs location. The ~~((offender))~~ individual must sign the appropriate form indicating ~~((he/she))~~ they will comply with all the ~~((work release))~~ partial confinement program policies and program rules.

NEW SECTION

WAC 137-56-101 Application of behavior management chapter. The definitions and serious violations described herein apply to individuals committed to partial confinement programs. Partial confinement programs i.e., reentry center, community parenting alternative and graduated reentry may create their own separate agency policies if it is not viable or feasible to combine, if determined necessary by the respective administrator.

NEW SECTION

WAC 137-56-105 Definitions. For the purposes of serious violations, the following terms have the following meanings:

(1) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(2) Attempting - Putting forth an effort to commit any violation.

(3) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(4) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(5) Individual - Offender or inmate as defined in RCW 72.09.015.

(6) Possessing - When an item(s) is found on an individual or in an individual's assigned area of responsibility.

(7) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(8) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This

does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(9) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(10) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(11) Staff member - A department of corrections employee, contract staff, or volunteer.

(12) Violation - The act of failing to comply with a rule enumerated in this chapter.

NEW SECTION

WAC 137-56-107 Adoption or revision of serious violations. (1)

The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-110 Serious ((infractions)) violations. ((Refer to chapter 137-25 WAC, serious infractions.))

(1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

(2) If contraband or another violation is discovered in an individual's assigned area of responsibility, such as within the confines or contents of an assigned room, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all individuals assigned responsibility for that area.

<p>Seriousness Level: Category A: Egregious Acts/Inflicting Harm/Violence</p>

<u>402</u>	<u>Committing an act that would constitute a felony or misdemeanor and that is not otherwise included in these rules.</u>
<u>403</u>	<u>Taking or holding any person hostage.</u>
<u>405</u>	<u>Possessing, manufacturing, or introducing an explosive device, any firearm, ammunition, weapon, sharpened instrument, knife, poison, or any components thereof.</u>
<u>611</u>	<u>Committing sexual assault against a staff member.</u>
<u>613</u>	<u>Committing any act of sexual contact against a staff member.</u>
<u>635</u>	<u>Committing sexual assault against another individual, as defined in department policy (i.e., aggravated sexual assault or individual-on-individual sexual assault).</u>
<u>637</u>	<u>Committing sexual abuse against another individual, as defined in department policy.</u>
<u>Seriousness Level: Category B: High Profile/Harmful/Violence Against Persons/Safety</u>	
<u>401</u>	<u>Assaulting another person.</u>
<u>404</u>	<u>Escaping from partial confinement.</u>
<u>406</u>	<u>Rioting, or inciting others to riot.</u>
<u>407</u>	<u>Setting fire.</u>
<u>408</u>	<u>Engaging in or inciting a group demonstration.</u>
<u>409</u>	<u>Fighting with another person.</u>
<u>415</u>	<u>Possessing, transferring, or soliciting any person's identification information, including current employees/contract staff or their immediate family members when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the community corrections supervisor.</u>
<u>416</u>	<u>Counterfeiting/forgery of official documents.</u>
<u>419</u>	<u>Possessing clothing or assigned equipment of an employee/contract staff.</u>
<u>437</u>	<u>Engaging in a sex act within facility boundaries.</u>
<u>438</u>	<u>Indecent exposure.</u>
<u>549</u>	<u>Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy.</u>

463	<u>Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance.</u>
700	<u>Failing to complete or administrative termination from a DOSA treatment program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC. A guilty finding will result in reclassification.</u>
701	<u>Failure to comply with the DOSA program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearings officer in accordance with chapter 137-24 WAC. A guilty finding may result in reclassification or lesser sanctions.</u>
<u>Seriousness Level: Category C: Noncompliance/Attitudes and Behaviors/Court and DOC Conditions Related</u>	
410	<u>Threatening another with bodily harm or with any offense against any person or property.</u>
411	<u>Extorting or blackmailing another person.</u>
412	<u>Refusing a direct order from an employee/contract staff member to proceed to or disperse from a particular area.</u>
413	<u>Interfering with an employee/contract staff or other personnel, in the performance of their duties.</u>
414	<u>Tampering with a locking device.</u>
417	<u>Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense.</u>
418	<u>Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.</u>
420	<u>Stealing property, possessing stolen property, or possessing another individual's property.</u>
423	<u>Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group.</u>

<u>425</u>	<u>Causing an innocent person to be penalized or proceeded against by providing false information.</u>
<u>659</u>	<u>Committing sexual harassment against another incarcerated individual, as defined in department policy.</u>
<u>896</u>	<u>Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information.</u>
<u>661</u>	<u>Committing sexual harassment against a staff member, visitor, or community member.</u>
<u>461</u>	<u>Introducing or transferring any unauthorized drug or drug paraphernalia.</u>
<u>462</u>	<u>Refusing to submit to or cooperate in a search, urinalysis, oral swab, breath alcohol test, or any testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by an employee/contract staff member.</u>
<u>464</u>	<u>Possessing or using an unauthorized drug, intoxicating substance or alcohol; receiving a positive test for an unauthorized drug, alcohol or intoxicating substance; possession of paraphernalia.</u>
<u>465</u>	<u>Providing a diluted, altered, or substituted urine sample.</u>
<u>472</u>	<u>Unauthorized contact with prohibited persons as defined in case plan.</u>
<u>899</u>	<u>Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the individual committed.</u>
<u>477</u>	<u>Being in the community without authorization, being in an unauthorized location in the community, unaccounted time, or having unauthorized contact with prohibited persons in the community.</u>
<u>810</u> <u>*Mandatory programming</u> <u>72.09</u>	<u>Refusing to seek/maintain employment, training, or programming, or being terminated from work, training, education, or other programming for negative or substandard performance.</u>

<u>557</u> <u>*Mandatory programming 72.09</u>	<u>Refusing to participate in an available work, training, education, or other mandatory programming assignment.</u>
<u>481</u>	<u>Violating conditions of furlough.</u>
<u>485</u>	<u>Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action, or initiating communication with a minor without the approval of that minor's parent or guardian.</u>
<u>494</u>	<u>Receiving or possessing contraband.</u>
<u>Seriousness Level: Category D: Self-Destructive Behavior/Risky Behavior/Case Plan Related</u>	
<u>421</u>	<u>Using facility phones, information technology resources/systems, or related equipment intended for employee/contract staff use without authorization.</u>
<u>422</u>	<u>Possessing, manufacturing, or introducing an unauthorized tool.</u>
<u>424</u>	<u>Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband.</u>
<u>435</u>	<u>Intentional destruction, damage, or altering any item that is not the individuals personal property, the value of which is \$10 or more.</u>
<u>436</u>	<u>Possessing any sexually explicit material(s), as defined in WAC 137-48-020.</u>
<u>439</u>	<u>Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle.</u>
<u>474</u>	<u>Unauthorized modification or noncompliance of an approved case plan.</u>
<u>482</u>	<u>Violating an imposed special condition.</u>
<u>483</u>	<u>Failing to comply with any administrative or post-hearing sanction imposed for committing any violation.</u>
<u>484</u>	<u>Operating motor vehicle or being in a motor vehicle without permission.</u>
<u>486</u>	<u>Telephoning, or sending written or electronic communication to any individual in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee.</u>
<u>Seriousness Level: Category E: General Noncompliance</u>	
<u>471</u>	<u>Failing to comply with written rules, handbook, or case plan.</u>

<u>475</u>	<u>Entering into an unauthorized contract.</u>
<u>476</u>	<u>Failing to report/turn in all earnings.</u>
<u>487</u>	<u>Possession of unauthorized items, to include money or other negotiable instruments without proper authorization.</u>
<u>491</u>	<u>Introducing, possessing, or using a cell phone, electronic/wireless device, or related equipment, without proper authorization.</u>
<u>492</u>	<u>Misusing or wasting issued supplies, goods, services, or property.</u>
<u>493</u>	<u>Out-of-bounds: Being in the room/dorm assigned to another individual under department jurisdiction or an area of the facility without authorization.</u>
<u>495</u>	<u>Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels.</u>

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-120 Provisions of supervision. (1) In meeting its responsibilities for providing supervision of ((offenders)) individuals in the ((program)) reentry center(s), the following will be provided ((at the work release facility)):

((1)) (a) Staff on duty ((twenty-four)) 24 hours a day, seven days a week;

((2)) (b) A check-in and check-out system to ensure that the stated whereabouts of the ((offender)) individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, etc.;

((3)) (c) Bed checks or head counts to account for the ((resident's)) individual's whereabouts; a minimum of three counts daily shall be required;

((4)) (d) Provide adequately for the ((resident)) individual with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

((5)) (e) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

(2) In meeting its responsibilities for providing supervision of individuals in partial confinement programs, the following will be provided:

(a) Case managers available during business hours;

(b) A system of approved movement in the community to ensure that the stated whereabouts of the individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, detention location, etc.;

(c) Reviews of electronic home monitoring equipment to ensure movement in the community was approved;

(d) Approve residential placement for the individual to ensure adequate sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-140 Limits of confinement. A ~~((work/training release offender))~~ partial confinement individual will follow specified program and/or condition requirements. If an individual is enrolled in partial confinement programs, they shall be confined to the ((facili-ty)) reentry center/approved residence at all times except:

(1) When seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) When in a reentry center, authorized a point-to-point pass not to exceed ~~((two))~~ four hours, ~~((excluding))~~ including travel, for the purpose of transacting personal business including a treatment regimen, between the hours of 7:00 a.m. and 10:00 p.m. and/or outside that time frame with written permission of the ~~((facility supervisor))~~ reentry center manager or designee;

(4) When authorized to participate in social and recreational activities ~~((in company with a))~~ accompanied by an authorized sponsor-escort ~~((between 8:00 a.m. and midnight));~~

(5) When on furlough;

(6) When on authorized medical/mental health appointments, sub-stance use disorder treatment, or court appearances;

(7) When ordered to perform community service/restitution;

(8) When seeking employment ~~((as approved))~~ on an approved job search pass;

(9) When in partial confinement programs, movement allowed as approved by the case manager/designee;

(10) The administrator for the confinement programs may determine an individual's program status and take nondisciplinary administrative action when an individual is no longer suitable and/or eligible for the partial confinement program;

(11) The administrator for the confinement programs may not modify or adjust decision adjudicated by a hearings officer without secretary approval.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a ~~((work/training release offender))~~ reentry center individual during a preapproved social or recreational activity. The sponsor-escort must be approved by the ~~((work/training release facility supervisor or designee))~~ reentry center manager/designee; and the sponsor and ~~((resident))~~ individual must sign an agreement with the department which describes ~~((his or her))~~ their responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the ~~((work release supervisor, or his or her designee))~~ reentry center manager/designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the ~~((work/training release facility))~~ case manager at the reentry center before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the ~~((offender))~~ individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-160 Termination of plan. At any time after approval has been granted to any ~~((work/training release offender))~~ partial confinement program individual to participate in the ~~((work/training release))~~ program, such approval may be revoked, and the ~~((offender))~~ individual may be sent to a state correctional institution or jail. A ~~((work release offender))~~ partial confinement individual may be terminated from the program as a result of a disciplinary or classification decision or the following:

(1) If requested in writing by the ~~((work/training release offender))~~ partial confinement individual;

(2) If the ~~((work/training release offender))~~ partial confinement individual lacks aptitude for the assignment or is improperly placed; or

(3) If the ~~((work/training release offender))~~ partial confinement individual has been unable to adjust or adapt to the conditions of the ~~((work/training release facility))~~ partial confinement program; or

(4) If the ~~((work/training release offender's))~~ partial confinement individual's situation and circumstances have significantly changed; or

(5) If the individual is on partial confinement programs and their circumstances, situation or living arrangements change, they may be returned to a reentry center to develop a new plan; or

(6) If the ~~((work/training release offender))~~ partial confinement individual has failed to comply with federal or state laws or local ordinances.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the ~~((work/training release facility))~~ supervisor/manager or ~~((community corrections officer))~~ case manager may suspend the ~~((work/training release))~~ partial confinement plan and place the ~~((offender in custody))~~ individual in total confinement pending a formal disciplinary hearing.

(2) The ~~((work/training release facility))~~ supervisor/manager or designee shall advise the ~~((offender))~~ individual in writing of the factual allegations which provide the basis for the proposed discipli-

nary action within one working day after the suspension of the ~~((work/training release))~~ partial confinement plan.

(3) If the ~~((work/training release))~~ partial confinement plan is not suspended pending the disciplinary hearing, then the ~~((facility))~~ program supervisor/manager or designee shall advise the ~~((offender))~~ individual at least ~~((twenty-four))~~ 24 hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided ~~((that))~~ the ~~((work/training release offender))~~ partial confinement individual shall have notice of such new and/or amended allegations at least ~~((twenty-four))~~ 24 hours prior to the disciplinary hearing unless such notice shall be waived in writing by the ~~((offender))~~ individual.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-175 Alternatives to the formal disciplinary hearing.

When addressing serious ~~((infractions))~~ violations, the ~~((work/training release community corrections officer))~~ partial confinement case manager may, with the ~~((facility))~~ supervisor's/manager's permission, choose to address the ~~((infraction))~~ violation behavior through a re-entry team meeting, or using ~~((either))~~ a department authorized stipulated agreement ~~((or the negotiated sanction agreement))~~ process.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-180 Disciplinary hearing. (1) A ~~((work/training release offender))~~ partial confinement individual served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before a department hearing officer. An allegation involving the commission by the ~~((offender))~~ individual of a serious ~~((infraction))~~ violation may be amended at anytime by the department, provided that ~~((twenty-four))~~ 24 hours notice be given to the ~~((offender))~~ individual or the ~~((offender))~~ individual agrees in writing to waive notice to respond to the allegations. The hearing will be held within eight working days of the suspension of the ~~((work/training release))~~ partial confinement plan, unless a longer time is approved by the hearings program administrator or ~~((his or her))~~ their designee. The written notice of hearing shall be given to the ~~((offender))~~ individual at least ~~((twenty-four))~~ 24 hours before the hearing unless notice is waived, in writing, and advise the ~~((offender of his or her))~~ individual of their rights, including the following:

(a) The ~~((offender))~~ individual shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ~~((offender))~~ individual shall present ~~((his or her))~~ their own case to the hearing officer. If there is a language or communications barrier, the hearing officer shall appoint an advisor.

(c) The ~~((offender))~~ individual may have an attorney present at ~~((his/her expense, only when a felony has been alleged. Such representation is limited to advising the offender of his or her rights to re-~~

~~main silent, and does not include the right to act as an advocate throughout the hearing)) their hearing upon case-by-case determination by the hearing officer if one is warranted.~~

(d) The ~~((offender))~~ individual may testify during the hearing or remain silent, and ~~((his or her))~~ their silence will not be held against ~~((him or her))~~ them.

(e) The ~~((work/training release offender))~~ partial confinement individual may, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other ~~((work/training release offenders))~~ partial confinement individuals, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the ~~((work/training release facility's))~~ partial confinement safety or correctional goals: Provided, however, limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the ~~((work/training release offender's))~~ partial confinement individual's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The hearing officer may exclude unauthorized persons.

(3) Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-200 Disciplinary hearing—Waiver. (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ~~((offender))~~ individual may choose to waive ~~((his or her))~~ their right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ~~((offender))~~ individual may waive, in writing, the ~~((twenty-four))~~ 24 hour notice.

(2) The ~~((offender))~~ individual may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ~~((offender, he or she))~~ individual, they shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result in the loss of ~~((work/training release))~~ partial confinement status, good time credits and/or the extension of the minimum term.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-210 Disciplinary hearing—Rules of evidence. (1) All relevant and material evidence is admissible which, in the opinion of the hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the hearing officer's decision in a matter shall be offered into evidence.

(3) The ~~((work/training release offender))~~ partial confinement individual shall be allowed to call witnesses approved by the hearing officer pursuant to WAC 137-56-180 (1)(e) and to present documentary evidence in ~~((his/her))~~ their defense at the hearing when permitting the ~~((work/training release offender))~~ partial confinement individual to do so will not be unduly hazardous to the ~~((work/training release facility's))~~ partial confinement program's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the ~~((work/training release offender's))~~ partial confinement individual's case. The testimony of all witnesses from outside the ~~((work/training release facility))~~ partial confinement program shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, that if the witness is unavailable, the hearing officer may, ~~((in his or her))~~ at their discretion, consider the written testimony previously submitted.

(4) The ~~((work/training release offender))~~ partial confinement individual may question witnesses against ~~((him/her))~~ them at the discretion of the hearing officer. If the hearing officer determines that a source of information would be subject to risk or harm if ~~((his/her))~~ their identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The hearing officer shall, out of the presence of all ~~((work/training release offenders))~~ partial confinement individuals and off the record, identify the confidential source, and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(a) Evidence from other staff members that the confidential source has previously given reliable information;

(b) Evidence that the confidential source had no apparent motive to fabricate information;

(c) Evidence that the confidential source received no benefit from providing the information;

(d) Whether the confidential source is giving first-hand information;

(e) Whether the confidential information is internally consistent and is consistent with other known facts; and

(f) The existence of corroborating evidence.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the ((~~offender~~)) individual, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The hearing officer should determine if the ((~~offender~~)) individual is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the ((~~offender~~)) individual is not competent or needs an interpreter, the hearing officer should postpone the hearing to secure a report on the competency of the ((~~offender~~)) individual, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-220 Disciplinary hearing—Findings and conclusions.

(1) At the conclusion of the hearing, the hearing officer will make a finding of fact as to whether ((~~or not~~)) the allegations made against the ((~~offender~~)) individual have been proven by a preponderance of the evidence presented at the hearing.

(2) If the hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ((~~offender~~)) individual shall be restored/continued on ((~~work/training release~~)) partial confinement status.

(3) If the hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the hearing officer will proceed to a disposition.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-230 Disciplinary hearing—Disposition. (1) The hearing officer shall seek and consider input from the ((~~community corrections officer, the facility contract~~)) case manager, the reentry center contract/custody staff, if applicable, staff and pertinent treatment providers.

(2) The hearing officer will consider the ((~~offender's~~)) individual's total background, any previous interventions, adjustment on ((~~work/training release~~)) partial confinement, attitude, recommendations of interested parties, and any other information relative to the ((~~offender's~~)) individual's ability to continue ((~~in the program~~)) on partial confinement. The hearing officer shall make a determination as to whether or not the ((~~offender~~)) individual has earned good time credits toward release, and whether the matter should be referred to

the indeterminate sentence review board or the court for possible increase in the inmate's or ~~((offender's))~~ individual's minimum term.

(3) The ~~((offender))~~ individual shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument(s) ~~((in his or her))~~ on their own behalf.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-240 Disciplinary hearing—Decision. (1) The hearing officer may:

(a) Restore the ~~((work/training release offender to his or her work/training release))~~ partial confinement individual to their partial confinement status under the same or modified conditions as the original plan; or

(b) Restrict the ~~((offender))~~ individual to the ~~((work/training release facility))~~ partial confinement program for up to ~~((thirty))~~ 30 days; or

(c) Require restitution be made by the ~~((work/training release offender))~~ partial confinement individual; or

(d) Require extra duty to be performed by the ~~((offender))~~ individual; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) Terminate the ~~((work/training release))~~ reentry center plan and return the ~~((work/training release offender to an institution/jail, or facility))~~ partial confinement individual from a reentry center to a prison/institution/jail, or an electronic home monitoring individual to a reentry center or a prison/institution/jail.

(2) Nothing in this section shall preclude subsequent reclassification of the ~~((work/training release offender))~~ partial confinement individual or placement into administrative segregation if demonstrable cause exists to support this action and is approved by the administrator.

(3) The hearing officer shall notify the ~~((offender))~~ individual orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the ~~((work/training release))~~ partial confinement is based, the reasons for the decision, a discussion of the ~~((offender's))~~ individual's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((offender's))~~ individual's progress, attitudes, need for further programs including ~~((work training))~~ reentry center alternatives.

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-250 Disciplinary hearing—Appeal. The ~~((offender))~~ individual may appeal the decision of the hearing officer to the area

appeals panel. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the hearing officer in making (~~his or her~~) their decision. Appeals must be submitted within seven calendar days of the hearing officer's written decision. For reasons of community protection, all sanctions ordered by the hearing officer will be imposed following the hearing and will not be stayed. The appeals panel, upon receipt of an appeal, will review the findings and decision of the hearing officer and either:

- (1) Affirm, or affirm and modify to a lesser sanction the decision of the hearing officer; or
- (2) Reverse the decision of the hearing officer; or
- (3) Remand for a rehearing.

AMENDATORY SECTION (Amending WSR 86-06-012, filed 2/21/86)

WAC 137-56-280 Applicability. WAC 137-56-170 through (~~137-56-260~~) 137-56-250 shall not apply to the termination of a (~~work/training release~~) partial confinement plan pursuant to WAC 137-56-160 (2) (~~(a), (b), or (c)~~). WAC 137-56-080 and 137-56-170 through (~~137-56-260~~) 137-56-250 shall not apply to the termination or modification of a (~~work/training release~~) partial confinement plan by the secretary pursuant to WAC 137-56-160(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|--------------|
| WAC 137-56-260 | Time limits. |
| WAC 137-56-270 | Exceptions. |

WSR 23-23-038
PROPOSED RULES
BUILDING CODE COUNCIL
 [Filed November 3, 2023, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-017.

Title of Rule and Other Identifying Information: WAC 51-51-0202 and 51-51-0331; amendments to 2021 International Residential Code to modify provisions for family home child care. This adoption increases the maximum children allowed in a family home child care scenario from 12 to 16. Additional safety features are also included in this rule making to be used when the children present exceed 12. Applicable sections in chapters 51-50 and 51-54A WAC will also be amended with expedited rule making for consistency across codes.

Hearing Location(s): On January 12, 2024, at 10:00 a.m., at 1500 Jefferson Street S.E., Olympia, WA 98504. Please access the meetings in-person, or via Zoom or conference call. The Zoom link and phone will be provided in the agenda at sbcc.wa.gov.

Date of Intended Adoption: January 19, 2024.

Submit Written Comments to: State Building Code Council, P.O. Box 41449, Olympia, WA 98509-1449, email sbcc@des.wa.gov, by January 19, 2024.

Assistance for Persons with Disabilities: Contact Annette Harworth, phone 360-407-9255, by January 12, [2024].

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule adopts changes to the provisions for "Family Home Childcare" in the 2021 International Residential Code. The changes are necessary to align with SB [E2SSB] 5237 which allows the department of children, youth, and families to issue a waiver to the limit of 12 children. The changes allow up to 16 children to be placed in a family home child care scenario while still using code requirements within the International Residential Code. Additional safety considerations are added as well.

Amendments to Chapter 51-51 WAC For Family Home Child Care Provisions

WAC	Section	Specific Change	Rationale/Discussion
51-51-0202	Definition	The definition of "Family Home Childcare" is amended to allow up to 16 children in a family home child care scenario.	Increases definition from 12 children to 16 children and still permits the family home child care to remain in the scoping of the residential code.
51-51-0331	Section R331	Section R331 is renumbered to R331.1	Change to include new sections 331.2 and 331.3.
	Section 331.1 #4	"A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d." is changed to "An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D."	Allows use of P2904 for sprinkler design which is considered equivalent to NFPA 13D.
	Section 331.1 Exception #2.3	"A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d." is changed to "An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D."	Allows use of P2904 for sprinkler design which is considered equivalent to NFPA 13D.

WAC	Section	Specific Change	Rationale/Discussion
	Section 331.1 (at end)	Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.	In the event of fire, occupant notification will be faster than out of date systems. The addition of kitchen heat detectors adds an additional location of detection.
	New Section 331.2	R331.2 Additional requirements for family home child care with 13 to 16 children. In addition to the requirements of Section 331.1, the provisions of this section shall apply to <i>family home child care</i> with 13 to 16 children.	This section and its subparts identify additional requirements for "Family Home Childcare" when more than 12 children are receiving care.
	New Section 331.2.1	R331.2.1 Illumination in the event of power failure. In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.	This section requires additional emergency lighting when there are more than 12 children receiving care in a "Family Home Childcare."
	New Section 331.2.2	R331.2.2 Exterior exit doors serving child care areas. Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.	Doors serving "Family Home Childcare" with more than 12 children receiving care will need to comply with these sections to facilitate egress in the event of an emergency.
	New Section 331.3 (Option 1)	(OPTION 1) R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.	This first option would require a P2904 or NFPA 13D sprinkler system for "Family Home Childcare" when more than 12 children receive care.
	New Section 331.3 (Option 2)	(OPTION 2) R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D. Exception: Subject to approval of the <i>code official</i> , a sprinkler system is not required where all of the following conditions are met: 1. Child care areas are located on a floor within four feet of grade level; and 2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.	This second option would require a P2904 or NFPA 13D sprinkler system for "Family Home Childcare" when more than 12 children receive care. It also allows for an exception to the sprinkler requirement based on code official approval, exiting door requirements, and proximity to grade requirements.

Reasons Supporting Proposal: RCW 19.27.031, 19.27.074.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: RCW 19.27.031, 19.27.074.

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

Name of Proponent: Department of children, youth, and families, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dustin Curb, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-972-4158; Enforcement: Local jurisdictions.

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

A cost-benefit analysis is not required under RCW 34.05.328. Exempt under RCW 34.05.328 (5) (b) (iii).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

October 20, 2023

Tony Doan
Council Chair

OTS-5065.1

AMENDATORY SECTION (Amending WSR 23-02-058, 23-12-104, and 23-20-024 [21-12-102], filed 1/3/23, 6/7/23, and 9/25/23 [6/2/21], effective 3/15/24 [7/3/21])

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

BUILDING. Any one- or two-family *dwelling* or *townhouse*, or portion thereof used or intended to be used for human habitation, for living, sleeping, cooking or eating purposes, or any combination thereof, or any accessory structure.

BUILDING, EXISTING. A *building* or structure erected prior to the adoption of this code, or one that has passed a final inspection.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of (~~twelve~~) sixteen or fewer children, including children who reside at the home.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CONDITIONED SPACE. An area, room or space that is enclosed within the building thermal envelope and that is directly or indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

DISTRIBUTED WHOLE-HOUSE VENTILATION. A whole-house ventilation system shall be considered distributed when it supplies outdoor air directly (not transfer air) to each dwelling or sleeping unit habitable space (liv-

ing room, den, office, interior adjoining spaces or bedroom), and exhausts air from all kitchens and bathrooms directly outside.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.
2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4 m²).

EGRESS ROOF ACCESS WINDOW. A skylight or roof window designed and installed to satisfy the *Emergency Escape and Rescue Opening* requirements of Section R310.2.

ENCLOSED KITCHEN. A kitchen whose permanent openings to interior adjacent spaces do not exceed a total of 60 square feet (6 m²).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior *lot line*; or
2. To the centerline of a street, an alley or public way; or
3. To an imaginary line between two buildings on the *lot*.

The distance shall be measured at a right angle from the wall.

FLOOR AREA. The area within the inside perimeter of exterior walls of the building. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above.

LANDING PLATFORM. A landing provided as the top step of a stairway accessing a *Loft*.

LOCAL EXHAUST. An exhaust system that uses one or more fans to exhaust air from a specific room or rooms within a residential dwelling or sleeping unit.

LOFT. A space on an intermediate level or levels between the floor and ceiling of a dwelling or sleeping unit, open on one or more sides to the room or space in which the loft is located, and in accordance with Section R333.

LOT LINE. The line which bounds a plot of ground described as a *lot* in the title to the property.

SALT WATER COASTAL AREA. Those areas designated as salt water coastal areas by the local jurisdiction.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

TOWNHOUSE UNIT. A single-family *dwelling unit* in a *townhouse* that extends from foundation to roof and that has a yard or public way on not less

than two sides that extends at least 50 percent of the length of each of these two sides.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 20-03-023, filed 1/6/20, effective 7/1/20)

WAC 51-51-0331 Section R331—Family home child care.

R331.1 Family home child care. For family home child care with more than six children, each floor level used for family child care purposes shall be served by two remote means of egress. Exterior exit doors shall be operable from the inside without the use of keys or any special knowledge or effort.

Basements located more than 4 feet below grade level shall not be used for family home child care unless one of following conditions exist:

1. Stairways from the basement open directly to the exterior of the building without entering the first floor;
2. One of the two required means of egress discharges directly to the exterior from the basement level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor above;
3. One of the two required means of egress is an operable window or door, approved for emergency escape or rescue, that opens directly to a public street, public alley, yard or exit court; or
4. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Floors located more than 4 feet above grade level shall not be occupied by children in family home child care.

EXCEPTIONS:

1. Use of toilet facilities while under supervision of an adult staff person;
2. Family home child care may be allowed on the second story if one of the following conditions exists:
 - 2.1. Stairways from the second story open directly to the exterior of the building without entering the first floor;
 - 2.2. One of the two required means of egress discharges directly to the exterior from the second story level, and a self-closing door is installed at the top or bottom of the interior stair leading to the floor below; or
 - 2.3. ~~((A residential sprinkler system is provided throughout the entire building in accordance with NFPA 13d.))~~ An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

Every sleeping or napping room in a family home child care shall have at least one operable window for emergency rescue.

EXCEPTION: Sleeping or napping rooms having doors leading to two separate means of egress, or a door leading directly to the exterior of the building.

Rooms or spaces containing a commercial-type cooking kitchen, boiler, maintenance shop, janitor closet, laundry, woodworking shop, flammable or combustible storage, or painting operation shall be separated from the family home child care area by at least 1-hour ~~((fire-resistive))~~ fire-resistant construction.

EXCEPTION: A ~~((fire-resistive))~~ fire-resistant separation shall not be required where the food preparation kitchen contains only a domestic cooking range, and the preparation of food does not result in the production of smoke or grease laden vapors.

Smoke alarms and heat detectors shall be installed in accordance with the requirements of new construction per IRC 314. Provide an additional heat detector in each kitchen.

R331.2 Additional requirements for family home child care with thirteen to sixteen children. In addition to the requirements of Section

331.1 the provisions of this section shall apply to family home child care with thirteen to sixteen children.

R331.2.1 Illumination in the event of power failure. In addition to illumination requirements of Section R311.7.9, provide an artificial light source that activates upon termination of building power supply at all interior stairs serving child care areas.

R331.2.2 Exterior exit doors serving child care areas. Exterior exit doors serving child care areas shall comply with the requirements of Sections R311.2 and R311.3.

(OPTION 1)

R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

(OPTION 2)

R331.3 Sprinklers. An automatic residential sprinkler system shall be designed and installed in accordance with Section P2904 or NFPA 13D.

EXCEPTION:

Subject to approval of the code official, a sprinkler system is not required where all of the following conditions are met:

1. Child care areas are located on a floor within 4 feet of grade level; and

2. Each child care area shall have a door compliant with Section R311.2 and R311.3, leading directly to the exterior of the building.

WSR 23-23-043

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 6, 2023, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-074.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is planning to amend WAC 388-71-0523, 388-71-0836, 388-71-0837, 388-71-0839, 388-71-0875, 388-71-0880, 388-71-0888, 388-71-0893, 388-71-0975, 388-71-0977, 388-71-0980, 388-71-1001, 388-112A-0010, 388-112A-0110, 388-112A-0115, 388-115-0503, 388-115-0505, 388-115-0520, 388-115-0523, 388-115-0540 and 388-115-05410; and repeal WAC 388-112A-0130 in response to and in compliance with E2SHB 1694 (chapter 424, Laws of 2023), passed during the 2023 legislative session.

Hearing Location(s): On December 26, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Hearings are held virtually, see the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rulings> for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 27, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by December 26, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by December 12, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes to chapters 388-71, 388-112A, and 388-115 WAC will bring them into compliance with E2SHB 1694 (chapter 424, Laws of 2023). The following changes included the definition of "date of hire," clarification on when the date of hire may be reset, and additional family relationships related to long-term care worker training and continuing education requirements. Additional changes were made relating to numerical representation, consistency, and inclusive language.

Reasons Supporting Proposal: Changes to law related to training and continuing education affect all long-term care workers, and those who fall into newly added familial relationships. Rules are being changed to be in compliance with the new laws. The department is also taking this opportunity to make necessary changes related to numerical representation, consistency regarding the consumer direct employer relationship to individual providers, and inclusive language.

Statutory Authority for Adoption: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, 74.39A.341.

Statute Being Implemented: RCW 18.88B.010, 18.88B.021, 18.88B.041, 74.39A.076, 74.39A.341.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Lacey, WA 98504-5600, 360-725-2516.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dave Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

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

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

Is exempt under RCW 18.88B.010, 18.88B.021, 18.88B.041, 74.39A.341, and 74.39A.076.

Explanation of exemptions: Changes to listed statutes require rule changes to reflect new language.

Scope of exemption for rule proposal:

Is fully exempt.

November 1, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4990.8

AMENDATORY SECTION (Amending WSR 22-19-048, filed 9/15/22, effective 10/16/22)

WAC 388-71-0523 What are the training and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers (~~(, including)~~). This includes criteria for those providers working limited hours for one person, caring only for one's child, ((~~or~~)) parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, ((and)) providing respite services ((~~only~~)), or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).</p>	<p>ARNP, RN, LPN, HCA, CN-A, or other professionals listed in WAC 388-71-0839.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. <u>For NA-C and those with special education training 12 hours is required for each year worked in long-term care.</u></p>	<p>((Not required. Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839)) Required under chapter 246-980 WAC.</p>
<p>(2) An individual provider or home care agency long-term care worker with specific employment history.</p>	<p>A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of ((his or her)) hire. WAC 388-71-0839.</p>	<p>Not required.</p>	<p>Not required.</p>	<p>Not required.</p>	<p><u>12 hours is required for each year worked in long-term care</u> ((Required 12 hours)) under WAC 388-71-0990 and 388-71-0991.</p>	<p>Not required.</p>
<p>(3) An individual provider or home care agency long-term care worker.</p>	<p>Hired by a licensed home care agency or the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 70 hours under WAC 388-71-0870 and 388-71-0875.</p>	<p>Required. 12 hours under WAC 388-71-0990 and 388-71-0991.</p>	<p>((Home care aide certification required under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within 200 days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065))) Required under chapter 246-980 WAC.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(4) An individual provider who works limited hours for one person.	((Contracted individual)) <u>An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.</u>	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
[(5)] An individual who provides ((only)) respite services and works 300 hours or less in any calendar year.	(a) An individual providing ((only)) respite care who ((and)) works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection ((7)) (6) of this section. (b) Individual providing ((only)) respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Seven)) <u>Nine</u> hours under WAC 388-71-0890.	Not required.	Not required.
(6) An individual provider caring only for ((his or her)) <u>the provider's biological, step, or adoptive adult child.</u>	An individual providing care only for ((his or her)) <u>the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.</u>	Required. Two hours per WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(7) An individual provider caring only for (his or her) the provider's biological, step, or adoptive child, or parent.	An individual providing care <u>only</u> to (his or her) the individual's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	(Required for an) <u>12 hours is required for each year worked in long-term care for an individual provider caring only for (his or her) the provider's biological, step, or adoptive (child or) parent under WAC 388-71-0990 and 388-71-0991.</u> Not required for an individual provider caring only for (his or her) the provider's biological, step, or adoptive child under WAC 388-71-1001.	Not required.
(8) An individual provider caring only for the provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.	An individual providing care <u>only</u> for the individual provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
(9) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.	A long-term care worker providing approved services <u>only</u> for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 22-10-024, filed 4/25/22, effective 5/26/22)

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? The following definitions apply to the long-term care worker training requirements:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, medication assistance, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Care team"** means the client and everyone involved in (~~his or her~~) the individual's care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the client's well-being. However, the client directs the care plan.

(3) **"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed and may only be used when basic training is not required.

(4) **"Client"** means an individual receiving in-home services.

(5) **"Competency"** means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

(6) **"Competency testing"** means evaluating a student to determine if (~~he or she~~) the student can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training, and the specialty and expanded specialty trainings. Training programs may integrate competency testing within (~~their~~) each program's approved curricula.

(7) **"Core basic training"** means the portion of the 70-hour home care aide basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(8) **"Date of hire"** for determining time frames related to training and certification, means the (~~date of hire as described in chapter 246-980 WAC~~) first day the long-term care worker is employed by any employer.

(9) **"DDA"** refers to the developmental disabilities administration.

(10) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes client care workers).

(11) **"Department"** or **"DSHS"** means the department of social and health services.

(12) **"Enhancement"** means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, online materials, and additional student activities.

(13) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(14) **"Guardian"** means an individual as defined in chapter ~~((11.88))~~ 11.130 RCW.

(15) **"Home care aide"** or **"certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

(16) **"Hybrid"** means a combination of online training and in-person, remote, or virtual classroom instruction.

(17) **"Individual provider"** or **"IP"** means a person (~~(who has contracted with the department)~~) employed by the consumer directed employer to provide personal care or respite care services to persons with functional disabilities under a medicaid state plan program, such as the medicaid personal care or community first choice programs, ~~((or))~~ under a federal medicaid waiver program, or through the veteran directed home care (VDHC) program.

(18) **"Learning objectives"** means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

(19) **"Long-term care worker"** means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

(20) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>.

(21) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living that are provided to the client.

(22) **"Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demonstrates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A training program must be approved by DSHS to provide remote skills training.

(23) **"70-hour home care aide training"** means the 70 hours of required training that a new long-term care worker must complete within 120 days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

(24) **"Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(25) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum. Training entities may only deliver approved curriculum.

(26) **"Training partnership"** means a joint partnership or trust that includes the office of the governor, and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(27) **"Virtual classroom"** means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0837 How does DSHS determine a long-term care worker's date of hire and when may a long-term care worker be eligible to have the date of hire reset? (1) The department determines a long-term care worker's date of hire according to ~~((chapter 246-980 WAC))~~ the first day the long-term care worker is employed by any employer.

(2) The date of hire is specific to each long-term care worker. ~~((It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-71-0980.))~~ A long-term care worker, including an individual or agency provider who has worked as a long-term care worker in the past, but who did not complete the training or certification that was required at the time, and a worker who is not currently certified or eligible to reactivate an expired credential, shall receive a new date of hire when beginning work with either a new employer or returning to a former employer after prior employment has ended.

(3) This section does not apply to background check requirements under this chapter.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0839 Which long-term care workers are exempt from the 70-hour, 30-hour, nine-hour, or seven-hour basic training requirements? The following long-term care workers are exempt from the 70-hour, 30-hour, nine-hour, or seven-hour (~~home care aide~~) basic training requirement:

- (1) An individual employed as a long-term care worker on January 6, 2012, who complied with the basic training requirements in effect on the date of hire;
- (2) An individual previously employed as a long-term care worker who completed the basic training requirements in effect on the date of hire, and was employed as a long-term care worker at some point between January 1, 2011, and January 6, 2012;
- (3) Registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW;
- (4) Nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within 120 days of the date of hire and the department of health has issued a nursing assistant certified credential within 200 days of the date of hire;
- (5) A home health aide who was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R., Sec. 484.36;
- (6) An individual with special education training who has an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010; and
- (7) A home care aide (HCA) certified under chapter 18.88B RCW.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0875 Who must complete the 70-hour basic training and by when? Unless exempt from training in WAC 388-71-0839(1) through (7), all long-term care workers must complete core and population specific competencies within 120 days of the date of hire as described in (~~chapter 246-980~~) WAC 388-71-0837.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0880 Who must ~~((take))~~ complete the ~~((thirty))~~ 30-hour basic training and by when must it be completed? Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), the following individuals must ~~((take))~~ complete the ~~((thirty))~~ 30-hour basic training under WAC 388-71-0885 within 120 days of the date of hire as described in WAC 388-71-0837:

- (1) An individual provider who only cares for that provider's:
 - ~~((i))~~ (a) (~~Cares for his or her~~) biological, step, or adoptive child, or parent; or

(b) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(2) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs; or

~~((ii))~~ (3) ((Provides)) A long-term care worker who provides no more than ((twenty)) 20 hours of nonrespite care for one person who is not the individual provider's:

(a) biological, step, or adoptive child, or parent((-)); or

(b) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

~~((2) An individual who provides only respite services to clients not covered under title 71A RCW, works three hundred hours or less in any calendar year and is not exempt from basic training under WAC 388-71-0839.))~~

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0888 When do the ((seventy)) 70-hour basic training and certification requirements apply to an individual whose required basic training was previously less than ((seventy)) 70 hours? (1) The following individual providers ((eligible for limited training under WAC 388-71-0880 and 388-71-0893, who begin to work for a second client who is not)) must complete 70 hours of basic training and become a certified home care aide under WAC 388-71-0523:

(a) Individual providers who previously provided no more than 20 hours of nonrespite care in any calendar month for one person who is not the provider's:

(i) ((their)) biological, step, or adoptive child or parent((-));
~~((or))~~

(ii) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(iii) spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs;

(A) who continue to work for one unrelated client whose authorized monthly hours fluctuate above 20 hours per month; or

(B) who begin to work for a second client.

(b) Individual providers who provide respite services and worked more than 300 respite hours in any calendar year;

(c) Individual providers who begin working for an unrelated client who previously only provided personal care to the provider's:

(i) biological, step, or adoptive child, or parent; or

(ii) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(iii) spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.

~~((continue to work for one client whose authorized monthly hours fluctuate above twenty hours per month must:~~

- ~~(a) Complete the seventy hours of basic training; and
(b) Become a certified home care aide under WAC 388-71-095.))~~

(2) When an IP described in subsection (1) of this section is required to complete the 70-hour basic training and become a certified home care aide, the IP will:

(a) Have 120 days from the date of the change to complete the 70-hour basic training and 200 days from the date of the change to become certified; and

(b) Be required to complete continuing education under WAC 388-71-0990.

~~((2) Individual providers who provide only respite services and worked more than three hundred hours in any calendar year must complete the seventy hours of basic training and become a certified home care aide.))~~

(3) For the purpose of this section, the date of the change means the date on which the IP:

(a) Began working for a client that is not the individual's:

(i) biological, step, or adoptive child, or parent; or

(ii) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(iii) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

(b) Exceeded 20 hours of work in one month; or

(c) Exceeded 300 respite hours in one calendar year.

~~((3) Individual providers who previously only provided personal care to their biological, step, or adoptive child or parent through DDA or HCS who begin working for an unrelated client must complete the seventy hour basic training and become a certified home care aide.))~~

(4) If an IP is required to or chooses to become a certified home care aide and completes the 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain the credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to 20 or fewer hours;

(b) The individual no longer works for more than one unrelated client; or

(c) The individual works 300 or fewer respite hours in a calendar year.

~~((4) When an IP described in subsections (1), (2), or (3) of this section is required to complete the seventy hour basic training and become a certified home care aide, the IP will:~~

~~(a) Have one hundred twenty days from the date of the change to complete the seventy hour basic training and two hundred days from the date of the change to become certified; and~~

~~(b) Be required to complete continuing education under WAC 388-71-0990.))~~

(5) The training and certification requirements for an individual that met the criteria in subsection (4) of this section does not apply if the individual returns to work only for the individual's:

(a) biological, step, or adoptive parent, or adult child,

(b) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

(c) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

~~((5) For the purpose of this section, the date of the change means the date on which the IP:~~

~~(a) Began working for a client that is not his or her biological, step or adoptive child or parent;~~

~~(b) Exceeded twenty hours of work in one month; or~~

~~(c) Exceeded more than three hundred respite hours in one calendar year.~~

~~(6) If an IP is required to or chooses to become a certified home care aide and completes the seventy hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain his or her credential and complete continuing education requirements even if:~~

~~(a) The monthly authorized hours are later reduced to twenty or fewer hours;~~

~~(b) He or she no longer works for a second unrelated client; or~~

~~(c) The individual works less than three hundred respite hours in a calendar year.~~

~~(7) The training and certification requirements for an individual that met the above criteria in subsection (6) does not apply if the individual returns to work only for his or her biological, step, or adoptive parent or adult child.)~~

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0893 Who must ~~((take))~~ complete the nine-hour basic training and by when must it be completed? (1) Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), an individual provider must ~~((take))~~ complete orientation and safety training and nine hours of training within 120 days of the date of hire as described in WAC 388-71-0837 if ~~((he or she))~~ the provider meets the following criteria:

(a) Provides ~~((only))~~ respite services for individuals with developmental disabilities receiving services under Title 71A RCW; and

(b) Works ~~((three hundred))~~ 300 hours or less of respite in any calendar year.

(2) The individual provider must complete the orientation and safety training before providing care.

(3) The training partnership identified in RCW 74.39A.360 must offer at least ~~((twelve))~~ 12 of the ~~((fourteen))~~ 14 total hours online and five of these online hours must be individually selected from elective courses.

(4) An individual must complete the nine hours basic training required under this section within ~~((one hundred twenty))~~ 120 days of the long-term care worker's date of hire.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and by when? In order to be authorized to provide department paid in-home services, all long-term care workers must obtain home care aide certification as provided in chapter 246-980 WAC unless exempt for the 70-hour basic training as described in WAC 388-71-0875.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0977 Once an individual is required to obtain certification as a home care aide, may that individual revert to exempt status? (1) If an individual is required to or chooses to become a certified home care aide and completes the ~~((seventy))~~ 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain ~~((his or her))~~ the credential and complete continuing education requirements even if:

- (a) The monthly authorized hours are later reduced to ~~((twenty))~~ 20 or fewer hours;
- (b) ~~((He or she))~~ The individual no longer works for a second unrelated client; or
- (c) The individual works 300 ~~((less than three hundred))~~ respite hours or less in a calendar year.

(2) The training and certification requirements for an individual that met the ~~((above))~~ criteria in subsection (1) of this section does not apply when the individual returns to work only for ~~((his or her))~~ the individual's:

- (a) biological, step, or adoptive parent, or adult child((-)); or
- (b) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or
- (c) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-0980 ((May)) When may a home care agency or client employ a long-term care worker who has not completed the 70-hour basic training or certification requirements? (1) If an individual has previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, 74.39A.074, and ~~((74.39A.096))~~ 74.39A.076, and this chapter, a home care agency or client must not employ the individual to work as a long-term care worker until the individual has completed the required training certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The date of hire may be reset according to ~~((chapter 246-980))~~ WAC 388-71-0837.

(3) Unless exempt from the 70-hour basic training as described in WAC 388-71-0875, individuals who meet the criteria in subsection (2) of this section are allowed a new 120 days to complete the 70-hour home care aide basic training and a new 200 days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (2) of this section must submit a new application and fee to the department of health.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-71-1001 Which long-term care workers are exempt from the continuing education requirement? Continuing education is not required for any of the following:

(1) Individual providers caring only for the provider's:

(a) ((~~their~~)) biological, step, or adoptive child; or

(b) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

(2) Individual providers that:

(a) Provide ~~((care to only one person and provide))~~ no more than 20 hours of nonrespite care in any calendar month to only one person who is not the provider's: ((~~or~~))

(i) biological, step, or adoptive child; or

(ii) sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership;

(b) ~~((Individual providers who only))~~ Provide respite services and work 300 hours or less of respite in any calendar year;

(3) Before January 1, 2016, a long-term care worker employed by a community residential service business; and

(4) Registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

AMENDATORY SECTION (Amending WSR 22-10-024, filed 4/25/22, effective 5/26/22)

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Adult family home training network"** means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to provide training, workforce development, and other services to adult family homes.

(3) **"Applicant"** means:

- (a) An individual who is applying for an adult family home license;
- (b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or
- (c) An individual who is applying for an enhanced services facility license.
- (4) **"Capable caregiving training"** means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements under RCW 18.20.270 and RCW 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed in both topics, may be completed for continuing education credits.
- (5) **"Care team"** includes the resident and everyone involved in ~~((their))~~ the individual's care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.
- (6) **"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.
- (7) **"Competency"** means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.
- (8) **"Competency testing"** including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.
- (9) **"Core basic training"** is the portion of the 70-hour home care aide basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.
- (10) **"Date of hire"** for determining time frames related to training and certification ~~((r))~~ means ~~((date of hire according to chapter 246-980 WAC))~~ the first day the long-term care worker is employed by any employer.
- (11) **"DDA"** means the developmental disabilities administration.
- (12) **"Designee"** means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.
- (13) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).
- (14) **"Direct supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.
- (15) **"DSHS"** or **"department"** means the department of social and health services.

(16) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(17) "**Entity representative**" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(18) "**Expanded specialty training**" means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(19) "**Guardian**" means an individual as defined in chapter ~~(11.88)~~ 11.130 RCW.

(20) "**Home**" means adult family homes, enhanced services facilities, and assisted living facilities.

(21) "**Home care aide certified**" or "**home care aide**" means a person who obtained and maintains a home care aide certification through the department of health.

(22) "**Hybrid**" means a combination of online training and in-person, remote, or virtual classroom instruction.

(23) "**Indirect supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

(24) "**Learning objectives**" means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

(25) "**Long-term care worker**" means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

(26) **"Online training"** means a course taken through an automated, asynchronous learning management system or other technology that conforms to the online training standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>.

(27) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

(28) **"Provider"** means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

(29) **"Remote skills training"** means training conducted in a virtual classroom environment, or online when a student either demonstrates a skill live or provides a video recorded file of themselves performing a skill that is forwarded for feedback to an approved instructor or a proctor trained by an approved instructor, or both. A training program must be approved by DSHS to provide remote skills training.

(30) **"Renewal period"** means the certification renewal period as defined in WAC 246-12-010.

(31) **"Resident"** means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

(32) **"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

(33) **"Routine interaction"** means regular contact with residents.

(34) **"70-hour home care aide basic training"** means the 70-hours of required training that a new long-term care worker must complete within 120 days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

(35) **"Special needs"** means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490 for assisted living or WAC 388-76-10000 for adult family homes.

(36) **"Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, ((WAC)) 388-112A-0440, or ((WAC)) 388-112A-0450.

(37) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

(38) **"Virtual classroom"** means a synchronous, instructor-led, remote learning environment conducted in real time that conforms to the virtual classroom standards posted on the DSHS website at <https://bit.ly/dshs-online-standards>. A training program must be approved by DSHS to provide virtual classroom instruction.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-112A-0110 May a home employ a long-term care worker who has not completed the 70-hour home care aide training or certification requirements? (1) If an individual previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, 74.39A.074, 74.39A.076, and this chapter, an adult family home, enhanced services facility, or assisted living facility must not employ the individual to work as a long-term care worker until the individual has completed the required training or certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The original date of hire may be reset according to (~~chapter 246-980~~) WAC 388-112A-0115. A long-term care worker who is not currently certified or eligible to reactivate an expired credential shall receive a new date of hire when beginning work with either a new employer or returning to a former employer after prior employment has ended.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new 120 days to complete the orientation, safety, and 70-hour home care aide basic trainings and a new 200 days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (2) of this section must submit (~~a new~~) an application and fee to the department of health.

AMENDATORY SECTION (Amending WSR 23-01-022, filed 12/9/22, effective 1/9/23)

WAC 388-112A-0115 How does DSHS determine a long-term care worker's date of hire and when may a long-term care worker be eligible to have the date of hire reset? (1) The department determines a long-term care worker's date of hire according to (~~chapter 246-980 WAC~~) the first day the long-term care worker is employed by any employer.

(2) The date of hire is specific to each long-term care worker. (~~It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-112A-0110~~) A long-term care worker, including an individual who has worked as a long-term care worker in the past, but who did not complete the training or certification that was required at the time, and a worker who is not currently certified or eligible to reactivate an expired credential, shall receive a new date of hire when beginning work with either a new employer or returning to a former employer after prior employment has ended.

(3) This section does not apply to background check requirements under this chapter.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0503 What definitions apply to WAC 388-115-0500 through 388-115-05640? (1) "Area agencies on aging (AAA)" means a

contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded LTC in ~~((their))~~ the individual's own ~~((homes))~~ home.

(2) **"Applicant"** means a person who is in the process of becoming an in-home long-term care worker.

(3) **"Negative actions"** are listed in WAC 388-113-0030.

(4) **"Background check"** means a name and date of birth check or a fingerprint-based background check, or both.

(5) **"Background check result"** is defined in WAC 388-113-0101.

(6) **"Background check central unit(()) (BCCU)"** means the DSHS entity responsible for conducting background checks for the department.

(7) **"Character, competence, and suitability determination (CC&S)"** is defined in WAC 388-113-0050.

(8) **"Client"** means an individual receiving medicaid((-)) or veterans' administration funded in-home long term services from the department.

(9) **"Consumer directed employer (CDE)"** is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout ~~((this))~~ chapter 74.39A RCW and include:

~~((1))~~ (a) Coordination with the consumer, who is the individual provider's managing employer;

~~((2))~~ (b) Withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers;

~~((3))~~ (c) Verifying an individual provider's qualifications; and

~~((4))~~ (d) Providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

(10) **"Date of hire"** for determining time frames related to training and certification means the first day the long-term care worker is employed by any employer.

(11) **"Department"** means the department of social and health services (DSHS).

(12) **"Fingerprint-based background check"** means an in-state criminal history records check through the Washington state patrol and a national criminal history records check through the Federal Bureau of Investigation.

(13) **"Individual provider (IP)"** as defined in RCW 74.39A.240 limited to individual providers employed by the consumer directed employer.

(14) **"Managing employer"** means a consumer who employs one or more individual providers and whose responsibilities include:

~~((1))~~ (a) Choosing potential individual providers and referring them to the consumer directed employer;

~~((2))~~ (b) Selecting an individual provider(s);

~~((3))~~ (c) Overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and

~~((4))~~ (d) Dismissing the individual provider when desired.

(15) "Name and date of birth check" is a search, conducted by the background check central unit (BCCU), of Washington state ~~((check))~~ criminal history and negative action records using the applicant's name and date of birth.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0505 What is the client's role as managing employer of an individual provider? The client, or ~~((their))~~ the client's representative, is the managing employer and:

- (1) Has the primary responsibility to select, dismiss, assign hours, and supervise the work of one or more individual providers; and
- (2) May receive assistance from the consumer directed employer or other resources in identifying potential providers.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0520 What are the training requirements for an individual provider? An individual hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006. ~~((These training requirements also apply to individual providers who were hired before January 7, 2012, if they did not complete prior training requirements within one hundred twenty days of hire and they want to be reinstated to work. These training requirements and certification if required must be met prior to reinstating these individuals to work.))~~

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers ~~((, including))~~. This includes criteria for those providers working limited hours for one person, caring only for one's child, ~~((or))~~ parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, ((and)) providing respite services ((only)), or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education ((CE))	Required credential
(1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required ((twelve)) 12 hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. <u>For NA-C and those with special education training, 12 hours is required for each year worked in long-term care.</u>	((Not required. Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839)) Required under chapter 246-980 WAC.
(2) An individual provider with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on ((his or her)) <u>the worker's date of hire.</u> WAC 388-71-0839.	Not required.	Not required.	Not required.	((Required. Twelve)) 12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.
(3) An individual provider.	Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 ((g)) and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Seventy)) 70 hours under WAC 388-71-0870 and 388-71-0875.	Required. ((Twelve)) 12 hours under WAC 388-71-0990 and 388-71-0991.	((Home care aide certification required under WAC 388-71-0975 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065))) Required under chapter 246-980 WAC.

Who	Status	Orientation training	Safety training	Basic training	Continuing education ((CE))	Required credential
(4) An individual provider who works limited hours for one person.	<u>An individual provider employed by the consumer directed employer</u> providing ((twenty)) <u>20</u> hours or less of <u>nonrespite</u> care for one person per calendar month((s)) and does not meet the criteria in <u>subsection (1) or (2)</u> of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) <u>30</u> hours under WAC 388-71-0880.	Not required.	Not required.
(5) An individual who provides ((only)) respite services and works ((three hundred)) <u>300</u> hours or less in any calendar year.	(a) <u>An individual providing</u> ((only)) respite care and works no more than ((three hundred)) <u>300</u> hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) <u>An individual providing</u> ((only)) respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working ((three hundred)) <u>300</u> hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) <u>Nine</u> hours under WAC ((388-71-0880)) <u>388-71-0890</u> .	Not required.	Not required.
(6) An individual provider caring only for ((his or her)) <u>the provider's biological, step, or adoptive adult child</u> .	<u>An individual providing care only for ((his or her)) the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.</u>	Required. Two hours per WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education ((CE))	Required credential
<p>(7) An individual provider caring only for (his or her) the provider's biological, step, or adoptive child, or parent.</p>	<p>An individual providing care <u>only</u> to (his or her) the provider's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. (Thirty) 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care for an individual provider caring only for (his or her) the individual's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for (his or her) the individual's biological, step, or adoptive child under WAC 388-71-1001.</p>	<p>Not required.</p>
<p>(8) An individual provider caring only for the individual provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.</p>	<p>An individual providing care <u>only</u> for the individual provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>Not required.</p>	<p>Not required.</p>
<p>(9) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.</p>	<p>A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.</p>	<p>Not required.</p>

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0540 When will the consumer directed employer (CDE) reject your selected individual provider? (1) The CDE will reject an individual provider who:

(a) Is the client's spouse, except in the case of an individual provider for a chore services client or when the client is receiving services under the veteran directed home care program;

(b) Is the natural, step, or adoptive parent of a minor client aged (~~seventeen~~) 17 or younger;

(c) Is the foster parent providing personal care or skills acquisition training to a child residing in (~~the~~) the individual's licensed foster home; or

(d) Does not meet the qualifications under WAC 388-115-0510.

(2) The CDE will also reject an individual provider when the CDE believes that the individual will be unable to appropriately meet the care needs of the consumer, including health and safety.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-05410 What are the client's rights if the consumer directed employer rejects (~~their~~) the selection of a person to serve as (~~their~~) the client's individual provider or discontinues (~~their~~) the current individual provider's assignment? (1) The client may choose to receive services from a different individual provider or another qualified provider.

(2) The client has the right to dispute the decision under the consumer directed employer's dispute resolution process.

(3) The client does not have a right to a hearing under chapter 34.05 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-112A-0130 When and how may a long-term care worker be eligible to reset date of hire?

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The proposed rule is mirroring language from the statute and adjusting gender-neutral language.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The proposed rule is mirroring language from the statute and adjusting gender-neutral language.

Scope of exemption for rule proposal:

Is fully exempt.

November 7, 2023

David L. Carsten, DDS, Chair
Dental Quality Assurance Commission

OTS-4952.1

AMENDATORY SECTION (Amending WSR 16-05-083, filed 2/16/16, effective 3/18/16)

WAC 246-817-150 Licenses—Persons licensed or qualified out-of-state who are faculty at school of dentistry—Conditions. (1) The department shall provide an application for faculty licensure upon receipt of a written request from the dean of the (~~University of Washington, School of Dentistry~~) school of dentistry of any institution of higher education in Washington state accredited by the commission on dental accreditation.

(2) Applicants for faculty licensure shall submit a signed application, including applicable fees, and other documentation as required by the DQAC.

(3) The dean of the (~~University of Washington, School of Dentistry, or his~~) school of dentistry of any higher education in Washington state accredited by the commission on dental accreditation, or their designee, shall notify the department of health of any changes in employment status of any person holding a faculty license.

WSR 23-23-064
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed November 9, 2023, 4:02 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 220-450-230 under WSR 23-22-118, filed on October 31, 2023. The department will file a new proposal on this topic at a later date.

Scott Bird
Rules Coordinator

WSR 23-23-086

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 13, 2023, 3:53 p.m.]

The department of licensing requests the withdrawal of the proposed rule making for chapter 308-124 WAC filed as WSR 23-16-153 on August 2, 2023.

Ellis Starrett
Rules Coordinator

WSR 23-23-103

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed November 15, 2023, 9:57 a.m.]

Continuance of WSR 23-16-123.

Preproposal statement of inquiry was filed as WSR 23-12-046.

Title of Rule and Other Identifying Information: WAC 4-30-010 Definitions, 4-30-020 What are the authority for and the purpose of the Board's rules?, 4-30-028 Rules governing the formal adjudicative proceedings and the brief adjudicative proceedings before the board, 4-30-030 What are the requirements for communicating with the board and staff?, 4-30-032 Do I need to notify the board if I change my address?, 4-30-034 Must I respond to inquiries from the board?, 4-30-036 What enforcement actions must be reported to the board?, 4-30-038 Fees, 4-30-082 How does a CPA-Inactive certificate holder apply for licensure?, 4-30-084 Converting from certificate to license, 4-30-088 What is the effect on a Washington individual licensee or CPA-inactive certificate holder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?, 4-30-094 How do I renew my individual license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-104 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?, 4-30-120 I am a CPA-Inactive certificate holder—Prior to July 1, 2001, I held a license—How do I apply to return to my previous status as a licensee?, 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or CPA-Inactive certificate out of retirement?, 4-30-124 How do I reinstate a lapsed license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-126 How do I reinstate a revoked or suspended license, CPA-inactive certificate, or registration as a resident nonlicensee firm owner?, 4-30-134 Continuing professional education (CPE) requirements, 4-30-136 Reporting continuing professional education (CPE) to the board, and 4-30-142 What are the bases for the board to impose discipline?

Hearing Location(s): On January 26, 2024, at 9:00 a.m., at the Radisson Hotel Seattle Airport, San Juan Rooms 2 and 3, 18118 International Boulevard, Seattle, WA 98188; or via Microsoft Teams meeting. This rules hearing is rescheduled from the original October 20, 2023, rules hearing date.

The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>.

A phone number will be provided as well in case you are unable to attend online.

Date of Intended Adoption: January 26, 2024.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by January 24, 2024.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by January 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board proposes amending the rules due to legislative changes. On March 17, 2022, Governor Inslee signed into law SB 5519. SB 5519 amends existing laws to remove outdated references to certificate holders. The board has not issued such certifi-

cates since the early 2000s. SB 5519 allows for the remaining population of certificate holders to transition to a licensed but inactive status while affording such certificate holders the opportunity to become fully licensed. SB 5519 also creates this new inactive status which did not previously exist. This new licensed status provides an intermediate step bridging the gap between the licensee statuses of CPA and retired CPA. Because SB 5519 removes the certificate holder status and creates an inactive licensee status, board laws now align with other CPA jurisdictions. As a result, many board rules must be amended because "CPA-Inactive certificate holder" and "certificate" references are woven throughout the entirety of chapter 4-30 WAC (board rules). The proposed board rules also further refine the new licensed but inactive status and the processes associated with the new status. The proposed rule changes will ensure consistency with the law as enacted by SB 5519 and consistency with other CPA jurisdictions. The proposed changes will rename some of the rules.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Paquette, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-485-1659.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board is not a listed agency in RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 15, 2023
Michael J. Paquette, CPA
Executive Director

OTS-4805.1

AMENDATORY SECTION (Amending WSR 23-04-085, filed 1/31/23, effective 3/3/23)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

"Act" means the Public Accountancy Act codified as chapter 18.04 RCW.

"Active individual participant" means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provi-

ded as a result of passive investment is not an active individual participant.

"Applicant" means an individual who has applied:

- (a) To take the national uniform CPA examination;
- (b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;
- (c) To renew an individual license, (~~(a CPA Inactive certificate)~~) a CPA firm license, or registration as a resident nonlicensee firm owner;
- (d) To reinstate an individual license (~~(, a CPA Inactive certificate)~~) or registration as a resident nonlicensee firm owner (~~(, or practice privileges)~~);
- (e) To convert an inactive license to an active license.

"Attest" means providing the following services:

- (a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;
- (b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;
- (c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and
- (d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

"Audit," "review," and **"compilation"** are terms reserved for use by licensees, as defined in this section.

"Board" means the board of accountancy created by RCW 18.04.035.

"Breach of fiduciary responsibilities/duties" means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

"Certificate" (~~(means a certificate as a CPA Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule)~~) issued under this act means an alternative license type previously issued by the board indicating that the certificate holder had passed the CPA examination, but had no verified experience, and was not fully licensed to practice public accounting. Certificates remained valid until June 30, 2024, at which time they convert to a CPA license in an inactive status. This definition does not include certificates issued by other jurisdictions which may be substantially equivalent to a Washington CPA license.

(~~("Certificate holder" means the holder of a valid CPA Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.)~~)

"Client" means the person or entity that retains a licensee, as defined in this section, (~~(a CPA Inactive certificate holder)~~) a nonlicensee firm owner of a licensed firm (~~(,)~~) or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

"Compilation" means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

"CPA" or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

~~(**"CPA-Inactive"** means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.)~~

"CPE" means continuing professional education.

"Fiduciary responsibility/duty" means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

"Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

"Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195

(1)(a)(iii)(A) through (D) exercising practice privileges in this state.

"Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

"Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

"Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

"Inactive" means ~~((the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public))~~ a status of a license which prohibits a licensee from practicing public accounting. A person holding an inactive license may apply to the board to convert the license to an active status through an approval process established by the board.

"Individual" means a living, human being.

"Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

"Interactive self-study program" means a CPE program that provides feedback throughout the course.

"IRS" means Internal Revenue Service.

"License" means a license to practice public accounting issued to an individual or a firm under the act, or ~~((the act of))~~ a license or certificate to practice public accounting in another state or jurisdiction.

"Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, ~~((including out-of-state))~~ and individuals ((exercising)) holding licenses or certificates to practice public accounting granted by out-of-state jurisdiction who are allowed to exercise practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

"Manager" means a manager of a limited liability company licensed as a firm under the act.

"Nano learning" is a stand-alone continuing professional education (CPE) course that is a minimum of 10 minutes (0.2 CPE credit hours) consisting of electronic self-study with a stated learning objective and a minimum of two final assessment questions.

"NASBA" means the National Association of State Boards of Accountancy.

"Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

"PCAOB" means Public Company Accounting Oversight Board.

"Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under this section.

"Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

"Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

"Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

"Professional services" include all services requiring accountancy or related skills that are performed for a client, an employer, or on a volunteer basis. These services include, but are not limited to, accounting, audit and other attest services, tax, bookkeeping, management consulting, financial management, corporate governance, personal financial planning, business valuation, litigation support, educational, and those services for which standards are promulgated by the appropriate body for each services undertaken.

"Public practice" or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

"Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

"Reciprocity" means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

"Report," when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report"

does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

"Representing oneself" means having a license, practice privilege, (~~(certificate)~~) or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

"Rules of professional conduct" means rules adopted by the board to govern the conduct of licensees, as defined in this section, while representing themselves to others as licensees. These rules also govern the conduct of (~~(CPA-Inactive certificate holders)~~) licensees with an inactive status, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

"SEC" means the Securities and Exchange Commission.

"Sole proprietorship" means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

"State" includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2) (a).

"Statements on auditing standards (SAS)" are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

"Statements on standards for accounting and review services (SSARS)" are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

"Statements on standards for attestation engagements (SSAE)" are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

"Substantial equivalency" or "substantially equivalent" means a determination by the board or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed those listed in this chapter.

OTS-4806.1

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-020 ((What are the authority for and the)) Authority and purpose of the board's rules((?)). The Public Accountancy Act (act), chapter 18.04 RCW, establishes the board as the licensing and disciplinary agency for certified public accountants (CPA), (~~(CPA-Inactive certificate holders,)~~) CPA firms, and owners of CPA firms. The act authorizes the board to promulgate rules to carry out the purpose of the act, which include:

- Protecting the public interest;

- Enhancing the reliability of information used for guidance in financial transactions or for accounting for or assessing financial status or performance;
- Establishing one set of qualifications to be a licensee of this state;
- Assuring that CPAs practicing in Washington have substantially equivalent qualifications to those practicing in other states;
- Regulating ownership of CPA firms;
- Publishing consumer alerts and public protection information regarding persons and firms who violate the act or board rules; and
- Providing general consumer protection information to the public.

The board's rules, contained in Title 4 WAC, encompass these subjects:

- Definitions;
- Administration of the board;
- Ethics and prohibited practices;
- Entry and renewal requirements;
- Continuing competency; and
- Regulation and enforcement.

OTS-4807.1

AMENDATORY SECTION (Amending WSR 22-04-074, filed 1/31/22, effective 3/3/22)

WAC 4-30-028 ((Rules governing the)) Formal adjudicative proceedings and ((the)) brief adjudicative proceedings before the board. Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, adjudicative proceedings in and before the board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

(1) Denials of initial individual license ~~((applications))~~, renewal ~~((s))~~, conversion, or ~~((applications for))~~ reinstatement applications;

(2) ~~((Denials of CPA Inactive certificate renewals or applications for reinstatement;~~

~~((3))~~) Denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

~~((4))~~) (3) Denials of initial firm license applications, renewals, and amendments;

~~((5))~~) (4) Denials of exam applications;

~~((6))~~) (5) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship; and

~~((7))~~) (6) Lifts of stays of suspension from a board order.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within 30 days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for brief adjudicative proceedings. The presiding officer renders a decision either upholding or overturning the denial. This decision, called an order, will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within 21 days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice chair's, or designee's, decision, also called an order, will be provided to you at the last address you furnished to the board.

OTS-4808.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-030 ((What are the requirements for)) Communicating with the board and staff(?). Individuals and firms must communicate with the board as follows:

Note: (1) Failure to timely inform the board ((of matters required by WAC 4-30-032, 4-30-036, 4-30-100, and 4-30-110)) can result in late fees and/or board discipline.
 (2) Failure to timely respond to board requests for information may result in board discipline.

Condition	Time Period	Preferred Form of Contact	WAC
Complete and/or submitted applications, including requested information, documents, and fees.	Prior to holding out as a credentialed person.	Online system, board form, letter, or email with required information.	Various
Request for brief adjudicative proceeding (BAP).	Within 30 days after the staff decision is posted in U.S. mail.	Email or written correspondence.	4-30-028
Request for appeal of brief adjudicative proceeding (BAP).	Within 21 days after the BAP decision is posted in U.S. mail.	Oral, email or written correspondence.	4-30-028
1. Change of individual physical address; or	Within 30 days of any change of address.	Online system, board form, letter, or email with required information.	((4-30-32 [4-30-032])) <u>4-30-032</u>
2. Change in the physical address of a firm's main office or branch office(s).			
Board requests for information or documents from licensees, ((certificate holders;)) nonlicensee firm owners, or applicants.	Within 20 days after the date of the request.	Email or written correspondence with requested information.	((4-30-34 [4-30-034])) <u>4-30-034</u>

Condition	Time Period	Preferred Form of Contact	WAC
1. Notification of orders or sanctions imposed by the SEC, PCAOB, IRS, or another state board of accountancy for reasons other than payment of a license fee or failure to meet the CPE requirements of another state board of accountancy.	Within 30 days of receipt of an initial notice.	Board form, letter, PDF, or email with required information.	4-30-036
2. Charges filed by the SEC, IRS, PCAOB, another state board of accountancy or a federal or state taxing, insurance or securities regulatory body.			
Licenses ((or certificate holders)) granted issued through foreign reciprocity.	Within 30 days of receiving notice that an investigation has begun or a sanction was imposed.	Board form, letter, PDF, or email with required information.	4-30-036
Any investigations undertaken or sanctions imposed by a foreign credentialing body against a foreign credential.			
Reporting firm changes:	Within 90 days after the condition occurs.	Board form, letter, PDF, or email with required information.	4-30-110
<ul style="list-style-type: none"> • Change in legal form; • Dissolution of a firm; • Change in resident manager(s) or owner(s); • Change in branch or main office location(s); • Change in firm name; • Noncompliance with firm ownership requirements. 			
A foreign license, permit, or certificate has lapsed or otherwise becomes invalid.	Within 30 days after the credential issued by the other jurisdiction has lapsed or otherwise becomes invalid.	Board form, letter, PDF, or email with required information.	((4-30-100)) <u>4-30-102</u>

OTS-4809.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-032 ~~((Do I need to notify the board if I change my address?))~~ **Change of address.** ~~((Yes.))~~ All individuals licensed in this state, ~~((CPA-Inactive certificate holders,))~~ CPA firms licensed in this state, individuals registered with the board as resident nonlicensee firm owners, and applicants must notify the board **in writing** within ~~((thirty))~~ 30 days of any change of address. Firms licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

OTS-4810.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-034 ~~((Must I respond to inquiries from the board?))~~ Re-
sponding to board inquiries. ~~((Yes.))~~ All licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b), ~~((CPA-Inactive certificate holders,))~~ nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within ~~((twenty))~~ **20 days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

OTS-4811.1

AMENDATORY SECTION (Amending WSR 11-06-062, filed 3/2/11, effective 4/2/11)

WAC 4-30-036 ~~((What))~~ Enforcement actions ((must be reported)) reportable to the board((?)). (1) A licensee ~~((, CPA-Inactive certificate holder,))~~ or nonlicensee firm owner must notify the board, of the following matters, in the manner prescribed by the board, within ~~((thirty))~~ **30 days** of the issuance of:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee, ~~((CPA-Inactive certificate holder,))~~ or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards.

(2) Licensed CPA firms with more than one licensed owner are not required to report on action taken against owners, principals, partners, or employees.

(3) If you hold a license ~~((or CPA-Inactive certificate))~~ issued through the foreign reciprocity provisions of the act, you must notify the board of any investigations undertaken, or sanctions imposed, by a foreign credentialing body against your foreign credential within ~~((thirty))~~ **30 days** of receiving notice that an investigation has begun or a sanction was imposed.

OTS-4812.1

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

WAC 4-30-038 Fees. RCW 18.04.065 provides that the board shall set fees related to licensure at a level adequate to pay the costs of administering chapter 18.04 RCW. The board has established the following fee schedule:

- (1) Initial application for individual license, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$330
- (2) Renewal of individual license, (~~CPA-Inactive certificate~~;) CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner \$230
- (3) Application for (~~CPA-Inactive certificate holder~~) a licensee to convert (~~(to a license)~~) from an inactive to an active status \$0
- (4) Application for reinstatement of license(~~;~~ ~~CPA-Inactive certificate~~;) or registration as a resident nonlicensee owner \$480
- (5) Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)
 - Firm submits reports for review \$400
 - Firm submits a peer review report for review \$60
 - Firm is exempted from the QAR program because the firm did not issue attest reports \$0
- (6) Late fee * \$100
- (7) Amendment to firm license except for a change of firm address (there is no fee for filing a change of address) \$35
- (8) Replacement CPA wall document \$50
- (9) Dishonored check fee (including, but not limited to, insufficient funds or closed accounts) \$35
- (10) CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.
 - (a) Section fees: Section fees for the computerized uniform CPA examination are set by third-party providers for the development and delivery of the exam. These fees are collected and retained by the third-party provider.

- (b) Administrative fees: Administrative fees for the qualification and application processes are set by a third-party provider. These fees are collected and retained by the third-party provider.

* The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

OTS-4813.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-082 ~~((How does a CPA-Inactive certificate holder apply for licensure?))~~ Certificate holder applying for initial licensure.
~~((CPA-Inactive))~~ Certificate holders ~~((are individuals who held a valid certificate on June 30, 2001, but did not hold a valid Washington state license to practice public accounting on that date. Individuals who did not hold a valid certificate on June 30, 2001 and current licensees are not eligible for CPA-Inactive certificate holder status))~~ who did not hold a valid certificate on the conversion date of June 30, 2024, must apply for a license and meet the requirements for initial licensure.

~~(1) To qualify for licensure ((a CPA-Inactive certificate holder))~~ you must meet the following criteria and requirements:

- (a) Good character requirements of RCW 18.04.105 (1)(a);
 (b) Experience requirements of WAC 4-30-070 within the eight-year period immediately preceding your application; and
 (c) CPE requirements of WAC 4-30-134(5).

~~(2) ((To apply for a license, you must also submit to the board a certification that you meet the requirements of subsection (1) of this section and:~~

~~-(a) Have not held out in public practice during the time in which you were a CPA-Inactive certificate holder; and~~

~~-(b) Other required documentation or information deemed necessary by the board.~~

~~-(3))~~ You must ((provide)) submit the required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

~~-(4) You must submit all requested information, documents, and fees (if applicable) to the board before the application will be evaluated.~~

~~-(5))~~ (3) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's license database and, therefore, made publicly available for confirmation. A hard copy of your ((credential)) license can be provided upon request.

~~-(6) Your CPE reporting period and your renewal cycle will remain the same.~~

~~-(7))~~ (4) Your license will expire on June 30th of the third calendar year following initial licensure.

(5) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

OTS-4814.1

NEW SECTION

WAC 4-30-084 Converting from certificate to license. Previous certificate holders were automatically converted on July 1, 2024, to a license in an inactive status. In order to practice public accounting, you must convert your license to an active status.

(1) To qualify to apply for an active license you must:

(a) Meet the experience requirements of WAC 4-30-070, without regard to the eight-year limitation; and

(b) Meet the CPE requirements of WAC 4-30-134(5); and

(c) Submit the required information, documents, and fees (if applicable) to the board either by submitting an application through the board's online application system or on a form provided upon request.

(2) Upon assessment of your qualifications and approval of your application, your license status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

(3) Your CPE reporting period and your renewal cycle will remain the same.

(4) You may not use the title "CPA" or "Certified Public Accountant" until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

OTS-4815.1

AMENDATORY SECTION (Amending WSR 14-22-033, filed 10/28/14, effective 11/28/14)

WAC 4-30-088 (~~What is the effect on a Washington individual licensee or CPA inactive certificateholder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?~~) Military service. (1) **Definitions.** For purposes of this rule:

(a) "Active military duty" means:

(i) Deployed upon order of the President of the United States, the U.S. Secretary of Defense or Homeland Security in the case of a member of the armed forces or armed force reserves; or

(ii) Deployed upon order of the governor of this state in the case of the National Guard.

(b) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard and reserves of each branch of the armed forces.

(c) "Active duty" means full-time employment in the armed forces of the United States. Such term does not include National Guard duty.

(d) "Military individual" means a living human being serving full time in the United States armed forces.

(e) "Military spouse" means the husband, wife, or registered domestic partner of a military individual.

(2) Active military duty.

(a) An individual fully employed on active duty in the armed forces of the United States applying for an initial license in this state shall receive priority processing of the application for initial licensing.

(b) A military applicant who obtains an initial license or a military individual holding a current license issued by this board, will be classified as "military" if the services provided to the armed forces include services within the definition of the practice of public accounting.

(c) An individual in the armed forces, reserves or National Guard and called to "active military duty" while holding an active or inactive license (~~or CPA inactive certificate~~) issued by this board may apply for a waiver of renewal fees and continuing professional education (CPE):

(i) The request for waiver of renewal fees and continuing professional education may be made through the board's online application and payment system or on a form provided by the board upon request;

(ii) The request for waiver must be supported by submitting documentation to substantiate the military individual's "active military duty" status;

(iii) Upon approval the waiver will serve to classify the individual as "military inactive";

(iv) The CPE reporting period and renewal year will not be affected by this reclassification of status;

(v) The waiver will continue to maintain an individual's military inactive status without fee or CPE until the individual is released from active military duty or discharged from the armed forces, reserves, or National Guard;

(vi) The board must be notified within six months after the date of release from active military duty or discharge from the armed forces. The board must be notified within six months of the date of release from a treatment facility if the individual is or has been in a treatment facility and a discharge was the result of injury or other reasons.

(3) Return to previously held status after release from "active military duty" or discharge from the armed forces.

(a) If a military individual desires to return to a previously held status after release from active military duty or discharge from the armed forces, all required information, documents, and fees must be submitted to the board before the application will be evaluated. An application for return to previously held status may be made through the board's online application and payment system or on a form provided by the board upon request and must include the following:

(i) Documentation to substantiate:

- Release from "active military duty"; or
- Type of discharge from the armed forces.

(ii) Documentation to substantiate completion of the following qualified CPE:

- If the application is submitted in the last year of the previous CPE reporting period the individual must have completed four CPE

credit hours in ethics and regulation in Washington state and receive a passing grade of (~~ninety~~) 90 percent on the board prepared examination available on the board's website. The renewal fee is waived in this circumstance;

- If the application is submitted in the second year of the previous CPE reporting period the individual must have completed (~~forty~~) 40 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of (~~ninety~~) 90 percent on the board prepared examination available on the board's website;

- If the application is submitted in the first year of the previous CPE reporting period the individual must have completed (~~eighty~~) 80 CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of (~~ninety~~) 90 percent on the board prepared examination available on the board's website.

(iii) A military individual may receive an expedited license while completing any specific requirements that are not related to CPE or other board rules.

(b) The previously held status will not become effective until the status has been posted to the board's database and, therefore, made available to the general public.

(4) Military spouses.

(a) A military spouse or state registered domestic partner of an individual in the military may receive an expedited license while completing any specific additional requirements that are not related to training or practice standards for the profession, provided the military spouse or state registered domestic partner:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and

(ii) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of another state or jurisdiction of the United States.

(b) To receive expedited license treatment, the military spouse or state registered domestic partner of an individual in the military must provide all required information, documents, and fees to the board either by making application through the board's online application and payment system or on a form provided by the board upon request before the application will be evaluated.

(c) The application for expedited licensing will not be processed until the applicant submits copies to the board of the military individual's orders and official documents to establish the applicant's relationship to the military individual, such as one or more following documents:

(i) The military issued identification card showing the individual's military information and the applicant's relationship to that individual;

(ii) A marriage license; or

(iii) Documentation verifying a state registered domestic partnership.

(d) A military spouse or state registered domestic partner may only use a restricted title and practice public accounting under another state's license without an expedited license issued by this board for (~~ninety~~) 90 days from the date the spouse entered this state for temporary residency during the military individual's transfer to this state.

OTS-4816.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-094 (~~(How do I renew my individual license, CPA Inactive certificate, or registration as a resident nonlicensee firm owner?)~~) **Renewals.** (~~(A licensee may not renew as a CPA Inactive certificate holder.)~~)

To renew your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner, you must by April 30th of the year of expiration make application through the board's online application system or on a form provided by the board upon request and provide the board with:

(1) Complete renewal information including:

(a) Your certification that you have complied with the CPE requirements of WAC 4-30-134(~~(-1)~~) and the supporting documentation requirements of WAC 4-30-138; and

(b) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or permit to practice;

(2) All required documentation, required information, and other documentation deemed necessary by the board; and

(3) All applicable fees.

A renewal application is not complete and cannot be processed until all required information, documents, and all applicable fees are submitted to the board.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

An individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner renewal expires on June 30 of the third calendar year following the calendar year of renewal.

Late renewal application: Failure to file a complete application for renewal of an individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner by April 30th of the year of expiration will result in late fees. The board may waive, reduce, or extend the due date of renewal and/or late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

Failure to file a renewal application: If you fail to file a complete application for renewal of an individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner by June 30th of the year of renewal, your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner will lapse.

Failure to complete CPE: If you did not complete the credit hours of continuing professional education (CPE) required to renew (~~your credential~~), or did not submit (~~a timely~~) an extension request, and/or (~~was~~) were not granted an extension of time (~~for reasonable cause within which~~) to complete the deficiency, your individual license(~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner will lapse on June 30th of the year of renewal.

Lapsed credentials: A lapsed credential is subject to reinstatement.

If your individual license (~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) or exercise other privileges that are dependent upon the renewal (~~(of your credential)~~).

OTS-4817.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 4-30-104 How do I renew a Washington CPA-Inactive certificate and/or license granted through foreign reciprocity?

OTS-4818.2

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-120 ~~((I am a CPA-Inactive certificate holder Prior to July 1, 2001, I held a license How do I apply to return to my previous status as a licensee?))~~ **Converting license status from inactive to active.** ~~((CPA-Inactive certificate holders who held a license at any time prior to July 1, 2001, may apply to return to their previous status as a licensee. If you are a CPA-Inactive certificate holder, you may not use the title "CPA" or "Certified Public Accountant" until you return to your previous status as a licensee.~~

~~If you hold a valid CPA-Inactive certificate, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, required documentation, fees, and other documentation deemed necessary by the board are submitted to the board.~~

~~To apply to return to your previous))~~ To convert to an active status as a licensee you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not held out ((in)) or practiced public ((practice)) accounting during the time in which you were ((a CPA-Inactive certificate holder)) inactive; and

(b) Met the CPE requirements of WAC 4-30-134(5) ((?)).

(2) ((All other required information, documents, and all fees.)) The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your active status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

~~((You may not use the title CPA until your status as a licensee is posted in the board's licensee database.))~~

OTS-4819.2

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-122 ~~((If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or a CPA-Inactive certificate out of retirement?))~~ **Renewal out of retirement.** If you notify the board that you wish to retire your license (~~(or CPA-Inactive certificate)~~) prior to the end of your renewal cycle, pursuant to RCW 18.04.215, you may renew your license (~~(or CPA-Inactive certificate)~~) out of retirement at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you renew out of retirement.

~~((If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.))~~

To apply to renew a license (~~(or a CPA-Inactive certificate)~~) out of retirement, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To apply to renew out of retirement, you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license (~~(or CPA-Inactive certificate)~~) was retired; and

(b) Met the CPE requirements to renew out of retirement in WAC 4-30-134(5) (~~(; and)~~).

(2) ~~((All applicable fees.))~~ The required information, documents, and fees (if applicable) to the board either by making application through the board's online application system or on a form provided upon request.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license (~~(or CPA-Inactive certificate)~~) will expire on June 30th of the third calendar year following the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the renewal of your retired license (~~(or CPA-Inactive certificate)~~) was approved by the board and ends on December 31st of the second calendar year fol-

lowing approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license (~~(or CPA-Inactive certificate)~~) cannot be utilized for subsequent renewal (~~(of your credential renewed out of retirement)~~).

You may not use the title CPA (~~(or CPA-Inactive)~~) until your renewal out of retirement application has been approved.

OTS-4820.1

AMENDATORY SECTION (Amending WSR 20-02-059, filed 12/24/19, effective 1/24/20)

WAC 4-30-124 (~~(How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?)~~) Reinstatements. If your individual license (~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) until your individual credential has been reinstated by the board.

~~((Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.))~~

To reinstate a lapsed individual license (~~(, CPA-Inactive certificate,)~~) or registration as a nonlicensee firm owner you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) Complete reinstatement information including your certification that you have:

(a) *For those who wish to reinstate a license (~~(or CPA-Inactive certificate)~~)*: Not used the title CPA or CPA-Inactive during the time in which your individual license (~~(or CPA-Inactive certificate)~~) was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was (~~(suspended or revoked)~~) lapsed; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(5); and

(d) Met the CPE supporting documentation requirements in WAC 4-30-138;

(2) (~~(Source)~~) Provide documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) Other required documents; and

(5) All applicable fees.

Upon approval of your reinstatement application, your status will be posted in the board's licensee database and, therefore, made pub-

licly available for confirmation. A hard copy of your credential can be provided upon request.

Your license(~~(, CPA-Inactive certificate,)~~) or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license(~~(, CPA-Inactive certificate,)~~) or registration as a nonlicensee firm owner was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for subsequent renewal (~~(of your reinstated credential)~~).

You may not use the (~~(restricted title(s))~~) title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident licensee firm owner until your reinstatement application has been approved (~~(and posted to the board's database)~~).

OTS-4821.1

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-126 ((How do I reinstate)) Reinstatement of a revoked or suspended license(~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner(?). If your license (~~(or CPA-Inactive certificate)~~) was revoked or suspended by the board pursuant to the act, you may not use the title CPA or CPA-Inactive until your license (~~(or CPA-Inactive certificate)~~) is reinstated by the board.

If your registration as a resident nonlicensee firm owner was revoked or suspended by the board pursuant to the act, you may not be a firm owner until your registration is reinstated by the board.

You may request that the board modify the suspension or revocation after three years have elapsed from the effective date of the board's order revoking or suspending your license(~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner unless the board sets some other period by order. However, if you made a previous request with respect to the same order, no additional request will be considered before the lapse of an additional three years following the board's decision on the last such previous application for reinstatement.

To request reinstatement of a revoked or suspended license(~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner you must provide the board with certain information either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To request reinstatement, you must submit to the board:

(1) Complete information including your certification that you have:

(a) *For those who wish to reinstate a license (~~(or CPA-Inactive certificate)~~):* Not used the title CPA or CPA-Inactive during the time

in which your license (~~(or CPA-Inactive certificate)~~) was suspended or revoked; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner:* Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(~~(+6)~~) (5), by submitting the documentation to support the CPE claimed;

(2) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, (~~(CPA-Inactive)~~) certificate, permit, or practice privilege under substantial equivalence;

(3) All applicable fees;

(4) Written substantiation of the reasons constituting good cause for the reinstatement; and

(5) Two supporting recommendations from licensees who have personal knowledge of your activities since the suspension or revocation was imposed.

In considering the reinstatement application, the board may consider all relevant factors, including but not limited to:

(a) The offense for which you were disciplined;

(b) Your activities since the disciplinary penalty was imposed;

(c) Your activities during the time the license(~~(, CPA-Inactive certificate,)~~) or registration as a resident nonlicensee firm owner was in good standing;

(d) Your rehabilitative efforts;

(e) Restitution to damaged parties in the matter for which the penalty was imposed; and

(f) Your general reputation for integrity, objectivity, and ethical commitment.

If the board decides to consider the merits of your application for reinstatement, in the board's discretion, a hearing may be held following such procedures as the board deems suitable for the particular case. If the board decides that it will not consider the merits of your application for reinstatement, then this constitutes final agency action and there is no further administrative review available to you. As a condition of reinstatement, the board may impose such terms and conditions as it deems suitable.

The board will not consider a request for reinstatement while you are under sentence for any criminal offense, including any period during which you are on court-imposed probation or parole.

If the board approves your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your reinstated credential can be provided upon request.

Your reinstated license(~~(, CPA-Inactive certificate,)~~) or registration will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license(~~(, CPA-Inactive certificate,)~~) or registration was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement of a license(~~(, CPA-Inactive certificate,)~~) or registration cannot be utilized for subsequent renewal (~~(of your credential)~~).

You may not use the title CPA or CPA-Inactive or hold an interest in a licensed CPA firm as a resident nonlicensee firm owner until your reinstatement application has been approved.

OTS-4822.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-134 Continuing professional education (CPE) requirements. (1) Renewal.

(a) CPE requirements for renewal are pursuant to RCW 18.04.215(5).

(b) An individual seeking renewal shall assert in a manner acceptable to the board that they met all of the CPE requirements for renewal during their CPE reporting period ending December 31st of the year prior to their license expiration date.

(c) CPA ((licensee)) license in an active status.

(i) Completion of a minimum of (~~one hundred twenty~~) 120 CPE credit hours within the three-year CPE reporting period;

(ii) Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132;

(iii) Completion of a minimum of (~~twenty~~) 20 CPE credit hours during each calendar year included in the three-year CPE reporting period. Restrictions on the type of CPE credit hours qualifying to meet the (~~twenty~~) 20 credit hour minimum are specified in WAC 4-30-133; and

(iv) Completion of no more than (~~sixty~~) 60 CPE credit hours in nontechnical subject areas as specified in WAC 4-30-132.

Exception: If the licensee qualifies for CPE reciprocity, see the CPE requirements under the provisions of subsection (7) of this section.

(d) (~~CPA-Inactive certificate holder~~) CPA license in an inactive status or nonlicensee firm owner. Completion of a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(2) First renewal cycle.

(a) After license issuance:

(i) CPE credit is allowable only for those programs taken in time periods after the first CPA license is issued pursuant to the authority of the board under chapter 18.04 RCW.

(ii) Credit is not allowed for programs taken to prepare an applicant for the CPA examination or the AICPA ethics examination as a requirement for initial licensure.

(b) After conversion of a (~~CPA-Inactive to a CPA license~~) license from an inactive to an active status.

(i) If your (~~license~~) active status was issued during the **first calendar year** of your CPE reporting period, you must have completed (~~eighty~~) 80 CPE credit hours which is limited to (~~forty~~) 40 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(ii) If your (~~license~~) active status was issued during the **second calendar year** of your CPE reporting period, you must have completed (~~forty~~) 40 CPE credit hours which is limited to (~~twenty~~) 20 CPE credit hours in nontechnical subject areas and must include a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(iii) If your (~~license~~) active status was issued during the **third calendar year** of your CPE reporting period, you must have completed a four credit hour Washington state board approved ethics course meeting the requirements of WAC 4-30-132.

(3) Extension requests for renewal.

(a) If an individual has failed to complete the required CPE as defined in WAC 4-30-134 by December 31st of the last year of their three-year CPE reporting period, the individual must notify the board prior to their expiration date to request an extension of time to complete their CPE requirement by their expiration date.

(b) Credits earned during the interim period between January 1st and June 30th of the individual's renewal year that are used to meet the prior reporting period's CPE requirement will be carried back to the CPE reporting period ended December 31st. These credits cannot be counted towards the requirement for the individual's current CPE reporting period.

(c) An individual is allowed only one CPE extension in any two consecutive CPE reporting periods (six year period).

(4) Failure to obtain required CPE for renewal. Under the following circumstances the board will serve notice that a license(~~, CPA-Inactive certificate,~~) or nonlicensee firm owner registration will lapse and the individual will have an opportunity to request a brief adjudicative proceeding:

(a) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st of the last year of their CPE reporting period and failed to request an extension by their expiration date;

(b) An individual who applied for renewal and failed to obtain the required CPE credit hours by December 31st for the second time in any two consecutive CPE reporting periods; or

(c) An individual who applied for renewal and failed to obtain the necessary CPE credit hours by June 30th of their renewal year after submitting an extension request.

(5) Applications other than renewal.

(a) For the following applications, you must have completed the requirements of this section within the (~~thirty-six~~) 36-month period immediately preceding the date an application is submitted to the board; however, the completion of a four credit hour Washington state board approved ethics course must be within the six-month period immediately preceding the date your application and the CPE documentation are submitted to the board:

(i) You are applying to renew a license out of retirement;

(ii) You are applying to convert your inactive status to active;

(iii) You are a (~~CPA-Inactive~~) certificate holder applying for ((a)) an initial license; or

(~~(iii)~~) (iv) You are applying for reinstatement of a lapsed, suspended, or revoked license.

(b) For the following applications, you must have completed a four credit hour Washington state board approved ethics course within the six-month period immediately preceding the date your application

and the CPE documentation are submitted to the board: (~~(i) You are applying to renew a CPA Inactive certificate out of retirement;~~

~~(ii) You are applying to reinstate a lapsed, suspended, or revoked CPA Inactive certificate; or~~

~~(iii))~~ You are applying to reinstate a lapsed, suspended, or revoked registration as a resident nonlicensee firm owner.

(6) **Individuals operating under mobility.** Licensees from other substantially equivalent U.S. states or jurisdictions, eligible to exercise practice privileges under RCW 18.04.195, are exempt from the CPE requirements of this section provided that they have met the CPE requirements of the state in which they are licensed.

(7) **CPE reciprocity.**

(a) A nonresident licensee seeking renewal of a license in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a license in the state in which the licensee's principal place of business is located.

(b) Nonresident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement on the renewal application of this state.

(c) If the state of residence has no CPE requirements for renewal, the nonresident licensee must comply with all CPE requirements for this state.

OTS-4823.1

AMENDATORY SECTION (Amending WSR 19-16-074, filed 7/31/19, effective 1/1/20)

WAC 4-30-136 Reporting continuing professional education (CPE) to the board. In order to apply for renewal of your license(~~, certificate,~~) or registration as a resident nonlicensee firm owner, you must satisfy the board's CPE and supporting documentation requirements.

The reporting of compliance with CPE requirements is concurrent with filing your renewal application. When you complete your application for renewal, you are required to certify that you complied with the board's CPE requirements as defined in WAC 4-30-134 and supporting documentation requirements as defined in WAC 4-30-138.

The board may verify through audit compliance with CPE and supporting documentation requirements as certified during the renewal application process. As part of this audit the board may require additional information to demonstrate your compliance with the board's rules.

OTS-4824.1

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-142 (~~(What are the bases for the board to impose discipline?)~~) **Disciplinary actions.** RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license (~~(, CPA Inactive certificate,)~~) the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed (~~(thirty thousand dollars)~~) \$30,000; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license (~~(, CPA Inactive certificate,)~~) or registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license (~~(, certificate,)~~) or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee (~~(, CPA Inactive certificate holder,)~~) or a resident nonlicensee firm owner including, but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required per RCW 18.04.215, obtaining a firm license as required by RCW 18.04.195, or without qualifying to operate under firm mobility;

(b) Offering or rendering public accounting services in this state by an out-of-state individual not qualified for practice privileges under RCW 18.04.350(2);

(c) Offering or rendering public accounting services in this state by an out-of-state firm not qualified for practice privileges under firm mobility per RCW 18.04.195.

(d) Making misleading, deceptive, or untrue representations;

(e) Engaging in acts of fiscal dishonesty;

(f) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

(g) Unlawfully selling unregistered securities;

(h) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

(i) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties, acting in a manner not in compliance with chapter 11.96A RCW; or

(j) Withdrawing or liquidating, as fees earned, funds received by a licensee(~~(, CPA-Inactive certificate holder,)~~) or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, (~~(a CPA-Inactive certificate holder,)~~) or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee(~~(, certificate holder,)~~) or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee(~~(, CPA-Inactive certificate holder,)~~) or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, (~~(CPA-Inactive certificate holder,)~~) or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in Title 4 WAC, by a licensee, defined

in WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state that does not meet the firm mobility requirements under RCW 18.04.195 (1)(a)(iii)(A) through (D) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of an out-of-state firm operating under firm mobility per RCW 18.04.195 (1)(a)(iii), in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a firm licensed in this state, or a firm operating under firm mobility to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, (~~(CPA-Inactive certificate holder,~~) nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insurance or securities regulatory body that the licensee(~~(, CPA-Inactive certificate holder,~~) or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee(~~(, CPA-Inactive certificate holder,~~) or nonlicensee firm owner.

WSR 23-23-140
PROPOSED RULES
GAMBLING COMMISSION

[Filed November 20, 2023, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-094.

Title of Rule and Other Identifying Information: WAC 230-03-155
Submitting a proposed plan of operations for charitable and nonprofit organizations.

Hearing Location(s): On January 11, 2024, at 9:30 a.m., at the Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location are tentative. Visit our website at www.wsgc.wa.gov approximately seven days prior to the meeting and select "About Us" and then "Upcoming commission meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: January 11, 2024.

Submit Written Comments to: Lisa C. McLean, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by January 10, 2024, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by January 10, 2024, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission has not received an application for large bingo operations in the last 20 years. Other rules already exist imposing additional reporting requirements on charitable and nonprofit organizations with gross gambling receipts of \$3 million or more. The additional rules cover the potential for an application from a large bingo operation.

Reasons Supporting Proposal: The rule is redundant and can be repealed without any impact on the commission's ability to oversee and regulate the operation of a large bingo program.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa McLean, Legislative and Policy Manager, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3454; Implementation: Tina Griffin, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Deputy Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (b) (ii).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

November 20, 2023

Lisa C. McLean

Legislative and Policy Manager

OTS-4964.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-03-155 Submitting a proposed plan of operations for charitable and nonprofit organizations.

WSR 23-23-143

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 20, 2023, 11:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-025.

Title of Rule and Other Identifying Information: The department is planning to amend WAC 388-112A-0800 related to adult family home administrator training certification.

Hearing Location(s): On December 26, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 27, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulescoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 26, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on December 12, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules on this subject are needed due to the lack of alignment between WAC 388-112A-0800 and RCW 70.128.120. Currently, the WAC and the law have conflicting information related to the number of hours of training needed for required adult family home administrator training. This conflict is causing concerns during the adult family home application process because older certificates with fewer hours, while valid, do not meet the hours required in the current rule. The change will ensure that older certificates, provided they were received through an approved community college program, will be accepted.

Reasons Supporting Proposal: Unlike rules for home care aide certificates of training completion, current rules do not specify a time limit for validity of adult family home administrator training certificates for the purpose of new adult family home applicants. Assuring [Ensuring] that training be reasonably current for new applicants is in the best interest of adult family home residents. Well-trained adult family home administrators are essential to the wellbeing of residents.

Statutory Authority for Adoption: RCW 70.128.120, 71A.12.040, 74.39A.009, 74.39A.070, and 74.39A.074.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Chappell, P.O. Box 45600, Lacey, WA 98504-5600, 360-725-2516.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Dave Chappell, P.O. Box 45600, Lacey, WA 98504-5600, phone 360-725-2516, email david.chappell@dshs.wa.gov.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 17, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4997.1

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

WAC 388-112A-0800 What is residential care administrator training? (1) Residential care administrator training is specific training on the administration of the care and services required to obtain a license or manage a facility. The training covers the facility specific Washington state statutes and administrative rules related to the operation of a long-term care facility.

(2) **Adult family home (AFH) administrator training.**

(a) AFH administrator training (~~(is)~~) must be a minimum of (~~(fifty-four)~~) 48 hours of (~~(training)~~) instructional time taken from an approved community college on topics related to the management and licensing requirements of adult family homes described in chapter 388-76 WAC.

(b) DSHS must approve AFH administrator training curricula, instructors, and training programs in a community college setting.

(3) **Assisted living facility (ALF) administrator training.**

(a) ALF administrator training curricula must be based on the requirements described in chapter 388-78A WAC.

(b) DSHS will work with stakeholders to develop, update, and approve ALF administrator training curricula, instructors, and training programs.

(4) **Enhanced services facility (ESF) administrator training.**

(a) An ESF administrator must complete:

(i) All training as required under this chapter and chapter 388-107 WAC; and

(ii) When available, ESF administrator training developed by the department.

(b) DSHS must approve ESF administrator training, instructors, and training programs.

WSR 23-23-144

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed November 20, 2023, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-154.

Title of Rule and Other Identifying Information: WAC 182-513-1100
Definitions related to long-term services and supports (LTSS).

Hearing Location(s): On December 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_ve5DgZL-QlKdGWXkrGLPog. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than December 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by December 26, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by December 15, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-513-1100 to define intensive behavioral health treatment facility (IBHTF) as a residential treatment facility licensed under chapter 246-337 WAC, and add and amend definitions related to long-term services and supports.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

November 20, 2023

Wendy Barcus

Rules Coordinator

OTS-5031.1

AMENDATORY SECTION (Amending WSR 23-11-039, filed 5/11/23, effective 6/11/23)

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community-based services (HCBS) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCBS waiver, and other services such as medic-aid personal care (MPC), community first choice (CFC), PACE, and hospice in the community.

• See chapter 182-516 WAC for definitions related to trusts, annuities, life estates, and promissory notes.

• See chapter 388-106 WAC for long-term care services definitions.

• See WAC 182-513-1405 for long-term care partnership definitions.

• See chapter 182-500 WAC for additional apple health eligibility definitions.

"Adequate consideration" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"Administrative costs" or "costs" means necessary costs paid by the guardian including attorney fees.

"Aging and long-term support administration (AL TSA)" means the administration within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) ~~((An))~~ Adult family home (AFH) licensed under chapter 70.128 RCW.

(b) ~~((An))~~ Adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) ~~((A behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.~~

~~((d) An))~~ Assisted living facility (AL) licensed under chapter 18.20 RCW.

~~((e) A))~~ (d) Behavioral health adult residential treatment facility (RTF) licensed under chapter 246-337 WAC.

(e) Intensive behavioral health treatment facility (IBHTF) is an RTF licensed under chapter 246-337 WAC.

(f) Developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

~~((f) An))~~ (g) Enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

~~((g) An))~~ (h) Enhanced service facility (ESF) licensed under chapter 70.97 RCW.

~~((h) A staffed residential facility licensed under chapter 74.15 RCW.~~

~~(i) A) (i) Facility for children and youth 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.~~

~~(j) Group care facility for medically complex children licensed under chapter 74.15 RCW.~~

~~((j) A facility for children and youth 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.) (k) Staffed residential facility licensed under chapter 74.15 RCW.~~

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community-based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPES)" means a medicaid home and community-based services (HCBS) waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community-based services (HCBS) waiver" means a medicaid HCBS waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCBS waivers:

- (a) Basic Plus;
- (b) Core;
- (c) Community protection;
- (d) Children's intensive in-home behavioral support (CIIBS); and
- (e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or "fees" means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community-based services (HCBS) waiver programs authorized by home and community services (HCS)" means medicaid HCBS waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCBS waivers: Community options program entry system (COPEs), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community-based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through an HCBS waiver; or
- (c) Through programs based on HCBS waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for 30 consecu-

tive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid alternative care (MAC)" is a Washington apple health benefit authorized under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver an array of person-centered long-term services and supports (LTSS) to unpaid caregivers caring for a medicaid-eligible person who meets nursing facility level of care under WAC 388-106-0355 and 182-513-1605.

"Medicaid personal care (MPC)" means a medicaid state plan home and community-based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCBS waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for 30 days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is ((under)) described in WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Presumptive eligibility (PE)" for long-term services and supports is described in WAC 182-513-1110.

"Program of all-inclusive care for the elderly (PACE)" provides long-term services and supports (LTSS), medical, mental health, and substance use disorder (SUD) treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

"Roads to community living (RCL)" is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of 29 days or fewer.

"Significant financial duress" means, but is not limited to, threatened loss of, or financial burden from, basic shelter, food, or medically necessary health care. It means that a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other

support needs of the community spouse to permit the community spouse to remain in the community.

"Special income level (SIL)" means the monthly income standard that is 300 percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCBS waivers authorized under 1915(c) of the Social Security Act, and through September 30, 2027, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Tailored supports for older adults (TSOA)" is a federally funded program approved under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver person-centered long-term services and supports (LTSS).

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or
- (b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

WSR 23-23-145

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed November 20, 2023, 12:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-03-045.

Title of Rule and Other Identifying Information: Chapter 16-309 WAC, Cannabis laboratory accreditation standards program.

Hearing Location(s): On Thursday, December 28, 2023, at 11:00 a.m., via Microsoft Teams conference line. Join by link [Date of Intended Adoption: Thursday, January 4, 2023.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzY5MjY2OTYtNzdlMy00OTQ5LTk2N2MtN2JjNGU1ZDQ0NjEy%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d; or join by phone (audio only) +1 564-999-2000,,698814391# United States, Olympia, Phone Conference ID 698 814 391#.</p></div><div data-bbox=)

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by Thursday, December 28, 2023.

Assistance for Persons with Disabilities: Contact Elisha Chambers, division rules coordinator, phone 360-902-1931, fax 360-902-2085, TTY 800-833-6388, email elisha.chambers@agr.wa.gov, by Thursday, December 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule creates a new chapter of rule that is intended to expand the laboratory quality standards first created by the Washington state liquor and cannabis board (LCB) as required by HB 1859. To complete the mandate of HB 1859, the Washington state department of agriculture (WSDA) is proposing the following rules:

- Creating education and training requirements for laboratory personnel, which depend on position, or testing responsibilities (WAC 16-309-040 through 16-309-080).
- Requiring standard operating procedure (SOP) criteria for all laboratory testing (WAC 16-309-090).
- Requiring sampling and homogenization protocols for sample preparation (WAC 16-309-100).
- Requiring security and safety protocols for the laboratory and for the laboratory staff (WAC 16-309-110).
- Requiring the use of quality control and assurance protocols for laboratory testing (WAC 16-309-120).
- Establishing facilities and equipment maintenance criteria for the laboratory (WAC 16-309-130).
- Establishing method performance criteria for laboratory testing (WAC 16-309-140).
- Establishing quality control and method performance criteria specific to each required test: Water activity testing; cannabinoid concentration analysis; foreign matter inspection; microbiological screening; residual solvent screening; mycotoxin screening; pesticide screening; and heavy metals screening (WAC 16-309-150 through 16-309-220).
- Establishing required standardized testing method procedures for cannabinoid concentration analysis, residual solvents screening,

and heavy metals screening. (WAC 16-309-160, 16-309-190, and 16-309-220).

- Establishing quality control and method performance criteria for analyte testing outside of product testing requirements as established by LCB (WAC 16-309-230).
- Creating laboratory computers and information system requirements (WAC 16-309-240).
- Establishing method validation criteria for laboratory testing (WAC 16-309-250).
- Requiring proficiency testing by laboratories as per the standards of the accrediting authority (WAC 16-309-260).
- Establishing certificate of analysis (CoA) report requirements (WAC 16-309-270).
- Establishing procurement protocols for the selection and purchasing of services and supplies for the laboratory (WAC 16-309-280).
- Establishing sample subcontracting requirements for third party services (WAC 16-309-290).

Reasons Supporting Proposal: HB 1859 created an interagency coordination team for cannabis laboratory quality standards. The team consists of WSDA, LCB, and the department of health (DOH). WSDA is designated lead agency for the team and must provide all necessary administrative support.

WSDA must establish and maintain cannabis testing laboratory quality standards by rule. The cannabis testing laboratory quality standards must include but are not limited to: Approved methods for testing cannabis for compliance with product standards established by rule by LCB or DOH; method validation protocols; and performance measures and criteria applied to testing of cannabis products.

The rules are developed in collaboration with LCB and DOH. As such, both agencies are heavily involved with this rule. Since the cannabis analysis lab accreditation program will be overseen by the Washington state department of ecology (ecology), WSDA will also be coordinating with ecology.

Since the interagency team is required to consider the recommendations made by the cannabis science task force (CSTF) on the development of appropriate laboratory quality standards for cannabis product testing laboratories, the department will also coordinate rule development with the members of the task force, which includes members of the cannabis scientific community.

Statutory Authority for Adoption: RCW 15.150.030, HB 1859.

Statute Being Implemented: Chapter 15.150 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Elisha Chambers, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1931; Implementation and Enforcement: Trecia Ehrlich, 1111 Washington Street S.E., Olympia, WA 98504, 360-584-3711.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5) (a) (i).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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

Small Business Economic Impact Statement
Chapter 16-309 WAC
Cannabis Testing Laboratory Quality Standard

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Background and Overview: Cannabis products sold in Washington state are required to be tested for harmful substances and for cannabinoid concentration. The science required to develop adequate testing protocols has been slow to meet industry needs. In 2019, Washington enacted HB 2052, which established and directed CSTF to recommend laboratory standards to be used in support of accrediting cannabis testing laboratories in Washington state. In June 2020, ecology published a report of laboratory quality standards for testing cannabis plants and products created by CSTF; this report recommended the creation of an interagency cooperative team consisting of LCB, DOH, and led by WSDA.

In response, the legislature passed HB 1859, which required WSDA to establish and maintain cannabis testing laboratory quality standards by rule. The cannabis testing laboratory quality standards must include but are not limited to: Approved methods for testing cannabis for compliance with product standards established by rule by LCB or DOH; method validation protocols; and performance measures and criteria applied to the testing of cannabis products. WSDA cannabis laboratory analysis standards program (CLASP) is responsible for creating and establishing these standards.

Proposed Rule: As required by HB 1859, WSDA is establishing cannabis testing laboratory quality standards under chapter 16-309 WAC, which include:

1. Creating education and training requirements for laboratory personnel, which depend on position, or testing responsibilities (WAC 16-309-040 through 16-309-070).
2. Requiring standard operating procedure (SOP) criteria for all laboratory testing (WAC 16-309-080).
3. Requiring sampling and homogenization protocols for sample preparation (WAC 16-309-090).
4. Requiring security and safety protocols for the laboratory and for the laboratory staff (WAC 16-309-100).
5. Requiring the use of quality control and assurance protocols for laboratory testing (WAC 16-309-110).
6. Establishing facilities and equipment maintenance criteria for the laboratory (chapter 16-120 WAC).
7. Establishing method performance criteria for laboratory testing (WAC 16-309-130).
8. Establishing quality control and method performance criteria specific to each required test: Water activity testing; cannabinoid concentration analysis; foreign matter inspection; microbiological screening; residual solvent screening; mycotoxin screening; pesticide screening; and heavy metals screening (WAC 16-309-140 through 16-309-210).

9. Establishing required standardized testing procedures for cannabinoid concentration analysis, residual solvents screening, and heavy metals screening. (WAC 16-309-150, 16-309-180, and 16-309-210).

10. Establishing quality control and method performance criteria for analyte testing outside of product testing requirements as established by LCB (WAC 16-309-220).

11. Creating laboratory computers and information system requirements (WAC 16-309-230).

12. Establishing method validation criteria for laboratory testing (WAC 16-309-240).

13. Establishing minimum proficiency testing standards for laboratories (WAC 16-309-250).

14. Establishing certificate of analysis (CoA) report requirements (WAC 16-309-260).

15. Establishing procurement protocols for the selection and purchasing of services and supplies for the laboratory (WAC 16-309-270).

16. Establishing sample subcontracting requirements for third party services (WAC 16-309-280).

Probable Compliance Costs and Professional Services Requirements: As standards are raised, so is the cost of compliance. Cannabis testing laboratories will need to spend more time completing quality control and quality assurance steps to ensure the quality of the data being produced. This will be paired with an increased usage of solvents and standards from chemical manufacturers.

Probable compliance costs for businesses may be accrued from changing personnel to meet new personnel requirements; purchasing of reagents and consumables from laboratory suppliers to meet new and changing testing requirements; increased hours of operation; and purchasing of new instrumentation to meet new and changing method performance requirements, method validation requirements, standardized methods requirements, and proficiency testing requirements.

The proposed rule does not require professional services. A laboratory may choose to begin or continue to use professional services for maintenance of computer information systems, maintenance of security systems, and facilitation of lab-to-lab sample transfers; however, it will not be mandatory.

There are currently eight laboratories in Washington state providing cannabis testing services.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Businesses in Washington	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Revenue
541380	Testing Laboratories	8	\$8,577.31	\$4,842.86

* Data source: 2020 Employment Security Department.

** Data source: 2020 Department of Revenue.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

Probable costs related to the implementation of these rules depend on the laboratory's current methods, instrumentation, equipment, and personnel. After reviewing the proposed rule language, the current

cannabis testing laboratories noted the following list of costs they are most likely to incur in order to comply with the rule:

1. Matrix blanks/spikes requirements along with the number of controls has increased. Current LCB rules require that laboratories use appropriate matrix blank and controls, the new rules just elaborate on how many. Cost for spiking standards and matrix could range between \$10,000 - \$50,000 per year depending on the laboratory's compliance to current rules.
2. The proposed rule increases storage requirements from the current LCB rule from three years to five years. Stakeholders may see a cost in hard-copy storage, or storage of electronic documents. This cost should be minor, if any, depending on the current storage capabilities of each laboratory. Estimates range between \$360 - \$5,000 per year.
3. Personnel cost may change for some laboratories due to the Bachelor of Science degree requirement for high complexity testing. Should a laboratory need to hire an additional scientist, cost could range between \$0 and \$90,000 per year. Most labs would not need to hire additional staff.
4. From the information we have received, all laboratories have the instrumentation to perform the testing required. The proposed rule does not require the purchasing of any new analytical instrumentation and laboratories may arrange for a sample lab-to-lab transfer for testing if they are unable to perform the method with their current instrumentation. Laboratory analytical instrumentation can range from \$0 to \$400,000.
5. The refrigerator storage requirements concerned stakeholders about the need to purchase additional refrigerators or freezers to store standards and samples. From the information we have received, all laboratories have current refrigerator(s) and/or freezer(s) used for storage of standards and samples. Cost of a laboratory grade refrigerator or freezer would range from \$0 - \$10,000 each.
6. The proposed rule requires a photo record to perform the foreign matter inspection in addition to a written record to document test results. Some laboratories may need to purchase some type of camera or system to meet this requirement. Cost of equipment capable of capturing photos would range from \$50 to \$500.
7. The annual validation requirement would increase the use of standards, solvents, personnel, and equipment. Costs would be between \$2,000 - \$10,000 per year.
8. The proposed rule sets more quality control and quality assurance standards which increases the possibility that a laboratory may need to repeat or redo work to meet data quality standards. Any repetition of work increases costs without increasing revenue. Quality assurance failures can be as simple as a reinjection (\$5) to a more complex need, such as instrument maintenance (\$25,000).

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.

The proposed rule will impose more-than-minor costs on some businesses in the industry.

It is assumed that businesses will choose the least expensive options to maintain adequate testing laboratories. Businesses that choose to purchase expensive capital equipment, like analytical instruments, will likely do so because the equipment can be used to bring in additional revenue and uses.

The survey determined that laboratories currently have all necessary instruments.

Businesses will not have more-than-minor costs imposed on them if they are able to continue using current equipment and utilize lab-to-lab transfers for testing. Businesses may exceed the minor cost threshold if they need to purchase equipment, or hire additional scientist(s).

Table 4.1 shows a range of estimated costs to run testing laboratories. These costs can be as low as \$0 and as high as \$400,000 for proper refrigeration and instrumentation to perform testing requirements. In some cases, these costs can be as low as \$0 and as high as \$90,000 to maintain proper controls, storage, equipment, consumables, or increased staffing.

Table 4.1: Businesses with estimated cost increases expected to **exceed** the minor cost threshold.

NAICS	541380
Industry type	Testing laboratories
Minor cost threshold**	\$8,577.31
Cost for matrix blanks/spiking standards	\$10,000.00 - \$50,000.00
Cost for increased storage	\$360.00 - \$5,000.00
Costs for additional staff	\$0 - \$90,000.00
Cost for analytical instruments	\$0 - \$400,000.00
Cost for refrigeration storage	\$0 - \$10,000.00
Cost for camera equipment	\$0 - \$500.00
Cost for increased standards, solvents, personnel, and equipment	\$2,000.00 - \$10,000.00
Cost of re-analysis and re-extraction work	\$5.00 - \$25,000.00

Sources: Census Bureau, LCB, DOH, WSDA.

* Minor cost thresholds calculated as one percent of average annual payroll.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per \$100 of sales.

After several surveys and interviews conducted by WSDA, it was determined that all eight laboratories currently providing cannabis testing are considered small businesses with fewer than 50 employees. Any cost of compliance should affect each laboratory equally, with slight variances due to current instrumentation and personnel.

No large businesses of the type categorized by NAICS 541380 have been identified by the Census Bureau's County Business Pattern (CBP) database. Therefore, WSDA was not able to compare the costs of compliance for small businesses with the costs of compliance for large businesses.

Without any large businesses to compare costs of compliance with, the proposed rule is considered inherently disproportionate.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements:* The proposed rule eliminates the necessity of laboratories to be certified for multiple fields of testing. A laboratory will be able to specialize in one or a few tests that share instrumentation and personnel needs. This increased flexibility allows laboratories to do only the work they find profitable and allows them to outsource all other work required.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* Transcripts of educational course work in personnel folders were a component of the first draft of the proposed rule, but have been removed as a requirement based on the first round of stakeholder feedback. A copy of the degree may be added to a personnel folder.

While the proposed rule increases the total time that records must be maintained from three years (LCB rule) to five years, the creation of hard copies of data and reports is not a requirement. The use of electronic data and storage of the electronic data is allowed and must be maintained for the minimum period described in the proposed rule. Electronic storage of records is generally less expensive than storage or hard copy records.

(c) *Reducing the frequency of inspections:* Inspections will be performed annually. The laboratories and the department agree this schedule is suitable as it is standard for accreditations across fields.

(d) *Delaying compliance timetables:* While WSDA sets and adopts the standards for accreditation, but the accrediting authority is responsible for compliance and enforcement of the standards. Delaying the compliance timetables is outside of the work of this rule making.

(e) *Reducing or modifying fine schedules for noncompliance:* Currently, there are no scheduled fines for noncompliance. It is the intent of this program to work with the laboratories to support compliance.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* Conditions were added to allow non-degreed laboratory technicians to perform several of the tests, but not all. This may require some laboratory to hire degreed staff. A grandfather clause is included in the proposed rule, which may qualify some of the laboratory technicians to perform high complexity testing.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

CLASP facilitated several opportunities for small businesses to be involved in the rule-making process. Before creation of the first draft of the proposed rule, CLASP arranged for meetings with all the laboratories as indicated in Table 1. CLASP shared the first draft of the rule with all eight laboratories, with instructions for the laboratories to identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue. Laboratories were also asked to identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. CLASP arranged a video conference call with all eight laboratories to discuss their feedback. CLASP revised the proposed rule to create a second draft and documented the changes made in a separate secondary document. CLASP shared the second draft of the proposed rule and secondary document with all eight laboratories, asking for addi-

tional feedback. CLASP revised the second draft based on the feedback and has created a third and final version of the proposed rule amendment.

Table 1 - Stakeholder Engagement Interactions			
Meeting with	Meeting Venue	Date	Discussion
Medicine Creek Analytics	In person	Thursday, February 2, 2023	Introduction to CLASP and next steps for lab standards.
Green Growers Labs	In person	Wednesday, February 22, 2023	Introduction to CLASP and next steps for lab standards.
True Northwest, Inc.	In person	Tuesday, April 4, 2023	Concerns with current cannabis laboratory regulations.
Integrity Labs	In person	Tuesday, April 11, 2023	Concerns with current cannabis laboratory regulations.
Treeline Analytics, LLC	In person	Friday, May 5, 2023	Introduction to CLASP and next steps for lab standards.
Capitol Analysis	Phone call	Friday, May 12, 2023	Concerns with current cannabis laboratory regulations.
Testing Technologies, Inc.	Phone call	Friday, May 26, 2023	Concerns with current cannabis laboratory regulations.
Confidence Analytics	Phone call	Friday, May 26, 2023	Concerns with current cannabis laboratory regulations.
All Laboratories	Outbound email	Thursday, June 22, 2023	Requesting feedback on draft rule, inviting to video conference.
All Laboratories	Video conference	Wednesday, June 28, 2023	Requesting feedback on draft rule.
Treeline Analytics, LLC	Inbound email	Monday, July 3, 2023	Response and comments on first draft.
True Northwest, Inc.	Inbound email	Wednesday, July 5, 2023	Response and comments on first draft.
Medicine Creek Analytics	Inbound email	Thursday, July 6, 2023	Response and Comments on first draft.
Capitol Analysis	Inbound email	Friday, July 7, 2023	Response and comments on first draft.
All Laboratories	Outbound email	Friday, July 21, 2023	Sent second draft of rules and responses to original questions and concerns.
Integrity Labs	Inbound email	Wednesday, July 26, 2023	Response and comments on second draft.
Treeline Analytics, LLC	Inbound email	Friday, July 28, 2023	Response and comments on second draft.
Confidence Analytics	Inbound email	Friday, July 28, 2023	Response and comments on second draft.
Capitol Analysis	Inbound email	Thursday, August 10, 2023	Follow up question on rule section.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The proposed rule should not cause job loss.

Some laboratories have indicated that the additional validation requirements will require more person hours. If laboratories need to

hire one additional person to meet the requirements, then the proposed rule amendment may create up to eight new jobs.

A copy of the statement may be obtained by contacting Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

November 20, 2023
Jessica Allenton
Assistant Director

OTS-4989.3

Chapter 16-309 WAC
CANNABIS LABORATORY ACCREDITATION STANDARDS PROGRAM

NEW SECTION

WAC 16-309-010 Purpose of chapter. Under the authority of chapter 15.150 RCW, the department adopts rules to establish and maintain quality standards for laboratories conducting analysis of recreational and medicinal cannabis. The standards are the elements used in the evaluation of a product's compliance with established product standards. These rules consist of approved methods, method validation protocols, and performance measures and criteria applied to the testing of the product.

NEW SECTION

WAC 16-309-020 Definitions. "Accessioning" means the process of receiving and organizing samples for testing in a laboratory.

"Accreditation" means the formal recognition by the accrediting authority that a cannabis laboratory is capable of producing accurate and defensible analytical data. This recognition is signified by the issuance of a written certificate, accompanied by a scope of accreditation indicating the parameters for which the laboratory is accredited.

"Accreditation year" means the one-year period as stated on the certificate of accreditation.

"Accrediting authority" means the recognized agency that has the authority to perform audits and inspections to assure laboratories meet the standards established in rule and will issue, suspend, or revoke accreditation to the laboratory.

"Accuracy" means the degree to which an analytical result corresponds to the true or accepted value for the sample being tested. Accuracy is affected by bias and precision.

"Aliquot" means a portion of a larger whole, especially a sample taken for chemical analysis or other treatment.

"Analyte" means the constituent or property of a sample measured using an analytical method.

"Analytical batch" means a group of samples, standards, and blanks which are analyzed together with the same method sequence and same lots of reagents and with the manipulations common to each sample within the same time period.

"Analytical data" means the recorded qualitative and/or quantitative results of a chemical, physical, biological, microbiological, radiochemical, or other scientific determination.

"Analytical method" means a written procedure for acquiring analytical data.

"Autoclave" means a steam sterilizer device that is intended for use by a laboratory to sterilize biohazardous products by means of pressurized steam.

"Bias" means the difference between the expectation of the test result and the true value or accepted reference value. Bias is the total systematic error, and there may be one or more systematic error components contributing to the bias.

"Biohazardous" means products that are infectious, and sharps materials such as needles and broken glass.

"Biosafety cabinet (BSC)" means biocontainment equipment used in biological laboratories to provide personnel, environmental, and product protection.

"Blank" means a substance that does not contain the analytes of interest and is subjected to the usual measurement process. Blanks can be further classified as method blanks, matrix blanks, reagent blanks, system blanks, and field blanks.

"Board" means the Washington state liquor and cannabis board.

"Calibration" means determination of the relationship between the observed analyte signal generated by the measuring/detection system and the quantity of analyte present in the sample measured. Typically, this is accomplished through the use of calibration standards containing known amounts of analyte.

"Calibration curve" means the functional relationship between instrument response and target analyte concentration determined for a series of calibration standards. The calibration curve is obtained by plotting the instrument response versus concentration and performing a regression analysis of the data.

"Calibration standard (Cals)" means a known amount or concentration of analyte used to calibrate the measuring/detection system. May be matrix matched for specific sample matrices.

"Cannabis laboratory analytical standards program (CLASP)" means the interagency coordination team for cannabis laboratory quality standards. The team consists of the department of agriculture (WSDA), the liquor and cannabis board (LCB), and the department of health (DOH). The WSDA is the designated lead agency for the team.

"Cannabis laboratory" or "laboratory" means a facility:

- (a) Under the ownership and technical management of a single entity in a single geographical location;
- (b) Where scientific determinations are performed on samples taken from cannabis plants and products; and
- (c) Where data is submitted to the customer or regulatory agency, or other entity requiring the use of an accredited laboratory under provisions of a regulation, permit, or contractual agreement.

"Carryover" means residual analyte from a previous sample or standard which is retained in the analytical system and measured in subsequent samples. Also called memory.

"Certified reference material (CRM)" means a reference material accompanied by documentation (certificate) issued by an authoritative body and providing one or more specified property values with associated uncertainties and traceability, using valid procedures.

Note: Standard reference material (SRM) is the trademark name of CRMs produced and distributed by the National Institute of Standards and Technology (NIST).

"Certifying scientist" means the person authorized by the scientific director to review the analytical results and issue the certificate of analysis for cannabis samples who has the appropriate education, training, and competencies to perform such duties.

"Clean room" means an isolated environment, strictly controlled with respect to: Airborne particles of viable and nonviable nature, temperature, humidity, air pressure, air flow, air motion, and lighting.

"Continuing calibration verification standard (CCV)" means one of the primary calibration standards used to verify the acceptability of an existing calibration.

"Control" means a sample used to evaluate whether an analytical procedure or test is operating within predefined tolerance limits.

"Cross check reference standard (CCR)" means a solution of method standards prepared from a stock standard solution that is obtained from a source that is independent of that used to prepare the calibration standards (i.e., independent vendor, independent lot, or independent preparation). The CCR is used to verify that the original calibration source is acceptable.

"Cut-off concentration" means, in qualitative analysis, the concentration of the analyte that is either statistically lower than the level of concern (for limit tests) or at which positive identification ceases (for confirmation of identity methods).

"Decision point" means the level of concern, cutoff, or target level for an analyte that must be reliably identified or quantified to be considered positive in a sample.

"Department" means the state of Washington department of agriculture when the term is not followed by another state designation.

"High complexity testing" means laboratory tests that require a level of expertise to perform the test due to the complexity of the test methodology and the risk of erroneous results. These tests require a higher level of scientific knowledge and experience, troubleshooting skills, and quality control checks.

"Incubation" means the act of storing microorganisms at a predetermined temperature, for a predetermined amount of time, to allow for growth of microorganism colonies.

"Inoculation" means the act of introducing microbes into a culture media to induce reproductive growth.

"Interference" means a positive or negative response or effect on response produced by a substance other than the analyte. Includes spectral, physical, and chemical interferences which result in a less certain or accurate measurement of the analyte.

"Intermediate precision" means within-laboratory precision obtained under variable conditions, e.g., different days, different analysts, and/or different instrumentation.

"Internal standard (IS)" means a chemical added to the sample, in known quantity, at a specified stage in the analysis to facilitate quantitation of the analyte. Internal standards are used to correct for matrix effects, incomplete spike recoveries, etc. Analyte concentration is deduced from its response relative to that produced by the

internal standard. The internal standard should have similar physiochemical properties to those of the analyte.

"Laboratory information management system (LIMS)" means a computer software system that is used to collect information about a sample, track results through the testing process, and disseminate the final results to the customer and regulating agency.

"Limit of detection (LOD)" means the minimum amount or concentration of analyte that can be reliably distinguished from zero. The term is usually restricted to the response of the detection system and is often referred to as the detection limit. When applied to the instrument capability it is known as an instrument detection limit (IDL) or when applied to the complete analytical method it is often referred to as the method detection limit (MDL).

"Limit of quantitation (LOQ)" means the minimum amount or concentration of analyte in the test sample that can be quantified with acceptable precision. Limit of quantitation (or quantification) is variously defined but must be a value greater than the MDL and should apply to the complete analytical method.

"Linearity" means the ability of a method, within a certain range, to provide an instrumental response or test results proportional to the quantity of analyte to be determined in the test sample.

"Low complexity testing" means laboratory tests that require little to no expertise to perform the test due to the lack of complexity of the test methodology and the low risk of erroneous results. These tests require a low level of scientific knowledge and experience, troubleshooting skills, and quality control checks.

"Matrix" means the material to be analyzed including, but not limited to, flower, trim, leaves, other plant matter, cannabis concentrate, cannabis infused, and edibles.

"Matrix blank" means a substance that closely matches the samples being analyzed with regard to matrix components. Ideally, the matrix blank does not contain the analyte(s) of interest but is subjected to all sample processing operations including all reagents used to analyze the test samples. The matrix blank is used to determine the absence of significant interference due to matrix, reagents, and equipment used in the analysis.

"Matrix effect" means an influence of one or more components from the sample matrix on the measurement of the analyte concentration or mass. Matrix effects may be observed as increased or decreased detector responses, compared with those produced by simple solvent solutions of the analyte.

"Matrix spike (MS)" means an aliquot of a sample prepared by adding a known amount of analyte(s) to a specified amount of matrix. A matrix spike is subjected to the entire analytical procedure to establish if the method is appropriate for the analysis of a specific analyte(s) in a particular matrix. Also referred to as a laboratory fortified matrix.

"Method validation" means the process of demonstrating or confirming that a method is suitable for its intended purpose. Validation criteria include demonstrating performance characteristics such as accuracy, precision, selectivity, limit of detection, limit of quantitation, linearity, range, ruggedness, and robustness.

"Moderate complexity testing" means laboratory tests that require a level of expertise to perform the test due to the complexity of the test methodology and the risk of erroneous results. These tests require a moderate level of scientific knowledge and experience, troubleshooting skills, and quality control checks.

"Parameter" means the combination of one or more analytes determined by a specific analytical method.

"Performance criteria" means defined, measurable performance characteristics of an analytical method or process-specific requirements for accuracy, precision, recovery, specificity (selectivity), sensitivity (limits of detection), inclusivity, exclusivity, linearity, range, and scope of application. Criteria may also be set by defining process (i.e., method validation protocols).

"Performance-based methods approach" means or conveys "what" needs to be accomplished, but not prescriptively "how" to do it. It is a measurement system based upon established performance criteria for accuracy and precision with use of analytical test methods. Under this measurement system, laboratories must demonstrate that a particular analytical test method is acceptable for demonstrating compliance. Performance-based method criteria may be published in regulations, technical guidance documents, permits, work plans, or enforcement orders.

"Precision" means the closeness of agreement between independent test results obtained under specified conditions. This is described by statistical methods such as a standard deviation or confidence limit of test results. See also "random error." Precision can be further classified as repeatability, intermediate precision, and reproducibility.

"Proficiency testing (PT)" means evaluation of the results from the analysis of samples, the true values of which are known to the supplier of the samples but unknown to the laboratory conducting the analyses.

"Proficiency testing provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that is approved by the department and provides samples for use in PT testing.

"Qualitative analysis/method" means analysis/method in which substances are identified or classified on the basis of their chemical, biological, or physical properties. The test result is either the presence or absence of the analyte(s) in question.

"Quality assurance (QA)" means activities intended to assure that a quality control program is effective. A QA program is a totally integrated program for assuring reliability of measurement data.

"Quality assurance (QA) manual" means a written record intended to assure the reliability of measurement data. A QA manual documents policies, organization, objectives, and specific QC and QA activities.

"Quality control (QC)" means the routine application of statistically based procedures to evaluate and control the accuracy of analytical results.

"Quantitative analysis/method" means analysis/method in which the amount or concentration of an analyte may be determined (or estimated) and expressed as a numerical value in appropriate units with acceptable accuracy and precision.

"Random error" means component of measurement error that in replicate measurements varies in an unpredictable manner. See also "precision."

"Range" means the interval of concentration over which the method provides suitable accuracy and precision.

"Reagent blank" means reagents used in the procedure taken through the entire method. Reagent blanks are used to determine the absence of significant interference due to reagents or equipment used in the analysis.

"Recovery" means the proportion of analyte (incurred or added) remaining at the point of the final determination from the analytical portion of the sample measured. Commonly expressed as a percentage.

"Reference material" means a material, sufficiently homogeneous and stable with respect to one or more specified properties, which has been established to be fit for its intended use in a measurement process or in examination of nominal properties.

"Reference standard" means a standard, generally having the highest metrological quality available at a given location in a given organization, from which measurements are made or derived.

Note: Generally, this refers to recognized national or international traceable standards provided by a standards producing body such as the National Institute of Standards and Technology (NIST).

"Relative percent difference (rpd)" means the comparison of two quantities while taking into account the size of what is being compared as calculated:

$$\%RPD = \frac{(\text{sample} - \text{duplicate})}{((\text{sample} + \text{duplicate})/2)} * 100$$

"Repeatability (RSDr)" means precision obtained under observable conditions at a specific concentration/spike level where independent test results are obtained with the same method on identical test items in the same test facility by the same operator using the same equipment within short intervals of time. Should be included in all quantitative MLV reports.

"Representative matrix" means a cannabis matrix used to assess probable analytical performance with respect to other matrices, or for matrix-matched calibration, in the analysis of broadly similar cannabis products.

"Reproducibility (RSDR)" means precision obtained at a specific concentration/spike level under observation conditions where independent test results are obtained with the same method on identical test items in different test facilities with different operators using different equipment. Should be included in all quantitative MLV reports.

"Ruggedness/robustness" means a measure of the capacity of an analytical procedure to remain unaffected by small but deliberate variations in method parameters and provides an indication of its reliability during normal usage.

"Sample" means representative portion of material taken from a larger quantity of homogenate for the purpose of examination or analysis, which can be used for judging the quality of a larger quantity for the purpose of compliance.

"Sample package" means the sealed, tamper-resistant container (e.g., plastic bag, box, etc.) which contains the quality control sample and transportation manifest from grower or producer collection.

"Scientific director" means the individual with the proper education and training responsible for the overall laboratory operations, compliance, and training of personnel.

"Selectivity" means the extent to which a method can determine particular analyte(s) in a mixture(s) or matrix(ces) without interferences from other components of similar behavior. Also known as specificity.

"Sensitivity" means the change in instrument response which corresponds to a change in the measured quantity (e.g., analyte concentration). Sensitivity is commonly defined as the gradient of the response curve or slope of the calibration curve at a level near the LOQ.

"Shipping container" means the container (e.g., box, mailer, bag) in which the collector, or laboratory has placed one or more sample packages for transport.

"SI" means the international system of units and more commonly known as the metric system. This is the international standard for measurement. Critical laboratory measurements must be traceable to this system.

"Specificity" means the ability of a method to measure analyte(s) in the presence of components which may be expected to be present.

"Spike recovery" means the fraction of analyte remaining at the point of final determination after it is added to a specified amount of matrix and subjected to the entire analytical procedure. Spike recovery is typically expressed as a percentage. Spike recovery should be calculated for the method as written. For example, if the method prescribes using deuterated internal standards or matrix-matched calibration standards, then the reported analyte recoveries should be calculated according to those procedures.

"Spore bioindicators" means a biological indicator that is made up of a carrier material, on which bacterial spores with a defined resistance to the sterilization process have been applied.

"Standard operating procedures (SOP)" means a written document that details the method for an operation, analysis, or action with thoroughly prescribed techniques and steps, and that is officially approved as the method for performing certain routine or repetitive tasks.

"Standard reference material (SRM)" means a certified reference material issued by the National Institutes of Standards and Technology (NIST) in the United States.

"Standard (solution)" means a solution containing a precisely known concentration of an element, analyte, or a substance.

"Sterilization" means a validated process used to render a product free of all forms of viable microorganisms.

"Stock standard" means a concentrated solution of method analyte(s) prepared in the laboratory from referenced and certified analyte standards, where available, or a concentrated solution of method analyte(s) purchased directly from a referenced and certified source, where available.

"Systematic error" means component of measurement error that in replicate measurements remains constant or varies in a predictable manner. This may also be referred to as bias.

"Testing personnel" means those qualified on the basis of appropriate education, training, experience and demonstrated skills to perform analytical testing on cannabis, cannabis concentrates, and cannabis infused products.

"Uncertainty" means nonnegative parameter characterizing the dispersion of the values being attributed to the measured value.

"Unidirectional flow" means performing a standard operating procedure in a single direction to reduce the risk of microbiological contamination.

"Upper level of linearity (ULOL)" means the highest level at which an instrument can measure the concentration of a substance accurately within an acceptable measure of deviation.

"Validated methods" means the methods that have undergone validation.

"Validation (method)" means the process of demonstrating or confirming the performance characteristics through assessments of data quality indicators for a method of analysis.

NEW SECTION

WAC 16-309-030 Laboratory instructions. (1) A cannabis testing laboratory must be accredited by the accrediting authority prior to conducting quality assurance tests on any cannabis flower or products derived under chapter 69.50 RCW.

(a) Accredited labs must conspicuously display the accreditation letter received by the accrediting authority at the lab's premises in a location where a customer may observe it unobstructed in plain sight.

(b) The laboratory must maintain a list of all tests they are currently accredited to test.

(2) The laboratory must identify potential conflicts of interest among key personnel in the organization that have involvement or influence on the testing activities of the laboratory.

(a) The laboratory conducting third-party testing shall be independent of other cannabis businesses and have no financial interest in another cannabis license, excluding multiple lab accreditations.

(b) If a potential conflict of interest is identified, the laboratory should notify the accrediting authority for review, determination, and resolution of the conflict.

(3) The customer's confidential information and proprietary rights must be protected by the laboratory. The laboratory shall maintain policies and procedures to protect confidential information.

(4) Cannabis labs must report quality control test results both to the customer and directly to the board in the required format(s).

(5) The department, board, and or accrediting authority may require the laboratory to submit raw data and information related to testing. The laboratory must keep and maintain all raw data and testing information for a period of five years.

(6) Laboratories shall conduct an internal audit of laboratory operations to verify compliance with the accreditation checklist within 60 days of their scheduled audit. This self-audit will be reviewed by the accrediting authority at their yearly laboratory audit.

NEW SECTION

WAC 16-309-040 Laboratory personnel. (1) The laboratory must have a training and retraining program for all personnel that is kept current and is adequately documented and maintained with personnel records.

(2) The laboratory must maintain personnel files on all employees detailing their qualifications and duties for all positions that include:

(a) Resume of training and experience.

(b) Job description of current position.

(c) Copies of certificates.

(d) Copies of diploma(s).

(e) Training checklists which include what training was performed, who did the training, and when it was performed.

(f) Documentation of continuing education, if any.

(g) Documentation of demonstrated abilities and competencies.

(3) The laboratory must document the technical staff's competency for each method performed on a yearly basis demonstrating their abili-

ties to perform their specific job functions. Completion must be signed and dated by the scientific director.

(a) Competencies include performing instrument setup or maintenance, sample handling, extractions, testing on each instrument used, quality control acceptance, and reporting of results.

(b) Testing personnel must demonstrate acceptable performance on precision, accuracy, selectivity, reportable ranges, blanks, and unknown challenges through the use of proficiency samples or internally generated quality controls. Completion must be signed and dated by the scientific director.

(4) The laboratory must have a personnel organization chart showing the chain of command and responsibilities approved, initialed, and dated by the scientific director.

(5) The scientific director may delegate some responsibilities in their absence or for other management staff. The delegation must be in writing, indicating what functions are being delegated (i.e., quality control data review, assessment of competency, or review of proficiency testing performance), and the delegatee must be qualified and approved by the scientific director.

(6) If the laboratory performs microbiological testing, at least one member of the laboratory staff must have a bachelor's degree in a biological or clinical laboratory science or medical technology from an accredited institution, or associate degree in a biological or clinical laboratory science or medical laboratory technology from an accredited institution. The scientific director may satisfy this requirement if they hold a biological or clinical laboratory science degree or medical technology from an accredited institution, as described in WAC 16-309-050.

(7) All staff must be properly trained and evaluated for proper test performance prior to starting sample testing and reporting results.

(8) The accrediting authority may waive the academic requirements listed in WAC 16-309-050 through 16-309-070, on a case-by-case basis, for highly experienced analysts. The accrediting authority may also waive the need for the specified training, on a case-by-case basis, for supervisors of laboratories associated with testing of cannabis and cannabis products.

(9) Laboratory testing personnel must be supervised by persons familiar with test methods and procedures.

(10) Supervisors of testing personnel must meet one of the qualifications for a scientific director or have at least a bachelor's degree in one of the natural sciences and three years of full-time laboratory experience in a regulated laboratory environment performing analytical scientific testing. A combination of education and experience may substitute for the three years of full-time laboratory experience.

(11) The laboratory must designate a quality assurance manager or officer with defined responsibilities for ensuring the quality system is implemented and followed. The QA manager must be a separate person from the scientific director.

(12) The laboratory must report to the accrediting authority any change in the status of the scientific director. A laboratory cannot be without a scientific director for more than 30 days.

NEW SECTION

WAC 16-309-050 Scientific director. (1) Each laboratory must employ a scientific director to ensure the achievement and maintenance of quality standards of practice who meets the following minimum qualifications:

(a) Must possess a doctorate in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of two years post-degree laboratory experience; or

(b) A master's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of four years of post-degree laboratory experience; or

(c) A bachelor's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of six years of post-education laboratory experience.

(2) The scientific director must have supervisory authority over all personnel involved with the accessioning, testing and storage of samples, and the reporting of results.

(3) The scientific director is not required to have direct supervisory authority over client service or IT personnel. However, they are responsible for ensuring laboratory compliance with chapters 314-55 and 246-70 WAC and this chapter, even if functions are performed by staff outside the cannabis laboratory (e.g., another department, off-site staff, corporate staff) ensuring that the confidentiality of reported results is maintained.

(4) The scientific director's responsibilities include, but are not limited to:

(a) Engaging in and responsible for the daily management of the laboratory;

(b) Establishing a training program for personnel;

(c) Ensuring that personnel are sufficiently trained;

(d) Ensuring that all personnel have demonstrated proficiency in assigned duties prior to working independently on customer cannabis samples;

(e) Ensuring that the standard operating procedures (SOP) manual is complete, current, available, signed, and followed by all personnel;

(f) Reviewing and approving any requests to modify analytical methods and documentation;

(g) Ensuring that all personnel are properly informed, and training documented when changes occur in the SOP;

(h) Ensuring that analytical methods are properly validated;

(i) Establishing a quality assurance program sufficient to legally and scientifically support results;

(j) Establishing acceptable performance limits for calibrators and controls;

(k) Ensuring that corrective action is taken in response to unacceptable QC performance or when other errors occur;

(l) Ensuring that results are not reported until after corrective actions have been taken and that the results provided are accurate and reliable;

(m) Fully understanding the function of the laboratory information management systems (LIMS) and other laboratory computer systems

in sample receiving, accessioning, chain of custody, testing, and the review and reporting of results;

(n) Ensuring that the LIMS software and other software in the laboratory have been properly validated;

(o) Fully understanding the role of any external service providers and the functions of external information systems and computer systems in the laboratory's activities associated with cannabis testing;

(p) Ensuring that external information systems and software used by the laboratory have been properly validated;

(q) Ensuring that appropriate corrective action is taken in response to issues identified in the inspection and proficiency testing (PT) phases of the program;

(r) Demonstrating knowledge of the cannabis regulatory documents and the cannabis laboratory analysis standards program.

NEW SECTION

WAC 16-309-060 Laboratory personnel performing high complexity testing. Personnel performing high complexity testing must be qualified on the basis of appropriate education, training, experience and demonstrated skills, and must meet the following minimum requirements:

(1) Have a bachelor's degree in a chemical, physical, biological or clinical laboratory science or medical technology from an accredited institution; or

(2) Must have an associate degree in a laboratory science (chemical or biological science) or medical laboratory technology from an accredited institution; or

(3) Have education and training equivalents that includes at least 60 semester hours, or equivalent, from an accredited institution that, at a minimum, includes either:

(a) Twenty-four semester hours of medical, clinical, or chemical laboratory technology courses; or

(b) Twenty-four semester hours of science courses that include:

(i) Six semester hours of chemistry;

(ii) Six semester hours of biology; and

(iii) An additional 12 semester hours of chemistry, biology, or medical laboratory technology in any combination;

(c) Be evaluated for competencies to perform the test by someone who is already qualified to perform the test;

(d) Be approved by the scientific director to perform the test.

NEW SECTION

WAC 16-309-070 Laboratory personnel performing moderate complexity testing. Personnel performing moderate complexity testing must be qualified on the basis of appropriate education, training, experience and demonstrated skills, and must meet the following minimum requirements:

(1) Have at least a high school diploma or equivalent;

(2) Have documented training appropriate to perform the test;

- (3) Have the skills required for performing preventive maintenance, troubleshooting, and calibration procedures related to each test performed;
- (4) Have the skills required to implement the quality control policies and procedures of the laboratory;
- (5) Have the awareness of factors that influence test results;
- (6) Be evaluated for competencies to perform the test by someone who is already qualified to perform the test;
- (7) Be approved by the scientific director to perform the test.

NEW SECTION

- WAC 16-309-080 Laboratory personnel performing low complexity testing.** Personnel performing low complexity testing must be qualified on the basis of appropriate education, training, experience and demonstrated skills, and must meet the following minimum requirements:
- (1) Have at least a high school diploma or equivalent;
 - (2) Have appropriate training to perform the test;
 - (3) Be evaluated for competencies to perform the test by someone who is already qualified to perform the test;
 - (4) Be approved by the scientific director to perform the test.

NEW SECTION

- WAC 16-309-090 Standard operating procedures.** (1) The laboratory must have a complete and current standard operating procedures (SOP) manual that describes in detail all laboratory operations and ensures all samples are tested in a consistent manner using the same procedures.
- (2) Copies of appropriate sections of the SOP must be available to all staff in their work areas.
 - (3) The scientific director must review and show written approval of all sections of the SOP dating when they were implemented. An itemized list of changes and versions made within the last five years must be documented on a summary of changes sheet for each section.
 - (4) The SOP must include a safety manual, procedure, or policy that describes specific precautionary issues throughout the lab that makes employees aware of, and know how to safely maneuver through, the issue as described in the OSHA laboratory safety guidance document.
 - (5) The SOP must include a procedure for decontamination and cleaning of instruments, bench space, and ventilation and microbial hoods.
 - (6) The SOP must include testing procedures that include pertinent information for the scope and complexity of the procedure, including:
 - (a) Title that identifies the activity or procedure;
 - (b) Scope and principle;
 - (c) Sample requirements;
 - (d) Calibration and control preparation and usage protocol;
 - (e) Instrumentation, equipment, materials and supplies used;
 - (f) Instrument settings, data acquisition, system operation, parameters and conditions for testing;
 - (g) Procedure for sample preparation and testing;

(h) Results review and acceptability;

(i) Additional information, notes, safety requirements, and precautions to include calculations, interferences, limitations, back-ground corrections, and proper disposal of lab waste including biohazardous waste and cannabis waste compliant with WAC 314-55-097; and

(j) References.

(7) The SOP must include a policy for the use of appropriate personal protective equipment (PPE) when working with samples, reagents, chemicals or potential hazards in the workplace along with a written and documented system on the competency of personnel on how to handle chemical spills and appropriate action in the use of chemical spill kits.

(8) The SOP must include a policy for limiting access to controlled areas of testing, storage of samples, disposal of samples, and records. Personnel must be assigned limited access according to their job responsibilities.

(9) The SOP must include a policy or procedure informing employees how to interact with law enforcement should they request information or come on-site for regulatory issues.

(10) The SOP must include a policy or procedure that informs employees and staff what tasks need to be performed and what information or documents need to be gathered prior to an audit or inspection.

(11) The SOP must include information on the proper handling and disposal of used and unused samples once testing is completed.

(12) The SOP must include information on how employees can access medical attention for chemical or other exposures, including follow-up examinations, without cost or loss of pay.

(13) The SOP must include a record or log of any deviations from the SOP detailing the reason for the deviation, the date, and approval from the scientific director.

(14) The laboratory must maintain retired procedures for at least five years beyond the retirement date and should be able to reconstruct the procedures that were in effect when a given sample was tested.

NEW SECTION

WAC 16-309-100 Sampling and homogenization protocols. (1) Upon receipt, the laboratory must inspect each sample package and transportation manifest, assuring they meet the following minimum requirements as defined in chapter 314-55 WAC:

(a) Each sample package must have a transportation manifest accompanying it to the laboratory.

(b) Each manifest must have the appropriate identifying information on it documented at the time of collection prior to sending it to the laboratory.

(c) Each manifest must have a unique sample identification number matching the label on the sample.

(d) The laboratory must reject samples when the sample ID number or label on sample container does not match the sample ID number or label on the manifest or when the container shows evidence of tampering.

(2) The laboratory must transfer samples to a secure, limited access area of the laboratory upon receipt for processing and analysis.

(3) Receipt of samples must be documented as to condition of the package, who took possession, and whether there were any unacceptable conditions.

(4) The laboratory must document all persons handling the original sample, aliquots, and extracts.

(5) The laboratory must establish the minimum volume or weight required to conduct all testing requested and any additional tests (i.e., repeat tests, differential tests, or reflex tests) that may be required.

(6) The laboratory must establish storage requirements for all sample types upon receipt at the lab.

All samples received for residual solvent testing must have an aliquot placed in an enclosed container that minimizes the evaporation of any solvents that may be present as soon as possible upon receipt.

(7) Samples that do not undergo initial testing within seven days of arrival at the laboratory must be placed in a secure temperature-controlled storage until testing.

(8) Samples must be handled in a way that avoids cross-contamination during aliquoting and handling by keeping other samples closed and out of the immediate vicinity. Analyte standards shall be handled in areas separate from sample preparation areas.

(9) It is not acceptable to reuse any labware that comes into contact with samples or aliquots until after proper cleaning. Labware, equipment, and surfaces shall be properly cleaned between each sample preparation or handling.

(10) All disposable pipettes/sample measuring devices can be used only once and must be discarded after use to prevent the possibility of cross-contamination.

(11) Aliquots must be labeled with a unique identifier assigned to the sample both with a barcode and in human-readable form, or just in human-readable form.

(12) When multi-well plates are used for testing, the laboratory must ensure the correct sample is aliquoted into the correct plate well and map the location of each sample on the plate.

(13) The laboratory must have a system to easily retrieve and track samples that are maintained in storage.

(14) Laboratories must ensure sample homogenization is appropriate for each test method performed.

NEW SECTION

WAC 16-309-110 Security. (1) Laboratories must control and document access into operation areas (e.g., accessioning, data entry, sample handling, analytical, certification), along with sample storage areas, and records storage areas during both operating and nonworking hours.

(2) Individuals who do not have routine duties in secured areas (with the exception of auditors and emergency personnel) must be escorted, and their entries and exits must be properly documented (i.e., date, time of entry and exit, purpose of visit, and authorized escort).

(3) If a laboratory uses external service provider(s) to perform services on the laboratory's behalf (i.e., records storage, software service provider, or cloud service providers), the laboratory must show due diligence in verifying that the service provider has proce-

dures in place to protect the confidentiality, integrity, and availability of data for the services that they will perform. The laboratory is responsible for ensuring the external service provider is in compliance with applicable requirements.

(4) Samples must be stored in a limited access, secured area.

(5) Only personnel who are assigned to the limited access, secured area can have unescorted access.

(6) Samples may be transported outside a secured area if they are in the custody of an authorized individual who is moving them to another secured location.

(7) Laboratories must maintain physical custody of samples and are not allowed to delegate sample storage to external service providers.

(8) Hardcopy records for reported samples must be maintained in a secure room, area, or file cabinet at all times suitable to prevent damage or deterioration and to prevent loss.

(9) Laboratories may use off-site record storage locations or services if they meet the limited access and security requirements listed above.

(10) The laboratory must establish a system to ensure records are adequately protected from loss or accidental destruction. This could include backup copies of electronic records, cloud storage, or off-site secured storage of back up tapes or disks.

(11) The laboratory must establish a procedure for documenting record retrieval, removal, and disposal assuring destruction is only allowed on records held past the five year storage requirement.

(12) The laboratory must establish a procedure for securing documents past the five year storage requirement when specifically requested by the accreditation program or for legal purposes.

NEW SECTION

WAC 16-309-120 Quality control and assurance. (1) The laboratory must develop and maintain an extensive quality control (QC) program which involves the concurrent analysis of calibrators and controls with samples to demonstrate if the analytical system is operating within defined tolerance limits and that random and systematic errors can be identified in a timely manner.

(2) Laboratories must use appropriate calibrators and controls in each analytical batch and must monitor the results of those samples within each batch and across batches.

(3) The laboratory must use controls that evaluate the performance of the sample prep and analytical instrument(s) each day of testing for appropriate methods that include:

(a) A negative or blank control to demonstrate the assay(s) ability to perform without interference or contamination.

(b) A positive or spiked control below the cutoff or decision point but above the limit of quantitation for each matrix and each specimen preparation method being used for testing that batch.

(c) A positive or spiked control above the cutoff or decision point but below the upper limit of linearity for each matrix and each specimen preparation method being used for testing that batch.

(d) A matrix spiked duplicate at least every 20 samples per matrix for high complexity tests.

(4) Control materials must be processed in the same manner and included with the test sample batches through the entire testing process.

(5) Controls must be prepared from a source different from the calibration standard source and contain all target analytes. The different source can be with a standard obtained from a second manufacturer or a separate lot prepared independently by the same manufacturer.

(6) Laboratories must use appropriate reference standards that are traceable to a primary standard through a certificate of analysis when possible.

(7) The use of quality control material must determine the accuracy and precision of all analyses performed.

(8) Quality control acceptance criteria for analysis must be within ± 20 percent of established value unless specific acceptance limits are established by method.

(9) New lots of reagents, calibrators, and control material must be validated against a currently validated calibration or method before it is put into service.

(10) All control results must be documented in a manner to allow the laboratory to detect instrument or process failure and to identify trends or bias.

(11) Quality control results must be reviewed by an analyst performing the test and must meet the acceptance limits prior to reporting out sample results.

(12) Cumulative quality control records must be reviewed by the individual responsible for oversight of the laboratory's QC program on a regular basis so that they can adequately detect assay problems, trends, shifts, and bias.

(13) The laboratory must have procedures describing corrective action to be taken and take action when cumulative control results show evidence of problems. Control records must include documentation of the specific problem noted and documented evidence of the corrective actions to resolve the problem.

(14) The laboratory must use notebooks, logbooks, or other electronic means of communicating with staff regarding issues, problems, or communications between shifts.

(15) The laboratory must have a quality assurance manual, policy, or procedure to identify operational procedures, organization objectives, functional activities, and quality control activities designed to achieve quality goals desired for operation of the lab.

(16) The laboratory must designate a quality manager who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed. The quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.

(17) The laboratory's quality assurance plan must measure meaningful data throughout laboratory processes that establish thresholds or limits for the indicators to trigger evaluation of the services if not met. Meaningful indicators established within the laboratory can be qualitative or quantitative and may be related to structure, processes, or outcome of the service involved.

(18) The quality assurance data must be reviewed by the scientific director on an ongoing basis that allows timely identification of problems to catch trends or issues early enough to make appropriate changes.

(19) The laboratory must maintain documentation and tracking of failed samples and batches like all other data and must make them available when requested.

(20) Instruments that use a multipoint curve must be calibrated using a minimum of a four-point curve and no blanks can be used as a point. The linear correlation determination (r^2) must be ≥ 0.9950 or the correlation coefficient (r) must be ≥ 0.9975 . Linear regression with $1/x$ or no weighting must be used. Forcing the curve through zero is not allowed.

(21) To ensure the quality of data for mass spectrometry methods, the laboratory must:

(a) Perform mass spectrometric tuning at relevant frequencies or at the frequency specified by the manufacturer.

(b) Ensure method performance by comparing transitions and retention times between duplicated controls, calibrators, and samples.

(c) Use an internal standard to minimize errors caused by evaporation of solvents and injection errors or discrepancies.

(d) Have a detailed procedure for the manual integration of any peaks, including the review of automated integration and adjustments.

(e) Maintain all information necessary for reconstruction of the data.

(22) To ensure the quality of data for an immunoassay method, the laboratory must:

(a) Ensure functionality of new test kits and reagent lots by utilizing positive and negative controls.

(b) Ensure absorbance intensity is within the acceptable range as defined by the manufacturer.

(c) Challenge the linearity of the calibration curve by using:

(i) Different levels of positive controls to challenge the low and high end of the corresponding curve assuring results are reliable throughout the whole range of the curve;

(ii) A negative or blank control to demonstrate the assay's ability to distinguish a positive from a negative and to perform without interference or contamination.

(d) Perform second source verification by utilizing a control separate from calibration material:

(i) For multianalyte assays, calibration curves and controls must be specific for each analyte;

(ii) Control analytes with similar chemical properties as the target analyte may be used.

(23) The laboratory may verify expired neat analytical standards if the standard is recertified by the vendor and new documentation is obtained or the standard is verified by comparison to unexpired neat standard. The response factors must be within 10 percent to be considered fit for purpose. Verified expired standards shall be recorded in the verification logs.

(24) The laboratory may only report quantitative results that are above the limit of quantification and below the upper limit of quantification.

(25) The laboratory must use American Chemical Society (ACS) grade acids or bases, ultra-high purity grade gasses, Type II water, and analytical quality materials in the preparation of standards and sample processing.

(26) Laboratory records must be legible and in ink or computerized system. Documents must be signed and dated. Changes must be initialed and dated, and there must be evidence of periodic review.

(27) When corrective action is needed, the laboratory shall identify and document the issue, determine a plan for corrective actions, evaluate the results from the plan, and ensure that sample results are not reported until after the corrective actions have provide accurate and reliable results.

NEW SECTION

WAC 16-309-130 Facilities, equipment, and maintenance. (1) Facilities where laboratory testing is performed must be appropriate for dealing with preanalytical, analytical, and postanalytical functions.

(2) The laboratory must monitor, control, and record environmental conditions as required by the relevant specifications, methods, and procedures where they influence the quality of the results. Due attention shall be paid to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.

(3) The laboratory must have adequate space for the number of personnel and appropriate separation of work areas.

(4) The arrangement of space must allow for appropriate workflow, sampling, lab space, office space, and break areas.

(5) The laboratory must have adequate eyewash stations, safety showers, and sinks within the laboratory in areas where exposure to corrosive chemicals or substances may occur. Eyewash facilities must be no greater than 10 seconds unobstructed travel distance from the area in the laboratory where hazardous chemicals are present.

(6) The laboratory must have chemical spill kits on-site and placed in appropriate locations that are well-labeled and easily available to personnel.

(7) The laboratory must have adequate electrical outlets, unobstructed, single-use, multiplug adaptors with surge control; single-use extension cords; ground fault circuit interrupters near wet areas.

(8) The laboratory must have sufficient numbers and types of safety equipment to minimize personnel exposure to biological hazards and toxic materials. There must be appropriate vacuum traps, ventilation for fume hoods and around solvent use or storage of solvents or waste. There must be appropriate storage cabinets for flammable solvent, acids, and bases. There must be appropriate vented hoods for any microbiological analysis (i.e., Class II Type A biosafety cabinets as applicable).

(9) The laboratory must assign a unique identifier to distinguish the individual test instrument and software version used. Each test result must be traceable back to the instrument used at the time of testing.

(10) The laboratory must comply with the scheduled maintenance and function checks recommended by the manufacturer and perform preventive maintenance and check critical operating characteristics of each instrument used in the testing process. Records must be retained for all instruments and equipment.

(11) For automated liquid handling equipment performing quantitative aliquoting, the laboratory must check the accuracy and precision of each system, perform a contamination check, and monitor and detect system issues or failures (e.g., drips or leaks, short sampling, bubbles, or air gaps in reagent dispensing lines) on a regular basis.

(12) The laboratory must verify the accuracy and precision of each pipette or pipetting device prior to placing it into service. Each device must be rechecked at least every six months. If the pipette or pipetting device is used to make measurements at different volumes, accuracy and precision must be checked at each volume used. Devices that do not meet stated precision and accuracy criteria must be removed from service.

(13) The laboratory must check and record temperatures on temperature sensitive devices (e.g., water baths, heating blocks, incubators, ovens, refrigerators, freezers, and refrigerated centrifuges) on a daily or when used basis. The laboratory must establish acceptance ranges to ensure proper storage conditions for samples, calibrator and control materials, test materials, and to ensure correct analytical conditions according to manufacturer and procedure requirements. Temperature records must be complete and clearly document the date and individual performing the check, and the laboratory must document corrective actions taken to address unacceptable temperature readings.

(14) Analytical balances must be mounted in accordance with manufacturer's instructions. They must be serviced and checked periodically over the appropriate weight range using ANSI/ASTM Classes 1-3 or equivalent weights.

(15) The laboratory must verify instrument and equipment performance prior to initial use, after major maintenance or service, and after relocation to ensure that they run within defined tolerance limits and according to expectations.

(16) Instrument maintenance records and function check documents must be reviewed by technical supervisory staff or the scientific director at least monthly.

(17) Instruments that do not meet performance specifications must be placed out of service and labeled as "Not In Use" until it has been repaired and shown by verification that it will perform correctly.

(18) Laboratories shall demonstrate, when possible, that calibrations of critical equipment and hence the measurement results generated by that equipment, relevant to their scope of accreditation, are traceable to the SI through an unbroken chain of calibrations.

(19) Laboratories must have breakrooms separate from the laboratory and ensure that food is not kept in refrigerators that have specimens, chemicals, or other laboratory related materials.

NEW SECTION

WAC 16-309-140 Method performance criteria. (1) Accredited labs may reference samples for testing by subcontracting fields of testing to another accredited laboratory.

(2) Laboratories must maintain the integrity of the sample by testing samples on an "as is" or "as received" basis before sample prep unless otherwise specified in rules.

(3) Laboratories may use historical calibrations for high complexity testing as long as it is supported by analytical data through quality control results. Historical calibrations can not extend past 30 days.

(4) The samples fail quality control testing if the results exceed the limits indicated in WAC 314-55-102.

(5) Sample results are positive for the analyte being tested if their results are greater than or equal to the decision point or cut-off limits as indicated in WAC 314-55-102.

(6) Sample results are to be reported out in the number of digits and units of measure described in WAC 314-55-102.

(7) Laboratories may be accredited to conduct the following fields of testing:

Field of Testing	Level of Complexity
water activity	low
cannabinoid concentration analysis	high
foreign matter inspection	low
microbiological screening	
culture method	moderate
immunoassay method	moderate
polymerase chain reaction (PCR) method	high
residual solvent screening	high
mycotoxin screening	
enzyme-linked immunosorbent assay (ELISA) method	moderate
liquid chromatography with tandem mass spectrometry (LC-MS/MS) method	high
pesticide screening	high
heavy metals screening	high

NEW SECTION

WAC 16-309-150 Water activity testing. (1) Water activity (a_w) analysis is intended to quantitatively report out the presence of water in the sample.

The laboratory must run two continuing calibration verifications at levels bracketing the target concentration at the beginning of each day of testing.

(2) One sample must be run in duplicate with difference in values of 80 percent - 120 percent as a quality control specimen.

(3) The laboratory must monitor and record temperature and humidity daily or when testing is performed.

(4) The laboratory must calibrate the a_w instrument when:

(a) The instrument has been physically moved from one location to another.

(b) The instrument has been cleaned.

(c) The manufacturer's instruction manual recommends.

NEW SECTION

WAC 16-309-160 Cannabinoid concentration analysis. (1) Cannabinoid concentration analysis, previously known as potency, is intended to quantitate and accurately report cannabinoids above the cutoff or decision points described in WAC 314-55-102.

(2) Laboratories must use the standard methods approved by the department to analyze cannabinoids:

(a) 977-CLASP Method CCSP - Cannabinoid Concentration Sample Preparation.

(b) 976-CLASP Method CCA - Cannabinoid Concentration Analysis.

(3) Laboratories that would like to use another method or make modifications to the methods provided must seek approval from the department. Laboratories must, at a minimum, do the following for a new method validation:

(a) Communicate the intended method changes to the department.

(b) Receive written approval from the department regarding the appropriate validation criteria.

(c) Produce all data acquired from the validation.

(d) Receive written approval from the department of the validated method for use on customer samples.

NEW SECTION

WAC 16-309-170 Foreign matter inspection. (1) The laboratory must analyze not less than 30 percent of the total representative sample of cannabis and cannabis products prior to sample homogenization to determine whether foreign material is present.

(2) The laboratory shall report the result of the foreign material test by indicating "pass" or "fail."

(3) The laboratory must use a microscope with photographic capabilities or a camera with magnification to assess the presence of foreign matter.

(4) The laboratory must document the observation with a detailed description of any foreign matter and photograph the sample supporting the report.

(5) The foreign matter inspection must be performed in a clean and sanitary location that prevents contamination or degradation prior to other testing.

NEW SECTION

WAC 16-309-180 Microbiological screening. (1) Microbiological screening is intended to accurately measure qualitative, semi-quantitative, or quantitative results, and report microorganisms incurred through the production and processing of cannabis and cannabis products.

(2) The laboratory must have a microbiological testing SOP that contains a detailed description of the preparation of any material that does not come as a working stock (i.e., culture media, master mix, spiked controls).

(3) The laboratory may use either culture-based screening methods, molecular assay methods, or a combination of culture-based and molecular assay methods for microbiological screening.

(4) Quality control must be performed on each new media lot, PCR reagent lot, or kit lot used. For molecular assays, DNA controls must be included with each analytical run and internal amplification controls (IACs) must be included with each individual reaction.

(a) Acceptability criteria for all calibration and QC materials such as controls, spikes, and blanks, must be defined, as well as the action to be taken when results are outside control limits. The labo-

ratory must set controls at relevant limits around the decision points for the microbial assay(s) as defined above.

(b) Positive and negative controls must be included in all microbial assay tests. Quality controls must be analyzed in the same manner as samples.

(i) The laboratory must use control organisms that represent the target organism. Controls for the confirmation of a target, such as salmonella or Shiga toxin-producing *E. coli* (STEC), must be as similar as possible to the presumptive organism.

(ii) The laboratory must maintain documentation of quality control organisms and ensure purity of the control organism is maintained by limiting the number of cell divisions from the original culture.

(5) The laboratory must have a record of all microbial quality control and sample results. If the laboratory does not use equipment capable of recording and printing results (i.e., a PCR instrument or plate reader), then the laboratory must photograph all microbial quality control and sample results for recordkeeping.

(6) The laboratory must have a procedure in place which must specify any safety requirements or precautions unique to the microbial assay(s) used, including:

(a) Biohazard labels on equipment used to store biohazardous materials and waste such as restricted areas, refrigerators, and waste receptacles;

(b) Performing microbial assay(s) in either a Class II biosafety cabinet (BSC) or a designated clean room;

(c) Sterilization of biohazardous waste, including any materials that have come into contact with control organisms, either by autoclave or by chemical disinfectants;

(d) For safety reasons, biosafety level (BSL) 1 organisms for salmonella and STEC may be used as control organisms.

(e) Lab-prepared media must be sterilized by autoclave and undergo a quality control check for sterility before use.

Sterilization by autoclave must be documented using materials such as autoclave tape, and autoclave functionality must be tested using materials such as spore bioindicators.

(7) The laboratory must have a procedure and training for shipping and receiving bacterial enrichments, organisms, or presumptive positive samples. Biohazardous shipping and receiving training must be documented.

(8) The laboratory must perform microbial analysis in a unidirectional (i.e., one way) manner to reduce possible contamination of microbial test materials.

(a) For molecular microbial assays, the laboratory must use materials to reduce contamination such as reaction tubes that are RNAase-free and DNAase-free and use aerosol barrier pipette tips.

(b) For culture-based screening methods, all samples and controls must initiate incubation within 10 minutes of inoculation.

(9) For qualitative methods, all results must be reported as qualitative designations such as "detected," "not detected," "positive," or "negative." For quantitative methods, the laboratory may only report results that are above the limit of quantification and below the upper limit of quantification.

(10) The laboratory may not report colony-forming units (CFU) counts with greater than two significant figures.

NEW SECTION

WAC 16-309-190 Residual solvent screening. (1) Residual solvent analysis is intended to accurately quantitate and report solvent residue left behind from product processing.

(2) Laboratories must use the CLASP modified methods adapted for cannabis to analyze residual solvents:

(a) 972-CLASP Method - Residual Solvents by Gas Chromatography Flame Ionization Detector.

(b) 973-CLASP Method - Residual Solvents by Headspace Analysis.

(c) 975-CLASP Method - Residual Solvents by Gas Chromatography Mass Spectrometry.

(d) 795-CLASP Method - Liquid Extraction for Residual Solvents.

(3) Method validation protocols are as established within each approved method.

(4) Performance criteria are as established within each approved method. The following additional performance measures and adaptations must supersede or be used in conjunction with the minimum method requirements, as appropriate.

(a) Laboratories must follow the method-specified quality control (QC) as a minimum.

(b) Methanol and any other solvent listed in WAC 314-55-102 must not be used in any preparation or analysis procedure for residual solvent testing.

(c) All board rules for field and product sampling should be followed. Upon receipt of a sample at a lab, the sample treatment should follow the method requirements for preservation and storage.

(d) In the method, the term "appropriate solvent" must be defined and understood as: "An organic solvent that is capable of accomplishing the dilution of the sample while still able to meet the quality control requirements of this method, the proceeding analytical method, and regulatory requirements, and is NOT a required analyte per regulations." The selected solvent must be specifically cited in a lab's standard operating procedure(s).

(5) Subsampling and homogenization protocols are as specified in the approved method(s), except as noted for sample receipt and handling protocols:

(a) Each sample must individually meet the board's sampling requirements.

(b) The container must contain a minimum of 0.25 grams of sample for residual solvents analysis. The total sample amount may contain more product but must allow for the sample size required for residual solvents.

(c) The lab must analyze at least 0.2 grams of sample per residual solvents analysis.

(d) Samples must be submitted in a hard sealable container or syringe. When headspace is encountered, laboratories must either reject the sample, or flag the data as having biased results due to headspace.

(e) Samples must be stored at $< 8^{\circ}\text{C}$ and must be analyzed within 14 days of receipt.

(f) Homogenization of residual solvent samples by the lab is prohibited unless necessary due to sample composition. If homogenization is necessary, steps must be taken to minimize evaporative loss.

(g) If any field QC is submitted (e.g., field blanks, trip blanks), the lab must follow the applicable steps in the approved methods for these samples.

NEW SECTION

WAC 16-309-200 Mycotoxin screening. (1) Mycotoxin screening is intended to accurately measure qualitative, semi-quantitative, or quantitative results, and report microorganisms incurred through the production and processing of cannabis and cannabis products.

(2) For qualitative methods, all results must be reported as qualitative designations such as "detected," "not detected," "positive," or "negative." For quantitative methods, the laboratory may only report numerical results that are above the limit of quantification and below the upper limit of quantification.

(3) The laboratory must have procedures that include the following:

(a) Special safety precautions required for handling mycotoxin standards;

(b) Mycotoxin standards may only be opened and used within a certified fume hood;

(c) A mycotoxin spill cleanup procedure must be included;

(d) The laboratory must ensure stability of mycotoxin standards;

(e) A detailed description of how potentially hazardous waste is disposed of.

(4) The analytical processes for mycotoxin testing must include the following:

(a) A matrix negative and a matrix positive for each sample matrix tested per batch;

(b) Matrix positive controls at relevant levels above the decision point;

(c) Laboratories recycling solvents by roto-evaporator or similar equipment must have a procedure for evaluating recycled solvent performance prior to use in testing. This should be applied any time the laboratory recycles solvents.

(5) The laboratory must perform a second-source calibration verification at the target concentration at the beginning of each day of testing.

(6) Analyze matrix spike duplicates or laboratory duplicates at a frequency of one in 20 samples per matrix, per sample extraction or preparation method, to measure repeatability and precision of the mycotoxin assay(s).

NEW SECTION

WAC 16-309-210 Pesticide screening. (1) Pesticide screening is intended to accurately quantitate and report pesticides incurred through the production and processing of cannabis and cannabis products.

(2) Pesticide standards and stock solutions must be prepared in an area separate from pesticide samples.

(3) Laboratories must create and validate their own method for pesticide analysis using the guidelines provided in the 982-CLASP Method - Cannabis Pesticide Residue Analysis, 983-CLASP Method - Cannabis Pesticide Sample Processing, and 981-CLASP Method - Cannabis Pesticide Data Analysis Manuals. This includes following quality standards for extraction, clean-up, chromatography, and the analytical technique.

NEW SECTION

WAC 16-309-220 Heavy metals testing. (1) Heavy metals screening is intended to accurately quantitate and report metals incurred through the production and processing of cannabis and cannabis products.

(2) Analytical standards and solutions must be National Institutes of Standards (NIST) traceable or equivalent.

(3) The ICP-MS must be tuned each day of analysis using a tuning solution containing elements representing all of the mass regions of interest.

(4) Instruments must be calibrated using a minimum of a four-point curve (no blanks can be used as a point).

(5) Laboratories must use the CLASP modified methods adapted for cannabis to analyze heavy metals: 475-CLASP Method - Cannabis Analysis of Heavy Metals by Inductively Coupled Plasma Mass Spectrometry.

(6) The laboratory must properly prepare samples using a digestion method that provides total sample decomposition for metal analysis approved by the department: 980-CLASP Method - Sample Preparation of Cannabis and Cannabis Products for Heavy Metals Analysis.

(7) A stabilizer must be added during sample preparation to stabilize mercury through the acid digestion and analysis. The stabilizer must be at the same level in the calibration standards as the samples.

(8) An internal standard (IS) must be added and analyzed in all calibration standards and samples.

(9) Spectral interference checks (SIC) must be used to verify that the interference levels are corrected by the instrument's data system. The SIC must contain known amounts of interfering elements that will demonstrate the magnitude of interference and test for any corrections.

(10) An initial calibration verification (ICV) and initial calibration blank (ICB) must be analyzed after the initial calibration.

(11) The ICB is analyzed after the ICV and must not contain target analytes.

(12) Sample concentrations that exceed the highest calibration standard must be diluted and reanalyzed to fall within the linear calibration range.

NEW SECTION

WAC 16-309-230 Other analytes. Should a laboratory test for analytes beyond the analytes required in chapter 314-55 or 246-70 WAC, they must adhere to the following guidelines:

(1) Additional test results must be listed separately from the required analytes on the certificate of analysis.

(2) Additional test results must be identified as analytes outside the scope of accreditation on the certificate of analysis.

(3) Additional analytes that are tested using methods that also include required analytes for compliance must meet similar requirements for testing and reporting.

(4) Additional analytes that are tested using methods that do not include required analytes for compliance must be validated and tested using standards established in this chapter.

NEW SECTION**WAC 16-309-240 Laboratory computers and information systems.**

(1) The laboratory must have computer systems and software adequate for sample tracking throughout the laboratory's possession from receipt of the samples through testing, reporting, and disposal.

(2) The laboratory must maintain a system security plan (SSP) for each information system used, including corporate systems and external service provider systems.

(3) The laboratory must have security controls (i.e., management, operations, and technical controls) in place to protect the confidentiality, integrity, and availability of the system and its information.

(4) If the laboratory contracts with an external service provider such as a cloud service provider, the laboratory must show due diligence in verifying that the service provider has procedures in place to protect the confidentiality, integrity, and availability of data for the services that they will perform on behalf of the laboratory.

(5) The laboratory must adequately protect any internal computer systems (e.g., desktops, servers, instrument computers) against electrical power interruptions and surges that can contribute to data loss.

(6) The laboratory must adequately protect any internal computer systems from spyware, viruses, malware and other attacks through the use of firewalls and by maintaining software security updates.

(7) The laboratory must validate and document changes made to computer systems, software, interfaces, calculations, and security measures prior to implementing for use on samples.

(8) Software testing shall include performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.

(9) The laboratory must have a signed contract or agreement with any external service providers that includes the priority elements of physical, technical, and administrative safeguards to protect their systems and data.

NEW SECTION

WAC 16-309-250 Method validations. (1) Laboratories must perform method validation studies prior to implementing a new or original test method, implementing a standardized method, implementing a new instrument, or modifying an existing method or instrument for each matrices tested.

(2) The records must include sufficient information to allow for a comprehensive review of the studies performed. Laboratories must have criteria for acceptance of study data, for agreement of replicate study samples, and for defining true outlier values. Study samples for quantitative methods must meet the same qualitative criteria (e.g., the same retention time, mass ratio, internal standard abundance, and chromatography criteria) used for samples. The laboratory's acceptance criteria must be described in the SOP and in the study summary.

(3) Laboratories must perform reverification studies on an annual basis at minimum on nonreagent methods. Reverification studies are designed to verify that the existing LOD, LOQ, and ULOL values are still

valid and do not require laboratories to analyze the same number of samples that are required for full validation studies.

(4) If the laboratory modifies an existing test method or instrument parameter that affects the performance of the method, the revised method must be re-validated prior to use. If the modification is relatively minor, the validation studies may be focused on those parameters that have been affected.

(5) Validations must include linearity, precision, accuracy, LOD, LOQ, ULOL, carryover, selectivity/interference, and matrix effects, unless defined specifically below.

(6) The laboratory must characterize the linearity of a method based on replicate analysis (i.e., a minimum of five replicates at each concentration) of samples of at least six concentrations. The concentrations must be distributed above and below the cutoff for the test.

(7) The laboratory must characterize the precision of a method based on replicate analysis, at least 20 results total. Analysis must be at significant concentrations around the cutoff/decision point and expected range. At least five replicates at each concentration must be analyzed. Precision studies must be performed on multiple days and in multiple batches in order to assess intra-batch and inter-batch variability.

(8) The laboratory must characterize the accuracy (expressed as bias) of a method by calculating the percent difference between the analyzed sample results and the target concentrations. Accuracy studies must be performed on multiple days and in multiple batches to assess intra-batch and inter-batch variability.

(9) The laboratory must characterize the LOD of a method by a series of replicates with decreasing concentrations (i.e., a minimum of five replicates at each concentration). The LOD must be experimentally determined and supported by analytical data. The laboratory can choose to artificially set the LOD at the established LOQ if the LOQ is at least 25 percent below the decision point limit.

(10) The laboratory must characterize the LOQ of a method by a series of replicates with decreasing concentrations (i.e., a minimum of five replicates at each concentration). The LOQ of a method must be determined and supported by analytical data and should be at least 25 percent below the decision point limit.

(11) The laboratory must characterize the ULOL of a method by a series of replicates with increasing concentrations (i.e., a minimum of five replicates at each concentration). Laboratories may select a value at the upper end of the dynamic range for a method, but it must be determined and supported by analytical data.

(12) The laboratory must investigate the potential of carryover of a method from one sample to another during testing by analyzing highly concentrated samples followed by negative samples (i.e., without the analyte of interest) and evaluate the negative samples for carryover. Concentrations evaluated should be realistic (i.e., high concentrations that may be found in the testing population) and at least as high as the established ULOL. Positive samples that follow a sample at carryover concentrations must be reinjected or reextracted to eliminate carryover concerns.

(13) The laboratory must investigate the day-to-day precision using positive and negative samples assuring the ruggedness of the testing method provides good reproducibility over a period of at least five days.

(14) The laboratory must investigate the selectivity and interferences of a method by testing commonly encountered compounds and compounds that are structurally similar that could potentially interfere with the method at higher concentrations. Laboratories may accept manufacturer studies of immunoassay products if the study was performed using cannabis-focused compounds.

(15) The laboratory must investigate any possible matrix effect by evaluating the potential for components of the sample matrix to either suppress or enhance the ionization of the analytes of the compound(s) of interest and internal standard(s). Studies must include the evaluation of at least 10 different lots of products (i.e., flower from 10 different plants or from 10 different plant lots).

(16) When dilution of a sample is necessary to keep the result concentration within the range of linearity, the laboratory must conduct dilution integrity studies to document that the dilution does not affect the methods performance. These consist of precision/accuracy studies using samples at the dilution specified in the procedure.

(17) The laboratory must perform a parallel study when a new instrument or a new/revised procedure is implemented where results from the revised/new method or new instrument are compared to results from the existing method/instrument.

(18) The laboratory must perform a positive/negative differentiation study when validating a qualitative test by analyzing positive and negative samples that have been verified by a quantitative method to assess the assay's ability to differentiate positive and negative samples. The laboratory may analyze a combination of positive and negative controls, proficiency test (PT) samples or previously tested samples. The laboratory should analyze a minimum of 10 positive samples at differing concentrations and 10 negative samples (i.e., 20 results total).

(19) The laboratory must verify extraction efficiency assuring their method can sufficiently extract out the analyte of interest from the sample matrix.

(20) Records for validation and periodic reverification studies must be organized in a format to facilitate a comprehensive review and, at a minimum, the records must include:

- (a) A stated purpose;
- (b) Description of test method(s);
- (c) Identity of the instrument(s) used for the study;
- (d) A listing of the instrument parameters used for the study;
- (e) A description of the study samples;
- (f) A summary of the statistical data collected to characterize the assay;
- (g) A discussion;
- (h) A summary with conclusions; and
- (i) All raw analytical data from the samples analyzed in the study.

(21) The laboratory must use the same criteria for acceptance of study data (e.g., the same retention time, mass ratio, internal standard abundance, and chromatography criteria) as used for the daily samples.

(22) The laboratory must maintain the original assay validation study records for an indefinite period. Validation and reverification study records must be made available at the time of inspection or upon request.

(23) All immunoassay and qualitative assay methods must be properly validated prior to use with samples and supported with the following studies:

- (a) Linearity;
- (b) Precision and accuracy around the cutoff;
- (c) Selectivity;
- (d) Carryover;
- (e) A parallel study using the existing and new/revised procedures;
- (f) Positive/negative sample differentiation studies.

(24) All quantitative assays must be properly validated prior to use with samples and supported with the following studies:

- (a) Determination of LOQ, LOD, and ULOL;
 - (b) Precision/accuracy around the cutoff;
 - (c) Carryover;
 - (d) Selectivity/interference;
 - (e) For an assay validation: Method parameters including appropriate ion selection;
 - (f) For full instrument validation: Instrument parameter optimization;
 - (g) For LC-MS, and LC-MS/MS methods: Matrix effects;
 - (h) For assays using a new technology: Parallel studies of PT samples and customer samples (e.g., when validating a technology different from the existing method);
 - (i) For assays using an extraction: Extraction efficiency must be determined; and
 - (j) Hydrolysis efficiency (if sample preparation includes a hydrolysis step).
- (25) An abbreviated instrument validation must be performed prior to implementing an additional instrument of an exact model that has been validated by the laboratory. The laboratory must perform the following studies:
- (a) Determination of the LOQ, LOD, and ULOL;
 - (b) Carryover evaluation;
 - (c) Interference studies;
 - (d) Instrument parameter optimization; and
 - (e) For LC, LC-MS, and LC-MS/MS methods: Evaluation of matrix effects.

NEW SECTION

WAC 16-309-260 Proficiency testing. The laboratory must participate in an approved proficiency testing (PT) program that reflects the best available science as determined by the accrediting authority.

NEW SECTION

WAC 16-309-270 Reports. (1) All sample test results must be supported by analytical data and all analytical data must have a documented review, once reviewed by an analyst, and once reviewed by a certifying scientist prior to being reported.

(2) Laboratories must report results as either "negative," "none detected," "pass/fail," or the numeric concentration equal to or above

the decision point or cutoff of the required analytes tested as indicated in rules.

(3) For the purpose of reporting, decision points or cutoff limits have been written in WAC 314-55-102 to the number or significant digits that laboratories are expected to use when reporting results.

(4) If the result is above the established ULOL, the laboratory must dilute the sample and retest to bring the results within the linear range of the test, unless allowed differently in the guidelines.

(5) The concentration of a diluted primary sample prior to applying the dilution factor must be above the concentration of the lowest calibrator or control in the batch.

(6) At a minimum, the computer generated COA reports for samples going to the customer must contain:

(a) A title: "Certificate of Analysis" or "Test Report";

(b) Laboratory name, lab ID number, and address;

(c) Unique identification of the test report certificate and on each page an identification in order to ensure that the page is recognized as a part of the COA, and a clear identification of the end of the report;

(d) The name, address, and license number of the customer;

(e) Date of sample collection;

(f) Date of transport;

(g) Sample identification number from transportation manifest;

(h) Driver's name and contact information;

(i) Sample/matrix type (flower, concentrate etc.);

(j) Product/sample name and category;

(k) Amount of sample received;

(l) Date received by laboratory;

(m) Name of certifying scientist;

(n) Date reported by the laboratory;

(o) Results of each test performed to include name of test, results, measurands (i.e., mg/g), cutoffs, and instrument/method of testing used;

(p) A statement to the effect that the results relate only to the items tested.

(7) Laboratories must use the analyte terminology and abbreviations specified by rules to ensure consistency in reporting and interpretation of test results.

(8) Laboratories must not release any cumulative or individual test result prior to the completion of all analysis by the lab for that sample.

(9) Any amendments to a COA after the original issuance must include a statement for the reason issued like "Corrected Report," "Supplement to COA (to include COA number)," or an equivalent form of wording.

(10) When it is necessary to issue a completely new COA, it must be uniquely identified and contain a reference to the original that it replaces (i.e., reprint).

(11) All records shall include the identity of personnel performing the aliquoting, sample preparation, calibration, testing of samples and controls, and review of results.

(12) Observations, data, and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.

(13) When mistakes occur in records, each mistake shall be lined out, not erased or made illegible or deleted, and the correct value entered alongside. All such alterations or corrections to records

shall be signed or initialed and dated by the person making the correction.

(14) All entries to hard copy laboratory records shall be made using indelible ink. No correction fluid or tape may be used on laboratory data records.

NEW SECTION

WAC 16-309-280 Procurement controls. (1) The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures covering reagents and laboratory consumables shall exist for the purchase, receipt, storage, and disposition of expired materials.

(2) The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.

(3) New lots or materials received outside of expected environmental conditions must be documented and validated before use.

(4) Reagents and standards shall be inspected, dated and initialed upon receipt, and upon opening.

(5) Calibration standards and analytical reagents shall have an expiration or reevaluation date assigned.

(6) Standards and solutions shall be adequately identified with lot number or other assigned unique identifier to trace back to preparation documentation.

(7) Prospective suppliers shall be evaluated and selected on the basis of specified criteria.

(8) Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.

NEW SECTION

WAC 16-309-290 Subcontracting. (1) The laboratory shall advise the customer of the subcontract arrangement in writing, including the subcontractors' accreditation credentials under chapters 69.50 RCW and 314-55 WAC.

(2) The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with chapter 314-55 WAC for the work in question.

(3) When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to laboratory management for corrective action.

WSR 23-23-147
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 20, 2023, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-025.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-310-1600 WorkFirst—Sanctions.

Hearing Location(s): On December 26, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 27, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by December 26, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by December 12, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments support implementation of 2SHB 1447 (chapter 418, Laws of 2023), which adds a good cause reason for failure to participate in WorkFirst program activities if a recipient is experiencing a hardship as defined by DSHS in rule. Related emergency rules are currently in place (effective July 23, 2023) under WSR 23-16-012.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; and chapters 74.08A and 74.12 RCW.

Statute Being Implemented: 2SHB 1447 (chapter 418, Laws of 2023).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jake Deskins, P.O. Box 45470, Olympia, WA 98504-5770, 360-480-3411.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:
Is fully exempt.

November 17, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4981.4

AMENDATORY SECTION (Amending WSR 21-12-030, filed 5/24/21, effective 7/1/21)

WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

- (a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);
- (b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;
- (c) Go to scheduled appointments listed in your individual responsibility plan;
- (d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and
- (e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have (~~ten~~) 10 days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within (~~ten~~) 10 days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

- (i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental, or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under ~~((thirteen))~~ 13 years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

(ii) Appropriate (licensed, certified, or approved under federal, state, or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children ~~((-))~~;

(e) You had an immediate legal problem, such as an eviction notice; ~~((-))~~

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan ~~((-))~~; or

(g) You have another hardship(s) that would reasonably prevent you from participating. For purposes of this subsection, a hardship is defined as a significant problem or event.

(4) What happens in my noncompliance case staffing?

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements ~~((-))~~;

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in grant reduction sanction status for ~~((ten))~~ 10 months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

- (i) You knew what was required;
- (ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;
- (iii) We tried to talk to you and encourage you to participate; and
- (iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

- (i) What you failed to do;
- (ii) That you are in sanction status;
- (iii) Penalties that will be applied to your grant;
- (iv) When the penalties will be applied;
- (v) How to request an administrative hearing if you disagree with this decision; and
- (vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(6) What is sanction status?

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

(7) Are there penalties when you or someone in your household goes into sanction status?

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) You will receive a grant reduction sanction penalty following two months of noncompliance ~~((-))~~;

(b) Your grant is reduced by one person's share or ~~((forty per cent))~~ 40%, whichever is more ~~((-))~~;

(c) The reduction is effective the first of the month following ~~((ten))~~ a 10-day notice from the department; and

(d) Your case may be closed effective the first of the month after your grant has been reduced for ~~((ten))~~ 10 months in a row.

(8) What happens before your case is closed due to sanction?

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

- (i) What you failed to do;
- (ii) When your case will be closed;

(iii) How you can request an administrative hearing if you disagree with this decision;

(iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(v) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

(9) What happens to my WorkFirst sanction after July 1, 2021?

If your case enters sanction status after July 1, 2021, your case may be closed after you have been in grant reduction sanction status for ~~((ten))~~ 10 months in a row.

(10) How do I resume participation to avoid or end sanction status?

(a) You must provide the information we requested to develop your individual responsibility plan; ~~((and/))~~ or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, ~~((twenty-eight))~~ 28 calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

(11) What happens when I get out of sanction status before my case is closed?

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

(13) What if I reapply for TANF or SFA after my case is closed due to sanction?

If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

WSR 23-23-154
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS
[Filed November 21, 2023, 8:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-058.

Title of Rule and Other Identifying Information: WAC 363-116-076 Examination for pilot applicants and 363-116-077 Simulator evaluation for pilot applicants.

Hearing Location(s): On January 18, 2024, at 10:00 a.m., at 2901 3rd Avenue, Agate Conference Room, Seattle, WA 98121; and via Microsoft Teams. Please contact Jolene Hamel at HamelJ@wsdot.wa.gov for a meeting link.

Date of Intended Adoption: January 18, 2023.

Submit Written Comments to: Jaimie Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by January 11, 2024.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by January 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In preparation for the 2024 Washington state marine pilot exam, the board of pilotage commissioners (BPC) is reviewing and updating these two WAC as needed for continued psychometric validation, diversity, equity and inclusion, clarity for applicants, as well as other housekeeping items.

The proposed changes to WAC 363-116-076 will update the psychometric validation requirement of the written exam process to better reflect current industry standards. It includes a description of the process to develop a job task analysis and the updated list of areas pilot applicants are to be tested on according to the job task analysis. It also further clarifies application requirement deadlines and contains minor housekeeping for clarity.

The proposed changes to WAC 363-116-077 will update the list of areas pilot applicants are to be tested on during the simulator evaluation according to the job task analysis. The proposed language also contains minor housekeeping for clarity.

Reasons Supporting Proposal: These proposed changes were vetted through BPC's exam psychometrician and will reflect the marine pilot exam process currently under development and to be administered in April 2024. Psychometric validation is crucial for a fair, equitable, and successful exam process, and for developing a ranked list of qualified pilot candidates to be called into the training program when a position is available.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: BPC received a recommendation from the pilot exam committee after working closely with the exam psychometrician and BPC's assistant attorney general favoring implementation of the proposed language.

Name of Proponent: BPC, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie Bever, Executive Director, 2901 3rd Avenue, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: BPC, 2901 3rd Avenue, Seattle, WA 98121, 206-515-3904.

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

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

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 21, 2023
Jaimie C. Bever
Executive Director

OTS-5091.1

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

WAC 363-116-076 Examination for pilot applicants. (1) Pilot applicants must pass a written examination (~~((given))~~) administered and (~~((graded))~~) scored by the board or the board's designated contracting entity. The board, in consultation with its (~~((designated contracting entity))~~) contracted psychometrician, will develop the written examination and set the minimum passing or "cut" score in conformance with (~~((a psychometrically validated process))~~) psychometric standards as put forth by *The Standards for Educational and Psychological Testing* (American Educational Research Association (AERA), American Psychological Association (APA), and National Council on Measurement in Education (NCME), 2014). Notice of the examination shall be published at least four months in advance by one paid advertisement in a major marine industry publication and written notice to any party who has requested notice of such examinations. The board may publish additional notices in such publications or in other media (~~((at such times as it deems appropriate))~~). Applications will be accepted by the board immediately following the publication of the notice of the examination, and the application must be received by the board before the close of business on the first business day of the month preceding the exam month. The board may, in an emergency, call for an examination on less than four months' notice.

The notice shall indicate which pilotage district or districts the examination is for and, if for both districts, the notice shall make it clear that applicants can elect to apply for a license in one or both of the districts. If an exam is given for both the Grays Harbor and Puget Sound pilotage districts, the applicants shall be (~~((graded))~~) scored and (~~((evaluated))~~) ranked as one applicant pool.

(2) The examination may be taken by all pilot applicants who the board has determined have met the qualifications of WAC 363-116-0751 and who:

(a) Have ~~((had an))~~ complied with the application ((on file with the board for at least one month prior to the examination)) deadline provided in subsection (1) of this section. This requirement may be waived by the chairperson of the board upon the showing of good cause. The application shall specify whether the applicant is applying for the Puget Sound pilotage district, the Grays Harbor pilotage district or both.

(b) Have tendered with the application a nonrefundable examination administration fee in such amount as may be set by the board ~~((from time))~~ prior to ((time)) each administration period. The board may, at its discretion, refund all or part of the examination administration fee for a pilot applicant who is unable to sit for the written examination.

(3) A comprehensive Job Task Analysis (JTA), consisting of a workshop with a Subject Matter Expert (SME) panel, on-the-job observation, and validation survey, must take place at least every other exam administration period, and at a minimum must occur every five years. The SME panel will be chosen by the board and shall consist of at least five members, of whom at least three members shall be active Washington state-licensed pilots.

For exam administration periods conducted between comprehensive JTAs, a SME panel will conduct a formal review to validate the exam blueprint and content outline prior to examination development. The JTA must be conducted in consultation with the contracted psychometrician and within guidelines set forth by AERA, APA, and NCME (2014).

The validation survey will yield the weightings for the exam blueprint, as established by the contracted psychometrician.

(4) The written examination shall be in compliance with RCW 88.16.090 and ~~((may consist of questions covering, but not limited to, the following subjects:~~

~~(a) Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying and accompanying information set forth in United States government publications on the subject;~~

~~(b) Meaning and understanding of the aids to navigation;~~

~~(c) Seamanship, including piloting and ship handling, docking and undocking problems, use of ship assist tugs and anchors;~~

~~(d) Vessel traffic system regulations;~~

~~(e) Engine and rudder order commands for United States and foreign merchant vessels and United States naval vessels;~~

~~(f) Operation and use of marine radar and automatic radar plotting aids (ARPA);~~

~~(g) Ability to calculate currents and tides;~~

~~(h) Federal laws affecting mariners and pilots including environmental laws;~~

~~(i) Use of vessel navigational equipment;~~

~~(j) Duties of a pilot;~~

~~(k) Relationship between pilot and master;~~

~~(l) Bridge resource management;~~

~~(m) United States government public health quarantine regulations;~~

~~(n) Marine VHF radio usage and phraseology, including bridge-to-bridge communications regulations;~~

~~(o) Federal navigation safety and security regulations;~~

~~(p) International distress signals;~~

~~(q) Nonlocal chart knowledge, including chart symbols and abbreviations as set forth in the latest U.S. Department of Commerce, NOS (National Ocean Survey) Chart No. 1;~~

~~(r) Maneuvering behavior for different vessel types; and~~

~~(s) Impact of propulsion and maneuvering machinery on vessel navigation.~~

(4)) must consist of multiple-choice items. Each question on the exam will be aligned with the tasks and knowledge statements on the blueprint resulting from the JTA process. The number of questions that are mapped to each content domain will be determined by the exam blueprint.

The written exam shall be designed to test a pilot applicant's capabilities in the following areas:

(a) Prevoyage planning;

(b) Master pilot-exchange;

(c) Operational safety;

(d) Docking and undocking;

(e) Use of anchors;

(f) Safe navigation;

(g) Shiphandling;

(h) Restricted water transit; and

(i) Use of tugs.

(5) The written exam must be administered in a proctored setting. This must be a live proctor, either in-person or via a proctoring platform chosen in consultation with the contracted psychometrician. It shall not be AI-based nor record-and-review.

(6) A preliminary cut score will be derived via psychometric practices (e.g., a modified-Angoff methodology) prior to the administration of the exam. Following an item analysis (conducted by the contracted psychometrician) and subsequent item revisions or removal recommendations, a secondary cut score will be recommended to the board by the psychometrician. The board will then approve a final cut score, taking into account the preliminary cut score, the item analysis results, and the recommendations of the psychometrician.

(7) The board may require that the cost of the written examination will be at the expense of the pilot applicant.

OTS-5092.1

AMENDATORY SECTION (Amending WSR 12-05-064, filed 2/15/12, effective 3/17/12)

WAC 363-116-077 Simulator evaluation for pilot applicants. (1)

Pilot applicants who pass a written examination and whose scores are among the top ~~((twenty))~~ 20 (or such other number as may be set by the board) of those taking the written examination (plus any pilot applicants who tie a qualifying score) shall be eligible to take the simulator evaluation set forth in this section.

(2) The simulator evaluation shall take place at a marine simulator facility designated by the board and ~~((may))~~ shall be recorded. In this evaluation pilot applicants shall be observed by available board members but shall be evaluated only by those available board members who hold, or have held a minimum U.S. Coast Guard license as master of

steam or motor vessels of not more than 1600 gross tons. The board, with guidance from its contracted psychometrician, shall ~~((also))~~ appoint a minimum of two additional evaluators who hold, or have held within ~~((ten))~~ 10 years of the examination date, a state pilot license issued by Washington or another state. ~~((If the evaluation is for applicants to both the))~~ Applicants for either Puget Sound or Grays Harbor ~~((and Puget Sound pilotage district, the applicants))~~ shall be evaluated as one applicant pool.

~~(3) ((All pilot applicants will be evaluated in writing based on some or all of the following factors:~~

~~(a) Fundamental piloting and ship handling ability;~~

~~(b) Ability to assimilate and prioritize all data necessary to safely maneuver the ship;~~

~~(c) Ability to respond appropriately in routine situations;~~

~~(d) Ability to respond appropriately in emergency or nonroutine situations;~~

~~(e) Ability to communicate well and project the proper bridge presence;~~

~~(f) Understanding of bridge resource management; and~~

~~(g) Understanding and command of the Rules of the Road then applicable to the pilotage district for which the pilot applicant is applying.~~

~~(4) The board, in consultation with its designated contracting entity, shall develop this simulator examination, determine the scoring method, the minimum passing or "cut" score, and the relative weight of this score to the whole examination in conformance with a psychometrically validated process.~~

~~(5) The board may require that the cost of the simulator evaluation will be at the expense of the pilot applicant.)~~ The simulator evaluation shall be designed to assess an applicant's competency in:

(a) Docking and undocking;

(b) Safe navigation;

(c) Shiphandling;

(d) Restricted waterway transit; and

(e) Other tasks deemed by the board, in consultation with its contracted psychometrician and a subject matter expert (SME) panel, to be necessary to the performance of safe, efficient, and competent pilotage service.

(4) The design of the exercise shall be conducted by a SME panel, consisting of at least two pilots. The board may appoint additional SMEs to the panel. The panel will work closely with the psychometrician to minimize bias as well as to maximize measurement efficiency. Subsequently, the simulator facility development team shall work with the panel and the psychometrician to develop, beta test, and finalize the exercise with the accompanying scoring rubric. All SMEs will sign confidentiality agreements and will not disclose any content of the simulator evaluation.

(5) All pilot applicants will be graded on the simulator exercise based on a validated rubric created by a SME simulation development panel, with assistance from the psychometrician. The simulator rubric will provide objective measurement points that map to the shiphandling tasks described in subsection (3)(e) of this section.

(6) A preliminary cut score will be derived via psychometric practices (e.g., a modified-Angoff methodology) prior to the administration of the simulator evaluation. Following an item analysis (conducted by the contracted psychometrician) and subsequent item revisions or removal recommendations, a secondary cut score will be recom-

mended to the board by the psychometrician. The board will then approve a final cut score, taking into account the preliminary cut score, the item analysis results, and the recommendations of the psychometrician.

(7) The board may require that the cost of the simulator evaluation be at the expense of the pilot applicant.

WSR 23-23-163
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed November 21, 2023, 1:44 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 110-03-0585
Index of significant decisions; this rule making is only to update the mailing and physical address of the department of children, youth, and families (DCYF) board of appeals.

Hearing Location(s): On December 26, 2023, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where DCYF will send its response. Comments received through and including December 26, 2023, will be considered.

Date of Intended Adoption: December 27, 2023.

Submit Written Comments to: DCYF rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 26, 2023.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by December 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to update the mailing and physical address of the DCYF board of appeals.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 34.05.220, 43.216.020, and 43.216.065.

Statute Being Implemented: RCW 34.05.220, 43.216.020, and 43.216.065.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Laura Farris, Olympia, 360-485-7621; Implementation and Enforcement: DCYF, state-wide.

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

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Scope of exemption for rule proposal:

Is fully exempt.

November 21, 2023
Brenda Villareal

OTS-5071.1

AMENDATORY SECTION (Amending WSR 20-02-031, filed 12/19/19, effective 1/19/20)

WAC 110-03-0585 Index of significant decisions. (1) The department's index of significant decisions, prepared under RCW 42.56.070(5), contains BOA orders that include an analysis or decision of substantial importance to the department in carrying out its duties.

(2) A final order may be relied upon, used or cited as precedent by a party if the final order has been indexed in the department's index of significant decisions.

(3) The department selects the orders to be included in its "index of significant decisions" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. The index of significant decisions will include orders meeting the criteria in subsections (1) and (3) of this section, issued by the department.

(4) The index will, at a minimum, contain the case or document number; type of document; name of parties, if applicable, unless such names are exempt from public disclosure; brief description of subject and program; and pertinent legal citation.

(5) Any person may nominate a BOA order to be evaluated for indexing by submitting the request, reason why the person believes an order should be indexed, and a copy of the nominated order to the Board of Appeals, P.O. Box ((40983)) 40982, Olympia, WA 98504. The department will make a final decision as to whether to index the nominated order, and that decision is not appealable.

(6) The department will periodically update and review the index to verify that the indexed documents continue to meet the criteria in subsections (1) and (3) of this section. The department may, at any time, delete a document from an index. Under RCW 42.56.070(6), a public record may not be cited in a proceeding if it has not been indexed.

(7) The index is a public record and is available for public inspection at <https://dcyf.wa.gov/board-of-appeals>. The index of significant decisions is located at the Board of Appeals, ((1115-Washing-~~ton~~)) 1310 Jefferson St. S.E., Olympia, WA 98501.

WSR 23-23-171

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed November 22, 2023, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-090.

Title of Rule and Other Identifying Information: Health and safety regulations, chapter 504-36 WAC.

Hearing Location(s): On January 4, 2024, at 4:00 p.m. Join Zoom meeting from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/97419335026?pwd=a0VMOWdkSmw3Y0RCSWRQK2VVOWtMUT09>, Meeting ID 974 1933 5026, Passcode 663606; or join by telephone +1 253 215 8782 or +1 669 900 9128 (Enter meeting ID and passcode when prompted). No in-person meetings are being scheduled.

Date of Intended Adoption: March 11, 2024.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, by January 4, 2024.

Assistance for Persons with Disabilities: Contact Joy B. Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by January 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington State University (WSU) is updating the health and safety rules.

Reasons Supporting Proposal: To meet industry best practices applicable to safety and security at WSU spectator events, WSU administration is clarifying authority to bar reentry to events and the use of security screening, metal detection, and video security systems. The clear bag policy section is updated for clarification. Personnel titles are updated to reflect the current organization of the OneWSU system.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, public.

Name of Agency Personnel Responsible for Drafting: Danielle Hess, Executive Director, Policy and Governance, Compliance and Risk Management, French Administration, Pullman, WA 99164-1045, 509-335-6893; Implementation: Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524; and Enforcement: Vicky Murray, Associate Vice President, WSU Police, Public Safety, French Administration 442, Pullman, WA 99164-1048, 509-335-5524.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSU does not consider this rule to be a significant legislative rule.

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

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023
Deborah L. Bartlett
Director
Policies, Records, and Forms
University Rules Coordinator

OTS-5044.1

AMENDATORY SECTION (Amending WSR 10-21-025, filed 10/11/10, effective 11/11/10)

WAC 504-36-020 Control of animals. This section governs the control of animals and pets on property owned or controlled by Washington State University.

(1) This section does not apply to animals owned by the university or under its care, custody, and/or control.

(2) Subsections (3) and (8) of this section do not apply to trained guide dogs or service animals that are being used by persons with disability.

(3) Animals are not permitted in university buildings, except in facilities that are the site of university-authorized events, such as stock shows, horse shows, parades, or demonstrations at sporting events, where the animals are participants in said events, or as allowed by university housing policies.

The executive vice president for (~~(business and)~~) finance and administration, the president, (~~(the)~~) chancellor (~~(of a branch campus)~~), or such other person as the president may designate, may waive this subsection for guide dogs in training or service animals in training, provided that such animals are present on campus with trainers or handlers who have a demonstrated history of training such animals.

(4) Animals are not permitted on university property unless under immediate control of their keeper, except as otherwise allowed under this rule. "Keeper" includes an owner, handler, trainer, or any person responsible for the control of an animal. "Under control" means the restraint of an animal by means of a leash or other device that physically restrains the animal to the keeper's immediate proximity. An animal which is otherwise securely confined while in or upon any motor vehicle, including a trailer, is deemed to be under control.

(5) The requirement that animals be under immediate control of their keeper does not apply to:

(a) A dog being exercised in any area designated by the university as leash optional;

(b) A dog undergoing training at a certified dog obedience class on the university campus and authorized by the dean of the college of veterinary medicine, the executive vice president for (~~(business and)~~) finance and administration, the president, chancellor, or (~~(the president's)~~) their designee;

(c) A dog while being exhibited in an organized dog show on university property;

(d) A dog trained to aid law enforcement officers while being used for law enforcement purposes or during demonstrations to illustrate the dog's capabilities;

(e) A dog trained and under the control of a university farm manager to aid farm managers while moving or handling livestock; and

(f) An animal participating in a university-authorized event, such as a stock show, horse show, parade, extension or outreach event, or demonstrations at a sporting, teaching, or agricultural event.

(6) Any stray dog or other animal that is running loose on university property is subject to impound by local authorities in accordance with the municipal or county ordinances that apply to each campus.

(7) The keeper of any animal must remove for disposal any fecal matter deposited by the animal on university premises before the keeper leaves the area where the matter was deposited. This requirement does not apply to an individual who, by reason of disability, is unable to comply, or to individuals bringing animals to university-authorized events where arrangements have been made for the removal of fecal matter.

(8) The executive vice president for ((business and)) finance and administration, the president, ((the)) a chancellor ((of a branch campus)), a service animal administrator, or such other person as designated by the president, may designate areas on a campus otherwise open to the public as restricted from access by dogs or other animals even when under the control of their keepers for safety reasons or where the presence of dogs or other animals conflicts with the educational or research missions of the university.

AMENDATORY SECTION (Amending WSR 18-23-085, filed 11/19/18, effective 12/20/18)

WAC 504-36-030 Spectator events—Safety rules. (1) Protection of the safety and general welfare of students, faculty and staff, performers and officials, and members of the general public attending or participating in spectator events on campus is a primary concern of Washington State University.

(2) The following rules of conduct apply to all spectator events of Washington State University. "Spectator event," for the purposes of this section, means ticketed or nonticketed athletic or entertainment events held on any portion of university property ~~((, including, but not limited to, Martin Stadium and the Beasley Coliseum))~~ and all campuses and locations (hereafter the "event site").

(a) Behavior which in the judgment of designated university officials, as defined in subsection (4) of this section, constitutes a disruption of the event or a safety hazard for other spectators or participants is prohibited.

(b) For ticketed events, an individual is entitled to occupy only the seat for which ~~((he or she has))~~ they have the proper ticket.

(c) Photographing or making audio or visual recordings of a spectator event for commercial purposes is not permitted without specific written permission from the WSU athletic department (for athletic events) or the performer and applicable designated university official (for entertainment events).

(d) Aisles, walkways, and stairs must be kept clear of hazards and obstacles at all times to ensure safe and easy passage for all persons.

~~(e) ((Possession and/or consumption of illegal drugs or marijuana is prohibited. Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.~~

~~(i) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (e)(ii) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.~~

~~(ii) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board and restrictions and policies imposed by the university, have restricted attendance, and be limited to specified room(s) or area(s). Possession, consumption, service, dispensation, or sale of alcohol is prohibited except to persons of legal age.~~

~~(f) Smoking and other uses of tobacco and/or nicotine products are prohibited in all areas of the Pullman campus in accordance with chapter 504-38 WAC and all areas of the Vancouver campus in accordance with chapter 504-37 WAC.~~

~~(g)) All WSU campuses and locations are tobacco free.~~

~~(f) Unless otherwise expressly permitted by the specific event rules, each spectator is allowed to bring one empty disposable or non-disposable water bottle into the event site, provided that the capacity of the water bottle is no more than one and one-half liters. All other beverage containers and devices used for carrying beverage containers are prohibited. ((All such items are subject to a visual inspection by designated university officials upon entry to the event site. If designated university officials make the determination that a given container or device is prohibited, the possessor of the container or device must remove the container or device from the event site premises or may surrender the container or device to such designated university officials for disposal.~~

~~(h) Each spectator is allowed to bring the following sizes and styles of bags into the event site, provided that, for seated events, the bags are small enough to fit completely under the spectator's seat, where such bags must be kept.~~

~~(i) Bags made of clear plastic, vinyl, or PVC that are no larger than fourteen inches by eight inches by fourteen inches.~~

~~(ii) Clear drawstring bags that are no larger than fourteen inches by fourteen inches.~~

~~(iii) One gallon clear plastic freezer bags (Ziploc bag or similar).~~

~~(iv) Small clutch bags, with or without a handle strap, that are no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).~~

~~(v) Exceptions are made for medically necessary items after proper inspection upon entrance.~~

~~(vi) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue.~~

~~(i))~~ (g) For events that have been designated by university officials as subject to the clear bag policy in subsection (3)(d) of this section, bags brought to the event site must comply with the following rules:

(i) Subject to the following exceptions, each spectator is allowed to bring only one bag into an event site. The bag must be clear (clear plastic, vinyl, or PVC) and no larger than 14 inches by eight inches by 14 inches. In addition to one clear bag as described, a spectator may bring the following, subject to additional inspection upon entrance:

(A) One small clutch bag, with or without a handle strap, that is no larger than four and one-half inches by six and one-half inches (the approximate size of a hand).

(B) An additional clear bag of the size specified above for medically necessary items.

(C) An additional clear bag of the size specified above for supplies (such as diapers, wipes, and similar items) for babies and small children.

(ii) For seated events, any bag(s) must be small enough to fit completely under the spectator's seat, where such bags must be kept.

(h) For events that have been designated by university officials as subject to the clear bag policy, prohibited bags and containers include, but are not limited to:

(i) Purses larger than a clutch bag;

(ii) Coolers;

(iii) Briefcases;

(iv) Backpacks and hydration packs;

(v) Fanny packs;

(vi) Cinch bags;

(vii) Luggage of any kind;

(viii) Computer or camera bags;

(ix) Binocular cases;

(x) Any bag (~~larger than the permissible sizes specified in subsection (h))~~) that does not meet the requirements of (g) of this ~~(section)~~ subsection.

~~((j))~~ (i) For events that have been designated by university officials as subject to the clear bag policy, spectators are allowed to bring personal items, e.g., keys, cellular telephones, wallet, makeup, in their pockets if they choose not to use a clear bag.

~~((k) Additional items such as diapers, wipes, and other supplies for babies and small children are allowed if placed in an approved clear bag.~~

~~(l) All items are subject to a visual inspection by designated university officials upon entry into the event site. If designated university officials make the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university officials for disposal.~~

~~(m))~~ (j) The following items are ~~(also)~~ prohibited in ~~(the)~~ all event sites:

(i) Fireworks, weapons, explosive devices, or artificial noise-making devices (such as airhorns);

(ii) Items deemed potentially dangerous ~~(or unacceptable)~~ by designated university officials;

(iii) Drones;

(iv) Laser pointers;

(v) Extension items used to hold cellular telephones or cameras in place (e.g., "selfie sticks");

(vi) Flag poles, or any items that act as an extension of an arm and have a flag or sign affixed;

(vii) Footballs, frisbees, sport balls, any kind of inflatable balls, or any other projectiles;

(viii) Umbrellas;

(ix) Seat cushions with rigid frames, unless expressly permitted by the specific event rules. Seatback cushions must:

(A) Be soft sided;

(B) Contain no pockets or zippers; and

(C) Be no wider than (~~eighteen~~) 18 inches.

(x) Pets or animals, except as allowed by WAC 504-36-020 or as otherwise required by state or federal law;

(xi) Food and beverages, unless expressly permitted by the specific event rules or purchased from a vendor within the event site;

(xii) Possessing and/or consuming illegal drugs or marijuana.

Possession and/or consumption of alcoholic beverages is permitted subject to restrictions.

(A) Any illegal drugs, marijuana, or alcoholic beverages, except for such beverages provided in accordance with (j) (xii) (B) of this subsection, found in the possession of a spectator or otherwise found on the event site may be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.

(B) Alcoholic beverages may be possessed, sold, served, and consumed at event sites only under a valid permit or license issued by the Washington state liquor and cannabis board. Events at which alcoholic beverages are possessed, sold, served, and consumed must comply with the restrictions imposed by the Washington state liquor and cannabis board, the restrictions and policies imposed by the university, and all applicable laws.

(3) Designated university officials, as defined in subsection (4) of this section, are authorized to act to the fullest extent of the law to enforce the prohibitions set forth in subsection (2) of this section. This includes, but is not limited to, the following:

(a) Designated university officials may perform an inspection of all items, bags, and persons entering or present at any event site.

(b) Designated university officials may use additional methods of security screening including, but not limited to, video security systems, metal detection, and other technologies, to detect the presence of prohibited items at an event site.

(c) The university chief of police/director of public safety, or designee; the director of campus safety or equivalent for locations other than Pullman, or designee; in consultation with the event sponsor, may implement a no reentry policy for any event.

(d) The clear bag policy is enforced at various venues at the discretion of university personnel and management. Exceptions may also be made depending on the venue. If a designated university official makes the determination that a given bag is prohibited, the possessor of the bag must remove the bag from the event site premises or may surrender the bag to such designated university official for disposal.

~~((3) Where)~~ (e) When there is reasonable cause to believe that a person is violating, or is attempting to violate, the requirements identified in subsection (2) of this section, such person is denied license or privilege to enter or remain in or upon the event site premises, and designated university officials may take necessary ac-

tion to deny entry or to remove such persons from the event site premises.

(f) Prohibited items found in the possession of a spectator or otherwise found on the event site are to be confiscated and delivered to the custody of designated university officials for law enforcement purposes or for disposal, as appropriate.

(g) Violation of the requirements identified in subsection (2) of this section or failure to vacate the event site premises upon request of designated university officials may result in university disciplinary action (if applicable), a no trespass order under WAC 504-35-150 (Administrative control—Trespass) barring the individual from campus, and/or subsequent legal proceedings under federal or state law and/or the Washington Administrative Code.

(4) For purposes of this section, designated university officials include the president of the university or designee, the executive vice president for finance and administration or designee, campus chancellor or designee of the campus where the event site is located, and the following officials:

(a) Director of athletics or designee for athletic events;

(b) Director of the Beasley Coliseum or designee for Beasley Coliseum events;

(c) Director of the Compton Union Building or designee for events in the Compton Union Building;

(d) Director of the School of Music or designee for events sponsored by that school;

(e) The WSU (~~executive director~~) chief of police/director of public safety, the director of campus safety or equivalent for locations other than Pullman, or designee;

(f) Officers of the WSU police department when (i) acting at the request of any of the above-named officials to enforce university regulations, or (ii) enforcing state laws or local ordinances;

(g) Campus safety personnel, contracted or hired security personnel, and crowd management personnel when:

(i) Acting at the direction of the above-named officials or designees to enforce university regulations; or

(ii) Enforcing state laws or local ordinances.

WSR 23-23-172

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed November 22, 2023, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-001.

Title of Rule and Other Identifying Information: Chapter 504-04 WAC, Practice and procedure.

Hearing Location(s): On January 9, 2024, at 4:00 p.m. Join Zoom meeting from PC, Mac, Linux, iOS, or Android <https://wsu.zoom.us/j/93763299013?pwd=eTFMa29tZlRtL01IakJPMjJjaFJCUT09>, Meeting ID 937 6329 9013, Passcode 580303; or join by phone +1 253 215 8782 or +1 669 900 9128, enter meeting ID and passcode when prompted. No in-person meeting will be held.

Date of Intended Adoption: March 11, 2024.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, by January 9, 2024.

Assistance for Persons with Disabilities: Contact Joy B. Faerber, phone 509-335-2005, email prf.forms@wsu.edu, by January 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington State University (WSU) is updating the rules regarding practice and procedure.

Reasons Supporting Proposal: The proposed amendment clarifies who is permitted to act as a representative in WSU formal adjudicative proceedings, resolving an internal inconsistency with WAC 504-26-020.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: WSU, governmental.

Name of Agency Personnel Responsible for Drafting: Nathan Deen, Senior Assistant Attorney General, Attorney General's Office, WSU Division, French Administration 332, Pullman, WA 99164-1031, 509-335-2636; Implementation: Jenna Hyatt, Associate Vice Chancellor and Dean of Students, Lighty 360, Pullman, WA 99164-1066, 509-335-5757 and Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524; and Enforcement: Jenna Hyatt, Associate Vice Chancellor and Dean of Students, Lighty 360, Pullman, WA 99164-1066, 509-335-5757 and Leslie Brunelli, Executive Vice President, Finance and Administration, French Administration 442, Pullman, WA 99164-1048, 509-335-5524.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSU does not consider this rule to be a significant legislative rule.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(4).
Scope of exemption for rule proposal:
Is fully exempt.

November 22, 2023
Deborah L. Bartlett
Director
Policies, Records, and Forms
University Rules Coordinator

OTS-5043.1

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

WAC 504-04-130 Advising and representation of parties. Any person whose rights are in issue in a formal adjudicative proceeding has the right to have an advisor present during any stage of the proceedings. However, only persons currently admitted to ~~((the))~~ practice ~~((of))~~ law ~~((in the state of Washington))~~, including licensed legal interns, are permitted to act as representatives at the proceedings. The presiding officer has the power to impose reasonable conditions upon participation of advisors and representatives.

WSR 23-23-173
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2023-08—Filed November 22, 2023, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-124.

Title of Rule and Other Identifying Information: Life insurance riders and disclosure requirements, WAC 284-23-650.

Hearing Location(s): On Wednesday, December 27, 2023, at 9:00 a.m., virtually via Zoom meetings. Please visit this website for the Zoom meeting registration and link <https://www.insurance.wa.gov/life-insurance-disclosure-requirements-r-2023-08>. Written comments can be submitted to the office of the insurance commissioner (OIC) via email to RulesCoordinator@oic.wa.gov by close of business (COB) (5 p.m. PST) on Thursday, December 28, 2023.

Date of Intended Adoption: December 29, 2023.

Submit Written Comments to: Michael Walker, Senior Policy Analyst, P.O. Box 40260, Olympia, WA 98504-0260, email RulesCoordinator@oic.wa.gov, fax 360-586-3109, by COB (5 p.m. PST) Thursday, December 28, 2023.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email Katie.Bennett@oic.wa.gov, by Tuesday, December 26, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is attempting to resolve misalignment identified between rules and laws in the insurance code. The rules in chapter 284-23 WAC do not align with the laws in chapter 48.83 RCW, as applied to life insurance with long-term care insurance (LTCi) riders and accelerated benefits. The rules currently prohibit life insurers from offering life insurance policies with riders that have accelerated benefits for LTCi and require disclosure statements communicating this prohibition. This contradicts current law that allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see WAC 284-23-650, RCW 48.83.010(3), 48.83.020(5)(a), and 48.83.080).

Reasons Supporting Proposal: The misalignment of authorities causes complications for all affected parties, including insurers, consumers, and regulators. The effective rules cause complications for insurers who submit product filings for life insurance policies with accelerated death benefits to fund LTCi. Currently, insurers are experiencing difficulty in filing and marketing the policies as such to consumers due to the misalignment in rules, as identified above. This rule making will attempt to achieve alignment between the life insurance disclosure requirements in WAC and the statutory provisions provided by chapter 48.83 RCW.

Statutory Authority for Adoption: RCW 48.02.060 and 48.83.170.

Statute Being Implemented: RCW 48.83.010, 48.83.020, and 48.83.080.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Walker, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501,

360-725-7036; Implementation: Ned Gaines, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000; and Enforcement: Charles Malone, 5000 Capitol Boulevard S.E., Tumwater, WA 98501, 360-725-7000.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023

Mike Kreidler

Insurance Commissioner

OTS-5077.1

AMENDATORY SECTION (Amending WSR 08-24-023, filed 11/24/08, effective 12/25/08)

WAC 284-23-650 Disclosure statement. (1) For purposes of this section, "policy" includes any agreement, amendment, certificate, contract, endorsement, plan, or statement of coverage that provides for life insurance benefits.

(2) The words "accelerated benefit" must be included in the required title of every life insurance policy or rider that includes a provision for accelerated benefits. Accelerated benefits that do not meet the definition of long-term care insurance in RCW 48.83.020(5), shall not be described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.

((+2)) (3) Possible tax consequences and possible consequences on eligibility for receipt of medicare, medicaid, Social Security, supplemental security income (SSI), or other sources of public funding shall be included in every disclosure statement.

(a) The disclosure form shall include a disclosure statement. The disclosure statement shall be prominently displayed on the first page of the policy, rider, or certificate. The disclosure statement shall contain substantially the following: "If you receive payment of accelerated benefits from a life insurance policy, you may lose your right to receive certain public funds, such as medicare, medicaid, Social Security, Supplemental Security, supplemental security income (SSI), and possibly others. Also, receiving accelerated benefits from a life insurance policy may have tax consequences for you. We cannot give you advice about this. You may wish to obtain advice from a tax professional or an attorney before you decide to receive accelerated benefits from a life insurance policy."

(b) For accelerated benefits that do not meet the definition of long-term care insurance in RCW 48.83.020(5), the disclosure statement must begin with the following statement: "This accelerated life bene-

fit does not and is not intended to qualify as long-term care insurance under Washington state law. Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care insurance or as providing long-term care benefits.

(c) The disclosure form must be provided (i) to the applicant for an individual or group life insurance policy at the time application is made for the policy or rider; and (ii) (A) to the individual insured at the time the owner of an individual life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid, or (B) to the individual certificate holder at the time an individual certificate holder of a group life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid. It is not sufficient to provide this required disclosure statement only to the holder of a group policy.

~~((3))~~ (4) The disclosure form shall give a brief and clear description of the accelerated benefit. It shall define all qualifying events which can trigger payment of the accelerated benefit. It shall also describe any effect of payment of accelerated benefits upon the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens.

(a) In the case of insurance solicited by an insurance producer, the insurance producer shall provide the disclosure form to the applicant before or at the time the application is signed. Written ~~((acknowledgement))~~ acknowledgment of receipt of the disclosure statement shall be signed by the applicant and the insurance producer.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a written notice that a full premium refund shall be made if the policy is returned to the insurer within the free look period.

(c) In the case of group life insurance policies, the disclosure form shall be contained in the certificate of coverage, and may be contained in any other related document furnished by the insurer to the certificate holder.

~~((4))~~ (5) If there is a premium or cost of insurance charge for the accelerated benefit, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of an accelerated benefit upon the policy's cash value, accumulation account, death benefit, premium, policy loans, or policy liens.

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant either before or at the time the application is signed.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant concurrently with delivery of the policy to the applicant.

(c) In the case of group life insurance policies, the disclosure form shall be included in the certificate of insurance or any related document furnished by the insurer to the certificate holder.

~~((5))~~ (6) (a) Insurers with financing options other than as described in WAC 284-23-690 (1) (b) and (c) of this regulation, shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. Insurers shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any premium or cost of insurance charge for the accelerated benefits, if he or she is required to pay all or any part of such a premium or cost of insurance charge.

(b) Insurers shall furnish an actuarial demonstration to the Insurance Commissioner when filing an individual or group life insurance policy or rider form that provides accelerated benefits, showing the method used to calculate the cost for the accelerated benefit.

~~((6))~~ (7) Insurers shall disclose to the policyholder any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any administrative expense charge if he or she is required to pay all or any part of any such charge.

~~((7))~~ (8) When the owner of an individual policy or the certificate holder of a group policy requests payment of an accelerated benefit, within ~~(twenty)~~ 20 days of receiving the request the insurer shall send a statement to that person, and to any irrevocable beneficiary, showing any effect that payment of an accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. This statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements. When the insurer pays the accelerated benefit, it shall issue an amended schedule page to the owner of an individual policy, or to the certificate holder of a group policy, showing any new, reduced in-force amount of the policy. When more than one payment of accelerated benefit is permitted under the policy or rider, the insurer shall send a revised statement to the owner of an individual policy, or to the certificate holder of a group policy, when a previous statement has become invalid due to payment of accelerated benefits.

WSR 23-23-174

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 22, 2023, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-122.

Title of Rule and Other Identifying Information: Chapter 365-240 WAC, Affordable and supportive housing—Local sales and use tax. In response to SB 5604 (Laws of 2023), the department of commerce (department) is proposing amendments to WAC 365-240-020, and 365-240-030 to align with changes made to RCW 82.14.540.

Hearing Location(s): On January 4, 2024, at 11:00 a.m. This hearing will be held virtually using Microsoft Teams. Click here to join the meeting [contact agency for link], Meeting ID 230 676 738 118, Passcode adFK82. Call in option (audio only) +1 564-999-2000,,78111635# United States, Olympia, (833) 322-1218,,78111635# United States (Toll-free), Phone Conference ID 781 116 35#.

Date of Intended Adoption: January 24, 2024.

Submit Written Comments to: Kirsten Jewell, P.O. Box 42525, Olympia, WA 98504-2525, email Kirsten.jewell@commerce.wa.gov, by January 4, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Kirsten Jewell, phone 360-725-2723, email Kirsten.jewell@commerce.wa.gov, by December 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing the following amendments to chapter 365-240 WAC in order to align with SB 5604 (Laws of 2023):

- Removing the population size requirement from WAC 365-240-020;
- Adding the allowable use of administrative costs, which may not exceed 10 percent to WAC 365-240-020; and
- Adding the allowable use of administrative costs, which may not exceed 10 percent to WAC 365-240-030.

Reasons Supporting Proposal: The department supports this proposal because this rule making is necessary to provide transparency to local jurisdictions by aligning the language in RCW 82.14.540 with language found in chapter 365-240 WAC.

Statutory Authority for Adoption: RCW 82.14.540.

Statute Being Implemented: Chapter 82.14 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: Reanna McNamara, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 564-669-4930; Implementation and Enforcement: Kirsten Jewell, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504, 360-725-2723.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the department.

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

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

Scope of exemption for rule proposal:
Is fully exempt.

November 22, 2023
Amanda Hathaway
Rules Coordinator

OTS-5049.1

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-020 Authorized uses of tax revenue. Counties (~~with populations over four hundred thousand and cities with populations over one hundred thousand~~) and cities may use tax revenue for:

(1) Acquiring, rehabilitating, or constructing affordable housing, which may include new units within an existing structure or facilities providing supportive housing services under RCW 71.24.385 (behavioral health organizations); ~~((~~or~~))~~

(2) Operations and maintenance costs of new units of affordable or supportive housing (~~(-~~

~~Counties with populations under four hundred thousand and cities with populations under one hundred thousand population may use tax revenue for the activities outlined above, as well as to provide rental assistance to tenants that are at or below sixty percent of the median income of the county or city that is imposing the tax))~~;

(3) Providing rental assistance to tenants that are at or below 60 percent of the area median income of the county or city that is imposing the tax; or

(4) Administrative costs of the county or city associated with administering this section, which may not exceed 10 percent of the annual tax distributed to the jurisdiction under this section.

AMENDATORY SECTION (Amending WSR 20-09-064, filed 4/13/20, effective 5/14/20)

WAC 365-240-030 Annual report to the department of commerce.

Jurisdictions must submit a report to the department by October 1st annually with the following information pertaining to the most recent fiscal year. Reports submitted by a lead jurisdiction or managing en-

tity pursuant to an interlocal agreement must be accompanied by contract language designating the responsible entity for submitting annual reports and ensuring their accuracy.

The first report will be due October 1, 2020, and annually thereafter.

(1) General:

(a) All references made in this section to funds, funds pooled, or funds utilized or bonded against are in regard to those derived from a jurisdiction's affordable and supportive housing sales and use tax distribution from the department of revenue for the corresponding fiscal year.

(b) An annual report submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must be accompanied by agreed language designating it as the responsible party for report timeliness and accuracy.

(c) Information submitted by a lead jurisdiction or managing entity pursuant to an interlocal agreement must include the total combined revenue collection and program activities for all jurisdictions subject to the agreement. A separate report on revenue collection and program activities must be submitted for each jurisdiction choosing to additionally expend funds outside the agreement, if applicable.

(d) All reports submitted pursuant to this section must include contact information for the preparer.

(2) Revenue collection:

(a) Total affordable and supportive housing sales and use tax distribution for the reporting jurisdiction(s);

(b) Applicable affordable housing and supportive housing sales and use tax rate(s) for the reporting jurisdiction(s);

(c) If an interlocal agreement is in place, the total revenue utilized jointly pursuant to the agreement;

(d) If an interlocal agreement is in place, the total revenue utilized by jurisdiction(s) separately, not according to the terms of the agreement.

(3) Program activities:

(a) Total funds committed;

(b) Number, types, and status of projects supported with funds;

(c) Degree of leverage with other public and private funds;

(d) Total funds utilized for rent assistance; and

(e) Duration of affordability for projects supported with funds.

(4) Program outputs:

(a) Total funds committed for loans and grants;

(b) Total funds obligated to support bonding activities;

(c) Total funds committed for operations and maintenance of new units of affordable or supportive housing;

(d) Total funds spent on administrative costs associated with administering this section, not to exceed 10 percent of the annual tax distributed to the jurisdiction;

(e) Total number of households served with funds used for rent assistance; and

~~((e))~~ (f) Target populations served with funds.

WSR 23-23-175

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed November 22, 2023, 10:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-092.

Title of Rule and Other Identifying Information: Updates and amendments to chapter 194-24 WAC to reflect new versions of EnergyStar standards for electric vehicle supply equipment (EVSE) and residential ventilating fans, and to remove state efficiency standards for air purifiers in light of new federal standards.

Hearing Location(s): On January 22, 2024, at 10:00 a.m., virtual https://wastatecommerce.zoom.us/webinar/register/WN_gWaoNW8kSlyTbJfg4ne3bg.

Date of Intended Adoption: February 10, 2024.

Submit Written Comments to: Nick Manning, P.O. Box 42525, Olympia, WA 98504, email nick.manning@commerce.wa.gov, by January 22, 2024.

Assistance for Persons with Disabilities: Contact Nick Manning, phone 564-200-4324, email nick.manning@commerce.wa.gov, by January 18, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 19.260 RCW establishes energy efficiency standards for multiple products (listed in RCW 19.260.030) that are sold, offered for sale, or installed in the state. The law also authorizes the department of commerce (commerce) to adopt by rule a more recent version of any standard established in statute in order to improve consistency with other comparable standards in other states. Implementing this authority, commerce regularly updates its appliance standards through rule, including after the passage of HB 1619 concerning appliance efficiency standards (2022), and in 2021 to incorporate updated appliance standards for computer equipment. Commerce has developed draft rules to update state efficiency standards for EVSE and residential ventilating fans to reflect more recent versions of the Environmental Protection Agency (EPA) EnergyStar standards listed in RCW 19.260.040 in order to maintain and improve consistency with other comparable standards in other states. Commerce has also developed draft rules to remove the section of chapter 194-24 WAC concerning air purifiers in light of new federal Department of Energy conservation standards for air cleaners.

Reasons Supporting Proposal: New versions of appliance efficiency standards for electric vehicle supply equipment and residential ventilating fans have been issued through the EPA's ENERGY STAR® program. Additionally, the Department of Energy has recently published a final rule establishing new energy conservation standards for air purifiers. Washington's adoption of a state air purifier standard was a key driving factor in reaching consensus at the national level to support and adopt a federal standard. It is important that commerce update state standards when the underlying standard changes; otherwise it would be impractical for manufacturers to comply with labeling requirements, and Washington consumers could lose access to the most recent versions of these products. New York, Rhode Island, Massachusetts, Nevada, and Colorado are all in the process of updating many of the same energy standards; it is important for Washington to do the same to maintain consistency with current markets.

Statutory Authority for Adoption: RCW 19.260.040(1), 19.260.070.

Statute Being Implemented: RCW 19.260.040.

Rule is necessary because of federal law, 10 C.F.R. Parts 429 and 430.

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

Name of Agency Personnel Responsible for Drafting: Liz Reichart, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-515-8194; Implementation and Enforcement: Brittany Wagner, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525.

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

A cost-benefit analysis is not required under RCW 34.05.328. Commerce is not a listed agency in RCW 34.05.328.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: The United States Department of Energy established a final rule for air cleaners in 10 C.F.R. Parts 429 and 430, preempting the Washington standard.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule changes do not update the required energy efficiency of any product. These updates are proposed only so that more product can be compliant and thus be sold in Washington.

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023

Amanda Hathaway
Rules Coordinator

OTS-5095.1

AMENDATORY SECTION (Amending WSR 23-07-050, filed 3/9/23, effective 4/9/23)

WAC 194-24-151 Residential ventilating fans manufactured on or after January 1, 2024. (1) **Scope.** This rule applies to new residential ventilating fans manufactured on or after January 1, 2024.

(2) **Standard.** Residential ventilating fans must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version ((4.1)) 4.2.

(3) **Testing.** Residential ventilating fans must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for residential ventilating fans, version 4.1.

(4) **Listing.** Each manufacturer must cause to be listed each residential ventilating fan, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every residential ventilating fan must have an ENERGY STAR® label.

AMENDATORY SECTION (Amending WSR 23-07-050, filed 3/9/23, effective 4/9/23)

WAC 194-24-200 Electric vehicle supply equipment. (1) Scope.

This rule applies to new electric vehicle supply equipment manufactured on or after January 1, 2024.

(2) **Standard.** Electric vehicle supply equipment must meet the requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version ((1.0)) 1.2.

(3) **Testing.** Electric vehicle supply equipment must meet the testing requirements included in the scope of the Environmental Protection Agency ENERGY STAR® program product specification for electric vehicle supply equipment, version 1.0.

(4) **Listing.** Each manufacturer must cause to be listed each electric vehicle supply equipment, by model number, in the ENERGY STAR® product database.

(5) **Marking.** Every unit of every electric vehicle supply equipment must have an ENERGY STAR® label.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 194-24-187 Air purifiers.

WSR 23-23-177

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed November 22, 2023, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-163.

Title of Rule and Other Identifying Information: Chapter 308-125 WAC, Real estate appraisers.

Hearing Location(s): On December 29, 2023, at 10:00 a.m., via Zoom meeting <https://dol-wa.zoom.us/j/84675290380?pwd=mXaE4GlE6MMZNnwDd3EGwzwc17zTU3.1>, Meeting ID 846 7529 0380, Passcode 963980; or One-tap mobile +12532050468,,84675290380#,,,,*963980# US, +12532158782,,84675290380#,,,,*963980# US (Tacoma), Meeting ID 846 7529 0380, Passcode 963980. Find your local number <https://dol-wa.zoom.us/j/84675290380?pwd=mXaE4GlE6MMZNnwDd3EGwzwc17zTU3.1>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 30, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by December 29, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by December 19, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Aligning state rule with recognized national industry guidance for real estate appraiser qualifications, allowing an alternative pathway to appraiser licensure, and other rule changes identified during rule chapter review.

Reasons Supporting Proposal: This rule making benefits real estate appraisers by allowing them to pursue licensure through an alternative pathway recommended in recognized national industry guidance.

Statutory Authority for Adoption: RCW 18.140.030 Powers and duties of director and 46.01.110 Rule-making authority.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Tanya Hessler, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6504.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes ease requirements and offer applicants an alternative pathway to licensure by aligning state requirements with national standards. This does not pose additional costs to licensees because it is providing them a new option.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemption(s): These rule changes ease requirements and offer applicants an alternative pathway to licensure by aligning state requirements with national standards. This does not pose addi-

tional costs to small businesses because it is providing applicants a new option.

Scope of exemption for rule proposal:
Is fully exempt.

November 22, 2023
Ellis Starrett
Rules and Policy Manager

OTS-5047.1

AMENDATORY SECTION (Amending WSR 16-02-008, filed 12/28/15, effective 1/28/16)

WAC 308-125-030 Examination prerequisite general classification.

The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~three hundred~~) 300 hours in the following core modules:

(a) Basic appraisal principles, (~~thirty~~) 30 hours.

(b) Basic appraisal procedures, (~~thirty~~) 30 hours.

(c) The National USPAP course or equivalent, (~~fifteen~~) 15 hours.

(d) General appraiser market analysis and highest and best use, (~~thirty~~) 30 hours.

(e) Statistics, modeling and finance, (~~fifteen~~) 15 hours.

(f) General appraiser sales comparison approach, (~~thirty~~) 30 hours.

(g) General appraiser site valuation and cost approach, (~~thirty~~) 30 hours.

(h) General appraiser income approach, (~~sixty~~) 60 hours.

(i) General appraiser report writing and case studies, (~~thirty~~) 30 hours.

(j) Appraisal subject matter electives, (~~thirty~~) 30 hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess (~~three thousand~~) 3,000 hours of appraisal experience obtained continuously over a period of not less than (~~thirty~~) 18 months in Washington or in another state having comparable certification requirements.

(4) To fulfill the experience requirement, an applicant must have at least (~~one thousand five hundred~~) 1,500 hours of nonresidential appraisal experience.

(5) Applicants for the certified general license must possess a bachelor's degree or higher in any field of study.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

WAC 308-125-040 Examination prerequisite state-certified residential classification. The state-certified residential real estate appraiser classification applies to appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value less than (~~two hundred fifty thousand dollars~~) \$250,000.

(1) As a prerequisite to taking the examination for certification as a state-certified residential real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~two hundred~~) 200 hours in the following core modules:

(a) Basic appraisal principles, (~~thirty~~) 30 hours.

(b) Basic appraisal procedures, (~~thirty~~) 30 hours.

(c) The National USPAP course or equivalent, (~~fifteen~~) 15 hours.

(d) Residential market analysis and highest and best use, (~~fifteen~~) 15 hours.

(e) Residential appraiser site valuation and cost approach, (~~fifteen~~) 15 hours.

(f) Residential sales comparison and income approaches, (~~thirty~~) 30 hours.

(g) Residential appraiser report writing and case studies, (~~fifteen~~) 15 hours.

(h) Statistics, modeling and finance, (~~fifteen~~) 15 hours.

(i) Advanced residential applications and case studies, (~~fifteen~~) 15 hours.

(j) Appraisal subject matter electives, (~~twenty~~) 20 hours.

(2) Credit towards qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-certified residential real estate appraiser shall not be issued to any person who does not possess (~~two thousand five hundred~~) 1,500 hours of appraisal experience obtained continuously over a period of not less than (~~twenty-four~~) 12 months in Washington or in another state having comparable certification requirements.

(4) Applicants for the certified residential appraiser license must satisfy one of the following college education requirement options:

(a) Possess a bachelor's degree or higher in any field of study; or

(b) Possess an associate's degree in a field of study related to business administration, accounting, finance, economics, or real estate; or

(c) Successful completion of (~~thirty~~) 30 semester hours of college level courses in all of the following subject matter areas:

(i) English composition, three hours; and

(ii) Microeconomics, three hours; and

(iii) Macroeconomics, three hours; and

(iv) Finance, three hours; and

(v) Algebra, geometry, or higher mathematics, three hours; and

(vi) Statistics, three hours; and

- (vii) Business or real estate law, three hours; and
- (viii) Computer science, three hours; and
- (ix) Two elective courses in: Accounting, geography, agricultural economics, business management, or real estate, three hours each.
- (d) Successful completion of at least (~~thirty~~) 30 semester hours of college level examination program (CLEP) examinations in all of the following subject matter areas:
 - (i) College algebra, three hours; and
 - (ii) College composition, six hours; and
 - (iii) College composition modular, three hours; and
 - (iv) College mathematics, six hours; and
 - (v) Principles of macroeconomics, three hours; and
 - (vi) Principles of microeconomics, three hours; and
 - (vii) Introductory business law, three hours; and
 - (viii) Information systems, three hours.
- (e) Any (~~thirty~~) 30 semester credit hour combination of (c) and (d) of this subsection that includes at least one course or CLEP exam in each of the following subject matter areas:
 - (i) Composition; and
 - (ii) Microeconomics; and
 - (iii) Macroeconomics; and
 - (iv) Business law; and
 - (v) Algebra, geometry or higher mathematics.
- (f) No college level education is required to apply for state-certified residential real estate appraiser license for an appraiser that has held a state-licensed real estate appraiser license for a minimum of five years, and satisfies all of the following requirements:
 - (i) No record of any adverse, final and nonappealable disciplinary action affecting the state-licensed real estate appraiser's legal eligibility to engage in appraisal practice within five years immediately preceding the date of application for a state-certified residential real estate appraiser license; and
 - (ii) Successful completion of the following core qualifying education modules:
 - (A) Statistics, modeling, and finance, (~~fifteen~~) 15 hours; and
 - (B) Advanced residential applications and case studies, (~~fifteen~~) 15 hours; and
 - (C) Appraisal subject matter electives, (~~twenty~~) 20 hours; and
 - (iii) Successful completion of the required experience as specified in subsection (3) of this section; and
 - (iv) Successful completion of the certified residential real property appraiser examination as specified in these rules.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

WAC 308-125-045 Examination prerequisite state-licensed classification. The state-licensed real estate appraiser classification applies to appraisal of noncomplex one to four residential units having a transaction value less than (~~one million dollars~~) \$1,000,000 and complex one to four residential units having a transaction value less than (~~two hundred fifty thousand dollars~~) \$400,000 and nonresidential property having a transaction value less than (~~two hundred fifty thousand dollars~~) \$250,000.

(1) As a prerequisite to taking the examination for certification as a state-licensed real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than (~~one hundred fifty~~) 150 hours in the following core modules:

- (a) Basic appraisal principles, (~~(thirty)~~) 30 hours.
- (b) Basic appraisal procedures, (~~(thirty)~~) 30 hours.
- (c) The National USPAP course or equivalent, (~~(fifteen)~~) 15 hours.
- (d) Residential market analysis and highest and best use, (~~(fifteen)~~) 15 hours.
- (e) Residential appraiser site valuation and cost approach, (~~(fifteen)~~) 15 hours.
- (f) Residential sales comparison and income approaches, (~~(thirty)~~) 30 hours.
- (g) Residential appraiser report writing and case studies, (~~(fifteen)~~) 15 hours.

(2) Credit toward qualifying education requirements may be obtained via the completion of a degree program in real estate from an accredited degree-granting college or university provided the college or university has had its curriculum reviewed and approved by the appraiser qualifications board.

(3) An original certification as a state-licensed real estate appraiser shall not be issued to any person who does not possess (~~(two thousand)~~) 1,000 hours of appraisal experience obtained continuously over a period of not less than (~~(twelve)~~) six months in Washington or in another state having comparable certification requirements.

AMENDATORY SECTION (Amending WSR 18-24-113, filed 12/4/18, effective 1/4/19)

WAC 308-125-070 Experience requirements. (1) State licensed applicants must accumulate (~~(two thousand)~~) 1,000 hours within a minimum of (~~(one year (twelve))~~) six months (+) and a maximum of seven years. Certified residential applicants must accumulate (~~(two thousand five hundred)~~) 1,500 hours within a minimum of (~~(two)~~) one year (~~(s (twenty-four))~~) (12 months) and a maximum of seven years. Certified general applicants must accumulate (~~(three thousand)~~) 3,000 hours within a minimum of (~~(thirty)~~) 18 months and a maximum of seven years.

(2) Any work product claimed for experience credit dated January 1, 1990, and later shall conform to the Uniform Standards of Professional Appraisal Practice in effect at the time the appraisal is completed.

(a) Reports shall be in writing.

(b) An appraisal work file must be available to the director to substantiate work performed.

(c) Appraisal experience must have been performed as a licensed or certified appraiser or a registered trainee to qualify. Appraisal experience accrued through a Practical Applications of Real Estate Appraisal program is exempt from the requirements of this subsection (2)(c) of this section.

(3) A registered trainee may gain experience under the supervision of no more than six supervisory appraisers during his/her trainee period.

(4) The department may request appraiser work files to verify, confirm, or compare entries made on the experience log. Failure to provide work files to the department upon its request may disqualify the reports as qualifying experience.

(5) An applicant for certification or license shall certify, under penalty of perjury, the completion of the required experience.

(6) Appraisal work qualifying for appraisal experience includes, but is not limited to, the following: Fee and staff appraisal, ad valorem tax appraisal, appraisal review, appraisal analysis, appraisal consulting, highest and best use analysis, feasibility analysis/study.

(7) The department may require a supervisory appraiser to certify, under penalty of perjury, the applicant's work experience.

(8) The department may request written reports or work files to verify an applicant's experience.

(9) As an alternative means to satisfy the experience requirements of this section, applicants may complete a Practical Applications of Real Estate Appraisal (PAREA) program. PAREA programs must be approved by the Appraiser Qualification Board prior to the program's administration.

(a) Participants may not receive partial credit for a Practical Applications of Real Estate Appraisal program.

(b) Participants may not receive a certificate of completion until all required components of the Practical Applications of Real Estate Appraisal program have been successfully completed and approved by a program mentor.

(c) Experience hours gained from Practical Applications of Real Estate Appraisal programs are exempt from state locality requirements outlined in WAC 308-125-020(2), 308-125-040(3), and 308-125-045(3).

(d) Participants who complete a Licensed Residential Practical Applications of Real Estate Appraisal program may apply their certificate of completion in the following ways:

(i) A Licensed Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Licensed Residential classification.

(ii) A Licensed Residential PAREA certificate of completion may satisfy up to 67 percent of the required experience hours for the Certified Residential classification.

(iii) A Licensed Residential PAREA certificate of completion may satisfy up to 33 percent of the required experience hours for the Certified General classification, none of which is eligible towards the required nonresidential hours.

(e) Participants who complete a Certified Residential Practical Applications of Real Estate Appraisal program may apply their certificate of completion in the following ways:

(i) A Certified Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Licensed Residential classification.

(ii) A Certified Residential PAREA certificate of completion may satisfy up to 100 percent of the required experience hours for the Certified Residential classification.

(iii) A Certified Residential PAREA certificate of completion may satisfy up to 50 percent of the required experience hours for the Certified General classification, none of which is eligible towards the required nonresidential hours.

OTS-5061.1

AMENDATORY SECTION (Amending WSR 06-23-038, filed 11/7/06, effective 12/8/06)

WAC 308-56A-525 Vehicle seller's report of sale. (1) **Who must file a vehicle seller's report of sale?** With the exception of certain vehicle transfers by registered Washington vehicle dealers, and vehicles disposed of by licensed vehicle wreckers, Washington law (RCW 46.12.101) requires filing a vehicle seller's report of sale by any person or business that transfers their interest in a Washington titled vehicle to anyone else. For the purposes of this rule, transferring interest includes, but is not limited to, selling, gifting, trading, or disposing of your vehicle, but does not include the creation, deletion, or change of a security interest. A licensed Washington vehicle dealer may file a report of sale on behalf of the legal and/or registered owner who trades in, sells, or otherwise transfers ownership to the dealership.

(2) **When must a completed vehicle seller's report of sale be filed?** Vehicle seller's report of sale must be received by the department within five days of the date of sale, gift, trade, or other disposition of the vehicle, excluding Saturdays, Sundays, and state and federal holidays.

(3) **Who is the seller?** The seller is the current registered owner of record according to the computer file kept by the department. The seller is a person (individual or business) who transfers their right of ownership of a vehicle to another person or business.

(4) **Who is the purchaser?** The purchaser is a person (individual or business) who takes a vehicle into their possession, by voluntary acquisition.

(5) **Why complete and file a vehicle seller's report of sale?** It is in the seller's best interest to file the properly completed vehicle seller's report of sale to protect the seller in the event the buyer does not make application for ownership and then accumulates parking tickets, or towing charges, is involved in an uninsured accident or used in illegal activity, etc.

Vehicle seller's report of sale received by the department of licensing that are incomplete will be filed with the department; however, those that do not meet the requirements of the law may not protect the seller from any civil or legal action if the vehicle is subsequently abandoned or involved in illegal activity.

(6) **How do I file my vehicle seller's report of sale?** You may file your seller's report of sale through:

- (a) Your local vehicle/vessel licensing office; or
- (b) The department by mail; or
- (c) The internet.

(7) **What information is required on the vehicle report of sale?**

You are required to provide information contained in RCW 46.12.101 that includes:

- (a) The date of sale or transfer;
- (b) Name(s) and address of seller;
- (c) Name(s) and address of transferee (buyer);
- (d) Description of vehicle; and
- (e) Purchase price.

When you mail a vehicle seller's report of sale to the department, you will not receive a confirmation or receipt. You may wish to

make a photocopy of the report of sale for your records prior to sending it to the department.

(8) **Is there a fee for recording a vehicle seller's report of sale?** Yes. It applies when a report of sale is filed through your local vehicle licensing office as authorized by RCW 46.01.140 (5)(b).

(9) **May a vehicle seller's report of sale be removed from my vehicle record?** Yes. As a registered owner, you may have a vehicle seller's report of sale removed from your vehicle record through your local vehicle licensing office, or by notifying the department in writing. You will need to provide the reason you are removing the vehicle seller's report of sale from your vehicle record.

(10) **How will I show that I filed a completed vehicle seller's report of sale?** When you file a vehicle seller's report of sale at any Washington vehicle licensing office, you will be provided with a receipt.

When you file a vehicle report of sale on the internet, you will have the option of printing your receipt. Both receipts will show the following information:

- (a) Date the report of sale was filed;
- (b) Description of vehicle;
- (c) Name and address of agent/subagent where filed (not included when filing through the internet);
- (d) Date of sale;
- (e) Purchase price if provided;
- (f) Name(s) and address of seller;
- (g) Name(s) and address of transferee (buyer if provided).

Washington law makes it clear that it is a felony to knowingly make a false statement of fact. The penalty, upon conviction, must be a fine of not more than ((five thousand dollars)) \$5,000 or imprisonment of not more than ((ten)) 10 years, or both the fine and imprisonment. (RCW 46.12.210.)

WSR 23-23-186

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed November 22, 2023, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-061.

Title of Rule and Other Identifying Information: Commercial shellfish fees for licenses, certificates, monitoring, and testing. The department of health (department) is proposing a fee increase and adding new fees in WAC 246-282-990 (fees for sanitary control of shellfish) to cover the operational costs of the shellfish program.

Hearing Location(s): On January 4, 2024, at 1:00 p.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Rooms 166 and 167, Tumwater, WA 98501; or virtually. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_JPYDiV9lT8ujFfpjF-8fFA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 10, 2024.

Submit Written Comments to: Peter Beaton, Division of Environmental Public Health, P.O. Box 47820, Olympia, WA 98504-7820, email peter.beaton@doh.wa.gov, <https://fortress.wa.gov/doh/policyreview/>, by January 4, 2024.

Assistance for Persons with Disabilities: Contact Dani Toepelt, phone 360-890-6054, TTY 711, email danielle.toepelt@doh.wa.gov, by December 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing amending fees to cover operational costs of the shellfish programs. The department completed an in-depth fee analysis and determined the program is not generating sufficient revenue to cover the cost of the program. The proposal amends the existing fees for operator licenses, export certificates, biotoxin monitoring, paralytic shellfish poisoning testing, and creates new fees in other cost recovery mechanisms for the program. The proposal also adds a new or expired license fee or a non-compliance driven virtual and on-site inspection fees. The department is also proposing changes to the fee categories and the fee schedule.

Reasons Supporting Proposal: RCW 43.70.250 requires fees to fully fund the work of licensing and regulating the commercial shellfish program and grants the secretary of health authority to establish fees to fund the costs of administering the program. The fee increase is needed to cover the costs of the program. Some of the commercial shellfish fees have not changed in decades and the program has been subsidizing the costs with general fund state monies that is no longer available. The department is also proposing changes to the fee categories and the fee schedule. This will allow the department to better allocate separate program costs to the appropriate fee payers. This increase will align fees with cost recovery for service costs. The proposed changes equitably assigns fees based on the cost of service for the varying types of shellfish operations. Other costs not included in this increase will undergo a program audit and could result in future fee increases.

Statutory Authority for Adoption: RCW 43.70.110 and 43.70.250.

Statute Being Implemented: RCW 43.70.110 and 43.70.250.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Dani Toepelt, 111 Israel Road S.E., Tumwater, WA 98501, 360-890-6054.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposal sets or adjust fees which is exempt under RCW 34.05.328 (5) (b) (vi).

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-5058.2

AMENDATORY SECTION (Amending WSR 23-17-073, filed 8/14/23, effective 9/14/23)

WAC 246-282-990 Fees. (1) Annual shellfish operation license fees are:

<u>(Type of Operation</u>	<u>Annual Fee</u>
Harvester	\$263
Shellstock Shipper	
0-49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$(1,210))

<u>Type of Operation</u>	<u>Annual Fee</u>
<u>Harvester 2 or less</u>	<u>\$528</u>
<u>Harvester 3 or more</u>	<u>\$543</u>
<u>Shellstock Shipper 0-49 Acres 2 or less</u>	<u>\$1,096</u>
<u>Shellstock Shipper 0-49 Acres 3 or more</u>	<u>\$1,173</u>
<u>Shellstock Shipper 50 or greater Acres</u>	<u>\$1,262</u>

<u>Type of Operation</u>	<u>Annual Fee</u>
Shellstock Shipper Wholesale Only	\$1,097
Shellstock Shipper Wholesale Only DNR Tracts	\$1,021
Shucker Packer (plants < 2,000 sq. ft.) 2 or less	\$2,437
Shucker Packer (plants < 2,000 sq. ft.) 3 or more	\$2,657
Shucker Packer (plants 2,000-5,000 sq. ft.) 2 or less	\$3,049
Shucker Packer (plants 2,000-5,000 sq. ft.) 3 or more	\$2,993
Shucker Packer (plants > 5,000 sq. ft.) N/A	\$2,967

(2) The fee for each export certificate is ((~~\$55.00~~)) \$75.

(3) (a) Annual biotoxin testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

((Fee Category

<u>Type of Operation</u>	<u>Number of Harvest Sites</u>	<u>Fee</u>
Harvester	≤2	\$353
Harvester	3 or more	\$535
Shellstock Shipper Wholesale Company		\$198
Shellstock Shipper 0-49 acres	≤2	\$393
Shellstock Shipper 0-49 acres	3 or more	\$610
Shellstock Shipper 50 or greater acres	N/A	\$961
Shucker-Packer (plants < 2000 ft ²)	≤2	\$752
Shucker-Packer (plants < 2000 ft ²)	3 or more	\$1,076
Shucker-Packer (plants 2000 - 5000 ft ²)	≤2	\$882
Shucker-Packer (plants 2000 - 5000 ft ²)	3 or more	\$1,297
Shucker-Packer (plants > 5000 ft ²)	N/A	\$2,412))

<u>Operation</u>	<u>Acres</u>	<u>HS</u>	<u>Fee</u>
Harvester		2 or less	\$665
		3 or more	\$1,009

<u>Operation</u>	<u>Acres</u>	<u>HS</u>	<u>Fee</u>
<u>Shellstock Shipper</u>	<u>Wholesale</u>	<u>Wholesale</u>	<u>\$373</u>
	<u>0-49 acres</u>	<u>2 or less</u>	<u>\$741</u>
	<u>0-49 acres</u>	<u>3 or more</u>	<u>\$1,150</u>
	<u>50 or greater</u>	<u>N/A</u>	<u>\$1,812</u>
<u>Shucker Packer</u>	<u>Plants < 2,000 sq. ft.</u>	<u>2 or less</u>	<u>\$1,418</u>
	<u>Plants < 2,000 sq. ft.</u>	<u>3 or more</u>	<u>\$2,029</u>
	<u>Plants 2,000-5,000 sq. ft.</u>	<u>2 or less</u>	<u>\$1,663</u>
	<u>Plants 2,000-5,000 sq. ft.</u>	<u>3 or more</u>	<u>\$2,445</u>
	<u>Plants > 5,000 sq. ft.</u>	<u>N/A</u>	<u>\$4,547</u>

~~((a))~~ (b) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:
 (i) At the time of first licensure; or
 (ii) January 1st of each year for companies licensed as harvesters; or
 (iii) ~~((July))~~ April 1st of each year for companies licensed as shellstock shippers and shucker packers.
~~((b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.))~~
 (4) Annual PSP testing fees for companies harvesting geoduck are ~~((as follows:))~~ \$305 per test.

<u>(Harvester</u>	<u>Cert #</u>	<u>Fee</u>
Chuckanut Shellfish Inc.	WA-1350-HA	\$997
Department of Natural Resources	NA	\$13,354
Jamestown S'Klallam Tribe	WA-0588-SS	\$4,584
Lower Elwha Klallam Tribe	WA-0587-HA	\$2,392
Lummi Indian Business Council	WA-0098-SS	\$399
Nisqually Indian Tribe	WA-1268-HA	\$199
Port Gamble S'Klallam Tribe	WA-0859-HA	\$3,388
Puyallup Tribe of Indians	WA-1137-HA	\$5,381
Rising Tide CE, LLC	WA-1951-HA	\$199
Suquamish Tribe	WA-0694-SS	\$7,175
Swinomish Indian Tribal Community	WA-1420-SS	\$997
Taylor Shellfish Company, Inc.	WA-0046-SP	\$9,168
The Tulalip Tribes	WA-0997-HA	\$9,766))

(5) Noncompliance inspection fee - Virtual is \$56.
 (6) Noncompliance inspection fee - On-site is \$252.
 (7) New/expired license fee is \$279.

(8) Fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

~~((+6+))~~ (9) Refunds for fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

WSR 23-23-187

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed November 22, 2023, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-031.

Title of Rule and Other Identifying Information: Private schools.

Hearing Location(s): On January 18, 2024, at 2:00 [p.m.], at Billings Conference Room, Office of the Superintendent of Public Instruction (OSPI) Building, 600 Washington Street S.E., Olympia, WA 98504. Remote option Zoom call <https://us02web.zoom.us/j/86996162015>.

Date of Intended Adoption: February 15, 2024.

Submit Written Comments to: Jacki Verd, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by February 1, 2024.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by January 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules help to implement SB [ESSB] 5515 and SB [E2SSB] 5315, from the 2023 legislative session. SB [ESSB] 5515—Protecting children from child abuse and neglect, concerns new regulation for private residential schools, including private boarding schools approved as private schools by the state board of education (SBE). Section 3 of the bill, codified at RCW 26.44.210, defines "Residential private school," and the proposed rule adopts the same definition.

SB [E2SSB] 5315—Concerning nonpublic agencies operating special education programs for students with disabilities, enacts additional requirements for organizations authorized by OSPI to provide special education services through contracts with school districts. These organizations include some private schools approved by SBE. Section 5 of the bill, codified at RCW 28A.155.245, requires SBE to notify OSPI of any unresolved concerns, deficiencies, or deviations related to a private school authorized by OSPI under RCW 28A.300.690 that is also approved by SBE under chapter 28A.195.RCW. The proposed rule implements this requirement.

In addition to aligning rules with the new requirements of the legislation, the proposed rule clarifies rule language, removes outdated language, and updates rules to align with current practice. Specifically, the proposed rule:

- Clarifies, in alignment with previous guidance, that "Washington state certificated teacher, administrator, or superintendent" means an educator that holds particular certificates and that a "Non-Washington state certificated teacher" means a person that does not hold any of those certificates but who meets certain other requirements.
- Clarifies that SBE may suspend or rescind approval if a school fails to verify that the school maintains certain conditions for approval.
- Adds a reference to an online complaint form to align the rules with current practice.
- Removes outdated language that permitted an exception to the physical facilities requirement and applied only during the 2020-21 school year.

Reasons Supporting Proposal: The proposal updates rules to align with the new legislation, clarifies rule language, removes outdated language, and updates rules to align with current practice.

Statutory Authority for Adoption: RCW 28A.195.040.

Statute Being Implemented: Section 5 of E2SSB 5315, codified at RCW 28A.155.245; and section 3 codified at RCW 28A.300.690. Also section 3 of ESSB 5515, codified at RCW 74.14.325, and section 2 codified at RCW 26.44.210.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to SBE (RCW 34.05.328 (5)(a)(i)). The proposed rules clarify language without changing its effect, incorporate by reference state statutes without material change, or relate only to internal government operations that are not subject to violation by a nongovernment party.

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

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

Scope of exemption for rule proposal:

Is fully exempt.

November 22, 2023
Randy Spaulding
Executive Director

OTS-4993.1

AMENDATORY SECTION (Amending WSR 22-07-048, filed 3/14/22, effective 4/14/22)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Private school" means a nonpublic school or nonpublic school district approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools set by federal, state, or local health authorities.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) "Washington state certificated teacher, administrator, or superintendent" or "certified person" in this chapter means an educator holding a residency, professional, initial, continuing, or standard certificate under WAC 181-79A-142(1); or a first peoples' language, culture, and oral tribal traditions certificate under WAC 181-78A-700.

(6) (a) "Non-Washington state certificated teacher" means a person who does not ((have a Washington state certification consistent with WAC 181-79A-030(2),)) hold a residency, professional, initial, continuing, or standard certificate under WAC 181-79A-142(1); or a first peoples' language, culture, and oral tribal traditions certificate under WAC 181-78A-700 but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

~~((6))~~ (7) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

~~((7))~~ (8) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

~~((8))~~ (9) "Executive director" means the executive director of the state board of education.

~~((9))~~ (10) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

~~((10))~~ (11) "SBE representative" means the person designated by the executive director to administer the state board of education's private school program or another SBE staff person, and may be represented by an assistant attorney general.

~~((11))~~ (12) "Hearing officer" means the person designated by the executive director, in consultation with the SBE executive commit-

tee, to conduct a brief administrative proceeding or a summary suspension hearing on the loss of private school approval.

~~((12))~~ (13) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

~~((13))~~ (14) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

~~((14))~~ (15) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

~~((15))~~ (16) "Residential private school," per RCW 26.44.210, means a nonpublic school or nonpublic school district subject to approval by the state board of education pursuant to RCW 28A.305.011 and chapter 28A.195 RCW that provides sleeping and living facilities or residential accommodations for enrolled students.

(17) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

~~((16))~~ (18) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health requirements or reasonable fire safety requirements; or failure to meet the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

~~((17))~~ (19) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

~~((18))~~ (20) "Review committee" means a committee of three to five SBE members identified by the SBE chair who will conduct reviews of initial decisions of brief adjudicative proceedings pursuant to WAC 180-90-143.

AMENDATORY SECTION (Amending WSR 15-24-108, filed 12/1/15, effective 1/1/16)

WAC 180-90-139 Approval action by SBE. The state board of education shall take one of the following actions:

(1) If no deviations are found, the state board of education shall grant full approval.

(2) If minor deviations are found and the private school has resolved the deviations, the state board of education shall grant full approval.

(3) If major deviations are found and the private school in its narrative report provides satisfactory assurance of compliance by the commencement of the annual school term, the state board of education shall grant full approval.

(4) If major deviations are found and the private school in its narrative report, supplemented by direct testimony to the state board of education, demonstrates it is not practical to correct such major deviations prior to the commencement of the annual school term but establishes to the satisfaction of the state board of education its ability to correct such deviation as soon as is practical, the state board of education shall grant such private school provisional approval for the period of time the state board of education determines is necessary to correct the major deviation but no longer than one year.

(5) If unacceptable deviations are found or if the private school fails to comply with timely corrective conditions within subsection (2), (3), or (4) of this section for minor or major deviations, state board of education approval shall be denied or rescinded.

(6) If any unresolved concerns, deficiencies, or deviations are found and the private school is an entity authorized by the superintendent of public instruction to provide a program of special education and related services for students with disabilities under RCW 28A.300.690, the state board of education will notify the office of the superintendent of public instruction of the unresolved concerns, deficiencies, or deviations.

AMENDATORY SECTION (Amending WSR 22-07-048, filed 3/14/22, effective 4/14/22)

WAC 180-90-141 Loss of private school approval. The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

~~((a) For the 2020-21 school year, schools that implement an on-line education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and~~

~~(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.))~~

(2) Failure to provide verification that the approved private school maintains teaching staff ~~((have a valid))~~ with appropriate Washington state ~~((teaching certificate or meet the provisions of WAC 180-90-112(5))~~ certification or otherwise meet the requirements of WAC 180-90-160 (1)(c).

(3) Failure to provide verification that the school maintains physical facilities ~~((of the school))~~ that meet all reasonable health requirements and all reasonable fire safety requirements.

(4) Failure to meet any of the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-170 Complaints against private schools. (1) Complaints about an approved private school may be made in writing to the state board of education and may be made through an online form available on the state board of education's website.

(2) If a complaint against a private school is received, the state board of education will:

(a) Notify the complainant that the communication was received;

(b) Notify the school of the complaint, provide a copy of the complaint if requested, and provide an opportunity for the school to respond. All correspondence will conform to state and federal student privacy laws; and

(c) Review the complaint and the school's response and may take appropriate action it deems necessary. Any action taken by the state board of education will be limited to authority pursuant to chapter 28A.195 RCW and the rules promulgated thereunder.

(3) The record of the complaint, the response and any action taken will be retained according to the record retention schedule established by the office of the secretary of state for the state board of education.

(4) The state board of education will follow the process described in subsections (2) and (3) of this section if complaints are relayed to the state board of education by other state agencies regarding a private school, including the office of the superintendent of public instruction regarding private schools authorized to provide special education and related services for students with disabilities under RCW 28A.300.690, and by the department of children, youth, and families concerning residential private schools under RCW 26.44.210.