

## WSR 21-08-034

## PROPOSED RULES

## CLARK COLLEGE

[Filed March 31, 2021, 11:14 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-102.

Title of Rule and Other Identifying Information: Repeal of chapter 132N-125 WAC, Code of student conduct, and replace with chapter 132N-126 WAC, Student code of conduct; and repeal WAC 132N-125-300 [chapter 132N-300 WAC,] Discrimination and harassment [Grievance procedure—Discrimination,] and replace with college policy and procedure.

Hearing Location(s): On May 26, 2021, at 5:00 p.m. Join Zoom meeting <https://us02web.zoom.us/j/83333583659?pwd=REWxalhrZFA3a2d0TG1HUlU3bC9TZz09>, Meeting ID 833 3358 3659, Passcode 228280, One tap mobile +13462487799,,83333583659#,,,,\*228280# US (Houston), +16699006833,,83333583659#,,,,\*228280# US (San Jose); dial by your location +1 346 248 7799 US (Houston), +1 669 900 6833 US (San Jose), +1 253 215 8782 US (Tacoma), +1 312 626 6799 US (Chicago), +1 646 876 9923 US (New York), +1 301 715 8592 US (Washington DC), Meeting ID 833 3358 3659, Passcode 228280, find your local number <https://us02web.zoom.us/j/83333583659?pwd=REWxalhrZFA3a2d0TG1HUlU3bC9TZz09>; join by SIP 83333583659@zoomcrc.com; join by H.323, 162.255.37.11 (US West), 162.255.36.11 (US East), 115.114.131.7 (India Mumbai), 115.114.115.7 (India Hyderabad), 213.19.144.110 (Amsterdam Netherlands), 213.244.140.110 (Germany), 103.122.166.55 (Australia Sydney), 103.122.167.55 (Australia Melbourne), 149.137.40.110 (Singapore), 64.211.144.160 (Brazil), 69.174.57.160 (Canada Toronto), 65.39.152.160 (Canada Vancouver), 207.226.132.110 (Japan Tokyo), 149.137.24.110 (Japan Osaka), Meeting ID: 833 3358 3659, Passcode 228280.

Date of Intended Adoption: May 26, 2021.

Submit Written Comments to: Bob Williamson, Special Projects Administrator, 1933 Fort Vancouver Way, BRD 106, Vancouver, WA 98663, email [bwilliamsonu@clark.edu](mailto:bwilliamsonu@clark.edu), fax 360-992-2884, by May 19, 2021.

Assistance for Persons with Disabilities: Contact Megan Jasurda, director of disabilities support services, phone 360-992-2065, fax 360-992-2879, email [mjasurda@clark.edu](mailto:mjasurda@clark.edu), video phone can be requested at [achilders@clark.edu](mailto:achilders@clark.edu), by May 19, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Code of student conduct, chapter 132N-125 WAC, repeal and replace with chapter 132N-126 WAC, to comply with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX) by adding new sections on Supplemental Title IX Student Conduct Procedures; reorganizes the student conduct code; uses consistent terminology throughout the code and revises some definitions; revises the jurisdiction section of the code; removes the section of the code applying to students studying abroad; adds a clause that academic consequences for academic dishonesty may be addressed outside of the code through failing grades and other academic consequences; revises subsections on prohibited student conduct; removes a section addressing trespass; revises the section on sanctions, initiation of disciplinary action, brief adjudicative proceedings, appeals to the student conduct committee, conduct committee hearings, initial orders, appeals from initial orders, record keeping, and summary suspension; removes the section on supplemental sexual misconduct procedures and imbeds those procedures within the rest of the code; and re-

peal chapter 132N-300 WAC, Grievance procedure—Discrimination, and replace with college policy and procedures that are in compliance with new federal regulations for Title IX of the Education Amendments of 1972 (Title IX).

Reasons Supporting Proposal: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment, which took effect on August 14, 2020. This requires updates to the college's code of student conduct, chapter 132N-125 WAC, replaced with chapter 132N-126 WAC, to be compliant with federal regulations. In addition, other revisions to the code of student conduct are necessary to address changes in case law and align with the new processes. Chapter 132N-300 WAC, Grievance procedure—Discrimination, needs to be repealed as it is not necessary to address these matters through WAC and they should instead be replaced as college policies and procedures.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Rule is necessary because of federal law, 34 C.F.R. 106; *Nelson v. Spokane Community College*, 14 Wn.App.2d 40, 469 P.3d 317 (2020).

Name of Proponent: Clark College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bob Williamson, 1933 Fort Vancouver Way, BRD 106, Vancouver, WA 98663, 360-992-2123.

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. Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii), and to date the joint administrative rules committee has not made 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) and 34.05.310 (4)(g)(i).

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

March 31, 2021

Bob Williamson

Special Projects Administrator

OTS-2967.3

**Chapter 132N-126 WAC  
STUDENT CODE OF CONDUCT**

NEW SECTION

**WAC 132N-126-005 Authority.** The board of trustees of Washington State Community College District No. 14, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student affairs or their designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

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NEW SECTION

**WAC 132N-126-010 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

- (1) "ASCC" means the associated students of Clark College as defined in the constitution of that body.
- (2) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.
- (3) "Business day" means a weekday, excluding weekends and college holidays.
- (4) "College" means Clark College and any other community college centers or premises established within Community College District No. 14, state of Washington.
- (5) "College community" means trustees, students, staff, faculty, and visitors on college premises.
- (6) "College official" includes any person employed by the college performing assigned duties.
- (7) "College premises" includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, websites, and other property owned, used, or controlled by the college.
- (8) A "complainant" is an alleged victim of sexual misconduct.
- (9) "Conduct review officer" is the vice president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.
- (10) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.
- (11) "Day" means a weekday, excluding weekends and college holidays.
- (12) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.
- (13) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct commit-

tee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(14) "Faculty member" and "instructor" means any employee of Community College District No. 14, state of Washington, who is employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(15) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(16) "The president" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(17) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(18) "Respondent" is the student against whom disciplinary action is initiated.

(19) "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 email and by 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.

(20) "Sexual misconduct" has the meaning ascribed to this term in WAC 132N-126-025(13).

(21) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

(22) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

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#### NEW SECTION

**WAC 132N-126-015 Statement of jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;  
 (b) At or in connection with college-sponsored activities; or  
 (c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

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#### NEW SECTION

**WAC 132N-126-020 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth.

Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college premises that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

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NEW SECTION

**WAC 132N-126-025 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating: Includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus and program handbook. Further academic consequences may follow consistent with the provisions in any program handbook including, but not limited to, dismissal from an academic program. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a pistol in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission.

This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged

in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. The use of tobacco, electronic cigarettes, and related products on the college campus is restricted to designated smoking areas. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, vaporizers, and snuff.

(11) **Lewd conduct.** Conduct which is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132N-126-205 (discipline procedures for cases involving allegations of Title IX violations).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limi-



ted to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A

person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (a) Unauthorized use of such resources or opening of a file, message, or other item;
- (b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (c) Unauthorized use or distribution of someone else's password or other identification;
- (d) Use of such time or resources to interfere with someone else's work;
- (e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (g) Use of such time or resources in violation of applicable copyright or other law;
- (h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, in-

cluding tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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#### NEW SECTION

**WAC 132N-126-030 Disciplinary sanctions and terms and conditions.** (1) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled premises without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(c) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(d) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(e) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college premises.

(f) **No trespass order.** A student may be restricted from college property based on their misconduct.

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#### NEW SECTION

**WAC 132N-126-035 Conduct hold on student records.** (1) A student conduct officer or other designated college official may place a conduct hold on the student's record if the student is the responding party in a pending complaint of prohibited conduct, a pending conduct proceeding under this code, or in conjunction with a disciplinary sanction or condition under this code.

(2) A conduct hold may restrict the student from registering for classes, requesting an official transcript, or receiving a degree from the college until the hold has been removed.

(3) If the conduct hold is placed pending or during a conduct proceeding, the student will be notified of the hold and be advised how to raise an objection about the hold or request that it be made less restrictive. The hold will remain in place until lifted by the student conduct officer or other designated college official with authority to do so.

(4) Implementation of any conduct hold prior to disciplinary action does not assume any determination of, or create any expectation of, responsibility for prohibited conduct under this conduct code.

[]

NEW SECTION

**WAC 132N-126-040 Amnesty policy.** (1) Clark College values the health, safety, and wellness of those in our college community. Students are encouraged to report crimes, share concerns, and seek medical attention for themselves or others in need.

(2) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of helping another person seek medical or other emergency assistance, admits to a possible policy violation under this student conduct code, provided that any such violations did not and do not place the health or safety of any other person at risk.

(3) A student conduct officer may elect not to initiate disciplinary action against a student who, while in the course of reporting violence, sexual misconduct, or a crime in progress, admits to personal consumption of alcohol or drugs at or near the time of the incident, provided that any such use did not place the health or safety of any other person at risk.

(4) While policy violations cannot be overlooked, the college may elect to offer educational options or referrals, rather than initiating disciplinary action against students who report crimes, serve as witnesses, or seek medical attention as described in this section.

(5) This amnesty policy may not apply to students who repeatedly violate college policies in regards to alcohol, drugs, or other prohibited conduct.

[]

NEW SECTION

**WAC 132N-126-045 Interim measures.** (1) After receiving a report of alleged sexual misconduct or other serious student misconduct, a student conduct officer or designee may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with an impacted party, a responding party, a reporting party, other specified persons, and/or a specific student organization;

(b) Changes to class schedules, assignments, or test schedules;

(c) Modified on-campus employment schedule or location;

(d) Restrictions on access to portions of campus; or

(e) Alternative safety arrangements such as campus safety escorts.

(2) If an interim measure is put in place pending or during a conduct proceeding, the student will be notified of the interim measure and be advised how to raise an objection about the interim measure or request that it be made less restrictive. The student conduct offi-

cer may adjust or modify interim measures as students' situations and schedules change and evolve over time. Interim measures will remain in place until the student receives notice they have been lifted or modified from the student conduct officer.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this student conduct code.

[]

#### NEW SECTION

**WAC 132N-126-050 Records.** (1) Student conduct code records are maintained in accordance with the college's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

[]

### HEARING PROCEDURES

#### NEW SECTION

**WAC 132N-126-100 Initiation of disciplinary action.** (1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing them to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or condi-

tions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132N-126-030.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

[ ]

#### NEW SECTION

**WAC 132N-126-105 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(10) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(11) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(12) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[]

#### NEW SECTION

##### **WAC 132N-126-110 Brief adjudicative proceedings authorization.**

Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

(1) Suspension of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceeding involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to respondent.



[]

NEW SECTION

**WAC 132N-126-115 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

NEW SECTION

**WAC 132N-126-120 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president or designee shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president or designee shall give all parties an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president or designee does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[ ]

#### NEW SECTION

**WAC 132N-126-125 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government (ASCC);
- (b) Two faculty members appointed by the president; and
- (c) One faculty member or administrator, other than an administrator serving as a student conduct or conduct review officer, appointed by the president to serve as the chair.

(2) The faculty member or administrator or other impartial hearing officer who serves as the chair of the committee may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

[]

NEW SECTION

**WAC 132N-126-130 Appeal—Student conduct committees.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW and by the model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline, or referral to the committee, and (b) the notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent and complainant in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice.

(10) The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the

attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer.

(11) The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

[]

#### NEW SECTION

**WAC 132N-126-135 Student conduct committee hearings—Presentation of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that they select, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(7) In cases involving allegations of sexual misconduct, no party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

#### NEW SECTION

**WAC 132N-126-140 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to

propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by a party, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[]

#### NEW SECTION

**WAC 132N-126-145 Appeal from student conduct committee initial decision.** (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president or designee may ask for additional briefing from the parties on issues raised on appeal. The president's or designee's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited

to a review of those issues and arguments raised in the notice of appeal.

(3) The president or designee shall provide a written decision to the party and the student conduct officer within twenty days after receipt of the notice of appeal. The president's or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

[ ]

#### NEW SECTION

**WAC 132N-126-150 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included warning the respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college cam-

pus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

(6) In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

[ ]

#### NEW SECTION

**WAC 132N-126-155 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one instructional day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer or designee on the same day of the suspension. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

[]

NEW SECTION

**WAC 132N-126-160 Sexual misconduct proceedings.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

[]

**SUPPLEMENTAL STUDENT CONDUCT PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF VIOLATION OF TITLE IX**

NEW SECTION

**WAC 132N-126-200 Order of precedence.** This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Clark College's standard disciplinary procedures, WAC 132N-126-005 through 132N-126-155, these supplemental procedures shall take precedence.

[]

NEW SECTION

**WAC 132N-126-205 Prohibited conduct under Title IX.** Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Clark College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A Clark College employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive



that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

[ ]

#### NEW SECTION

**WAC 132N-126-210 Title IX jurisdiction.** (1) This supplemental procedure applies only if the alleged misconduct:

- (a) Occurred in the United States;
  - (b) Occurred during a Clark College educational program or activity; and
  - (c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.
- (2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Clark College.
- (3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit Clark College from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132N-126-025.
- (4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

[ ]

#### NEW SECTION

- WAC 132N-126-215 Initiation of discipline.** (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.
- (2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:
- (a) Set forth the basis for Title IX jurisdiction;
  - (b) Identify the alleged Title IX violation(s);
  - (c) Set forth the facts underlying the allegation(s);
  - (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s); and
  - (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
    - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
    - (ii) An advisor may be an attorney; and
    - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

**WAC 132N-126-220 Prehearing procedure.** (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132N-126-100. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Clark College intends to offer the evidence at the hearing.

[]

NEW SECTION

**WAC 132N-126-225 Rights of parties.** (1) Clark College's student conduct procedures, WAC 132N-126-100 through 132N-126-155, and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

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NEW SECTION

**WAC 132N-126-230 Evidence.** The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

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#### NEW SECTION

**WAC 132N-126-235 Initial order.** (1) In addition to complying with WAC 132N-126-130, the student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Clark College's educational programs or activities; and

(h) Describes the process for appealing the initial order to the Clark College president.

(2) The committee chair will serve the initial order on the parties simultaneously.

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NEW SECTION

**WAC 132N-126-240 Appeals.** (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132N-126-145.

(2) The president or their designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(3) President's office shall serve the final decision on the parties simultaneously.

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## WSR 21-08-042

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed April 1, 2021, 1:54 p.m.]

Continuance of WSR 20-19-123.

Preproposal statement of inquiry was filed as WSR 20-01-107.

Title of Rule and Other Identifying Information: WAC 468-16-180.

Suspension of qualification.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Denys Tak, 310 Maple Park Avenue S.E., Olympia, WA 98504, email DOTConstruction@wsdot.wa.gov, by May 15, 2021.

Assistance for Persons with Disabilities: TTY 711, by May 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 468-16 WAC creates the rules for prequalification of contractors for highway construction contracts required by RCW 47.28.070. This revision involves adding new grounds for suspending a contractor's prequalification.

Reasons Supporting Proposal: Ensuring that contractors on Washington state department of transportation (WSDOT) projects are meeting the requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

Statutory Authority for Adoption: RCW 47.01.101, 47.28.030, 47.28.070.

Statute Being Implemented: RCW 47.01.101, 47.28.030, 47.28.070.

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

Name of Proponent: [None supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Denys Tak, 310 Maple Park Avenue S.E., Room 2D05, Olympia, WA 98504, 360-705-7833; Implementation and Enforcement: Jenna Fettig, 310 Maple Park Avenue S.E., Room 2D20, Olympia, WA 98504, 350-705-7017 [360-705-7017].

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. WSDOT is not a listed agency under 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.

March 31, 2020  
Shannon Gill  
Interim Director  
Risk Management  
and Legal Services

OTS-2037.5

AMENDATORY SECTION (Amending WSR 15-01-170, filed 12/23/14, effective 1/23/15)

**WAC 468-16-180 Suspension of qualification.** (1) A suspension may be ordered for cause or for a period pending the completion of investigation and any ensuing legal action for revocation of qualification.

(2) The secretary may, upon determination from reports, other documents, or through investigation that cause exists to suspend the qualification of a contractor, impose suspension upon a contractor.

(3) The secretary may immediately suspend qualification for:

(a) Incompetency found detrimental to timely project completion or to the safety of the public or employees.

(b) Inadequate performance on one or more projects.

(c) Infractions of rules, regulations, specifications, and instructions which may adversely affect public health, welfare, and safety.

(d) Uncompleted work which might prevent the prompt completion of other work.

(e) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with equal employment opportunity, women's, minority and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(f) Repeated findings of noncompliance (two or more) with equal employment opportunity, women's, minority, and disadvantaged business enterprise requirements or state apprentice utilization requirements.

(g) Debarment or suspension from participation in federal or state projects.

(h) Pending completion of debarment proceedings in federal or state projects.

(i) A finding of noncompliance and refusal to agree to take corrective action, and/or failure to implement agreed upon corrective action to comply with all requirements of Title VII of the Civil Rights Act of 1964 and the Washington law against discrimination.

(j) Repeated findings of noncompliance (two or more) with the requirements set forth in subsection (3)(i) of this section.

(4) The periods of suspension for acts or deficiencies enumerated above are as follows:

(a) For subsection (3)(a) and (e) of this section - Three months.

(b) For subsection (3)(b), (c), (d), and (f) of this section - Six months.

(c) For subsection (3)(g) of this section - For duration of debarment or suspension by the federal or other state agency.

(d) For subsection (3)(h) of this section - Until a determination is made by the federal or other state agency.

(e) For subsection (3)(i) of this section - A minimum of one year.

(f) For subsection (3)(j) of this section - A minimum of two years.

(5) The secretary may reduce the period of suspension upon the contractor's supported request for reasons including, but not limited to:

(a) Newly discovered evidence;

(b) Elimination of causes for which the suspension was imposed.

[Statutory Authority: RCW 47.01.101, 47.28.030, and 47.28.070. WSR 15-01-170, § 468-16-180, filed 12/23/14, effective 1/23/15; WSR 97-09-045 (Order 168), § 468-16-180, filed 4/15/97, effective 5/16/97; WSR 94-05-004, § 468-16-180, filed 2/2/94, effective 3/5/94; WSR 93-03-020 (Order 134), § 468-16-180, filed 1/12/93, effective 2/12/93; WSR 91-04-014 (Order 128), § 468-16-180, filed 1/28/91, effective 2/28/91.]



## WSR 21-08-048

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed April 2, 2021, 12:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-038.

Title of Rule and Other Identifying Information: WAC 246-470-037, adding a new section relating to the prescription monitoring program (PMP). The department of health (department) is proposing a new section in chapter 246-470 WAC to establish a waiver process and criteria for facilities, entities, offices, or provider groups with ten or more prescribers to apply for an exemption from the PMP and electronic health record (EHR) integration required by SSB 5380.

Hearing Location(s): On May 19, 2021, at 1:00 [p.m.]. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To access the meeting: Please join the meeting from your computer, tablet or smartphone <https://attendee.gotowebinar.com/register/8967228021489391119>. You can also dial in using your phone, Dial-in +1 (631) 992-3221, Access code 441-927-342.

Date of Intended Adoption: May 26, 2021.

Submit Written Comments to: Carly Bartz-Overman, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, [carly.bartz-overman@doh.wa.gov](mailto:carly.bartz-overman@doh.wa.gov), by May 19, 2021.

Assistance for Persons with Disabilities: Contact Carly Bartz-Overman, phone 360-236-3044, fax 360-236-2901, TTY 711, email [carly.bartz-overman@doh.wa.gov](mailto:carly.bartz-overman@doh.wa.gov), by May 12, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is needed in order to meet the department's requirements per SSB 5380, section 22 (2) (b), codified as RCW 70.225.090 (2) (b). This section states the department must develop a waiver process for the integration requirements outlined in RCW 70.225.090 (2) (a) due to economic hardship, technological limitations that are not reasonably in the control of the facility, entity, office, or provider group, or other exceptional circumstance demonstrated by the facility, entity, office, or provider group.

The proposed rules create a process for a facility, entity, office, or provider group wishing to receive a waiver from the PMP integration requirement to follow and outline what constitutes an economic hardship, technological limitations that are not reasonably in the control of the facility, entity, office, or provider group, or other exceptional circumstance. The rule also outlines the number of waivers a facility, entity, office, or provider group may receive with the goal of giving these groups more time to comply with the integration mandate while still ensuring that as many as possible will be able to overcome the hardships and integrate with the PMP.

If a facility, entity, office, or provider group has an economic hardship, technological limitation, or other exceptional circumstance, they may attest that they have an economic hardship, technological limitation, or other exceptional circumstance that inhibits their ability to integrate their EHR with the PMP. This attestation will grant them a one-year waiver from the integration requirement.

Reasons Supporting Proposal: The proposed rules establish the process by which a facility, entity, office, or provider group may attest to having an economic hardship, technological limitation, or exceptional circumstance in order to have the PMP integration requirement waived. Waiver attestations will give a facility, entity, office, or provider group a simple, streamlined process to follow in order to have the PMP integration mandate waived.

The proposed rules also outline how many waivers will be granted and the length of time a waiver is granted for. This will give a facility, entity, office, or provider group clear direction on how long a waiver is in effect for and how long they have before they must meet the PMP integration mandate.

Additionally, the proposed rules clarify what constitutes an economic hardship, technological limitation, or exceptional circumstance. This will make the attestation simpler for a facility, entity, office, or provider group as it clearly lays out the waiver criteria so they may quickly review what options they have to request a waiver and determine if they meet any of those criteria.

This clarified, streamlined system will also make the process simpler and more cost-effective for the department as well.

Statutory Authority for Adoption: RCW 70.225.025.

Statute Being Implemented: SSB 5380 (chapter 314, Laws of 2019) as codified as RCW 70.225.090 (2)(b).

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: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carly Bartz-Overman, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3044.

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 Carly Bartz-Overman, P.O. Box 47850, Olympia, WA 98504-7850, phone 360-236-3044, fax 360-236-2901, TTY 711, email carly.bartz-overman@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The policies in this proposed rule create little additional cost to a facility, entity, office, or provider group seeking to submit a waiver for the PMP integration requirement. Any costs would be related to the amount of time a staff member must spend completing a form and submitting it to the department attesting that they meet one or more of the waiver criteria.

Cost estimates: The department estimates this would take no more than thirty minutes per year to complete and could be done by any member of staff. The department assumes that an office manager would be the staff person to fill out the form and, based on average salaries in Washington, clinic office managers make about \$21 an hour. For thirty minutes of work on an annual basis, the calculated cost to a facility, entity, office, or provider group is \$10.50 annually. This falls well below the minor cost threshold for any of the identified businesses in the industry.

2017 Industry NAICS Code - Threshold calculated based on 0.3% of Average Annual Gross Business Income:

62133 Offices of Mental Health Practitioners (except Physicians) - \$519.90  
 621399 Offices of All Other Miscellaneous Health Practitioners - \$826.66  
 62139 Offices of All Other Health Practitioners - \$844.48  
 621391 Offices of Podiatrists - \$1,674.73  
 62132 Offices of Optometrists - \$2,690.05  
 62142 Outpatient Mental Health and Substance Abuse Centers - \$3,444.05  
 62121 Offices of Dentist[s] - \$3,551.76  
 62141 Family Planning Centers - \$4,347.88  
 62111 Offices of Physicians - \$8,994.55  
 621610 Home Health Care Services - \$9,631.09  
 62221 Psychiatric and Substance Abuse Hospitals - \$28,916.57  
 62149 Other Outpatient Care Centers - \$31,975.74  
 62211 General Medical and Surgical Hospitals - \$585,843.60

April 1, 2021  
 Jessica Todorovich  
 Chief of Staff  
 for Umair A. Shah, MD, MPH  
 Secretary

## OTS-2913.1

### NEW SECTION

**WAC 246-470-037 Waiver for integrating electronic health record system with the prescription monitoring program.** (1) A facility, entity, office, or provider group that is subject to the prescription monitoring program integration mandate requirement in RCW 70.225.090 (2)(a), and is experiencing an economic hardship, technological limitation, or other exceptional circumstances as stated in RCW 70.225.090 (2)(b), may submit an attestation to the department for a waiver from the integration mandate. The attestation must be submitted on forms provided by the department. The waiver is deemed granted upon submission.

(2) A facility, entity, office, or provider group that has been granted a waiver from the mandate in RCW 70.225.090 (2)(a) shall be exempt from the prescription monitoring program integration mandate for the calendar year in which the attestation is received by the department beginning with the effective date of this section.

(a) For economic hardship and technical limitation, a facility, entity, office, or provider group may submit up to three annual attestations, giving the facility, entity, office, or provider group up to three years to integrate its electronic health record with the prescription monitoring program.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a facility, entity, office, or provider group may submit.

(3) A facility, entity, office, or provider group may submit an attestation for a waiver from the mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or a waiver submitted under this chapter due to bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients; or

(iv) Intent to discontinue operating in Washington prior to December 31, 2021;

(b) Technological limitations outside the control of the facility, entity, office, or provider group in the following circumstance: Integration of electronic health records system with the PMP through a method approved by the department is in process but has not yet been completed;

(c) Other exceptional circumstances:

(i) Providing services as a free clinic;

(ii) The internet speed or bandwidth required to integrate an electronic health record with the prescription monitoring program through a method approved by the department is not available;

(iii) The technology to connect the electronic health record of the entity requesting the waiver to the prescription monitoring program through a method approved by the department does not exist;

(iv) Fewer than one hundred prescriptions for Schedule II-V drugs are generated in a calendar year; or

(v) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseen barriers to integration, or unforeseen events that result in a statewide emergency.

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## WSR 21-08-049

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed April 2, 2021, 1:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-072.

Title of Rule and Other Identifying Information: WAC 246-843-990 Nursing home administrator fees and renewal cycle, 246-810-990 Counselors fees and renewal cycle, and 246-849-990 Ocularists fee and renewal cycle. The department of health (department) is proposing to increase the licensing fees charged to the specified professions and to align other fees with department policy.

Hearing Location(s): On May 13, 2021, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register for the meeting at the link below <https://attendee.gotowebinar.com/register/1003383938241392654>. You can also dial in using your phone. Phone number +1 (914) 614-3221, Access Code 993-561-986.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Cori Tarzwell, Washington State Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, [HSQAfeerules@doh.wa.gov](mailto:HSQAfeerules@doh.wa.gov), by May 13, 2021.

Assistance for Persons with Disabilities: Contact Cori Tarzwell, phone 360-833-6388, TTY 711, email [cori.tarzwell@doh.wa.gov](mailto:cori.tarzwell@doh.wa.gov), by May 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current fees are not generating sufficient revenue to keep the certified counselor/advisor, nursing home administrator, and ocularist programs self-supporting. The forecasted revenue for the certified counselor/advisor program is insufficient to recover the program's accumulated debt of nearly \$1.1 million and build adequate reserves. The forecasted revenue for the nursing home administrator program is insufficient to recover the program's accumulated debt of nearly \$400,000 and maintain adequate reserves. While the ocularist program ended the 2019 fiscal year with a positive fund balance of \$131, the balance is forecasted to decline over the next six years, resulting in an estimated fund deficit of approximately \$8,700 by June of 2026.

Professions need to maintain a reserve that is based on level of risk including revenue stability, disciplinary trends, and size of the profession, in order to cover unanticipated costs. In addition to funding adequate reserves, the proposed fee increases are projected to bring licensing revenues in alignment with the actual costs of regulating these professions and maintain a positive program fund balance. The department is also proposing adjustments to bring the late renewal penalty in line with agency standards to ensure consistency across the health professions.

Additionally, this proposal reflects the office of financial management requirement that agencies maintain a reasonable working capital reserve.

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members

and licensing fees to be based on the licensing program's costs. The department has also developed standards to ensure we apply consistent late renewal fees across professions. This rule package also aligns late renewal fees consistent with these standards.

For the nursing home administrator program, the goal of the two proposed fee increases (twenty percent in 2021 and seventeen percent in 2022) is to ensure current and future operations, as well as to gradually decrease the program's negative fund balance. Total spending also increased at an average annual rate of seven percent from fiscal year 2016 to fiscal year 2019. Growth during this period was largely due to a forty-one percent increase in operations costs from 2017 to 2018. Originally, the department presented the necessary fee increase to the board of nursing home administrators (board) as a single, one-time fee increase. The board discussed the potential impacts to the profession of one large increase and requested the department consider breaking the fee into two increases to lessen the impact of the increase on licensees. The department determined this option was viable and agreed to a staged increase occurring over two years. While this increase would not result in the program reaching its target fund balance within the next six years, it has been determined the fee increase required to bring the program into full statutory and department policy compliance would likely result in a reduction in revenue to an unsustainable level for the program.

The certified counselor/advisor program's inception in 2010 created a large deficit as startup costs greatly exceeded revenues. Since then, program costs have exceeded revenues by an average of \$280,000 annually from fiscal year 2011 through fiscal year 2015, and \$43,000 annually since 2016. As a result, the program has accumulated a negative fund balance of nearly \$1.1 million. Additionally, the program's licensee base declined seven percent over the last five years, reducing licensees from six hundred thirty-three to four hundred seventy-one and costing the program an estimated \$35,000 in anticipated revenue. Program expenditures are also expected to gradually increase due to inflation. With the high costs of this program, a decline in potential revenue from a diminishing licensee base only further exacerbates the declining fund balance.

Due to the small size of the ocularist profession, the department is projecting no revenue growth through 2026. Expenditures are projected to rise 1.5 percent per year due to general cost inflation. In fiscal year 2016, the program received two associated complaints concerning a scope of practice and supervisory issue, costing the program half of its annual expenditures for 26.9 billed hours of investigation. The costs of this disciplinary action are seen in the increased enforcement costs of 2017. Operations costs increased in 2018 and 2019 due to program staff consulting the attorney general's office concerning a comprehensive periodic review (required every five years) of health professions rules; as part of that review, at least four well-attended stakeholder meetings also explored the professions fee structures. Based on the financial outlook, the fund balance will continue to decline and decrease below zero by 2021 as expenditure growth outpaces revenues. Therefore, the department concludes that current fees are not enough to sustain the cost of operating the program.

In addition, the state auditor's office published their performance audit report, "Aligning Healthcare Professional Fees with Licensing Costs," in November 2018, to examine if the department aligns the fees it charges to healthcare professions with the costs of licensing. In response, the department is developing processes to review fees

more consistently and enhance transparency of fund balances and fee setting.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Statute Being Implemented: RCW 43.70.250 and 43.70.280.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cori Tarzwell, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4981.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5) (b) (vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

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

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

April 1, 2021  
 Jessica Todorovich  
 Chief of Staff  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-2849.3**

AMENDATORY SECTION (Amending WSR 18-01-098, filed 12/18/17, effective 4/1/18)

**WAC 246-810-990 Counselors fees and renewal cycle.** (1) Under chapter 246-12 WAC, (~~Part 27~~) a counselor must renew (~~his or her~~) their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$10.00
Verification of registration	\$25.00
Certified counselor:	

Title	Fee
Application and certification	<del>(\$255.00)</del> <u>\$345.00</u>
Examination or reexamination	\$85.00
Renewal	<del>(\$225.00)</del> <u>\$305.00</u>
Late renewal penalty	<del>(\$115.00)</del> <u>\$155.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Certified adviser:	
Application and certification	<del>(\$210.00)</del> <u>\$285.00</u>
Examination or reexamination	\$85.00
Renewal	<del>(\$185.00)</del> <u>\$250.00</u>
Late renewal penalty	<del>(\$95.00)</del> <u>\$125.00</u>
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Registered agency affiliated counselor:	
Application and registration	\$90.00
Renewal	\$75.00
Late renewal penalty	\$50.00
Expired registration reissuance	\$50.00
Duplicate registration	\$10.00
Verification of registration	\$25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 18-01-098, § 246-810-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.250, 18.19.050, 43.70.110 and 2013 c 4. WSR 14-07-095, § 246-810-990, filed 3/18/14, effective 7/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-810-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-810-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 18.19.050. WSR 06-08-106, § 246-810-990, filed 4/5/06, effective 5/6/06. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-810-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-810-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-810-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.19.050(1). WSR 97-17-113, § 246-810-990, filed 8/20/97, effective 9/20/97. Statutory Authority: Chapter 18.19 RCW. WSR 96-08-069, § 246-810-990, filed 4/3/96, effective 5/4/96. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-810-990, filed 6/24/93, effective 7/25/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-810-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-18-039 (Order 084), §



308-190-010, filed 8/29/90, effective 9/29/90; WSR 90-04-094 (Order 029), § 308-190-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-033 (Order PM 669), § 308-190-010, filed 8/27/87.]

**OTS-2850.3**

AMENDATORY SECTION (Amending WSR 17-24-014 and 17-22-088, filed 11/27/17 and 10/27/17, effective 3/1/18)

**WAC 246-843-990 Nursing home administrator fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) (~~The following nonrefundable fees will be charged:~~) Between the effective date of this rule and October 31, 2022, the following fees will apply:

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Original license</b>	( <del>\$575.00</del> ) <u>\$690.00</u>
<b>Administrator-in-training</b>	285.00
<b>Application-Endorsement</b>	715.00
<b>License renewal</b>	
Renewal	( <del>695.00</del> ) <u>835.00</u>
Late renewal penalty	300.00
Expired license reissuance	285.00
<b>Inactive license</b>	
Inactive license renewal	315.00
Late renewal penalty	160.00
Expired inactive license reissuance	190.00
<b>Temporary permit</b>	325.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00

(3) On and after November 1, 2022, the following fees apply:

<b>Title of Fee</b>	<b>Fee</b>
<b><u>Application-Original license</u></b>	<u>\$805.00</u>
<b><u>Administrator-in-training</u></b>	<u>285.00</u>
<b><u>Application-Endorsement</u></b>	<u>805.00</u>
<b><u>License renewal</u></b>	
<u>Renewal</u>	<u>975.00</u>
<u>Late renewal penalty</u>	<u>300.00</u>
<u>Expired license reissuance</u>	<u>285.00</u>
<b><u>Inactive license</u></b>	
<u>Inactive license renewal</u>	<u>315.00</u>
<u>Late renewal penalty</u>	<u>160.00</u>
<u>Expired inactive license reissuance</u>	<u>190.00</u>
<b><u>Temporary permit</u></b>	<u>325.00</u>

<u>Title of Fee</u>	<u>Fee</u>
<u>Duplicate license</u>	<u>10.00</u>
<u>Verification of license</u>	<u>25.00</u>

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 17-24-014 and 17-22-088, § 246-843-990, filed 11/27/17 and 10/27/17, effective 3/1/18. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-843-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-843-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-843-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250, [43.70.]280 and chapter 18.52 RCW. WSR 99-24-098, § 246-843-990, filed 11/30/99, effective 12/31/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-843-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250 and chapter 18.52 RCW. WSR 94-09-006, § 246-843-990, filed 4/11/94, effective 5/12/94. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-843-990, filed 6/24/93, effective 7/25/93; WSR 91-09-051 (Order 154), § 246-843-990, filed 4/16/91, effective 5/17/91. Statutory Authority: RCW 43.70.040. WSR 91-06-058 (Order 138), recodified as § 246-843-990, filed 3/1/91, effective 4/1/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), § 308-54-315, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-54-315, filed 8/27/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-54-315, filed 8/10/83. Formerly WAC 308-54-310.]

**OTS-2851.2**

AMENDATORY SECTION (Amending WSR 17-24-014 and 17-22-088, filed 11/27/17 and 10/27/17, effective 3/1/18)

**WAC 246-849-990 Ocularist fees and renewal cycle.** (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC(~~(, Part 2)~~).

(2) The following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee</b>
<b>Original application and examination</b>	<del>(\$200.00)</del> <u>\$370.00</u>
<b>License renewal</b>	
Renewal	<del>(300.00)</del> <u>555.00</u>
Late renewal penalty	<del>(150.00)</del> <u>185.00</u>
<b>Apprentice registration</b>	<del>(25.00)</del> <u>100.00</u>
Apprentice renewal	<del>(25.00)</del> <u>100.00</u>
<b>Expired license reissuance</b>	115.00
<b>Temporary practice permit</b>	25.00

<b>Title of Fee</b>	<b>Fee</b>
<b>Retired active license</b>	50.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 17-24-014 and 17-22-088, § 246-849-990, filed 11/27/17 and 10/27/17, effective 3/1/18. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-849-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-849-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-849-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-849-990, filed 6/24/93, effective 7/25/93; WSR 92-02-018 (Order 224), § 246-849-990, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-849-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-55-025, filed 8/27/87. Statutory Authority: 1983 c 168 § 12. WSR 83-17-031 (Order PL 442), § 308-55-025, filed 8/10/83. Formerly WAC 308-55-010.]

WSR 21-08-050  
PROPOSED RULES  
ARTS COMMISSION

[Filed April 2, 2021, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-045.

Title of Rule and Other Identifying Information: WAC 30-02-015 Grants, the grants program is increasing the amount the executive director can approve for individual grant awards.

Hearing Location(s): On May 11, 2021, at 8:30 a.m., at 711 Capitol Way South, Suite 600, Olympia, WA 98504. Written comments are due by May 10, 2021. The building is closed to the public but with advance notice we can let you into the building. Notify by May 10, 2021.

Date of Intended Adoption: May 11, 2021.

Submit Written Comments to: Terry J. West, Deputy Director, 711 Capitol Way South, Suite 600, Olympia, WA 98504, email terry.west@arts.wa.gov, fax 360-586-5351, by April 29, 2021.

Assistance for Persons with Disabilities: Contact Terry J. West, Deputy Director, phone 360-586-5350, fax 360-252-9978, email terry.west@arts.wa.gov, by April 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend the grant rule to increase the amount the executive director can approve for individual grant awards.

Reasons Supporting Proposal: This is an amendment that increases the executive director's discretion. A public rules writing session was held and no members of the public attended or presented any opposition.

Statutory Authority for Adoption: RCW 43.46.040

Statute Being Implemented: RCW 43.46.090 through 43.46.095

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

Name of Proponent: Washington state arts commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Terry J. West, 711 Capitol Way South, Suite 600, Olympia, 360-252-9978.

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 under RCW 34.05.328 as the Washington state arts commission is not listed under this statute as required to prepare a cost-benefit analysis. The rule being amended is not considered a significant rule change.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: A small business economic impact statement is not required under RCW 19.85.030 because there are not more-than-minor costs to businesses in order to comply with this minor amendment.

April 2, 2021  
Karen Hanan  
Executive Director

## OTS-2914.1

AMENDATORY SECTION (Amending WSR 19-07-001, filed 3/6/19, effective 4/6/19)

**WAC 30-12-015 Grants.** (1) The commission provides grants through a competitive process to organizations or individuals for the purpose of developing, sponsoring, and promoting the growth and development of the arts and arts education in the state of Washington.

(2) Staff create and publish applications, application cycles, forms and documents, guidelines, eligibility requirements, review criteria, and select review panelists.

(3) Staff manage the application process. Panelists evaluate and score applications and offer recommendations to the board. See also WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels).

(4) The board reviews panel recommendations and approves grants, except as noted below.

(a) The executive director may approve grants that do not exceed (~~three~~) five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

(b) The board may delegate to the executive director approval of grants that exceed (~~three~~) five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

[Statutory Authority: RCW 43.46.040. WSR 19-07-001, § 30-12-015, filed 3/6/19, effective 4/6/19; WSR 18-02-086, § 30-12-015, filed 1/2/18, effective 2/2/18. Statutory Authority: Chapter 43.46 RCW. WSR 10-23-102, § 30-12-015, filed 11/16/10, effective 12/17/10.]

**WSR 21-08-056**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed April 5, 2021, 8:41 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-325  
When must an employer grant leave with pay for other miscellaneous reasons?, 357-31-326 When may an employer grant leave with pay?, and 357-31-330 For what reasons may an employer grant leave without pay?

Hearing Location(s): On May 13, 2021, at 8:30 a.m., at the office of financial management (OFM), audio conference only, dial-in (888) 285-8919, enter pin 8101730, code (if asked) 415.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by May 6, 2021.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making has the following effects:

To require a general government employer to grant leave with pay (LWP) to allow an employee to take a reasonable amount of LWP for an employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace;

To allow a general government employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace; and

To allow a higher education employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace.

An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel when the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. If state or federal law provides paid leave specifically to receive the COVID-19 vaccination, the provisions concerning leave for immunization no longer apply. The proposed rules also allow an employer to grant leave without pay for an employee to protect themselves, or a relative or household member, from risks related to COVID-19.

Reasons Supporting Proposal: To align Title 357 WAC with Governor Jay Inslee's issued Proclamation 20-05 which declares [a] State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. Our governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impact the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 41.06 RCW.

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

Name of Proponent: [Not supplied by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-878-4827.

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.

Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328

(5) (b) (ii) for exemption.

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.

April 5, 2021

Roselyn Marcus

Assistant Director of Legal  
and Legislative Affairs

## OTS-2885.5

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

**WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons?** Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for

the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(6) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

**WAC 357-31-326 When may an employer grant leave with pay?** (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to,



firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(4) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(5) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

(6) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment

thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

**WAC 357-31-330 For what reasons may an employer grant leave without pay?** Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; ((or))

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from risks related to coronavirus disease 2019 (COVID-19). In determining whether to grant leave, an employer may consider whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later.

[Statutory Authority: Chapter 41.06 RCW. WSR 09-17-056 and 09-18-113, § 357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

**WSR 21-08-057**  
**PROPOSED RULES**  
**OFFICE OF**  
**FINANCIAL MANAGEMENT**  
[Filed April 5, 2021, 8:52 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-01-220 Overtime eligible employee, 357-01-225 Overtime-exempt employee, 357-19-260 While an employee is in an in-training appointment, what class is used to determine the employee's salary, overtime eligibility and performance evaluation?, and 357-58-120 What is a disciplinary demotion and what changes may occur in salary?

Hearing Location(s): On May 13, 2021, at 8:30 a.m., at the office of financial management (OFM), audio conference only, dial-in 888-285-8919, enter pin 8101730, code (if asked) 415.

Date of Intended Adoption: May 20, 2021.

Submit Written Comments to: Caroline Kirk, OFM, P.O. Box 47500, Olympia, WA 98501, email caroline.kirk@ofm.wa.gov, fax 360-586-4694, by May 6, 2021.

Assistance for Persons with Disabilities: Contact OFM, TTY 711 or 1-800-833-6384, by May 6, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 357-01-220 is amended to clarify an overtime eligible employee is an employee who is not exempt from the overtime provisions of either the Washington state Minimum Wage Act, chapter 49.46 RCW, or the federal Fair Labor Standards Act. WAC 357-01-225 is amended to clarify an overtime-exempt employee is an employee who is exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act. The amendments to chapter 357-01 WAC align with the recent rule making by the Washington department of labor and industries (L&I) modifying the state standards defining exempt employees. WAC 357-19-260 is amended to refer to "overtime eligibility" instead of "work period designation" to align with both federal and state law. The term "work period designation" is outdated terminology that is no longer relevant. WAC 357-58-120 is amended to clarify if a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both the state and federal law. The amendment to WAC 357-58-120 clarifies the language and makes clear that the requirements of state law must also be followed.

Reasons Supporting Proposal: To align Title 357 WAC with the changes to the Washington Minimum Wage Act. L&I updated the minimum weekly standard salary level required to exempt executive, administrative or professional employees from Washington state's overtime pay requirements. The new state thresholds are more favorable than the current federal threshold, Washington employers must adhere to the state thresholds as of January 1, 2021.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: Chapter 49.46 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Caroline Kirk, 128 10th Avenue, Olympia, WA 98501, 360-878-4827.

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. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

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.

April 5, 2021  
Roselyn Marcus  
Assistant Director of  
Legal and Legislative Affairs

## OTS-2976.2

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

**WAC 357-01-220 Overtime eligible employee.** An employee who is ~~((covered by))~~ not exempt from the overtime provisions of either chapter 49.46 RCW or the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-220, filed 12/21/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

**WAC 357-01-225 Overtime-exempt employee.** An employee who is ~~((not covered by))~~ exempt from the overtime provisions of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-204, § 357-01-225, filed 12/21/04, effective 7/1/05.]

## OTS-2977.1

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-260** While an employee is in an in-training appointment, what class is used to determine the employee's salary, ~~((work period designation))~~ overtime eligibility, and performance evaluation?

For each in-training step, the training plan must identify the job class to which the employee's work is being allocated. The employee's salary, (~~work period designation~~) overtime eligibility, and performance evaluation must be based upon the allocated class of the in-training step.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-01-206, § 357-19-260, filed 12/21/04, effective 7/1/05.]

## OTS-2978.1

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-120 What is a disciplinary demotion and what changes may occur in salary?** Demotion for cause is a disciplinary demotion. A disciplinary demotion results in the:

(1) Assignment of responsibilities which results in a lower salary standard and/or lower evaluation points for the same position or results in the position being placed in the WGS with a lower base salary, or

(2) Movement to a different position that has a lower salary standard and/or lower evaluation points or to a WGS position with a lower base salary.

A disciplinary demotion may result in a salary decrease. (~~Any~~) If a disciplinary demotion results in a salary decrease, the overtime status of the position may be impacted and must comply with the salary basis test of both chapter 49.46 RCW and the Fair Labor Standards Act.

[Statutory Authority: Chapter 41.06 RCW. WSR 05-12-069, § 357-58-120, filed 5/27/05, effective 7/1/05.]

## WSR 21-08-059

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed April 5, 2021, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-051.

Title of Rule and Other Identifying Information: WAC 246-945-014 Electronic prescribing mandate waiver, the pharmacy quality assurance commission (commission) and the department of health (DOH) are jointly proposing a new section of rule to outline the electronic prescribing mandate, exceptions allowing a waiver, and related waiver process as required by SSB 5380 passed during the 2019 legislative session.

Hearing Location(s): On June 4, 2021, at 9:30 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, DOH and the pharmacy quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To access the meeting: Please register for this meeting and join from your computer, tablet or smartphone <https://attendee.gotowebinar.com/register/3088602240482857744>. You can also dial in using your phone, United States +1 (631) 992-3221, Access Code 902-027-067. New to GoToMeeting? Get the app now and be ready when your first meeting starts <https://global.gotomeeting.com/install/541045301>.

Date of Intended Adoption: June 4, 2021.

Submit Written Comments to: Cori Tarzwell, P.O. Box 47990, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, [cori.tarzwell@doh.wa.gov](mailto:cori.tarzwell@doh.wa.gov), by May 28, 2021.

Assistance for Persons with Disabilities: Contact Cori Tarzwell, phone 360-236-4981, TTY 711, email [cori.tarzwell@doh.wa.gov](mailto:cori.tarzwell@doh.wa.gov), by May 28, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5380, section 16, requires all providers prescribing controlled substances Schedules II-V, and refills for Schedules III-V, to transmit those prescriptions electronically. The law also provides for exceptions to this mandate and directs the department to create a waiver for practitioners who cannot comply with the mandate due to economic hardship, technological limitations, or other exceptional circumstances. The proposed rules implement the requirements of the bill by creating a waiver and clarifying what qualifies as an economic hardship, technological limitation, or exceptional circumstance.

The intent of the underlying statute is to ensure prescriptions and refills for controlled substances in Schedules II-V are transmitted electronically whenever possible; however, the statute acknowledges challenges to electronic prescribing. The proposed rule clarifies what economic hardships, technological limitations, or exceptional circumstances qualify a provider for a waiver of electronic prescribing.

The requirement to electronically prescribe goes into effect January 1, 2021. However, due to the COVID-19 pandemic, the secretary of health (secretary) issued a waiver for all providers until September 30, 2021. Should it be necessary, the secretary may consider extending that waiver until such a time that compliance is deemed possible.

Reasons Supporting Proposal: SSB 5380, section 16, requires all providers prescribing controlled substances Schedules II-V, and refills for Schedules III-V, to transmit those prescriptions electronically. The law also provides for exceptions to this mandate and directs the department to create a waiver for practitioners who cannot comply with the mandate due to economic hardship, technological limitations, or other exceptional circumstances. Through discussion with stakeholders, it was determined rules are necessary to clarify what is an economic or technological hardship, or exceptional circumstance. The final proposed rules were drafted with stakeholder feedback to create a waiver program that provides necessary guidance to licensees, allows for relatively easy compliance, and results in immediate access to a waiver if a licensee request[s] one.

Statutory Authority for Adoption: RCW 69.50.312; SSB 5380 (chapter 314, Laws of 2019).

Statute Being Implemented: RCW 69.50.312; SSB 5380 (chapter 314, Laws of 2019).

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: Not applicable.

Name of Proponent: DOH and the pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Cori Tarzwell, 111 Israel Road S.E., Olympia, WA 98504, 360-236-4981; Implementation and Enforcement: Lauren Lyles, 111 Israel Road S.E., Olympia, WA 98504, 360-236-4853.

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 Cori Tarzwell, P.O. Box 47990, Olympia, WA 98504, phone 360-236-4981, TTY 711, email cori.tarzwell@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed costs to comply with these rules are minimal and apply directly to health care providers with prescribing authority for controlled substances Schedules II-V and refills for controlled substances Schedules III-V. The only cost is assumed to be completing an attestation and submitting it to the proper disciplining authority at the department. It is assumed that this can be done by staff at any level and would take less than thirty minutes per year.

April 5, 2021  
Jessica Todorovich  
Chief of Staff  
for Umair A. Shah, MD, MPH  
Secretary  
Tim Lynch  
Pharmacy Quality  
Assurance Commission Chair

**OTS-2896.1**

NEW SECTION

**WAC 246-945-014 Electronic prescribing mandate waiver.** (1) A practitioner may submit an attestation to the department for a waiver from the electronic prescribing mandate in RCW 69.50.312, if the practitioner is experiencing an economic hardship, technological limitations not reasonably in the control of the practitioner, or other exceptional circumstance. A practitioner does not need to submit a waiver if exempted from the mandate under RCW 69.50.312 (2)(a) through (j). A practitioner must submit an attestation for the waiver using forms provided by the department. The department shall deem the waiver granted upon submission of an attestation and the practitioner will be deemed exempt under RCW 69.50.312 (2)(k).

(2) A practitioner who has submitted an attestation for a waiver from the mandate in RCW 69.50.312 is exempt from the electronic prescribing mandate for the calendar year in which the attestation is signed, beginning with the effective date of this section.

(a) For economic hardship and technical limitations, a practitioner may attest to the need for a waiver up to three times, giving the practitioner three years to come into compliance with the mandate.

(b) There is no limit on the number of other exceptional circumstance waivers under subsection (3)(c) of this section that a practitioner can submit.

(3) A practitioner required to electronically prescribe under RCW 69.50.312 may submit an attestation for a waiver from this mandate due to:

(a) Economic hardship in the following circumstances:

(i) A bankruptcy in the previous year or submitted an attestation for a waiver under this chapter due to a bankruptcy in the previous year;

(ii) Opening a new practice after January 1, 2020;

(iii) Intent to discontinue operating in Washington prior to December 31, 2021; or

(iv) Operating a low-income clinic, that is defined as a clinic serving a minimum of thirty percent medicaid patients.

(b) Technological limitations outside the control of the practitioner if the practitioner is in the process of transitioning to an electronic prescription system.

(c) Other exceptional circumstances.

(i) The practitioner is providing services at a free clinic;

(ii) The practitioner generates fewer than one hundred prescriptions of Schedules II through V drugs in a one-year period, including both new and refill prescriptions;

(iii) The practitioner is located in an area without sufficient internet access to comply with the e-prescribing mandate; or

(iv) Unforeseen circumstances that stress the practitioner or health care system in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseeable barriers to electronic prescribing, or unforeseen events that result in a statewide emergency.

(4) The department may audit waiver attestations submitted by a practitioner to determine compliance with this chapter. Submitting a false attestation is grounds for disciplinary action against a practitioner's license by the appropriate disciplinary authority as well as fines pursuant to RCW 69.50.312(5).



[]

## WSR 21-08-062

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed April 5, 2021, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-11-072 and WSR 21-01-158.

Title of Rule and Other Identifying Information: WAC 182-51-1800 Administrative hearing (formal appeal) right, 182-70-110 Appeals, 182-70-655 Hearing and final order, 182-70-660 Final decision, 182-526-0005 Purpose and scope, 182-526-0195 Prehearing conferences, 182-526-0203 Administrative reviews requested by a reporting entity to the prescription drug pricing transparency program, 182-526-0205 Appeals requested by a data supplier to the Washington all payer health care claims database (WA-APCD), and 182-526-0206 Hearing and final order for penalties imposed under WAC 182-70-600.

Hearing Location(s): On May 11, 2021, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the agency will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. To attend the virtual public hearing, you must register at the following link <https://attendee.gotowebinar.com/register/3065017719404451084>, Webinar ID 639-429-907. After registering, you will receive a confirmation email containing the information about joining the webinar.

Date of Intended Adoption: Not sooner than May 12, 2021.

Submit Written Comments to: Health Care Authority (HCA) Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 11, 2021.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by April 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA began rule making under WSR 20-11-072 on May 20, 2020, to amend WAC 182-526-0005 Purpose and scope, to include chapter 182-70 WAC, All payer health care claims database; and chapter 182-51 WAC, Washington prescription drug pricing transparency program, as chapters that this section applies to. HCA also intended to clarify in WAC 182-526-0005 that rules in chapter 182-526 WAC do not apply to the school benefits board found in chapter 182-32 WAC. During the course of the review, HCA identified additional sections in chapters 182-51 and 182-70 WAC that needed related changes. Consistency is needed between chapters 182-51, 182-70, and 182-526 WAC regarding hearings and appeals. HCA filed an additional CR-101 under WSR 21-01-158 on December 18, 2020, to solicit stakeholder participation for these additional rule sections.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 43.71C.110; and ESSHB [E2SHB] 1224, chapter 334, Laws of 2019.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Kerry Breen, P.O. Box 42700, Olympia, WA 98504-2700, 360-725-9970.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rule amendments do not impose a disproportionate cost impact on small businesses.

April 5, 2021  
Wendy Barcus  
Rules Coordinator

## OTS-2784.1

AMENDATORY SECTION (Amending WSR 20-19-079, filed 9/15/20, effective 10/16/20)

### **WAC 182-51-1800 Administrative hearing (formal appeal) right.**

~~((1))~~ A reporting entity has a right to an administrative hearing (formal appeal), and any resulting appeals process available under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a final notice of violation and fine(s) against the reporting entity under any section of chapter 43.71C RCW and this chapter. ~~((To the extent that there may be a conflict between the general provisions contained in chapter 182-526 WAC and this chapter, the more specific provisions in this chapter apply.~~

~~(2) A reporting entity may appeal both the assessed violation(s) and the amount of the fine(s) assessed in the final notice of violation and fine(s).~~

~~(3) A reporting entity must submit a request for formal hearing to the authority in writing, in a manner that provides proof of receipt, within twenty-eight calendar days after receipt of the final notice of violation and fine(s) under WAC 182-51-1700.~~

~~(4) Requests should specify:~~

~~(a) The name of the reporting entity requesting the hearing and the reporting entity's, or representative's, mailing address, telephone number, and email address (if available);~~

~~(b) The items, facts, or conclusions in the final notice of violation being contested; and~~

~~(c) The basis for contesting the authority's action, including any mitigating factors upon which the reporting entity relies and the outcome the reporting entity is seeking.~~

~~(5) At the administrative hearing and on appeal, the reporting entity bears the burden of proving by a preponderance of the evidence that it has complied with applicable laws, rules, regulations, and agreements.~~

~~(6) The administrative hearing process is governed by chapters 34.05 RCW and 182-526 WAC.~~

~~(7) The authority does not begin the collection process until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.~~

~~(8) Interest on owed and outstanding fines continues to accrue at the rate of one percent per month or portion of a month, but it is not collected until a decision in the administrative hearing is issued and all levels of appeal have been exhausted.) See WAC 182-526-0203.~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 334. WSR 20-19-079, § 182-51-1800, filed 9/15/20, effective 10/16/20.]

### OTS-2785.1

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

**WAC 182-70-110 Appeals.** ~~((1))~~ A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC ~~((182-75-100.~~

~~(2) Request for an appeal must be submitted in writing to the authority within fifteen calendar days after receipt of written notification of denial of its administrative review.~~

~~(3) Within ten business days of receipt of a written notice of appeal, the authority will transmit the request to the office of administrative hearings (OAH).~~

~~(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.~~

~~(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other authority employees may attend a hearing, and the ALJ will notify the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.~~

~~(c) **Decisions.** The decision of the ALJ shall be considered a final decision. Either party or both may file a petition for review of the final decision to superior court. If neither party files an appeal within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thir-~~

ty days from service of the final decision)) 182-70-100. See WAC 182-526-0205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 43.371.020. WSR 20-08-059, § 182-70-110, filed 3/25/20, effective 4/25/20. WSR 19-24-090, recodified as § 182-70-110, filed 12/3/19, effective 1/1/20. Statutory Authority: Chapter 43.371 RCW. WSR 16-04-068, § 82-75-110, filed 1/29/16, effective 2/29/16.]

AMENDATORY SECTION (Amending WSR 20-08-059, filed 3/25/20, effective 4/25/20)

**WAC 182-70-655 Hearing and final order.** (~~((1) The director may conduct the hearing or delegate to an individual within the authority or to an administrative law judge pursuant to chapter 34.12 RCW the authority to conduct the hearing and prepare a proposed decision. The WA-APCD program director, on behalf of the authority, shall be the petitioner in the hearing, and the requestor shall be the respondent.~~

~~(2) The WA-APCD program director shall have the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.~~

~~(3) The hearing shall be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW and to the extent not covered in this chapter, by the uniform procedural rules in chapter 10-08 WAC.~~

~~(4) If the director presides over the hearing, the director shall issue a final written decision that includes findings of fact, conclusions of law, and if appropriate, the penalty. The director shall cause service of the final decision on all parties.~~

~~(5) If the director's designee or an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law and if appropriate the penalty. The proposed decision shall also include instructions on how to file objections and written arguments or briefs with the director. Objections and written arguments and briefs must be filed within twenty days from the date of receipt of the proposed decision.)) For penalties imposed under WAC 182-70-600, the WA-APCD program director or the director's designee conducts a hearing and prepares a final order in accordance with WAC 182-526-0206.~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 43.371.020. WSR 20-08-059, § 182-70-655, filed 3/25/20, effective 4/25/20. WSR 19-24-090, recodified as § 182-70-655, filed 12/3/19, effective 1/1/20. Statutory Authority: RCW 43.371.070 (1)(h). WSR 18-15-002, § 82-75-655, filed 7/5/18, effective 8/5/18.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-70-660 Final decision.

OTS-2786.2

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0005 Purpose and scope.** (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to:

(i) The resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC; and

(ii) The resolution of disputes between an appellant and the health care authority (HCA) arising from the prescription drug pricing transparency program in chapter 182-51 WAC and the all payer health care claims data base rules in chapter 182-70 WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(c) Establishes rules encouraging informal dispute resolution between (~~the health care authority (HCA)~~) HCA, its authorized agents, or an HCA-contracted managed care organization (MCO), and people or entities who disagree with its actions.

(d) Regulates all hearings involving medical services programs established under chapter 74.09 RCW including, but not limited to, managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC, unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the public employees benefits board or the school employees benefits board programs (see chapters 182-16 and 182-32 WAC).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0005, filed 2/13/17, effective 3/16/17. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0005, filed 12/19/12, effective 2/1/13.]

AMENDATORY SECTION (Amending WSR 17-05-066, filed 2/13/17, effective 3/16/17)

**WAC 182-526-0195 Prehearing conferences.** (1) Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference.

(b) An ALJ may conduct the prehearing conference in person, by telephone, or in any other manner acceptable to the parties.

(2) All parties must attend the prehearing conference. If the party who requested the hearing does not attend the prehearing conference, the ALJ may enter an order of default and an order dismissing the hearing.

(3) The ALJ may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, the ALJ must continue the previously scheduled hearing when necessary to comply with notice requirements in this section.

(6) The ALJ may grant additional requests for prehearing conferences.

(7) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) ~~((The department's division of residential care services under Title XIX of the federal Social Security Act.~~

~~(b-))~~ Provider and vendor overpayment hearings.

~~((e))~~ (b) Estate recovery and predeath liens.

(c) Notice of violation disputes under chapter 182-51 WAC.

(d) Notice of violation disputes under chapter 182-70 WAC.

(8) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

(9) After the prehearing conference, the ALJ must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

(e) Any ruling of the ALJ.

(10) OAH must serve the prehearing order on the parties at least fourteen calendar days before the scheduled hearing.

(11) A party may object to the prehearing order by notifying OAH in writing within ten calendar days after the mailing date of the or-

der. The ALJ must issue a ruling on the objection within five days from the date a party files an objection.

(12) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(13) The ALJ may take further appropriate actions to address other concerns raised by the parties.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-05-066, § 182-526-0195, filed 2/13/17, effective 3/16/17. Statutory Authority: 2011 1st sp.s. c 15 § 53, chapters 74.09, 34.05 RCW, and 10-08 WAC. WSR 13-02-007, § 182-526-0195, filed 12/19/12, effective 2/1/13.]

#### NEW SECTION

#### **WAC 182-526-0203 Administrative reviews requested by a reporting entity to the prescription drug pricing transparency program.** (1) (a)

A reporting entity as defined in WAC 182-51-0100, seeking administrative review of a fine or other appealable action of the authority taken under chapter 182-51 WAC or chapter 43.71C RCW, must file a written request for administrative review at the address provided in the authority's notice within twenty-eight calendar days after receiving the notice.

(b) When the authority has sent written notice by United States mail, it considers the reporting entity to have received the notice five calendar days after the date of the notification letter, unless actual proof of the date of receipt of the authority's notification letter exists. If such proof exists, the authority uses the actual date of receipt to determine timeliness of the reporting entity's request for administrative review. When the authority has electronically mailed (email) written notice, the date the authority's notification email was sent is considered to be the date of receipt by the reporting entity, irrespective of when the reporting entity reads the email.

(c) The reporting entity's request for administrative review must:

(i) Be signed by a partner, officer, or authorized employee of the reporting entity;

(ii) State the particular issues raised; and

(iii) Include supporting documentation or other information.

(2) After receiving a request for administrative review, the authority either directly schedules the requested administrative hearing or causes the scheduling of the hearing with the office of administrative hearings (OAH). The hearing may be conducted by telephone.

(3) At least five calendar days before the scheduled date of the administrative hearing, the reporting entity must supply to the authority or OAH any additional or supporting documentation or information upon which they intend to rely in presenting its case. In addition, at any time before issuing the initial order, the authority or OAH may request any documentation or information needed to decide the issue raised, and the reporting entity must comply with such a request within five calendar days after it is received. The authority or OAH may extend this period up to fourteen additional calendar days for good cause shown if the reporting entity requests an extension in writing and it is received by the authority or OAH before the initial



five-day period expires. The authority or OAH may dismiss issues that cannot be decided or resolved due to a reporting entity's failure to provide requested documentation or information within the required period.

(4) Within sixty calendar days after conclusion of the hearing conducted as part of the administrative review, the authority or OAH renders an initial order in writing, addressing the issues raised. If the authority or OAH is waiting for additional documentation or information promised by or requested from the reporting entity, the sixty-day period does not begin until the authority or OAH receives the documentation or information or until expiration of the time allowed to provide it. The initial order includes a notice of dismissal of all issues which cannot be decided due to a reporting entity's failure to provide documentation or information promised or requested.

(5) Additional review of a determination.

(a) A reporting entity seeking further review of an initial order issued according to subsection (4) of this section, must file a written application for an adjudicative proceeding signed by one of the individuals authorized by subsection (1) of this section with the authority's board of appeals within twenty-one calendar days after receiving the authority's initial order.

(b) When the authority or OAH has sent the initial order by United States mail, the authority considers the reporting entity to have received the initial order five calendar days after the date of the order, unless proof of the date of receipt of the letter exists. If such proof exists, the authority or OAH uses the actual date of receipt to determine timeliness of the reporting entity's application for an adjudicative proceeding. When the authority or OAH has electronically mailed (email) the initial order, the date of authority's email containing the initial order was sent is considered to be the date of receipt by the reporting entity, irrespective of when the contractor reads the email.

(c) The reporting entity must attach the authority's or OAH's initial order to its application for an adjudicative proceeding. When the authority or OAH delivered the initial order by email, either in the body of the email or as an attachment to the email, the reporting entity must include a copy of the email with the application for an adjudicative proceeding. The application for an adjudicative proceeding must be addressed to the authority's board of appeals. The authority uses the board of appeals date received stamp on the application for an administrative proceeding to determine whether the application is timely. When the application for adjudicative proceeding is filed by fax, the authority uses the date stamped on the application received by fax to determine timeliness.

(6) A review judge employed by the authority's board of appeals conducts a review of any appealed initial order. The scope of any review is generally limited to the issues specifically raised by the reporting entity at the initial hearing and addressed on the merits in the authority's or OAH's initial order. The authority or OAH considers the reporting entity to have waived all issues or claims that could have been raised to challenge the authority's or OAH's action, but which were not previously pursued at the hearing and not addressed in the initial order. The reporting entity must specify its issues in its request for an adjudicative proceeding, or as soon as practicable.

(7) Any party dissatisfied with an order of the board of appeals may file a petition for reconsideration within ten calendar days after the order is served on the party. The petition must state the specific

grounds upon which relief is sought. The review judge may extend the time for seeking reconsideration for good cause upon motion of either party if the extension request is made within ten calendar days after the order was entered. The review judge rules on a petition for reconsideration and may seek additional argument, briefing, testimony, or other evidence as considered necessary. Filing a petition for reconsideration is not a requisite for seeking judicial review; however, if either party files a reconsideration petition, the authority's order is not considered final until the review judge makes a ruling.

(8) The authority's board of appeals assigns a review judge to conduct the review and render the final agency order. A reporting entity dissatisfied with a board of appeals' order may file a petition for judicial review under RCW 34.05.570(3) or other applicable authority.

[]

#### NEW SECTION

**WAC 182-526-0205 Appeals requested by a data supplier to the Washington all payer health care claims database (WA-APCD).** (1) **Appeal.** A data supplier may request an appeal of a denial of its administrative review conducted in accordance with WAC 182-70-100.

(a) Request for an appeal must be submitted in writing to the health care authority (HCA) within fifteen calendar days after receipt of written notification of denial of its administrative review.

(b) An appeal request must contain:

(i) The requestor's name;

(ii) The requestor's mailing address;

(iii) The requestor's telephone number;

(iv) A description of HCA's action being contested;

(v) A brief explanation of why the person or entity disagrees with HCA's action; and

(vi) Any accommodation to help the requestor fully participate in the hearing, if applicable.

(c) Within ten business days of receipt of a written notice of appeal, HCA transmits the request to the office of administrative hearings (OAH).

(2) **Scheduling.**

(a) OAH will assign an administrative law judge (ALJ) to handle the appeal.

(b) The ALJ will notify parties of the time when any additional documents or arguments must be submitted.

(c) If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines.

(d) A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(3) **Hearings.**

(a) The hearing must be conducted in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and this chapter. To the extent that there may be a conflict between the general provisions contained in this chapter and this section, the more specific provisions in this section apply.

(b) Hearings may be by telephone or in person.

(c) The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries.

(d) The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case.

(e) The date and time for a hearing may be continued at the ALJ's discretion.

(f) Other authority employees may attend a hearing, and the ALJ notifies the appellant when other authority employees are attending. The appellant may appear in person or may be represented by an attorney.

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#### NEW SECTION

**WAC 182-526-0206 Hearing and final order for penalties imposed under WAC 182-70-600.** (1) For penalties imposed under WAC 182-70-600, the Washington all payer health care claims database (WA-APCD) program director or the director's designee conducts a hearing and prepares a final order.

(2) The hearing must be conducted in accordance with this chapter and the Administrative Procedure Act, chapter 34.05 RCW.

(3) The WA-APCD program director, on behalf of the health care authority, must be the petitioner in the hearing, and the requestor must be the respondent.

(4) The WA-APCD program director has the burden of proving the basis for the finding of a violation and the penalty as set forth in the notice of violation and recommended penalty.

(5) The WA-APCD program director or the director's delegate issues a final written order that includes findings of fact, conclusions of law, and if appropriate, the penalty.

(6) If the order finds a violation and assesses monetary penalties, the order must include notice that payment must be made no later than forty-five days after service of the order or the period to appeal has expired, whichever is later.

(7) The WA-APCD program director must cause service of the final order on all parties.

(8) Any party to whom a violation is found may file a petition for review of the final order to superior court.

(9) If an appeal is not filed within the period set by RCW 34.05.542, the WA-APCD program director's order is conclusive and binding on all parties.

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**WSR 21-08-068**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-01—Filed April 6, 2021, 7:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-04-038.

Title of Rule and Other Identifying Information: Implementation credits: Specifying health carriers as a permissible entity in WAC 284-30-595.

Hearing Location(s): On May 13, 2021, at 10:00 a.m. Due to the COVID-19 public health emergency, this hearing will be held via Zoom. Remote access information for public testimony will be made available at web page <https://www.insurance.wa.gov/implementation-credits-specifying-health-carriers-permissible-entity-wac-284-30-595-r-2021-01>.

Date of Intended Adoption: May 14, 2021.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [MelanieW@oic.wa.gov](mailto:MelanieW@oic.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes amending one current regulation, WAC 284-30-595, to specify that health carriers are a permissible entity to use implementation credits. The anticipated effect of the proposed rules is to provide reference and guidance to insurers and health carriers implement the legislative amendments made to RCW 48.30.140 and 48.30.150 through passage of SHB 1075 (2019).

Reasons Supporting Proposal: The legislature passed SHB 1075 during the 2019 legislative session. The bill established that the insurance code's prohibition on offering rebates or inducements does not prohibit an insurer and health carrier from issuing payment to offset documented expenses incurred by a group policy holder in changing coverage from one insurer to another. Insurers and health carriers are not required to offer implementation credits, but when they choose to, the office of the insurance commissioner has developed rules to provide guidance for companies to use and apply them.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Statute Being Implemented: RCW 48.30.140, 48.30.150.

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: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Toni Hood, P.O. Box 40260, Olympia, WA 98504-0260, 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 David

Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, fax 360-586-3109, email davidf@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 19.85.020.

Explanation of exemptions: The domestic health carriers that are affected by this rule are large, interstate companies and are not small businesses as defined in RCW 19.85.020(3).

Direct health and medical insurance carriers in Washington state employ on average 6,777 individuals annually throughout the industry. Considering there are on average fifty-eight direct health and medical insurance carrier firms operating annually in Washington, the mean number of employees per firm is one hundred eighteen (6777/58), well above the small business threshold as defined by RCW 19.85.020(3). The figures used for this calculation are drawn from the 2020 Washington state employment security department's quarterly census of employment and wages.

April 6, 2021

Mike Kreidler

Insurance Commissioner

## OTS-2986.1

AMENDATORY SECTION (Amending WSR 20-24-070, filed 11/24/20, effective 12/25/20)

**WAC 284-30-595 Unfair practices regarding documented expenses for implementation credits.** Under RCW 48.30.140 and 48.30.150, an insurer or health carrier may issue payment to offset a documented expense that is incurred by a group policyholder (~~((while transferring from one policy to another policy))~~) in changing coverages from one insurer or health carrier to another provided that the insurer or health carrier maintains evidence of the documented expense for three years from the date of the expense. An insurer or health carrier will describe in the policy or in any such filing with the commissioner that the payment made to the group policyholder will not exceed the amount of the documented expenses.

(1) The failure to maintain and document an expense incurred by a group policyholder constitutes an unfair trade practice and is a violation of this chapter.

(2) Upon the commissioner's request, the insurer or health carrier must provide proof of a documented expense in the form of paper or electronic copy.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health carrier" has the same meaning as in RCW 48.43.005.

(b) "Insurer" has the same meaning as in RCW 48.01.050.

[Statutory Authority: RCW 48.02.060 and 48.43.715. WSR 20-24-070, § 284-30-595, filed 11/24/20, effective 12/25/20.]

**WSR 21-08-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed April 6, 2021, 7:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-086.

Title of Rule and Other Identifying Information: Self-insurance financial rules, chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations.

Hearing Location(s): On May 11, 2021, at 10:00 a.m. Zoom hearing. Join Zoom meeting at <https://us02web.zoom.us/j/84089308844>, Meeting ID 840 8930 8844, Passcode Meeting@10. Join by phone +253-215-8782 US (Tacoma), Meeting ID 840 8930 8844, Passcode 7925639240. The hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 22, 2021.

Submit Written Comments to: Brian Schmidlkofer, 310 Israel Road S.E., Tumwater, WA 98501, email [Brian.Schmidlkofer@Lni.wa.gov](mailto:Brian.Schmidlkofer@Lni.wa.gov), fax 360-902-6900, by May 14, 2021, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Brian Schmidlkofer, phone 360-902-6839, fax 360-902-6900, email [Brian.Schmidlkofer@Lni.wa.gov](mailto:Brian.Schmidlkofer@Lni.wa.gov), by May 5, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to make updates to the self-insurance financial rules. These amendments are being proposed to:

- Ensure self-insured employers can accurately and timely provide workers' compensation benefits to their workers;
- Protect and safeguard the Insolvency Trust Fund;
- Promote transparency for the department of labor and industries (L&I) actions when a firm is placed on financial watch;
- Make the rules relevant to current financial conditions and business models; and
- Create efficient and adaptable standards for employers' overall financial management.

This rule making proposes repealing WAC 296-15-024 Additional certification requirements; and amending WAC 296-15-021 Self-insurance certification requirements and application process, 296-15-121 Surety for a self-insurance program, 296-15-123 Financial watch, 296-15-151 Surety for a public entity's self-insurance program, 296-15-161 Surety for a group self-insurance program, and 296-15-221 Self-insurer's reporting requirements.

Reasons Supporting Proposal: The purpose of this rule making is to update the rules for the financial qualification and maintenance of self-insurance certification, so that these rules are consistent with modern business practices. Existing rules are dated and out of alignment with industry best practices.

Statutory Authority for Adoption: RCW 51.14.020, 51.14.020(7).

Statute Being Implemented: Not applicable.

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: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Schmidlkofer, Tumwater, Washington, 360-902-6839; Implementation and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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 Brian Schmidlkofer, 310 Israel Road S.E., Tumwater, WA 98501, phone 360-902-6839, fax 360-902-6900, email Brian.Schmidlkofer@Lni.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).

Explanation of exemptions: The proposed rule does not affect small businesses. The employers that participate in the self-insurance program are medium to large multi-regional and international entities that have the financial means to have their own workers [workers'] compensation program and cover all those liabilities.

April 6, 2021

Joel Sacks

Director

## OTS-2843.5

AMENDATORY SECTION (Amending WSR 09-01-177, filed 12/23/08, effective 1/23/09)

**WAC 296-15-021 Self-insurance (~~certification requirements and application process~~) qualifications.** (~~((1) What requirements must an employer meet to apply for self-insurance certification?~~ An employer must meet all the following minimum criteria:

~~(a) Be in business for three years prior to applying for self-insurance.~~

~~(b) Have a written accident prevention program in place in Washington state for at least six months prior to making application.~~

~~(c) Have total assets worth at least twenty-five million dollars as verified by audited financial statements prepared by independent certified accountants.~~

~~(d) Demonstrate positive earnings in the current year and two out of the last three years. The overall earnings for the last three years must also be positive.~~

~~(e) Have a current liquidity ratio of at least 1.3 to 1, and a debt to net worth ratio of not greater than 4 to 1.~~

~~(2) **When are applications processed?** The department processes applications for certification the quarter after the application is accepted. Self-insurance certification for approved applicants will be effective the quarter following processing.~~

~~(3) **What documentation must be submitted with an application?** The following documentation must be submitted with each self-insurance application:~~

~~(a) A completed application form (Form F207-001-000) with a non-refundable application fee. The application fee is reviewed annually~~

by the department and is based on the administrative costs incurred in processing an application, but in no instance will it be less than two hundred fifty dollars.

~~(b) Three years of audited financial statements prepared by independent certified accountants. The audited financial statements must be in the name of the applicant.~~

~~(c) A list of all of the applicant's physical locations and addresses in Washington state, including all subsidiary operations.~~

~~(d) A copy of the written accident prevention program for each of the applicant's operations in Washington. If the applicant or any of its subsidiaries has multiple locations, more than one copy of the accident prevention program may be required.~~

~~(e) A completed Self-Insurance Certification Questionnaire (Form 207-176-000).~~

~~(f) A completed self-insurance electronic data reporting system (SIEDRS) enrollment form (Form F207-193-000).~~

~~(4) **What happens during the application review process?** The department:~~

~~(a) Assesses the accident prevention program at department-selected sites.~~

~~(b) Analyzes the financial information supplied by the applicant. The department may also consider relevant information obtained from other sources to assess the applicant's financial strength.~~

~~(c) Reviews the completed Claims Administration Questionnaire and attachments. Additional information may be requested.~~

~~The department determines whether the application is denied or tentatively approved. The department notifies each applicant of its decision. If the department denies an application, it will state the reasons for the denial in its notification.~~

~~(5) **If the application is denied, when may the applicant submit a new application?** If an application is denied for deficiencies in its accident prevention program, the applicant may submit a new application for certification after the corrections to the program are made and have been in place for six months.~~

~~If the application is denied for financial reasons, the applicant may submit a new application for certification after the next annual audited financial statement is available.~~

~~If the application is denied because the claims administration organization is deficient, the applicant may submit a new application for certification after corrections to the program are made.~~

~~(6) **What if the application is tentatively approved?** The applicant must submit the following:~~

~~(a) Surety in the amount determined by the department and issued on the department form.~~

~~(b) A signed copy of the service agreement with a third-party administrator, if applicable.~~

~~(i) The contract copy may delete clauses(s) relating to payment of services.~~

~~(ii) However, if payment for services is based on the number of claims filed by the self-insurer's workers, this must be explained in detail.~~

~~(c) A copy of any excess insurance (reinsurance) policy including Washington state endorsements, if obtained.~~

~~(d) A signed copy of the Acknowledgement of Self-Insurance Responsibilities form.~~

~~(e) Payment of any outstanding premium of the applicant's state industrial insurance account.~~



~~(f) Payment of the applicant's estimated portion of the deficit, if a deficit condition in the state industrial insurance fund exists at the time of application.~~

~~(g) Adequate electronic test data to SIEDRS, to demonstrate the ability to submit claim data electronically in the required format. Requirements are defined in the SIEDRS enrollment package (Publication F207-194-000). The department may waive the testing requirement if the applicant has a service agreement with a third-party administrator that already submits data to SIEDRS.~~

~~If the required items are not received prior to the end of the quarter, the application may be denied. If the application is denied, the applicant must reapply in order to be considered for self-insurance.~~

~~(7) **How is the initial surety requirement established?** The initial surety requirement is established at the highest of the following:~~

~~(a) The annual premiums the applicant pays (or would pay) into the state industrial insurance fund; or~~

~~(b) The annual average of the last five years of developed incurred costs to the state industrial insurance fund; or~~

~~(c) The minimum surety requirement as established annually by the department. The minimum surety requirement is equal to the average total cost of one permanent total disability award.~~

~~The applicant has the option of submitting an independent actuarial analysis of its projected liability. The department reserves the right to accept or reject this analysis. In no event will the surety requirement be established at less than the minimum surety in force at that time.)~~

~~**(1) What factors does the department consider whether an employer qualifies for self-insurance certification?** The department will consider whether:~~

~~(a) An employer satisfactorily demonstrates:~~

~~(i) Stability: Has been in business for three years prior to applying for self-insurance without substantial changes in principle ownership, structure, or operations.~~

~~(ii) Safety: Has a written accident prevention program in place in accordance with DOSH standards in Washington state for at least six months prior to making application.~~

~~(iii) Sufficiency: Has net worth of twenty-five million dollars, or revenue of fifty million dollars, or annual workers compensation premium payments or loss costs of one million dollars, to be adjusted once every five years as indexed to the U.S. Consumer Price Index beginning in 2025. This subsection does not apply to cities and counties, or groups, authorized under RCW 51.14.150.~~

~~(b) Credit ratings of investment grade or higher, or, in the case of authorized groups, an actuarially determined low likelihood of default:~~

~~(i) A publicly traded business' credit analysis shows a credit rating of investment grade or higher (Moody's Baa3 or higher, Standard and Poor's BBB- or higher), and carries excess insurance.~~

~~(ii) A privately held business' credit analysis shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, and carries excess insurance.~~

~~(iii) A public entity, such as a county or city, that shows a credit rating of investment grade or higher as determined by self-insurance credit rating procedures, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.~~

(iv) An authorized group such as a hospital district, or an educational service district, has adequate monetary reserves as determined under accepted actuarial practices, and carries excess insurance.

(c) In addition, other factors can be considered to establish, to the director's satisfaction, the employer has the ability to make certain the prompt payment of all compensation under Title 51 RCW, and all assessments that may become due to the department from the employer. For publicly traded companies, this may require providing up to one hundred twenty-five percent of the initial surety amount when credit ratings are below investment grade.

(2) **What factors does the department consider when determining whether an employer qualifies for self-insurance if there are special circumstances with principle ownership, structure, or operations?** If there are special circumstances, the department will consider the factors in subsection (1)(a) through (c) of this section, and an analysis that includes the following for:

(a) **Joint venture:** A joint venture is defined as two or more employers that have signed a contractual agreement to operate as a single unit for a specified period of time for the completion of a specific task. The department will consider a joint venture's application for self-insurance if the joint venture is sponsored by a current self-insurer. Applications must include:

(i) The name of a sponsoring party. The sponsoring party must be a certified self-insurer in good standing with the department and have a majority financial interest in the assets and profits of the joint venture.

(ii) A list of named participants. Each named participant must also demonstrate that it has at least twenty percent interest in the joint venture.

(iii) Submit three years' worth of audited financial statements prepared by certified independent accountants.

(iv) A written acknowledgment from each named participant of its joint and several liability for continuing compensation if any participant of the joint venture defaults. This responsibility continues until the department grants a written release to the joint venture or the remaining participant(s) of the joint venture. A written release from the department is granted only after the contract has been completed and final settlement of the joint venture account has been made.

(v) A written description of the obligations of each participant for the industrial insurance program of the joint venture.

(vi) A written acknowledgment of the sponsoring party's responsibilities for the management of all claims and payment of all compensation incurred during the period of the joint venture's self-insurance certification and after the joint venture is dissolved. This acknowledgment must include the sponsor's continuation of benefits if the joint venture or any of the other parties of the joint venture defaults.

(b) **Employee stock ownership program (ESOP):** An employee stock ownership program is defined as a firm in which the employees have purchased a majority of the financial interest. If the employees purchase an existing self-insured company, that company would be required to return to the state industrial insurance fund for a minimum of one year before the department would consider its application for self-insurance.

(c) **Partnership:** A partnership is defined as a business operation between two or more individuals who share management and profits. Applications must include:

(i) A copy of the partnership agreement; and

(ii) An explanation of allowed withdrawal of funds by partners.

(d) **Group:** A group is defined as a group of employers authorized under chapter 51.14 RCW to form self-insurance groups. Applications must include:

(i) A copy of the group's bylaws;

(ii) A current audited consolidated financial statement of the group (if the group exists at the time of the application);

(iii) An indemnity agreement jointly and severally binding the group and each member to comply with the provisions of Title 51 RCW; and

(iv) A detailed budget of all projected administrative revenues and expenses for the first year of operation.

(e) When the application for a group is tentatively approved, the applicant must submit the following:

(i) Initial surety, established at one hundred twenty-five percent of the standard industrial insurance premiums; and

(ii) A copy of the excess insurance coverage policy and a copy of any aggregate stop loss coverage policy.

[Statutory Authority: RCW 51.14.110. WSR 09-01-177, § 296-15-021, filed 12/23/08, effective 1/23/09. Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-06-066, § 296-15-021, filed 2/28/06, effective 4/1/06. Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-021, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

**WAC 296-15-121 Surety for a self-insurance program.** (1) **What is surety?** Surety is the legal financial guarantee each self-insurer must provide to the department for its self-insured workers' compensation program. Failure to provide surety in the amount required by the department will result in the withdrawal of the self insurer's certification. If a self-insurer defaults on (stops payment of) benefits and assessments, the department will use its surety to cover these costs.

(a) Surety for all entities must be provided on the department's form. The original will be kept by the department. Surety must cover all (~~past, present and future self insurance liabilities~~) self-insurance claims liabilities associated with the claims occurring during the time an employer functions as a self-insurer. Excluding public entities and groups. Surety amounts for public entities and groups are covered by WAC 296-15-151 and 296-15-161 respectively.

(b) Surety may not be used by a self-insurer to:

(i) Pay its workers' compensation benefits; or

(ii) Serve as collateral for any other banking transactions.

(c) Surety is not an asset of the self-insurer and will not be released by the department if the self-insurer files a petition for dissolution or relief under bankruptcy laws.

(d) The department will determine the amount of surety each self-insurer must provide annually. (~~The surety level may be increased or decreased to maintain its adequacy when necessary~~) Surety can also be determined by an independent qualified actuary (associate or fellow of the casualty actuarial society). The surety estimate is subject to the approval of the department's actuary.

(e) Surety may be increased by a maximum of twenty-five percent of the estimated claim liabilities. These increases will be based on the self-insurer's credit rating or the director's discretion.

(f) Surety for privately held entities are required to submit audited financial reports prepared by a certified public accountant annually. Failure to provide timely updates will result in increased surety requirements. If the latest financial reports are older than twelve months past their fiscal year, surety will be increased by ten percent over the required surety calculated by the department. If the latest financial reports are older than twenty-four months, surety will be increased by twenty-five percent over the required surety calculated by the department and the department will proceed to decertify the employer from self-insurance.

**(2) What types of self-insurance surety will the department accept?** The department will accept the following types of surety:

(a) Cash, corporate, or governmental securities deposited with a department approved escrow agent and administered by a written agreement L&I form F207-039-000 between the department, self-insurer and escrow agent. Use L&I form F207-137-000 for any rider/amendment to the escrow account.

An escrow account may not be used by the self-insurer to satisfy any other obligation to the bank which maintains the escrow account.

(b) A bond on L&I form F207-068-000 written by a company approved to transact surety business in Washington. Use L&I form F207-134-000 for any rider/amendment to the bond.

(c) An irrevocable standby letter of credit (LOC) on L&I form F207-112-000 if the self-insurer has a net worth of at least 500 million dollars. Use L&I form F207-111-000 for any rider/amendment. LOCs are subject to acceptance by the department. Acceptance includes, but is not limited to, approval of the financial condition of the issuing or confirming bank.

(i) The issuing or confirming bank must have a location in Washington. The bank must provide the department with an audited financial statement or call report made to the banking regulatory agencies for the most recent fiscal year. An audited statement/call report is due at LOC issuance and annually while the LOC is in effect.

(ii) The self-insurer must provide the department a memorandum of understanding on L&I form F207-113-000 showing the self-insurer's agreement with the following conditions:

(A) The department will automatically extend an LOC for an additional year unless notified otherwise by registered mail at least sixty days prior to expiration.

(B) If the department is notified an LOC will not be replaced, and the self-insurer fails to provide acceptable replacement surety within thirty days of notice:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department;

(II) Accrued interest in excess of the surety requirement will be returned semiannually to the self-insurer; and

(III) If acceptable replacement surety is later provided, the proceeds of the LOC and accrued interest will be returned to the self-insurer.

(C) If the self-insurer defaults on the payment of workers' compensation benefits and has failed to provide acceptable replacement surety for an expired LOC:

(I) The title to the proceeds will be transferred to the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(D) If the self-insurer defaults on the payment of workers' compensation benefits and has an LOC in force:

(I) The department will draw the full value of the LOC. All proceeds of the LOC will be deposited with the department; and

(II) The proceeds and accrued interest will be used to pay the self-insurer's workers' compensation benefits.

(iii) If the self-insurer provides another acceptable type of surety in the amount required by the department, the department's interest in the LOC will be released.

(iv) All legal proceedings regarding a self-insurer's LOC will be subject to Washington laws and courts.

(3) ~~((How often is each self insurer's surety requirement reviewed? Each self insurer's surety requirement is reviewed annually based on the self insurer's annual report.~~

~~(4))~~ **When could a self-insurer's surety level change?**

(a) Surety will be maintained at the current level unless the department's estimate or an independent qualified actuary's estimate of the self-insurer's outstanding claim liabilities changes by more than ~~((twenty-five))~~ one hundred thousand dollars.

(b) Surety changes are due by July 1 of each year.

~~((5))~~ **(4) How does the department determine the required surety level?** The department analyzes each self-insurer's loss history using incurred development, paid development or other department approved actuarial methods of loss development ~~((The following factors also may influence the surety determination:~~

~~(a) Pension claims.~~

~~(b) Reinsurance.~~

~~(c) Inconsistency in reserving practices.~~

~~(d) Independent qualified actuarial estimate.~~

~~(e) Surety cap).~~

~~((6))~~ **(5) What is considered reinsurance?** For the purposes of Title 51 RCW, excess insurance and reinsurance mean the same thing.

~~((7))~~ **(6) May a self-insurer reinsure part of its liability?**

(a) A self-insurer may reinsure up to eighty percent of its liability under Title 51 RCW.

(b) The reinsuring company and its personnel are prohibited from participating in the administration of the responsibilities of the self-insurer.

(c) Reinsurance policies issued after July 1, 1975, must include endorsements which state (a) and (b) of this subsection.

(d) The self-insurer must:

(i) Notify the department of the name of the insurance carrier, the extent and coverage period of the policy; and

(ii) Submit copies of all reinsurance policies in force including all modifications and renewal provisions.

(e) The department may accept a certificate of insurance on L&I form F207-095-000 in place of the policy if the certificate certifies

all coverage conditions and exceptions and that the reinsurance company and its personnel do not participate in the administration of the responsibilities of the self-insurer under Title 51 RCW.

~~((8))~~ **(7) What if a self-insurer ends its self-insured workers' compensation program?** If a self-insurer voluntarily surrenders certification or has its certificate involuntarily withdrawn by the department, the former self-insurer must continue to do all of the following:

(a) Pay benefits on claims incurred during its period of self-insurance. Claim reopenings and new claims filed for occupational diseases incurred during the period of self-insurance remain the obligation of the former self-insurer.

(b) File quarterly and annual reports as long as quarterly reporting is required. A former self-insurer may ask the department to release it from quarterly reporting after it has had no claim activity with the exception of pension or death benefits for a full year.

(c) Provide surety at the department required level. The department may require an increase in surety based on annual reports as they continue to be filed. Surety will not be reduced from the last required level (while self-insured) until three full calendar years after the certificate was terminated. A bond may be ~~(cancelled)~~ cancelled for future obligations, but it continues to provide surety for claims occurring prior to its cancellation.

(d) Pay insolvency trust assessments for three years after surrender or withdrawal of certificate.

(e) Pay all expenses for a final audit of its self-insurance program.

~~((9))~~ **(8) When could the department consider releasing surety to a former self-insurer or its successor?**

(a) The department may consider releasing surety to a former self-insurer or its successor when all of the following have occurred:

(i) All claims against the self-insurer are closed; and

(ii) The self-insurer has been released from quarterly reporting for at least ten years.

(b) If the department releases surety, the former self-insurer remains responsible for claim reopenings and new claims filed for occupational disease incurred during the period of self-insurance.

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-121, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 06-07-141, filed 3/21/06, effective 5/1/06)

**WAC 296-15-123 (~~(Financial watch-)~~) Monitoring certification.**

~~((1) What is financial watch? Financial watch occurs when the department has concerns regarding a self-insured employer's ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements provided by that employer.~~

~~The purpose of financial watch is two-fold:~~

~~(a) It serves to alert the employer that the department is concerned with its ability to provide benefits to its injured workers; and~~

~~(b) It enforces the due diligence that the department must exercise in preserving the financial integrity of each self-insurer.~~

~~(2) What factors can lead to a firm being placed on financial watch? Contributing factors that can lead to a firm being placed on financial watch are negative changes in the following ratios and trends:~~

- ~~(a) Net losses;~~
- ~~(b) Ratio of debt to equity;~~
- ~~(c) Liquidity ratios;~~
- ~~(d) Ratios of debt and equity to total assets;~~
- ~~(e) Ratio of net income to revenue;~~
- ~~(f) Trends in earnings;~~
- ~~(g) Trends in liquidity;~~
- ~~(h) Trends in levels of debt;~~
- ~~(i) Ratio of tangible net worth to levels of debt.~~

~~To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other analytical ratios. The department may also utilize industry standards and other relevant information in its analysis.~~

~~(3) What are the consequences of being placed on financial watch? At the department's discretion, the surety requirement for a firm being placed on financial watch may be increased by up to twenty-five percent. No reduction in surety will be allowed while an employer is on financial watch.~~

~~(4) How long can a firm remain on financial watch? The status of a firm on financial watch will be re-evaluated annually upon receipt of its audited financial statements. The department may request interim financial information in addition to the annual audited financial statement.~~

~~If significant improvement is not demonstrated to the department's satisfaction after three years of being placed on financial watch, the department may undertake action to withdraw the self-insurance certification of that employer.)~~ (1) To maintain certification, a self-insured employer must remain in good standing with department reporting requirements and payment of assessments, and continue to demonstrate they have the ability to promptly provide benefits to its injured workers based on an analysis of the audited financial statements and related information for that employer.

(2) Credit rating evaluation for financial monitoring.

(a) Credit rating equal to or below B+/B1: Self-insurer must increase their surety by ten percent of estimated claim liabilities.

(b) Credit rating equal to or below CCC+/Caal: Self-insurer must increase their surety by twenty-five percent of estimated claim liabilities.

(c) Credit rating equal to or below CCC-/Caa3: Self-insurer will be placed on corrective action for one year. If no improvement in credit rating, then certification may be withdrawn.

(d) To assess an employer's ability to promptly provide any and all required benefits to its injured workers, the department will utilize these and other financial information. The department may also utilize industry standards and other relevant information in its analysis.

(e) In addition to the actions and other relevant information utilized in (a) through (d) of this subsection, the department, with the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.

[Statutory Authority: RCW 51.04.020, 51.14.020, 51.32.190, 51.14.090, and 51.14.095. WSR 06-07-141, § 296-15-123, filed 3/21/06, effective 5/1/06.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

**WAC 296-15-151 Surety for a public entity's self-insurance program.** ~~((1) How does the department determine the required surety level for a public entity? The required surety level for a public entity will be its estimated claim costs for all claims during the upcoming fiscal year. The minimum surety amount will be determined annually by the department.~~

~~(2) How does a public entity provide surety? By July 1 of each year, each public entity must submit its public entity surety certification. A public entity's surety certification must demonstrate that it has sufficient revenues in its next budget to meet its estimated claim costs for the next fiscal year by documenting:~~

~~(a) The estimated claim liabilities;~~

~~(b) Source of revenues, detailing accounts identified for self insurance obligations; and~~

~~(c) How the cumulative reserve (twenty-five percent of the required surety) is funded. Show the account balance.~~

~~(3) What type of surety may a public entity use for its cumulative reserve? A public entity may provide surety for its cumulative reserve using any of the surety types listed in WAC 296-15-221.)~~ (1) Surety for public entities must be provided on a department developed form consistent with WAC 296-15-121(2). The original will be kept by the department. Required surety must cover at a minimum one hundred twenty-five percent of the expected workers' compensation claim costs occurring in the next calendar year or five hundred thousand dollars, whichever is higher. The surety required may be increased up to the total outstanding liabilities associated with claims occurring during the time an employer functions as a self-insurer based on the credit rating of the employer.

(2) Public entities must provide a public entity surety certification which will provide an estimate of the next calendar year's expected claim costs and the current estimate of the outstanding claim liabilities.

(3) Credit rating evaluation for financial monitoring.

(a) For entities with acceptable credit ratings above B+/B1, the surety requirement will be one hundred twenty-five percent of the next calendar year's expected claim costs or five hundred thousand dollars, whichever is higher.

(b) For entities with credit ratings at or below B+/B1, the surety requirement will be the highest of the above amount, but not less than fifty percent of the current estimate of outstanding claim liabilities.

(c) For entities with credit ratings at or below CCC+/Caal, the surety requirement will be the highest of the above amount, but not less than one hundred percent of the current estimate of outstanding claim liabilities.

(d) In addition to the actions and other relevant information utilized in (a) through (c) of this subsection, the department, with



the director's discretion, may consider general economic conditions to evaluate whether a self-insurer's certification may be maintained or withdrawn.

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-151, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

**WAC 296-15-161 Surety for a group self-insurance program. (1)**  
**How does the department determine the required surety level for a group self-insurer?** (~~(After the initial five years of certification, the department will annually calculate the surety requirement for a group self insurer by comparing its original liability estimate to its reserve fund. If the difference is:~~

~~(a) Less than fifteen percent, the department will accept the stated reserves of the group as the required surety level.~~

~~(b) Greater than fifteen percent, the department will establish the group's required surety level.~~

~~(2) **What type of surety is acceptable for a group self insurer's reserve fund?** A group self insurer's reserve fund must be cash.~~

~~(3)) The department will require that each group provide an actuarial report prepared by an independent qualified actuary (associate or fellow of the casualty actuarial society) that shows the following:~~

~~(a) Development of the next year's rates and allocation to members;~~

~~(b) Calculation of outstanding claims liabilities cover all years after being certified to self-insure; and~~

~~(c) Statement of the adequacy of the group's contingency reserve (assets and liabilities).~~

~~(2) **May a group self-insurer pay expenses from its reserve fund?** A group self-insurer may pay only the following items from its cash reserve fund:~~

~~(a) Administrative expenses for operating the group self-insurance program, including claims handling expenses, legal, investigative or administrative costs and department administrative assessments.~~

~~(b) Claim expenditures. Supplemental pension fund (SPRF) benefits may also be paid from the reserve fund if the group redeposits SPRF reimbursements into the reserve account. Interest earned by the reserve account must remain in the account while this method is in effect.~~

~~(c) Reinsurance premiums. All recoveries from these policies must be redeposited into the reserve fund. Within eighteen months of premium payment, the group must return the amount paid for premiums if reinsurance recoveries were not sufficient to return the account to its original amount.~~

~~((4)) (3) **How can a group self-insurer assess its members for reserve fund costs?** A group self-insurer may determine how it will assess members for required reserve fund costs. The group's bylaws must describe the procedures it will use to collect these costs.~~

~~((5)) (4) **Must a group self-insurer purchase reinsurance?** A group self-insurer must obtain reinsurance for each year of operation to ensure adequate protection against catastrophic or unexpected loss.~~

~~((6))~~ (5) **What if a group self-insurer collects excess premiums during a fund year and has a surplus?** A group self-insurer may refund surplus money from a fund year if it retains sufficient money to fulfill all of its workers' compensation obligations. This includes maintaining the required reserve fund.

~~((7))~~ (6) **What if a group self-insurer collects insufficient premiums during a fund year and has a deficit?** The department will demand a group self-insurer ~~((may))~~ to cover a deficit by:

- ~~(a)~~ ~~((After receiving department approval, using:~~
  - ~~(i))~~ Unencumbered surplus from a different fund year;
  - ~~((ii))~~ (b) An alternative method; or
  - ~~((b))~~ (c) Assessing the membership. ~~((The department may require the group to use this method.))~~

[Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-161, filed 11/17/99, effective 12/27/99.]

AMENDATORY SECTION (Amending WSR 09-13-018, filed 6/5/09, effective 7/6/09)

**WAC 296-15-221 Self-insurers' reporting requirements.** (1) **What information must self-insurers report to the department?** Each self-insurer must provide the department:

(a) The name, title, address and phone number of the single contact person who is the liaison with the department in all self-insurance matters. This contact will be sent all department correspondence and is responsible for forwarding information to appropriate parties for timely action.

(b) A copy of its current policy of applying sick leave, health and welfare benefits or any other compensation in conjunction with, or as a substitute for, time loss benefits.

(2) **When must self-insurers notify the department of business status changes?** Self-insurers must notify the department in writing:

(a) Immediately, of any plans to:

- (i) Cease business entirely or cease business in Washington; or
- (ii) Dispose of controlling financial interest of the original self-insurer. The self-insurer must surrender its certificate for cancellation if requested by the department.

(b) Within thirty days, of any:

- (i) Amendment(s) or modification(s) to the self-insurer's articles, charter or agreement of incorporation, association, copartnership or sole proprietorship which will materially change the business identity or structure originally certified.

(A) The department may require additional documentation.

(B) If the self-insurer becomes a subsidiary to another firm, the parent must provide the department with its written guarantee on L&I form F207-040-001 to assume responsibility for all workers' compensation liabilities of the subsidiary if the subsidiary defaults on its liabilities. See WAC 296-15-021 for additional information.

(ii) Separation (for example, divestiture or spinoff) of any part of the original self-insurer.

(A) The original self-insurer remains responsible for claims liability of the separated part up to the date of separation unless the department approves an alternative.

(B) If the separating part wishes to continue being self-insured, it must submit an application for self-insurance certification (L&I Form F207-001-000) to the department at least thirty days before separation.

(C) If certification cannot be granted before separation, industrial insurance coverage must be purchased from the state fund effective the date of separation.

(iii) Relocation, addition or closure of physical locations.

(3) **When must self-insurers notify the department of administrative changes?** A self-insurer must notify the department in writing within ten days, of any change to its:

(a) Single contact person who is the liaison with the department in all self-insurance matters. The self-insurer must include the contact's title, address and phone number.

(b) Contract with a service organization or third party administrator independent of the self-insurer which will participate in the self-insurer's responsibilities. The self-insurer must submit a copy of the new or updated service contract. See WAC 296-15-021 for additional information.

(c) Administrator of its workers' compensation program, if the self-insurer is self-administered instead of contracting with a service organization or third party administrator.

(4) **What reports must self-insurers submit to the department?** Each self-insurer must submit:

(a) Complete and accurate quarterly reports summarizing worker hours and claim costs paid the previous quarter. Self-insurers must use a form substantially similar to the preprinted Quarterly Report for Self-Insured Business, L&I form F207-006-000, form sent by the department. This report is the basis for determining the administrative, second injury fund, supplemental pension, asbestosis and insolvency trust assessments. Payment is due by the date specified on the preprinted report sent by the department.

(i) Worker hours must be reported as defined in chapter 296-17 WAC General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance.

(ii) Claim costs include, but are not limited to:

(A) Time loss compensation. Include the amount of time loss the worker would have been entitled to if kept on full salary.

(B) Permanent partial disability (PPD) awards.

(C) Medical bills.

(D) Prescriptions.

(E) Medical appliances.

(F) Independent medical examinations and/or consultations.

(G) Loss of earning power.

(H) Travel expenses for treatment or rehabilitation.

(I) Vocational rehabilitation expenses.

(J) Penalties paid to injured workers.

(K) Interest on board orders.

(b) A complete and accurate annual report of all claim costs paid for each year of liability with an estimate of future claim costs. The self-insurer must use a form substantially similar to the Annual Report for Self-Insured Businesses (SIF-7), L&I form F207-007-000. This report is due March 1 of each year. The department uses this for the annual determination of each self-insurer's surety requirement.

(c) ~~((A fully audited financial statement within six months after the end of the self-insurer's fiscal year. This report demonstrates the self-insurer's continued ability to provide benefits and pay as~~

~~sessments as required. The department will consider a written request for filing time extension.)~~ Privately held entities are required to submit annually audited financial statements within six months of their fiscal year end, unless the department grants an extension. Failure to provide financial statements will result in increased surety requirements and may result in decertification as a self-insured.

(i) This statement must be prepared by a certified public accountant.

(ii) A self-insurer with a parental guarantee may submit the parent's fully audited financial statement if the parent's audited statement includes the financial condition of all subsidiaries, including the self-insurer.

(iii) A political subdivision of the state may submit a state auditor's report if it includes the self-insurer's audited financial statement. If the state auditor does not audit the self-insurer annually, the self-insurer must submit financial statements prepared internally for any year a report by the state auditor is not available.

[Statutory Authority: RCW 51.14.077, 51.14.150, 51.14.160, 51.44.040, 51.44.070, and 51.44.150. WSR 09-13-018, § 296-15-221, filed 6/5/09, effective 7/6/09. Statutory Authority: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070 and 51.44.150. WSR 99-23-107, § 296-15-221, filed 11/17/99, effective 12/27/99.]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-15-024            Additional certification requirements.

**WSR 21-08-070**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed April 6, 2021, 7:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-05-055.

Title of Rule and Other Identifying Information: Proposed fee increase to the electrical rules under WAC 296-46B-906 Inspection fees, 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees, and 296-46B-911 Electrical testing laboratory and engineer accreditation fees.

Hearing Location(s): On May 11, 2021, at 9:00 a.m. Virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams). Click here to join the meeting [contact agency for link] or visit [Date of Intended Adoption: May 18, 2021.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ODJiOGY2YzctZjcxYi00M2E5LTljZTctZGQyZDQ1Mzc1NDMy%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22acb1df6f-3588-43aa-b503-63aebce21ddc%22%7d; or call in (audio only) 1-253-372-2181, Phone Conference ID 645 544 642# (pound sign must be entered). The virtual/telephonic hearing starts at 9:00 a.m. and will continue until all oral comments are received.</p></div><div data-bbox=)

Submit Written Comments to: Alicia Curry, Department of Labor and Industries (L&I), P.O. Box 44400, Olympia, WA 98504-4400, email [Alicia.Curry@Lni.wa.gov](mailto:Alicia.Curry@Lni.wa.gov), fax 360-902-5292, by 5 p.m., on May 11, 2021.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email [Alicia.Curry@Lni.wa.gov](mailto:Alicia.Curry@Lni.wa.gov), by April 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose a 5.79 percent fee increase for the electrical program to support operating expenses for electrical inspections and other program public safety activities. This is the office of financial management's maximum allowable fiscal growth rate for fiscal year 2022.

Reasons Supporting Proposal: The electrical program's budget and projected revenue were evaluated and a fee increase is needed to support the cost of ongoing services. A fee increase enables the program to continue providing quality and timely services to assure [ensure] safe electrical installations and inspections in homes, businesses, industry, and institutions to protect people and property from electrical hazards.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031, 19.28.041(3), 19.28.051, 19.28.061(3), 19.28.101(6), 19.28.161(2), 19.28.201, 19.28.211(3), 19.28.251, 19.28.420(7), and 19.28.440.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.031, 19.28.041(3), 19.28.051, 19.28.061(3), 19.28.101(6), 19.28.161(2), 19.28.201, 19.28.211(3), 19.28.251, 19.28.420(7), and 19.28.440.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Wayne Molesworth, Project Manager, Tumwater, Washington, 360-902-6234; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act RCW 34.05.328 (5)(b)(vi) rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

Is exempt under RCW 19.85.025(3) as the rules 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.

April 6, 2021  
Joel Sacks  
Director

**OTS-2929.2**

AMENDATORY SECTION (Amending WSR 20-11-053 and 20-14-083, filed 5/19/20 and 6/30/20, effective 10/29/20)

**WAC 296-46B-906 Inspection fees.** To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

**(1) Residential.**

**(a) Single- and two-family residential (New Construction).**

**Notes:**

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	(( <del>\$94.20</del> )) \$99.60
Each additional 500 sq. ft. or portion of	(( <del>\$30.10</del> )) \$31.80
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	(( <del>\$39.20</del> )) \$41.40
(iii) Each outbuilding or detached garage - Inspected separately	(( <del>\$62.00</del> )) \$65.50
(iv) Each swimming pool - Inspected with the service	(( <del>\$62.00</del> )) \$65.50

- (v) Each swimming pool - Inspected separately ((~~\$94.20~~)  
\$99.60)
- (vi) Each hot tub, spa, or sauna - Inspected with the service ((~~\$39.20~~)  
\$41.40)
- (vii) Each hot tub, spa, or sauna - Inspected separately ((~~\$62.00~~)  
\$65.50)
- (viii) Each septic pumping system - Inspected with the service ((~~\$39.20~~)  
\$41.40)
- (ix) Each septic pumping system - Inspected separately ((~~\$62.00~~)  
\$65.50)

**(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).**

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	(( <del>\$101.60</del> ) <u>\$107.40</u> )	(( <del>\$30.10</del> ) <u>\$31.80</u> )
201 to 400	(( <del>\$126.30</del> ) <u>\$133.60</u> )	(( <del>\$62.00</del> ) <u>\$65.50</u> )
401 to 600	(( <del>\$173.50</del> ) <u>\$183.50</u> )	(( <del>\$86.30</del> ) <u>\$91.20</u> )
601 to 800	(( <del>\$222.70</del> ) <u>\$235.50</u> )	(( <del>\$118.60</del> ) <u>\$125.40</u> )
801 and over	(( <del>\$317.60</del> ) <u>\$335.90</u> )	(( <del>\$238.20</del> ) <u>\$251.90</u> )

**(c) Single or multifamily altered services or feeders including circuits.**

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	(( <del>\$86.30</del> ) <u>\$91.20</u> )
201 to 600	(( <del>\$126.30</del> ) <u>\$133.60</u> )
601 and over	(( <del>\$190.40</del> ) <u>\$201.40</u> )

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) ((~~\$46.70~~)  
\$49.40)

**(d) Single or multifamily residential circuits only (no service inspection).**

**Note:**

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

- (i) 1 to 4 circuits (see note above) ((~~\$62.00~~)  
\$65.50)
- (ii) Each additional circuit (see note above) ((~~\$6.60~~)  
\$6.90)

**(e) Mobile homes and modular homes.**

- (i) Mobile home or modular home service or feeder only ((~~\$62.00~~)  
\$65.50)
- (ii) Mobile home service and feeder ((~~\$101.60~~)  
\$107.40)

**(f) Mobile home park sites and RV park sites.**

**Note:**

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

- (i) First site service or site feeder ((~~\$62.00~~)  
\$65.50)
- (ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder ((~~\$39.20~~)  
\$41.40)

**(2) Commercial/industrial.**

**(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).**

**Note:**

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	<del>(\$101.60)</del> \$107.40	<del>(\$62.00)</del> \$65.50
101 to 200	<del>(\$123.70)</del> \$130.80	<del>(\$79.00)</del> \$83.50
201 to 400	<del>(\$238.20)</del> \$251.90	<del>(\$94.20)</del> \$99.60
401 to 600	<del>(\$277.60)</del> \$293.60	<del>(\$110.80)</del> \$117.20
601 to 800	<del>(\$359.10)</del> \$379.80	<del>(\$151.00)</del> \$159.70
801 to 1000	<del>(\$438.40)</del> \$463.70	<del>(\$182.70)</del> \$193.20
1001 and over	<del>(\$478.30)</del> \$505.90	<del>(\$255.00)</del> \$269.70

**(b) Altered services/feeders (no circuits).**

**(i) Service/feeder**

Ampacity	Service/Feeder
0 to 200	<del>(\$101.60)</del> \$107.40
201 to 600	<del>(\$238.20)</del> \$251.90
601 to 1000	<del>(\$359.10)</del> \$379.80
1001 and over	<del>(\$398.90)</del> \$421.90

**(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)** ~~(\$86.30)~~  
\$91.20

**(c) Circuits only.**

**Note:**

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

**(i) First 5 circuits per branch circuit panel** ~~(\$79.00)~~  
\$83.50

**(ii) Each additional circuit per branch circuit panel** ~~(\$6.60)~~  
\$6.90

**(d) Over 600 volts surcharge per permit.** ~~(\$79.00)~~  
\$83.50

**(3) Temporary service(s).**

**Notes:**

(1) See WAC 296-46B-590 for information about temporary installations.

(2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

**Temporary services, temporary stage or concert productions.**

Ampacity	Service/Feeder	Additional Feeder
0 to 60	<del>(\$54.30)</del> \$57.40	<del>(\$27.80)</del> \$29.40
61 to 100	<del>(\$62.00)</del> \$65.50	<del>(\$30.10)</del> \$31.80
101 to 200	<del>(\$79.00)</del> \$83.50	<del>(\$39.20)</del> \$41.40
201 to 400	<del>(\$94.20)</del> \$99.60	<del>(\$46.80)</del> \$49.50



401 to 600	(( <del>\$126.30</del> ) \$133.60)	(( <del>\$62.00</del> ) \$65.50)
601 and over	(( <del>\$143.30</del> ) \$151.50)	(( <del>\$71.30</del> ) \$75.40)

**(4) Irrigation machines, pumps, and equipment.**

**Irrigation machines.**

- (a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL ((~~\$6.60~~)  
\$6.90)
- (b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers ((~~\$94.20~~)  
\$99.60)
- (c) Each additional tower ((~~\$6.60~~)  
\$6.90)

**(5) Miscellaneous - Commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

- (i) First thermostat ((~~\$46.80~~)  
\$49.50)
- (ii) Each additional thermostat inspected at the same time as the first ((~~\$14.50~~)  
\$15.30)

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

- (i) First 2500 sq. ft. or less ((~~\$54.30~~)  
\$57.40)
- (ii) Each additional 2500 sq. ft. or portion thereof ((~~\$14.50~~)  
\$15.30)

**(c) Signs and outline lighting.**

- (i) First sign (no service included) ((~~\$46.80~~)  
\$49.50)
- (ii) Each additional sign inspected at the same time on the same building or structure ((~~\$22.10~~)  
\$23.30)

**(d) Berth at a marina or dock.**

**Note:**

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

- (i) Berth at a marina or dock ((~~\$62.00~~)  
\$65.50)
- (ii) Each additional berth inspected at the same time ((~~\$39.20~~)  
\$41.40)

**(e) Yard pole, pedestal, or other meter loops only.**

- (i) Yard pole, pedestal, or other meter loops only ((~~\$62.00~~)  
\$65.50)
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations ((~~\$14.50~~)  
\$15.30)

**(f) Inspection appointment requested for outside of normal working hours.**

- Regular fee plus surcharge of: ((~~\$118.60~~)  
\$125.40)

**(g) Generators.**

**Note:**

Permanently installed generators: Refer to the appropriate residential or commercial new/alterd service or feeder section.

- Portable generators: Permanently installed transfer equipment for portable generators ((~~\$86.30~~)  
\$91.20)

**(h) Electrical - Annual permit fee.**

**Note:**

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	<b>Inspections</b>	<b>Fee</b>
1 to 3 plant electricians	12	(( <del>\$2,284.20</del> ) <u>\$2,416.40</u> )
4 to 6 plant electricians	24	(( <del>\$4,571.00</del> ) <u>\$4,835.60</u> )
7 to 12 plant electricians	36	(( <del>\$6,856.20</del> ) <u>\$7,253.10</u> )
13 to 25 plant electricians	48	(( <del>\$9,143.00</del> ) <u>\$9,672.30</u> )
More than 25 plant electricians	52	(( <del>\$11,429.80</del> ) <u>\$12,091.50</u> )

**(i) Telecommunications - Annual permit fee.**

**Notes:**

(1) See WAC 296-46B-901(12).

(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum	(( <del>\$188.80</del> ) <u>\$199.70</u> )
Each additional hour, or portion thereof, of portal-to-portal inspection time	(( <del>\$94.20</del> ) <u>\$99.60</u> )

**(j) Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof	(( <del>\$46.80</del> ) <u>\$49.50</u> )
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<b>(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.</b>	(( <del>\$79.00</del> ) <u>\$83.50</u> )
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**(6) Carnival inspections.**

**(a) First carnival field inspection each calendar year.**

(i) Each ride and generator truck	(( <del>\$22.10</del> ) <u>\$23.30</u> )
(ii) Each remote distribution equipment, concession, or gaming show	(( <del>\$6.60</del> ) <u>\$6.90</u> )
(iii) If the calculated fee for first carnival field inspection above is less than (( <del>\$100.50</del> ) <u>\$106.30</u> ), the minimum inspection fee will be:	(( <del>\$118.60</del> ) <u>\$125.40</u> )

**(b) Subsequent carnival inspections.**

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show	(( <del>\$118.60</del> ) <u>\$125.40</u> )
(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show	(( <del>\$6.60</del> ) <u>\$6.90</u> )

**(c) Concession(s) or ride(s) not part of a carnival.**

(i) First field inspection each year of a single concession or ride, not part of a carnival	(( <del>\$94.20</del> ) <u>\$99.60</u> )
(ii) Subsequent inspection of a single concession or ride, not part of a carnival	(( <del>\$62.00</del> ) <u>\$65.50</u> )

**(7) Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)	(( <del>\$94.20</del> ) <u>\$99.60</u> )
(b) Submitter notifies the department that work is ready for inspection when it is not ready.	(( <del>\$46.80</del> ) <u>\$49.50</u> )
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	(( <del>\$46.80</del> ) <u>\$49.50</u> )

(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	(( <del>\$46.80</del> ) \$49.50)
(e) Each trip necessary to remove a noncompliance notice.	(( <del>\$46.80</del> ) \$49.50)
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	(( <del>\$46.80</del> ) \$49.50)
(g) Installations that are covered or concealed before inspection.	(( <del>\$46.80</del> ) \$49.50)

**(8) Progress inspections.****Note:**

The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

**On partial or progress inspections, each 1/2 hour.** ((~~\$46.80~~)  
\$49.50)

**(9) Plan review.**

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906.	35%
(b) Plan review submission fee .	(( <del>\$79.00</del> ) \$83.50)
(c) Supplemental submissions of plans per hour or fraction of an hour of review time.	(( <del>\$94.20</del> ) \$99.60)
(d) Plan review handling fee.	(( <del>\$22.10</del> ) \$23.30)

**(10) Out-of-state inspections.**

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

**(11) Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour: ((~~\$94.20~~)  
\$99.60)

**(12) Variance request processing fee.**

Variance request processing fee. This fee is nonrefundable once the transaction has been validated. ((~~\$94.20~~)  
\$99.60)

**(13) Class B basic electrical work labels.**

(a) Block of twenty Class B basic electrical work labels (not refundable).	(( <del>\$258.70</del> ) \$273.60)
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	(( <del>\$46.80</del> ) \$49.50)
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	(( <del>\$46.80</del> ) \$49.50)

**(14) Provisional electrical work permit labels.**

Block of twenty provisional electrical work permit labels. ((~~\$258.70~~)  
\$273.60)

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 20-11-053 and 20-14-083, § 296-46B-906, filed 5/19/20 and 6/30/20, effective 10/29/20. Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-906, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031, 19.28.101, 19.28.051, and 19.28.211. WSR 16-23-139, § 296-46B-906, filed 11/22/16, effective 1/1/17. Statutory Authority: Chapter 19.28 RCW. WSR 14-11-075, § 296-46B-906, filed 5/20/14, effective 7/1/14; WSR 13-03-128, § 296-46B-906, filed 1/22/13, effective

3/1/13. Statutory Authority: Chapter 19.28 RCW and 2011 1st sp.s. c 50. WSR 12-11-108, § 296-46B-906, filed 5/22/12, effective 6/30/12. Statutory Authority: Chapter 19.28 RCW and 2009 c 564. WSR 10-18-025, § 296-46B-906, filed 8/24/10, effective 10/1/10. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-906, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-906, filed 11/25/08, effective 12/31/08; WSR 06-24-041, § 296-46B-906, filed 11/30/06, effective 12/31/06.]

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.**

- Notes:**
- (1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.
  - (2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.
  - (3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

**(1) General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)**

- |   |                                       |
|---|---------------------------------------|
| (a) Initial application or renewal made in person, by mail, or by fax               | (( <del>\$277.60</del> )<br>\$293.60) |
| (b) Renewal fully completed using the online web process                            | (( <del>\$240.10</del> )<br>\$254.00) |
| (c) Reinstatement of a general or specialty contractor's license after a suspension | (( <del>\$56.20</del> )<br>\$59.40)   |

**(2) Master electrician/administrator/electrician/trainee certificate.**

- |  |                                     |
|--|-------------------------------------|
| (a) Examination application (nonrefundable)  |                                     |
| Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.) | (( <del>\$34.70</del> )<br>\$36.70) |

**(b) Examination fees (nonrefundable)**

**Note:**

Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.

- |   |                                       |
|---|---------------------------------------|
| (i) Master electrician or administrator first-time examination fee (when administered by the department)                | (( <del>\$83.80</del> )<br>\$88.60)   |
| (ii) Master electrician or administrator retest examination fee (when administered by the department)                   | (( <del>\$98.20</del> )<br>\$103.80)  |
| (iii) Journey level or specialty electrician examination fee (first test or retest when administered by the department) | (( <del>\$63.10</del> )<br>\$66.70)   |
| (iv) Certification examination review fee   | (( <del>\$129.90</del> )<br>\$137.40) |

**(c) Original certificates (nonrefundable after certificate has been issued)**

- |  |                                       |
|--|---------------------------------------|
| (i) Electrical administrator original certificate (except 09 telecommunication)        | (( <del>\$125.60</del> )<br>\$132.80) |
| (ii) Telecommunications administrator original certificate (for 09 telecommunications) | (( <del>\$83.50</del> )<br>\$88.30)   |

(iii) Master electrician exam application (includes original certificate and application processing fee) <b>(((\$34.70)) \$36.70 is nonrefundable after application is submitted)</b>	<del>(\$160.60)</del> <u>\$169.80</u>
(iv) Journey level, specialty, or reciprocal electrician application (includes original certificate and application processing fee) <b>(((\$34.70)) \$36.70 is nonrefundable after application is submitted)</b>	<del>(\$90.00)</del> <u>\$95.20</u>
(v) Training certificate	
(A) Initial application made in person, by mail, or by fax	<del>(\$44.10)</del> <u>\$46.60</u>
(B) Initial application fully completed online using the online web process	<del>(\$37.90)</del> <u>\$40.00</u>
(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) <b>(((\$53.40)) \$56.40 is nonrefundable after application is submitted)</b>	<del>(\$80.30)</del> <u>\$84.90</u>
(D) 75% supervision modified training certificate.	<del>(\$53.40)</del> <u>\$56.40</u>
(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b).	<del>(\$26.40)</del> <u>\$27.90</u>
<b>(d) Certificate renewal (nonrefundable)</b>	
(i) Master electrician or administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	<del>(\$158.70)</del> <u>\$167.80</u>
(B) Renewal fully completed using the online web process	<del>(\$137.90)</del> <u>\$145.80</u>
(ii) Telecommunications <b>(09)</b> administrator certificate renewal	
(A) Renewal made in person, by mail, or by fax	<del>(\$105.70)</del> <u>\$111.80</u>
(B) Renewal fully completed using the online web process	<del>(\$91.20)</del> <u>\$96.40</u>
(iii) Late renewal of master electrician or administrator certificate	
(A) Renewal made in person, by mail, or by fax	<del>(\$317.50)</del> <u>\$335.60</u>
(B) Renewal fully completed using the online web process	<del>(\$275.90)</del> <u>\$291.60</u>
(iv) Late renewal of telecommunications <b>(09)</b> administrator certificate	
(A) Renewal made in person, by mail, or by fax	<del>(\$211.60)</del> <u>\$223.60</u>
(B) Renewal fully completed using the online web process	<del>(\$182.50)</del> <u>\$192.80</u>
(v) Journey level or specialty electrician certificate renewal	
(A) Renewal made in person, by mail, or by fax	<del>(\$83.50)</del> <u>\$88.30</u>
(B) Renewal fully completed using the online web process	<del>(\$72.70)</del> <u>\$76.90</u>
(vi) Late renewal of journey level or specialty electrician certificate	
(A) Renewal made in person, by mail, or by fax	<del>(\$167.20)</del> <u>\$176.60</u>
(B) Renewal fully completed using the online web process	<del>(\$145.50)</del> <u>\$153.80</u>
(vii) Trainee update of hours submitted more than 30 days after expiration of a training certificate	<del>(\$53.40)</del> <u>\$56.40</u>
(viii) Trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	<del>(\$53.40)</del> <u>\$56.40</u>
(B) Renewal fully completed using the online web process when the affidavit of experience is submitted per WAC 296-46B-942 (8)(d)	<del>(\$46.60)</del> <u>\$49.20</u>
(ix) Late trainee certificate renewal	
(A) Renewal made in person, by mail, or by fax	<del>(\$74.90)</del> <u>\$79.20</u>

(B) Renewal fully completed using the online web process	(\$65.20) <u>\$68.90</u>
<b>(e) Certificate - Reinstatement (nonrefundable)</b>	
(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee)	(\$56.20) <u>\$59.40</u>
(ii) Reinstatement of suspended journey level, or specialty electrician certificate (in addition to normal renewal fee)	(\$26.40) <u>\$27.90</u>
<b>(f) Assignment/unassignment of master electrician/administrator designation (nonrefundable)</b>	
	(\$41.60) <u>\$44.00</u>
<b>(3) Certificate/license.</b>	
(a) Replacement for lost or damaged certificate/license. (Nonrefundable.)	(\$18.20) <u>\$19.20</u>
(b) Optional display quality General Master Electrician certificate.	(\$29.60) <u>\$31.30</u>
<b>(4) Continuing education courses or instructors. (Nonrefundable.)</b>	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	(\$53.50) <u>\$56.50</u>
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	(\$130.20) <u>\$137.70</u>
<b>(5) Copy fees. (Nonrefundable.)</b>	
(a) <b>Certified copy of each document (maximum charge per file):</b>	(\$59.10) <u>\$62.50</u>
(i) First page:	(\$26.40) <u>\$27.90</u>
(ii) Each additional page:	(\$2.10) <u>\$2.20</u>
(b) RCW or WAC printed document:	(\$5.80) <u>\$6.10</u>
<b>(6) Training school program review fees. Initial training school program review fee. (Nonrefundable.)</b>	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	(\$615.30) <u>\$650.90</u>
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	(\$307.60) <u>\$325.40</u>

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031 and 19.28.251. WSR 19-15-117, § 296-46B-909, filed 7/23/19, effective 8/23/19. Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031, 19.28.101, 19.28.051, and 19.28.211. WSR 16-23-139, § 296-46B-909, filed 11/22/16, effective 1/1/17. Statutory Authority: Chapter 19.28 RCW. WSR 14-11-075, § 296-46B-909, filed 5/20/14, effective 7/1/14; WSR 13-03-128, § 296-46B-909, filed 1/22/13, effective 3/1/13. Statutory Authority: Chapter 19.28 RCW and 2011 1st sp.s. c 50. WSR 12-11-108, § 296-46B-909, filed 5/22/12, effective 6/30/12. Statutory Authority: Chapter 19.28 RCW and 2009 c 564. WSR 10-18-025, § 296-46B-909, filed 8/24/10, effective 10/1/10. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 09-20-032, § 296-46B-909, filed 9/29/09, effective 10/31/09; WSR 08-24-048, § 296-46B-909, filed 11/25/08, effective

tive 12/31/08; WSR 06-24-041, § 296-46B-909, filed 11/30/06, effective 12/31/06.]

AMENDATORY SECTION (Amending WSR 16-23-139, filed 11/22/16, effective 1/1/17)

**WAC 296-46B-911 Electrical testing laboratory and engineer accreditation fees.** The amount of the fee due is calculated based on the fee effective at the date payment is made.

<b>Electrical testing laboratory</b>	
<b>Initial filing fee: (Nonrefundable)</b>	(( <del>\$585.00</del> ) \$618.80)
<b>Initial accreditation fee:</b>	
1 product category	(( <del>\$292.40</del> ) \$309.30)
Each additional category for the next 19 categories	(( <del>\$116.90</del> ) \$123.60 each)
Maximum for 20 categories or more	(( <del>\$2,515.70</del> ) \$2,661.30)
<b>Renewal fee: (Nonrefundable)</b>	50% of initial filing fee
<b>Renewal of existing accreditations</b>	
Each additional category for the next 19 categories	(( <del>\$116.90</del> ) \$123.60 each)
Maximum for 20 categories or more	(( <del>\$2,515.70</del> ) \$2,661.30)
Engineer for evaluating industrial utilization equipment	
<b>Initial filing fee: (Nonrefundable)</b>	(( <del>\$585.00</del> ) \$618.80)
<b>Renewal fee: (Nonrefundable)</b>	50% of initial filing fee

[Statutory Authority: Chapter 19.28 RCW, RCW 19.28.031, 19.28.101, 19.28.051, and 19.28.211. WSR 16-23-139, § 296-46B-911, filed 11/22/16, effective 1/1/17. Statutory Authority: Chapter 19.28 RCW and chapter 50, Laws of 2011 (2ESHB 1087). WSR 12-11-108, § 296-46B-911, filed 5/22/12, effective 6/30/12. Statutory Authority: Chapter 19.28 RCW and 2009 c 564. WSR 10-18-025, § 296-46B-911, filed 8/24/10, effective 10/1/10. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.281, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551. WSR 06-05-028, § 296-46B-911, filed 2/7/06, effective 5/1/06. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2003 c 399, 2003 c 211, 2003 c 78, and 2003 c 242. WSR 04-12-049, § 296-46B-911, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 19.28.006, 19.28.010, 19.28.031, 19.28.041, 19.28.061, 19.28.101, 19.28.131, 19.28.161, 19.28.171, 19.28.191, 19.28.201, 19.28.211, 19.28.241, 19.28.251, 19.28.271, 19.28.311, 19.28.321, 19.28.400, 19.28.420, 19.28.490, 19.28.551, 2002 c 249, chapters 34.05 and 19.28 RCW. WSR 03-09-111, § 296-46B-911, filed 4/22/03, effective 4/22/03.]

**WSR 21-08-072**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 6, 2021, 9:12 a.m.]

Supplemental Notice to WSR 20-20-086.

Preproposal statement of inquiry was filed as WSR 20-13-047.

Title of Rule and Other Identifying Information: The department is proposing additional amendments to WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

Hearing Location(s): On May 11, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 South Washington Street, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than May 12, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., May 11, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by April 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Additional proposed amendments clarify language regarding acceptance of certificates of parental improvement, as issued by the department of children, youth, and families (DCYF), for purposes of eligibility for temporary assistance for needy families cash assistance benefits in cases where nonrelative adults are acting in place of a parent without court-ordered custody. The amendments clarify that the applicant must disclose, and DSHS must verify, the certificate of parental improvement prior to excluding the related founded finding of child abuse or neglect from consideration as part of the background check determination.

Reasons Supporting Proposal: The additional proposed language reflects new policy regarding certificates of parental improvement implemented by DCYF under 2SHB 1645 (chapter 270, Laws of 2020) effective January 1, 2021.

Statutory Authority for Adoption: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

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: Melissa Kenney, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-3272.

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, "[t]his 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

April 5, 2021  
Katherine I. Vasquez  
Rules Coordinator

#### SHS-4834.4

AMENDATORY SECTION (Amending WSR 16-24-037, filed 11/30/16, effective 1/1/17)

**WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody.** (1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:

(a) Is not related to you; and

(b) Lives with you but you do not have a court order that gives you legal custody of the child.

(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.

(3) A child who is not related to you cannot receive benefits while living with you if:

(a) You have been convicted of a crime listed in WAC ((388-06A-0170)) 110-04-0100 (1)(a) through (e); or

(b) You have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110 (1) through (3) within the last five years; or

(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or

(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.

(4) We review your background when you have been convicted of a crime listed in WAC ((388-06A-0180)) 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of convictions in your background; and

(d) Your age at the time of the conviction.

(5) When you have a conviction for a crime other than those listed in WAC ((388-06A-0170)) 110-04-0100 (1)(a) through (e), or

~~((388-06A-0180))~~ 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.

(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify it, then the related founded finding of child abuse or neglect, or dependency finding will not be considered in our determination under this section.

(7) Expunged or sealed conviction records do not count against you.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 16-24-037, § 388-454-0006, filed 11/30/16, effective 1/1/17. Statutory Authority: RCW 13.32A.080, 13.32A.082, 74.04.050, 74.08.090, 74.12.290, 74.12.450, 74.12.460. WSR 02-01-011, § 388-454-0006, filed 12/7/01, effective 1/7/02.]

**WSR 21-08-081**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 7, 2021, 8:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-20-135.

Title of Rule and Other Identifying Information: Chapter 392-380 WAC Public school pupils—Immunization requirement and life-threatening health condition.

Hearing Location(s): On May 11, 2021, at 1:00 p.m. Webinar via Zoom (call-in option will be available). Due to the public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom. There will be no physical location for the hearing. For information on registering and participating, please visit the superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospirulemaking-activity> [<https://www.k12.wa.us/policy-funding/ospirulemaking-activity>]. Questions, email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us).

Date of Intended Adoption: May 14, 2021.

Submit Written Comments to: Annie Hetzel, School Health Services, OSPI, P.O. Box 47200, Olympia, WA 98504, email [Annie.hetzel@k12.wa.us](mailto:Annie.hetzel@k12.wa.us), fax 360-664-3028, by May 11, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email [Kristin.murphy@k12.wa.us](mailto:Kristin.murphy@k12.wa.us), by May 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule amendments to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320.

Reasons Supporting Proposal: Rules adopted by the Washington state board of health, in August 2020, regarding school immunization requirements increase the possibility that students may be excluded from school due to noncompliance with these requirements. This, coupled with the current lack of clarity in chapter 392-380 WAC regarding procedural and substantive due process safeguards for students who are excluded from school due to noncompliance with immunization requirements, create a need to amend the chapter.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

Statute Being Implemented: RCW 28A.210.120 and 28A.210.320.

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

Name of Proponent: OSPI, [governmental].

Name of Agency Personnel Responsible for Drafting and Implementation: Annie Hetzel, OSPI, 600 Washington Street S.E., Olympia, 360-725-6054.

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.

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed

amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

April 7, 2021  
Chris P. S. Reykdal  
State Superintendent  
of Public Instruction

## OTS-2569.1

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(1)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~(246-100-166(5))~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization(~~(7)~~) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is

required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall ~~((mean parent, legal guardian, or other adult in loco parentis))~~ have the same meaning as in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-020, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-045 School attendance conditioned upon presentation of proofs.** (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by ~~((a))~~ the student's parent ~~((, guardian or other adult in loco parentis))~~.

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-045, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-050 Written notice prior to exclusions from school.**

~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

~~(2) The written notice for public school students shall:~~

~~(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.~~

~~(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.~~

~~(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.~~

~~(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.~~

~~(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.)~~ **(1) Written notice.**

Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

(2) Language assistance. The school must ensure the written notice is provided in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with commu-

nication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-050, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

**WAC 392-380-080 Prehearing and hearing process.** ~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~ (1) Requesting a hearing. A student or the parent may request a hearing to the chief administrator orally or in writing.

(2) Notice. Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

(3) Hearing. The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

(4) Hearing decision. The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(5) Language assistance. The school must ensure the notice, hearing proceedings, and written hearing decision are in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-080, filed 5/25/07, effective 6/25/07.]

**WSR 21-08-082**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 7, 2021, 8:59 a.m.]

Supplemental Notice to WSR 20-23-040.

Preproposal statement of inquiry was filed as WSR 20-14-104.

Title of Rule and Other Identifying Information: The department is proposing additional amendments to WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation.

Hearing Location(s): On May 11, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 South Washington Street, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than May 12, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m., May 11, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov), by April 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments expand exemption from mandatory participation to recipients who are unable to participate in WorkFirst activities due to a declared state of emergency.

Reasons Supporting Proposal: The proposed amendments are necessary to clarify exemption from mandatory participation when a declared state of emergency prevents clients from participating in WorkFirst activities.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010.

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: Jennie Fitzpatrick, P.O. Box 45470, Olympia, WA 98504, 360-688-6275.

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, "[t]his 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

April 5, 2021  
Katherine I. Vasquez



**SHS-4789.3**

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

**WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?**

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are fifty-five years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than ten hours a week and is expected to last at least twelve months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than ten hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time; and

(ii) No adult other than yourself is available and able to provide the care; and

(iii) The adult with the disability is related to you; and

(iv) You are unable to participate in work activities for more than ten hours per week because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) Unable to participate in WorkFirst activities due to a declared state of emergency.

**(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?**

We accept medical evidence from the following sources when considering disability:

(a) For a physical impairment:

(i) A physician, which includes:

(A) Medical doctor (M.D.); and

(B) Doctor of osteopathy (D.O.);

(ii) An advanced registered nurse practitioner (ARNP) for physical impairments;

(iii) A physician's assistant (P.A.);

(iv) A doctor of optometry (O.D.) for visual acuity impairments;

or

(v) Doctor of podiatry (D.P.) for foot disorders;

(b) For a mental impairment:

(i) A psychiatrist;

(ii) A psychologist;

(iii) An ARNP certified in psychiatric nursing;

(iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or

(v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

**(3) Who reviews and approves an exemption from participation?**

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between thirty days and up to ninety if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

**(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?**

When you are exempt due to your severe and chronic disability, you may be required to:

(a) Pursue SSI or another type of federal disability benefit; and/or

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

**(5) Can I participate in WorkFirst while I am exempt?**

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

**(6) Does an exemption from participation affect my sixty-month time limit for receiving TANF/SFA benefits?**

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit as described in WAC 388-484-0005.

**(7) How long will my exemption last?**

Unless you are an older caretaker relative, your exemption will be reviewed at least every twelve months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

**(8) What happens when I am no longer exempt?**

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received sixty or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-310-0350, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-310-0350, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.340. WSR 09-16-079, § 388-310-0350, filed 7/31/09, effective 9/1/09; WSR 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]

**WSR 21-08-087**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**  
[Filed April 7, 2021, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-090.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the department is proposing adding all species in the genus *Vespa* (hornet) to the list of quarantined pests.

The proposed rules would prohibit live life stages of hornet species from being sold, offered for sale, distributed, or knowingly moved throughout or received within Washington.

Under the proposed amendment, additional restrictions would apply to "infested sites," defined as all real property within twenty meters of a nest containing any live life stage of hornet. The Washington state department of agriculture (WSDA) will attempt to notify occupants and/or owners of those properties that their property has been designated as an infested site. When an infested site has been designated, no person may enter the area without authorization until WSDA has deemed it clear of infestation. This limits the risk to public health and safety, as well as prevents further infestation. The rule clarifies that WSDA inspectors may enter infested sites to remove and treat the nest and hornets.

A special permit would be established under the proposed amendment, which would allow for the possession of live hornets for research purposes.

Hearing Location(s): On May 11, 2021, at 1:00 p.m., Microsoft Teams conference line. Join by link [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_NGI5ZTBjYTAatMTVjMS00ODkxLWJjNDUtNmNlODBjMjU5YjAx%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](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGI5ZTBjYTAatMTVjMS00ODkxLWJjNDUtNmNlODBjMjU5YjAx%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). Join by phone +1 564-999-2000, ID 636 676 622#. Due to the mandated social distancing requirements in place during the current COVID-19 pandemic, the public hearing will be held solely over video and teleconference.

Date of Intended Adoption: May 18, 2021.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by 5:00 p.m., May 11, 2021.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388 or 711, email [dpainter@agr.wa.gov](mailto:dpainter@agr.wa.gov), by May 4, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 17.24 RCW mandates "a strong system" to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and infestations. WSDA is charged with implementing that mandate by excluding plant and bee pests and diseases from pest free areas of the state through the regulation of agricultural commodity movement and the quarantining of infested areas. RCW 17.24.041 authorizes the director of WSDA to adopt quarantine areas by rule.

Under the proposed amendment, when a hornet nest is discovered and an infested site has been designated, no person may come within twenty meters of the hornet nest without authorization until the department deems it clear from any live life stage of hornet. The department will attempt to notify the owner and/or occupants of the property about the designation of the area as an infested site. In the department's discretion, authorization may be granted to enter an infested site subject to conditions to limit the risks of further infestation and ensure that the nest is appropriately removed and treated. Hornet nests can be found in a variety of places, but the most common are in trees, voids of structures, subterranean cavities, and mulch. The Asian giant hornet species discovered in Washington prefers subterranean nest construction in the dry soil of wooded areas, but has also been known to nest in trees above ground. Hornet stings are extremely painful and can be life threatening. Restricting access to the area surrounding a nest is a safety precaution that prevents stings and exposure to any control measures that may be used to treat the nest. Additionally, restricting access also limits the risk of unintended spread, which may lead to further infestation.

After a hornet nest is removed and the possibility of straggler hornets is no longer present, the designation of the infested site will be lifted. Typically, WSDA will remove a hornet nest as soon as possible. The time it takes to remove a nest is situational and depends on factors such as weather, the presence of obstructions, and the availability of equipment. Generally, removal would not take longer than two weeks. To date, only one hornet nest removal has taken place in the state.

The proposed amendment would also prohibit live life stages of hornet species from being sold, offered for sale, distributed, or knowingly moved throughout or received within Washington. This would prohibit any business from selling or distributing any live life stage of hornet species. WSDA is not currently aware of any businesses within the state that sell or distribute hornet species.

A special permit would be established under the proposed amendment, which would allow for the possession of live hornets for research purposes. This would allow researchers to test the effectiveness of lures and attractants, perform behavioral studies, and study the dispersal capability of queens. Studying live hornets will provide researchers with valuable information that will enable them to better track existing populations and prevent further spread.

Reasons Supporting Proposal: Hornets pose a direct and indirect risk to agricultural crops in Washington state. They have been known to feed on fruit such as pears, peaches, plums, grapes, berries, and apples making the fruit unfit for human consumption. Hornets attack honey bees and other native insect populations. Managed honey bees and other native insects are important pollinators that are vital to the production of agriculture. Many crops within the state, such as fruits, vegetables, and crops for livestock feed, depend on these pollinating insects for reproduction. Pollination also contributes to higher crop yields, making pollinators economically valuable to Washington's agricultural industry. If hornets were to become established within the state, there could be dire economic and ecological impacts.

Hornets can pose a risk to human health. The venom in their sting can be toxic and unlike bees, they can sting repeatedly. A sting from a hornet can cause substantial pain, as well as tissue damage. In some extremely rare cases, death can also occur. Although hornets don't generally target people, they can attack when threatened. Hornets eat

ripe fruit, which could put fruit harvesters at a higher risk of getting stung.

International and interstate shipping has led to a greater potential for the distribution of hornets into the state. Mated queens often seek sheltered locations in which to undergo diapause (a dormant period). These locations are sometimes on items that are transported, making it easier for the species to spread to new areas. In the past few years, multiple detections have occurred, with Oriental hornet (*Vespa orientalis*) being found in Washington in 2010, *Vespa tropica* was detected in Guam in 2016, and *Vespa soror* was found in neighboring Vancouver, B.C. in 2019. There were multiple detections of Asian giant hornet (*Vespa mandarinia*) in Washington and Vancouver, B.C. in 2019 and 2020. Also in 2020, *Vespa crabro* was detected in B.C. and Oregon. Certain hornet species have a greater likelihood of becoming established once introduced into the state. This is due to Washington's climate and other environmental factors which result in a suitable habitat. For some hornet species, there is a lack of scientific information available. However, there are characteristic traits that all hornets possess, making it prudent to establish a quarantine against all hornet species. No species of hornet are native to Washington state and managing an invasive population once it is established is challenging and costly. Any hornet introduction could upset the state's ecosystem in a number of ways, including spreading new pathogens and parasites to native wasps, bees, and yellow jackets. Creating a quarantine for all species of hornet will allow WSDA to monitor and eradicate any potential introduction. The anticipated effects of the proposed amendment will restrict the movement of any live life stage of hornet found within the state.

Establishing a quarantine for hornets will protect the agricultural industry in multiple ways. It will protect native honey bee and insect populations, which act as important pollinators for agricultural crops throughout the state. The quarantine will also protect the state's beekeeping industry, as some species of hornet, such as the Asian giant hornet (*Vespa mandarinia*), have been known to rapidly attack and destroy honey bee hives. Hornets also feed on ripe fruit, making it unfit for human consumption and posing a potential health risk to fruit harvesters who could be stung. Lastly, any hornet introduction could impact the state's ecosystem as hornets could prey upon native insects and could introduce new pathogens and parasites to native insect populations.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.021, and 17.24.041.

Statute Being Implemented: Chapter 17.24 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, Implementation, and Enforcement: Greg Haubrich, 1111 Washington Street, Olympia, WA 98504, 360-902-2071.

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).

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

### Small Business Economic Impact Statement

Chapter 16-470 WAC  
Quarantine - Agricultural Pests  
Hornet Quarantine  
April 7, 2021

**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: Chapter 17.24 RCW mandates "a strong system" to protect the forest, agricultural, horticultural, floricultural, and apiary industries of the state from the impact of insect pests, plant pathogens, noxious weeds, and bee pests and infestations. WSDA is charged with implementing that mandate by excluding plant and bee pests and diseases from pest free areas of the state through the regulation of agricultural commodity movement and the quarantining of infested areas. RCW 17.24.041 authorizes the director of WSDA to adopt quarantine areas by rule.

Hornets pose a direct and indirect risk to agricultural crops in Washington state. They have been known to feed on fruit such as pears, peaches, plums, grapes, berries, and apples making the fruit unfit for human consumption. Hornets attack honey bees and other native insect populations. Managed honey bees and other native insects are important pollinators that are vital to the production of agriculture. Many crops within the state, such as fruits, vegetables, and crops for livestock feed, depend on these pollinating insects for reproduction. Pollination also contributes to higher crop yields, making pollinators economically valuable to Washington's agricultural industry. If hornets were to become established within the state, there could be dire economic and ecological impacts.

Hornets can pose a risk to human health. The venom in their sting can be toxic and unlike bees, they can sting repeatedly. A sting from a hornet can cause substantial pain, as well as tissue damage. In some extremely rare cases, death can also occur. Although hornets don't generally target people, they can attack when threatened. Hornets eat ripe fruit, which could put fruit harvesters at a higher risk of getting stung.

International and interstate shipping has led to a greater potential for the distribution of hornets into the state. Mated queens often seek sheltered locations in which to undergo diapause (a dormant period). These locations are sometimes on items that are transported, making it easier for the species to spread to new areas. In the past few years, multiple detections have occurred, with Oriental hornet (*Vespa orientalis*) being found in Washington in 2010, *Vespa tropica* was detected in Guam in 2016, and *Vespa soror* was found in neighboring Vancouver, B.C. in 2019. There were multiple detections of Asian giant hornet (*Vespa mandarinia*) in Washington and Vancouver, B.C. in 2019 and 2020. Also in 2020, *Vespa crabro* was detected in B.C. and Oregon. Certain hornet species have a greater likelihood of becoming established once introduced into the state. This is due to Washington's climate and other environmental factors which result in a suitable habitat. For some hornet species, there is a lack of scientific information available. However, there are characteristic traits that all hornets possess, making it prudent to establish a quarantine against all hornet species. No species of hornet are native to Washington state and managing an invasive population once it is established is

challenging and costly. Any hornet introduction could upset the state's ecosystem in a number of ways, including spreading new pathogens and parasites to native wasps, bees, and yellow jackets. Creating a quarantine for all species of hornet will allow WSDA to monitor and eradicate any potential introduction. The anticipated effects of the proposed amendment will restrict the movement of any live life stage of hornet found within the state.

Establishing a quarantine for hornets will protect the agricultural industry in multiple ways. It will protect native honey bee and insect populations, which act as important pollinators for agricultural crops throughout the state. The quarantine will also protect the state's beekeeping industry, as some species of hornet, such as the Asian giant hornet (*Vespa mandarinia*), have been known to rapidly attack and destroy honey bee hives. Hornets also feed on ripe fruit, making it unfit for human consumption and posing a potential health risk to fruit harvesters who could be stung. Lastly, any hornet introduction could impact the state's ecosystem as hornets could prey upon native insects and could introduce new pathogens and parasites to native insect populations.

Proposed Rule Amendments: Restrictions under the proposed amendment would prohibit live life stages of hornet species from being sold, offered for sale, distributed, or knowingly moved throughout or received within Washington.

Under the proposed amendment, additional restrictions would apply to "infested sites," defined as all real property within twenty meters of a nest containing any live life stage of hornet. WSDA will attempt to notify occupants and/or owners of those properties that their property has been designated as an infested site. When an infested site has been designated, no person may enter the area without authorization until WSDA has deemed it clear of infestation. This limits the risk to public health and safety, as well as prevents further infestation. The rule clarifies that WSDA inspectors may enter infested sites to remove and treat the nest and hornets.

The allowance of a special permit issued by the director would be established under the proposed amendment, which would allow for the possession of live hornets for research purposes. The issuance of these permits would be subject to conditions and provisions deemed necessary for the protection of Washington's agriculture.

Required Professional Services: The proposed amendment would not require professional 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.**

Although a hornet nest may be detected at any business or industry type, the following industries sell products which may be more suitable locations for a nest.

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Businesses	1% of Average Annual Payroll*	0.3% of Average Annual Gross Business Income**
111332	Grape Vineyards	187	\$4,838.62	\$655.69
111334	Berry (except strawberry) farming	207	\$2,891.00	\$6,275.41
111421	Nursery and tree production	195	\$4,955.96	\$2,712.36
111940	Hay farming	317	\$1,312.82	\$3,818.83
112910	Apiculture	37	\$1,273.61	\$420.48



113110	Timber tract operations	21	\$7,685.17	\$5,288.01
113210	Forest nurseries and gathering of forest products	11	\$3,125.97	\$14,375.35
113310	Logging	405	\$4,733.17	\$4,855.13
115310	Support activities for forestry	177	\$3,524.04	\$2,385.67
312130	Wineries	425	\$3,581.58	\$3,369.76
321999	All other miscellaneous wood product manufacturing	37	\$4,843.39	\$10,709.65
424910	Farm supplies merchant wholesalers	301	\$7,647.50	\$37,719.39
444220	Nursery, garden center, and farm supply stores	392	\$3,429.16	\$3,622.59
561730	Landscaping services	3262	\$1,971.15	\$790.57

\* Data source: 2018 employment security department and 2018 Quarterly Census of Employment and Wages (Bureau of Labor Statistics).

\*\* Data source: 2018 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.**

Hornet nests can be detected in multiple ways. Some are located through chance encounters by the public, which are then reported to WSDA. Others are found through visual survey of areas where hornets have been spotted. A nest can also be located using a live hornet caught in a trap. The hornet is tagged and radio telemetry is used to track the hornet back to its nest. Currently, WSDA traps for all twenty-three species in the Genus *Vespa*.

Under the proposed amendment, when a hornet nest is discovered and an infested site has been designated, no person may come within twenty meters of the hornet nest without authorization until the department deems it clear from any live life stage of hornet. In the department's discretion, authorization may be granted to enter an infested site subject to conditions to limit the risk to public health and safety, as well as prevent further infestation and ensure that the nest is appropriately removed and treated. Additionally, no live life stage of hornet can be sold, offered for sale, distributed, or knowingly moved within the state.

Hornet nests can be found in a variety of places, but the most common are in trees, voids of structures, subterranean cavities, and mulch. The Asian giant hornet species discovered in Washington prefers subterranean nest construction in the dry soil of wooded areas, but has also been known to nest in trees above ground. If a nest is discovered on the property of a business, WSDA will notify the owner/renter and provide informational literature about the hornet. For safety, WSDA staff will then mark off the quarantine zone which extends twenty meters in all directions from the nest. Hornet stings are extremely painful and can be life threatening. Restricting access to the area surrounding a nest is a safety precaution and is not intended to impede access to a business. Rather, the twenty-meter restriction prevents employees or customers from being stung by hornets or exposed to any control measures that may be used to treat the nest. The removal of a nest may be viewed positively by businesses, as a hornet nest could become a liability issue if a customer or employee were stung. In addition to being a health and safety necessity, restricting access to the area surrounding the nest is also needed to prevent unintended spread, which may lead to further infestation.

After a hornet nest is removed and the possibility of straggler hornets is no longer present, the designation of the infested site will be lifted. Typically, WSDA will remove a hornet nest as soon as possible. The time it takes to remove a nest is situational and depends on factors such as weather, the presence of obstructions, and the availability of equipment. Generally, removal would not take longer than two weeks. To date, only one hornet nest removal has taken place in the state and there was no impact to any businesses. This removal was delayed only twenty-four hours due to weather and purchasing of necessary equipment and an additional four days to allow for tree removal. Access to the restricted area was granted by WSDA after just six days.

A hornet nest detection at a business could lead to a loss in sales and revenue. This is because patrons would not be allowed within twenty meters of where the nest was located. The extent a business is impacted depends on where the nest is found. A nest near a business' entrance will likely impact sales and revenue more than one located in an area where customers don't go. This is because nests found near the entrance of a business could prohibit customers from entering through that entrance until the infested site designation was lifted. Since only one nest removal has occurred at this time and each removal is highly situational, it is not possible to analyze the cost to a business with the information available.

The proposed amendment would prohibit businesses from selling or distributing any live life stage of hornet species. WSDA is not currently aware of any businesses within the state that sell or distribute hornet species.

Under the proposed amendment, a business could not knowingly move or transport a live life stage of hornet. Therefore, if a nest was detected on a product for sale (such as a Christmas tree or mulch pile), that product could not be moved until the nest was removed. This could impact sales or revenue for certain businesses depending on where the nest was found and its location on the property. Additionally, the process of removing the nest itself could damage the product, making it no longer fit for sale. This could lead to a loss in revenue from the lost sale of that product.

Businesses will not be required to cover costs associated with nest removal. Costs for removal are covered by WSDA, who performs the procedure. When removal of a nest takes place, any vegetation or structure which limits access to the nest entrance may be cleared away. This is not always necessary and is determined based on the specific circumstances in which the nest is located. There could be an associated cost to a business related to removal of a structure, however it is difficult to estimate potential costs due to the variety of situations which could arise. Generally, nests are removed using a vacuum to extract hornets from the nest, followed by CO<sup>2</sup> gas introduction, and excavation of the nest. If the nest is in the ground, an area of approximately two cubic feet is cleared of soil and roots. Another way a nest could be removed is through the application of Cyfluthrin dust (Tempo 1% Dust). The dust is applied directly into the nest cavity. If the nest is located in a tree cavity, the tree will be sealed after the hornets are vacuumed or treated, and felled, after which the section of the tree that contains the nest will be removed. Physical removal of the nest is required as hornets, including new queens, may continue to emerge from the nest. Baited traps will be left in the vicinity of the nest location for several weeks following

the nest removal, in order to capture hornets that were not present in the nest. Removals are timed to occur at or just before sunrise.

Under the proposed rule amendment, there are no increased costs to businesses associated with equipment, supplies, labor, professional services, or administrative costs. However, depending on where a nest is located on a property when it is discovered and the type of business it's located at, the proposed amendment may cause businesses to lose sales or revenue.

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

Due to the variability of where a hornet nest may be located, businesses in any industry have the potential to be impacted. The extent to which a business may be economically impacted is extremely situational and depends on the time of year, the nature of the business, and where the nest is located on the property. Since a business is not responsible for covering the cost of removing the nest, the only potential costs associated with the proposed amendment are related to sales and revenue. This could be from customers being unable to access the business or a business may not be able to transport products for sale if they are within the boundary of the quarantine. A quantifiable cost cannot be determined due to the situational variability of nest detections. For example, if the nest was located at the entrance of a business, the economic impact to sales and revenue would be greater. If the nest was located further than twenty meters from where customers generally frequent or in an area that could be partitioned off from customer access, then the impact would be much lower. Whether the nest was detected during a busy or slow time of year for a business would also be a factor.

Removal of a nest would occur as quickly as possible and likely be completed within two weeks. If a business must restrict customer access for two weeks during a busy time of year, the economic impact would be greater than during a slower time of year. The type of business in which the nest is discovered may also effect [affect] the financial impact. If for example, the business sells mulch and the nest is located within one of the mulch piles offered for sale, the business would not be able to transport any product within twenty meters of where the nest was detected, until the nest was removed and the department determined that the area was clear of all live life stages of hornet. Alternatively, if a nest was detected at a business with few walk-in customers, then revenue and sales would be impacted much less. Another potential revenue loss could occur if the nest was detected on or inside of a sellable product, such as inside a mulch pile or on a Christmas tree. Removing the nest might damage the product, making it unfit for sale.

Based on the situational variability of hornet detections, the economic impact of the proposed amendments cannot be determined. Although unlikely, in some instances it is possible the economic impact of the proposed quarantine could exceed the minor cost threshold in lost sales or revenue. Businesses most likely impacted by the proposed rules are identified in Section 2. However, the proposed amendment could affect any business in the state. Because circumstances can be so varied, determining the exact cost is difficult.

The department anticipates that businesses will appreciate the removal of a hornet nest because of the liability a business may face if their customers or employees are stung; especially since stings can be life threatening. In order to prevent the spread of the invasive

species, the department plans to remove the nest at no charge to the business owner.

To date, only one nest has been detected in Washington and no businesses have been impacted at this time. To assume the agency will find more hornet nests next year than this past year would require speculation that is not supported by available information.

No businesses selling live hornets will be impacted by the proposed amendment because no businesses exist in this industry in Washington.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.**

The department does not have the data to determine if the proposed amendments will impose more than minor costs on businesses within any industry. Since we cannot determine the extent of costs, we are unable to determine if the rules will have a disproportionate impact on small businesses.

**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:* Any reduction, modification, or elimination of the regulatory requirements of the proposed rule amendment could increase the risk of hornet species becoming established in Washington. Once an invasive pest becomes established, the costs of control are high and the likelihood of successfully eradicating it is low.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* There are no recordkeeping or reporting requirements associated with the proposed rule amendment.

(c) *Reducing the frequency of inspections:* There are no inspection requirements associated with the proposed rule amendment.

(d) *Delaying compliance timetables:* The proposed rule amendment does not establish any compliance timetables. Delaying the removal of a hornet nest is not a viable mitigation measure. Any delay will result in a higher risk of hornet species becoming established in Washington. Any delay in removal of the nest could expose employees and customers of affected businesses to the potential of being stung by hornets.

(e) *Reducing or modifying fine schedules for noncompliance:* RCW 17.24.141 specifies the penalty for violating a quarantine order. Chapter 16-470 WAC does not address penalties for violations of the hornet quarantine.

(f) *Any other mitigation techniques including those suggested by small businesses or small business advocates:* No other mitigation techniques were presented to the department by small businesses or small business advocates.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

WSDA sought feedback from industry groups with members representing large and small businesses that could be impacted by the proposed amendment. These industry groups included the Washington Beekeepers Association, Washington State Tree Fruit Association, Washington Wine Industry Foundation, Washington blueberry commission, and the Washing-

ton raspberry commission. WSDA also sought feedback from the Washington State Farm Bureau, Association of Washington Businesses, and the Washington State Nursery and Landscaping Association. A presentation was also given to the Washington seed potato commission.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

No jobs are estimated to be created or lost as a result of compliance with the proposed rule. However, failure to adopt the proposed amendment could result in hornet species spreading and becoming established within the state. This could have far reaching impacts on Washington's agricultural industry.

A copy of the statement may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov).

April 7, 2021  
Brad White  
Assistant Director

**OTS-2981.1**

NEW SECTION

**WAC 16-470-070 Quarantine—Hornet.** A quarantine is established under this chapter against any live life stages of all species in the genus *Vespa* (hornet) including, but not limited to, *Vespa mandarinia*. The quarantine does not include species that are not classified within the genus *Vespa* (such as wasps in the genus *Vespula*). Hornets feed on fruit and damage plants, as well as attack managed bee and other native insect populations. No species of hornet are native to Washington state. The director of agriculture has determined that the regulation and exclusion of all species of hornet is necessary to protect the environmental quality, forests, floriculture and agricultural crops of the state of Washington.

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NEW SECTION

**WAC 16-470-075 Quarantine—Hornet—Area under order.** (1) The area under quarantine includes the entire state of Washington.  
(2) Within the state of Washington, infested sites are subject to additional restrictions. For purposes of this hornet quarantine, "infested sites" include all real property within 20 meters of a nest containing any live life stage of hornet. After identifying an infested site, the department will attempt to notify occupants and owners of properties within the infested site that the property or a portion thereof has been designated as an infested site and is subject to additional restrictions. The designation of an infested site will remain

in place until department inspectors have removed the nest and determined that the area is clear of all live life stages of hornet.

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NEW SECTION

**WAC 16-470-080 Hornet quarantine restrictions.** (1) No live life stage of hornet may be sold, offered for sale, distributed, or knowingly moved throughout or received within Washington unless the entity or person proposing such action has been issued a special permit under WAC 16-470-085.

(2) No unauthorized person may enter an infested site until the department has deemed the area clear of the infestation. Department inspectors may enter upon public and private premises within an infested site to remove and treat the nest and hornets. Authorization to enter an infested site will be granted to the property owners, occupants, and other persons in the department's discretion and such authorization may be made subject to conditions to limit the risks to public health and safety, as well as to prevent further infestation and ensure that the nest is appropriately and safely removed and treated.

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NEW SECTION

**WAC 16-470-085 Special permits.** The director may issue special permits subject to conditions and provisions deemed necessary for the protection of Washington agriculture. Additionally, a special permit may be issued which allows for the possession of live hornets for research purposes.

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