

**WSR 21-17-025
PROPOSED RULES
OFFICE OF THE
CORRECTIONS OMBUDS**

[Filed August 6, 2021, 2:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-091.

Title of Rule and Other Identifying Information: Rules implementing Public Records Act for the office of the corrections ombuds.

Hearing Location(s): On September 21, 2021, at 12:00 p.m. Microsoft Teams meeting. Join on your computer or mobile app (please go to <https://oco.wa.gov/public-meetings> to access the link) or call in (audio only) +1 564-999-2000,,640029681# United States, Olympia, Conference ID 640 029 681#.

Date of Intended Adoption: September 30, 2021.

Submit Written Comments to: Joanna Carns, Director, 2700 Evergreen Parkway N.W., Olympia, WA 98505, email Joanna.carns@gov.wa.gov, by August 30, 2021.

Assistance for Persons with Disabilities: Contact Joanna Carns, Director, phone 360-764-3168, email Joanna.carns@gov.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement rules that are required under RCW 42.56.040 and 42.56.070. No changes or other impacts to existing rules.

Reasons Supporting Proposal: Establishment of rules is required under RCW 42.56.040 and 42.56.070, as it is for every agency.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 34.05.310 - [34.05.]395.

Statute Being Implemented: Public Records Act, chapter 42.56 RCW. Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Joanna Carns, office of the corrections ombuds, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joanna Carns, 2700 Evergreen Parkway N.W., Olympia, WA 98505, 360-764-3168.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

August 6, 2021
Joanna Carns
Director

OTS-3203.1

Chapter 138-12 WAC

PUBLIC RECORDS ACCESS

NEW SECTION

WAC 138-12-010 Authority and purpose. (1) The office of the corrections ombuds serves the purpose of providing information to incarcerated individuals and their families; promoting public awareness and understanding of the rights and responsibilities of incarcerated individuals; identifying system issues and responses for the governor and the legislature to act upon; and ensuring compliance with relevant statutes, rules, and policies pertaining to corrections facilities, services, and treatment of incarcerated individuals under the jurisdiction of the department. The administrative office of the corrections ombuds and its staff are located at 2700 Evergreen Parkway N.W., Olympia, Washington 98505.

(2) The purpose of these rules is to establish the procedures the ombuds will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the ombuds office and establish processes for both requestors and ombuds office staff that are designed to best assist members of the public in obtaining such access.

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NEW SECTION

WAC 138-12-020 Contact information—Public records officer. The public records officer for the ombuds shall be responsible for responses to requests for public records. Any person wishing to request access to public records of the corrections ombuds office, or seeking assistance in making such a request should contact the public records officer of the ombuds office:

Public Records Officer
Corrections Ombuds Office
2700 Evergreen Parkway N.W.
Olympia, WA 98505
email: OCOPDR@gov.wa.gov

Information and public records are also available at the ombuds office website at <https://oco.wa.gov/>. Requestors are encouraged to view the information and records available on the website prior to contacting the records officer.

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NEW SECTION

WAC 138-12-030 Availability of public records. (1) **Hours for inspection of records.** Public records are available for inspection and copying by appointment during normal business hours of the ombuds of-

office, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the ombuds office. A requestor shall not take ombuds office records from ombuds offices without the permission of the public records officer or designee.

(2) **Records index and records available online.** An index of public records is available for use by members of the public. The index may be accessed online at <https://oco.wa.gov/>. A variety of records is also available on the ombuds office website.

(3) **Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the ombuds office should make the request in writing by letter or email addressed to the public records officer. Records requests should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and email address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to retain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the office's collection of the records requested. Pursuant to WAC XXX.

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NEW SECTION

WAC 138-12-040 Processing of public records requests—General.

(1) **Order of response.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying; or
- (b) If copies or scanned records are requested and terms of payment are met, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

(3) **Clarifications.**

(a) If a requestor fails to respond to a request to clarify the request and the entire request is unclear, the request may be closed without further action.

(b) If portions of the request are clear, those portions of the request will be processed.

(4) **Failure to respond.** If the ombuds does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(5) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the ombuds office believes that a record is exempt from disclosure and should be withheld in whole or in part, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld or redacted. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) **Inspection of records.**

(a) Consistent with other demands, the ombuds office shall promptly provide space to inspect public records. No member of the public may remove a record from the viewing area or disassemble or alter any record. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the ombuds office notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the ombuds office may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(9) **Providing records in installments.** When the request is for a large number of records or records requiring extensive review for confidential information, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ombuds of-

office has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the ombuds office has closed the request.

(12) **Later discovered records.** If, after the ombuds office has informed the requestor that it has provided all available records, the ombuds office becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(13) Detailed policy can be found on office website at <https://oco.wa.gov/>.

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NEW SECTION

WAC 138-12-050 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

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NEW SECTION

WAC 138-12-060 Exemptions. (1) The Public Records Act provides that a number of types of records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some records held by ombuds office for inspection and copying: RCW 43.06C.060, corrections ombuds confidentiality provisions.

(2) The ombuds office is prohibited by statute from disclosing lists of individuals for commercial purposes.

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NEW SECTION

WAC 138-12-070 Costs of providing copies of public records. (1) Copying fees - Payments. The following copy fees and payment procedures apply to requests to the office under chapter 42.56 RCW and received on or after July 23, 2017.

(2) Pursuant to RCW 42.56.120 (2)(b), the office is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The office does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(3) The office will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The office will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the office may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The office may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the office are summarized in the fee schedule available on the office's website at <https://oco.wa.gov/>.

(4) Requestors are required to pay for copies in advance of receiving records. Fee waivers are an exception and are at the discretion of the public records officer.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The office will notify the requestor of when payment is due.

(7) Payment should be made by check or money order to the ombuds office. The office prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The office will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

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NEW SECTION

WAC 138-12-080 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the director of the ombuds office. The petition will be affirmed or reversed within five business days following the ombuds office receipt of the petition, or within such other time as the ombuds office and the requestor mutually agree.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the ombuds office denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

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WSR 21-17-047

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 10, 2021, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-022.

Title of Rule and Other Identifying Information: WAC 388-106-0275

Are there limits to the community transition services I may receive?

Hearing Location(s): On September 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than September 22, 2021.

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

Assistance for Persons with Disabilities: Contact DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, by September 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-106-0275 to enable budgetary flexibilities related to funding availability, and to clarify items that may not be purchased under this rule.

Reasons Supporting Proposal: See purpose statement.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.400; and 42 C.F.R. § 441.500-590.

Statute Being Implemented: RCW 74.08.090 and 74.09.520.

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: Victoria Nuesca, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2393.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule pursuant to RCW 34.05.328.

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

Is exempt under RCW 19.85.025(4) because the proposed amendments do not impact small businesses and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

August 10, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4881.3

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0275 Are there limits to the community transition services I may receive? Community transition services:

(1) Do not include recreational or diverting items, such as a television, cable or VCR;

(2) Do not include room and board; ((and))

(3) ~~((May not exceed eight hundred fifty dollars per discharge))~~

Do not include residential unit furnishings, as outlined in WAC 388-78A-3011 for assisted living facilities and WAC 388-76-10685 for adult family homes;

(4) Do not include items that would otherwise be covered under other payment sources, including but not limited to, medicare, medic-aid, and private insurance; and

(5) May not exceed twenty-five hundred dollars per discharge for items and services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0275, filed 1/22/16, effective 2/22/16.]

WSR 21-17-057

PROPOSED RULES

BOARD OF ACCOUNTANCY

[Filed August 10, 2021, 2:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-106.

Title of Rule and Other Identifying Information: WAC 430-30-062
Applying to take the CPA examination.

Hearing Location(s): On October 29, 2021, at 9:00 a.m., Microsoft Teams meeting. The link to join the meeting will be available on the board's website approximately two weeks before the hearing date at <https://acb.wa.gov/next-board-meeting>. A phone number will be provided as well in case you are unable to attend by Teams meeting.

Date of Intended Adoption: October 29, 2021.

Submit Written Comments to: Kirsten Donovan, Rules Coordinator, P.O. Box 9131, Olympia, WA 98507, email Kirsten.donovan@acb.wa.gov, fax 360-664-9190, by October 27, 2021.

Assistance for Persons with Disabilities: Contact Kirsten Donovan, rules coordinator, phone 360-664-9191, fax 360-664-9190, TTY 771 [711], email Kirsten.donovan@acb.wa.gov, by October 27, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending WAC 4-30-062 to align the board rule with the National Association of State Boards of Accountancy.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055.

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Trujillo, CPA, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-664-9268.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No additional costs are associated with these changes for CPA examination candidates.

August 11, 2021
David E. Trujillo, CPA
Executive Director

OTS-3257.1

AMENDATORY SECTION (Amending WSR 19-10-080, filed 5/1/19, effective 6/1/19)

WAC 4-30-062 Applying to take the CPA examination. (1) **Application process and due dates:** Your application to take the CPA examination must be submitted to the board's examination administrator. Applicants must submit all required information, documents, and fees to complete their application within sixty days of the date their application is submitted to the board's examination administrator. Your application is not considered complete until all of the following are provided:

- Complete application information and requested documents;
- Fee(s).

(2) **Fee refund and forfeiture:** Upon submission of your application to the examination administrator, no portion of the board's administrative fee is refundable. Upon the examination administrator's authorization to test, no portion of the total exam fee (both administrative fee and section fee(s)) is refundable. If you fail to meet the board's scheduling or admission requirements, you forfeit all of the exam fee(s) and you must reapply to take the section(s) of the exam.

(3) **Notice of admittance to the examination or denial of your application:** You must contact the approved test provider to schedule the time and location for your examination. The notice of eligibility to take the examination is called a Notice to Schedule (NTS), the NTS will be valid for one taking of the examination within the six months following the date of the NTS.

Notice of a denial of your application, or notice of your eligibility to take the examination will be sent to you by the examination administrator.

(4) **Examination content and grading:** The CPA examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. (~~The examination will consist of the following four sections: Auditing and attestation; financial, accounting and reporting; regulation; and business environment and concepts.~~) The board may accept the advisory grading services of the American Institute of Certified Public Accountants.

(5) **Examination process:**

(a) **Conditions for examinations held prior to January 1, 2004:** Contact a customer service representative at customerservice@acb.wa.gov or by phone at 360-753-2586.

(b) **For examinations taken after December 31, 2003:** The board uses all parts of the uniform CPA examination and the advisory grading services of the American Institute of Certified Public Accountants.

(i) To satisfy the examination requirement for a license you must have achieved a score of seventy-five on all (~~four~~) sections of the examination within a rolling eighteen-month period.

(ii) You may take the required (~~four~~) sections individually and in any order. Credit for any section(s) taken and passed after December 31, 2003, will be valid for eighteen months from the actual date you successfully passed any particular section of the examination.

(iii) You must pass all (~~four~~) sections of the examination within a rolling eighteen-month period, which begins on the date that the first section(s) is passed. A section is considered passed on the date that you took the exam section and not the date that your grade is released.

(iv) You may not retake a failed section(s) in the same examination window. An examination window refers to a three-month period in which candidates have an opportunity to take the examination (comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered while routine maintenance is performed and the examination is refreshed).

(v) If the board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, (iv) of this subsection will no longer be effective, and a candidate can retake a test section once their grade for any previous attempt of that same section has been released.

(vi) In the event you do not pass all (~~four~~) sections of the examination within the rolling eighteen-month period, credit for any section(s) passed prior to the eighteen-month period will expire and you must retake any expired section.

[Statutory Authority: RCW 18.04.055. WSR 19-10-080, § 4-30-062, filed 5/1/19, effective 6/1/19; WSR 18-21-034, § 4-30-062, filed 10/8/18, effective 11/8/18. Statutory Authority: RCW 18.04.055, 18.04.105. WSR 16-10-019, § 4-30-062, filed 4/22/16, effective 5/23/16. Statutory Authority: RCW 18.04.105(2). WSR 10-24-009, amended and recodified as § 4-30-062, filed 11/18/10, effective 12/19/10; WSR 05-01-137, § 4-25-720, filed 12/16/04, effective 1/31/05; WSR 03-17-041, § 4-25-720, filed 8/15/03, effective 9/30/03. Statutory Authority: RCW 18.04.055(5) and 18.04.105(2). WSR 02-04-064, § 4-25-720, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055. WSR 93-12-070, § 4-25-720, filed 5/27/93, effective 7/1/93.]

WSR 21-17-073

PROPOSED RULES

CLARK COLLEGE

[Filed August 12, 2021, 1:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR March 19, 2021 [21-07-095].

Title of Rule and Other Identifying Information: Amending WAC 132N-122-010 withholding services for outstanding debt.

Hearing Location(s): On September 22, 2021, at 5:00 p.m., Zoom meeting. Join Zoom meeting <https://us02web.zoom.us/j/87876815565?pwd=UXZqR3BvOF1xc25SMEZDZHJpNUl0QT09>, Meeting ID 878 7681 5565, Passcode 413271, One tap mobile +12532158782,,87876815565#,,,,*413271# US (Tacoma), +13462487799,,87876815565#,,,,*413271# US (Houston).

Date of Intended Adoption: September 22, 2021.

Submit Written Comments to: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 161, Vancouver, WA 98663, email gburley@clark.edu, phone 360-992-2123, fax 360-992-2884, by September 15, 2021.

Assistance for Persons with Disabilities: Contact Megan Jasurda, phone 360-992-2065, fax 360-992-2879, email dss@clark.edu for employees hr@clark.edu, video phone can be requested at achilders@clark.edu, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Remove the word "transcripts" from the existing language in WAC 132N-122-010 to comply with HB [2SHB] 2513 (2020) codified at RCW 28B.10.293.

Reasons Supporting Proposal: Enactment of Washington state HB [2SHB] 2513 (2020) codified at RCW 28B.10.293 requires removal of the word "transcripts" from WAC 132N-122-010.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

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

Name of Proponent: Clark College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 161, Vancouver, WA 98663 [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) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

August 12, 2021

G. Burley
Executive Vice President
of Operations

OTS-2831.1

AMENDATORY SECTION (Amending WSR 97-23-019, filed 11/10/97, effective 12/11/97)

WAC 132N-122-010 Policy. If any person, including faculty, staff, student or former student, is indebted to the college for an outstanding debt, the college need not provide any further services of any kind to such individual((~~r~~)) including, but not limited to, trans-
mitting files, records, admission to or registration with the college, conferring of degrees, ((~~transcripts~~)) or other services which have been requested by such person. Further, if the person is an employee of the college, the college shall have the right to offset such outstanding debts against the wages owed to the employee.

[Statutory Authority: Chapter 28B.50 RCW. WSR 97-23-019, § 132N-122-010, filed 11/10/97, effective 12/11/97.]

WSR 21-17-086

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 13, 2021, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-010.

Title of Rule and Other Identifying Information: WAC 182-503-0515
Washington apple health—Social Security number requirements.

Hearing Location(s): On September 21, 2021, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance https://zoom.us/webinar/register/WN_ij64u_n1S-OQwmOmrIS3MQ. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than September 22, 2021.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 21, 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, by September 10, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-503-0515 to add a new subsection (6)(f) to name the family planning only program described in WAC 182-532-510 as an additional program for which a Social Security number is not required. The agency has determined this rule amendment is necessary because the agency is expanding family planning only program services to all Washington residents, including those who do not have a Social Security number.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

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: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Melissa Rivera, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1713.

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

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

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

August 13, 2021

OTS-3122.2

AMENDATORY SECTION (Amending WSR 18-10-014, filed 4/23/18, effective 5/24/18)

WAC 182-503-0515 Washington apple health—Social Security number requirements. (1) To be eligible for Washington apple health (medicaid), or tailored supports for older adults (TSOA) described in WAC 182-513-1610, you (the applicant or recipient) must provide your valid Social Security number (SSN) or proof of application for an SSN to the medicaid agency or the agency's designee, except as provided in subsections (2) and (6) of this section.

(2) An SSN is not required if you are:

(a) Not eligible to receive an SSN or may only be issued an SSN for a valid nonwork reason described in 20 C.F.R. 422.104;

(b) A household member who is not applying for apple health coverage, unless verification of that household member's resources is required to determine the eligibility of the client;

(c) Refusing to obtain an SSN for well-established religious objections as defined in 42 C.F.R. 435.910 (h) (3); or

(d) Not able to obtain or provide an SSN because you are a victim of domestic violence.

(3) If you are receiving coverage because you meet an exception under either subsection (2) (c) or (d) of this section, we (the agency) will confirm with you at your apple health renewal, consistent with WAC 182-503-0050, that you still meet the exception.

(4) If we ask for confirmation that you continue to meet an exception in subsection (2) of this section and you do not respond in accordance with subsection (3) of this section, or if you no longer meet an exception and do not provide your SSN, we will terminate your apple health coverage according to WAC 182-518-0025.

(5) If you are not able to provide your SSN, either because you do not know it or it has not been issued, you must provide:

(a) Proof from the Social Security Administration (SSA) that you turned in an application for an SSN; and

(b) The SSN when you receive it.

(i) Your apple health coverage will not be delayed, denied, or terminated while waiting for SSA to send you your SSN. If you need help applying for an SSN, assistance will be provided to you.

(ii) We will ask you every ninety days if your SSN has been issued.

(6) An SSN is not required for the following apple health programs:

(a) Refugee medical assistance program described in WAC 182-507-0130;

(b) Alien medical programs described in WAC 182-507-0115, 182-507-0120, and 182-507-0125;

(c) Newborn medical program described in WAC 182-505-0210 (2) (a);

(d) Foster care program for a child age eighteen and younger as described in WAC 182-505-0211(1); ~~((e))~~

(e) Medical programs for children and pregnant women who do not meet citizenship or immigration status described in WAC 182-503-0535 (2)(e)(ii) and (iii); or

(f) Family planning only program described in WAC 182-532-510 if you do not meet citizenship or immigration status for Washington apple health or you have made an informed choice to apply for family planning services only.

(7) If you are required to provide an SSN under this section, and you do not meet an exception under subsection (2) of this section, failure to provide your SSN may result in:

(a) Denial of your application or termination of your coverage because we cannot determine your household's eligibility; or

(b) Inability to apply the community spouse resource allocation (CSRA) or monthly maintenance needs allowance (MMNA) for a client of long-term services and supports (LTSS).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-10-014, § 182-503-0515, filed 4/23/18, effective 5/24/18. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0515, filed 7/29/14, effective 8/29/14.]

WSR 21-17-090

PROPOSED RULES

CLARK COLLEGE

[Filed August 13, 2021, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR September 2, 2020 [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, Code of student conduct; repeal chapter 132N-300 WAC, Grievance procedure—Discrimination, and replace with college policy.

Hearing Location(s): On September 22, 2021, at 5:00 p.m., Zoom meeting. Join Zoom meeting <https://us02web.zoom.us/j/87876815565?pwd=UXZqR3BvOF1xc25SMEZDZHJpNUl0QT09>, Meeting ID 878 7681 5565, Passcode 413271, One tap mobile +12532158782,,87876815565#,,,,*413271# US (Tacoma), +13462487799,,87876815565#,,,,*413271# US (Houston).

Date of Intended Adoption: September 22, 2021.

Submit Written Comments to: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 106, Vancouver, WA 98663, email gburley@clark.edu, fax 360-992-2884, by September 15, 2021.

Assistance for Persons with Disabilities: Contact Megan Jasurda, phone 360-992-2065, fax 360-992-2879, email dss@clark.edu, for employees hr@clark.edu, video phone can be requested at achilders@clark.edu, by September 15, 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 132N-126, 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 repeal 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: Galina Burley, 1933 Fort Vancouver Way, Baird Building, Room 161, 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. 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) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025(3).

August 12, 2021

Galina Burley

Executive Vice President
of Operations

OTS-2966.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132N-125-005	Student responsibilities.
WAC 132N-125-010	Authority.
WAC 132N-125-015	Definitions.
WAC 132N-125-020	Statement of jurisdiction.
WAC 132N-125-025	Students studying abroad.
WAC 132N-125-030	Statement of student rights.
WAC 132N-125-035	Prohibited student conduct.
WAC 132N-125-040	Trespass.
WAC 132N-125-045	Disciplinary sanctions—Terms— Conditions.

WAC 132N-125-100	Initiation of disciplinary action.
WAC 132N-125-105	Appeal from disciplinary action.
WAC 132N-125-110	Brief adjudicative proceedings—Initial hearing.
WAC 132N-125-115	Brief adjudicative proceedings—Review of an initial decision.
WAC 132N-125-120	Student conduct committee.
WAC 132N-125-125	Appeal—Student conduct committee.
WAC 132N-125-130	Student conduct committee hearings—Presentation of evidence.
WAC 132N-125-135	Student conduct committee—Initial decision.
WAC 132N-125-140	Appeal from student conduct committee initial decision.
WAC 132N-125-145	Summary suspension.
WAC 132N-125-150	Classroom misconduct and authority to suspend for no more than one day.
WAC 132N-125-200	Supplemental sexual misconduct procedures.
WAC 132N-125-205	Supplemental definitions.
WAC 132N-125-210	Supplemental complaint process.
WAC 132N-125-215	Supplemental appeal rights.
WAC 132N-125-220	Brief adjudicative proceedings—College record.
WAC 132N-125-225	Recordkeeping.

OTS-2967.4

**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.

[]

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 committee. 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.

[]

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.

[]

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.

[]

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 limited 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, including 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 disciplina-

ry proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

[]

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.

[]

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 officer 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.

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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).

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HEARING PROCEDURESNEW 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 conditions, 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.

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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.

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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.

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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.

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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.

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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.

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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.

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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 campus 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 pro-

ceedings 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.

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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. The college may, at its own discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[]

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 occur-

red. 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.

[]

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.

[]

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.

[]

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.

[]

OTS-3260.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132N-300-001 Statement of policy.
- WAC 132N-300-010 Grievance procedure.

WSR 21-17-094
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 13, 2021, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-014.

Title of Rule and Other Identifying Information: The department is planning to amend WAC 388-478-0020 Payment standards for TANF, SFA and RCA, 388-478-0027 What is the payment standard for pregnant women assistance (PWA), 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA?, and 388-436-0050 Determining financial need and benefit amount for CEAP.

Hearing Location(s): On September 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held by Skype. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than September 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 21, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by 5:00 p.m., September 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Planned amendments will implement the 15 percent payment standard increase (effective July 1, 2021) for the temporary assistance for needy families, state family assistance, refugee cash assistance, and pregnant women assistance programs, approved via the 2021-2023 operating budget. Planned amendments will also update net income limits and allowable benefit amounts for the consolidated emergency assistance program.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, and 74.08A.230.

Statute Being Implemented: 2021-2023 Operating Budget (chapter 334, Laws of 2021).

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: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504, 360-522-2214.

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.

August 12, 2021
 Katherine I. Vasquez
 Rules Coordinator

SHS-4868.1

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for the consolidated emergency assistance program (CEAP), the assistance unit's nonexcluded income, minus allowable deductions, must be less than or equal to ninety percent of the temporary assistance for needy families (TANF) payment standard (~~for households with shelter costs~~). The net income limit for CEAP assistance units is:

Assistance unit members	Net income limit
1	(\$327) <u>\$375</u>
2	(413) <u>475</u>
3	(512) <u>589</u>
4	(603) <u>694</u>
5	(695) <u>799</u>
6	(789) <u>908</u>
7	(912) <u>1,049</u>
8 or more	(1,009) <u>1,160</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, (~~for households with shelter costs~~) as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	(\$220) <u>\$253</u>	(\$280) <u>\$322</u>	(\$345) <u>\$397</u>	(\$408) <u>\$469</u>	(\$469) <u>\$539</u>	(\$532) <u>\$612</u>	(\$608) <u>\$699</u>	(\$672) <u>\$773</u>
Shelter	(268) <u>308</u>	(339) <u>390</u>	(422) <u>485</u>	(497) <u>572</u>	(571) <u>657</u>	(647) <u>744</u>	(750) <u>863</u>	(828) <u>952</u>
Clothing	(31) <u>36</u>	(39) <u>45</u>	(49) <u>56</u>	(57) <u>66</u>	(66) <u>76</u>	(77) <u>89</u>	(85) <u>98</u>	(97) <u>112</u>
Minor medical care	(186) <u>214</u>	(237) <u>273</u>	(294) <u>338</u>	(345) <u>397</u>	(398) <u>458</u>	(449) <u>516</u>	(524) <u>603</u>	(578) <u>665</u>
Utilities	(91) <u>105</u>	(115) <u>132</u>	(142) <u>163</u>	(166) <u>191</u>	(191) <u>220</u>	(220) <u>253</u>	(254) <u>292</u>	(280) <u>322</u>

	1	2	3	4	5	6	7	8 or more
Household maintenance	((66)) <u>76</u>	((84)) <u>97</u>	((105)) <u>121</u>	((122)) <u>140</u>	((142)) <u>163</u>	((161)) <u>185</u>	((186)) <u>214</u>	((204)) <u>235</u>
Job related transportation	((363)) <u>417</u>	((459)) <u>528</u>	((569)) <u>654</u>	((670)) <u>771</u>	((772)) <u>888</u>	((877)) <u>1,009</u>	((1,013)) <u>1,165</u>	((1,121)) <u>1,289</u>
Child related transportation	((363)) <u>417</u>	((459)) <u>528</u>	((569)) <u>654</u>	((670)) <u>771</u>	((772)) <u>888</u>	((877)) <u>1,009</u>	((1,013)) <u>1,165</u>	((1,121)) <u>1,289</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section and WAC 388-436-0045;
- (b) Cash on hand, if not already counted as income; and
- (c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

[Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-436-0050, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-436-0050, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-436-0050, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.660. WSR 09-14-040, § 388-436-0050, filed 6/24/09, effective 7/25/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 08-18-009, § 388-436-0050, filed 8/22/08, effective 9/22/08; WSR 98-16-044, § 388-436-0050, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0020 Payment standards for TANF, SFA, and RCA. The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units are:

Assistance unit size	Payment standard	Assistance unit size	Payment standard
1	((\$363) <u>\$417</u>)	6	((\$877) <u>\$1,009</u>)
2	((459) <u>528</u>)	7	((1,013) <u>1,165</u>)
3	((569) <u>654</u>)	8	((1,121) <u>1,289</u>)
4	((670) <u>771</u>)	9	((1,231) <u>1,416</u>)
5	((772) <u>888</u>)	10 or more	((1,338) <u>1,539</u>)

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0020, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-478-0020, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-478-0020, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-478-0020, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, and 2008 c 329 § 207 (1)(e). WSR 08-16-105, § 388-478-0020, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-507-0710.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0027 What is the payment standard for pregnant women assistance (PWA)? The payment standard for a PWA cash assistance unit is:

Assistance Unit Size	Payment Standard
1	(\$363) <u>\$417</u>

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0027, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335 and 2019 c 415. WSR 19-21-056, § 388-478-0027, filed 10/11/19, effective 11/11/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0027, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 18-09-088, filed 4/17/18, effective 7/1/18)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of family members	Maximum earned income level	Number of family members	Maximum monthly earned income level
1	((\\$726)) <u>\$834</u>	6	((\\$1,754)) <u>\$2,018</u>
2	((918)) <u>1,056</u>	7	((2,026)) <u>2,330</u>
3	((1,138)) <u>1,308</u>	8	((2,242)) <u>2,578</u>
4	((1,340)) <u>1,542</u>	9	((2,462)) <u>2,832</u>
5	((1,544)) <u>1,776</u>	10 or more	((2,676)) <u>3,078</u>

[Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, 2018 c 299 and 2017 c 1. WSR 18-09-088, § 388-478-0035, filed 4/17/18, effective 7/1/18. Statutory Authority: RCW 74.04.050, 74.08.090, 74.08A.230, and 2015 3rd sp.s. c 4 § 207. WSR 16-01-093, § 388-478-0035, filed 12/15/15, effective 1/15/16. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0035, filed 4/27/12, effective 6/1/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 11-16-029, § 388-478-0035, filed 7/27/11, effective 8/27/11. Statutory Authority: RCW 74.04.050, 74.04.055, and 2008 c 329 § 207 (1) (e). WSR 08-16-105, § 388-478-0035, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0035, filed 7/31/98, effective 9/1/98.]

WSR 21-17-096
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 13, 2021, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-016.

Title of Rule and Other Identifying Information: The department is planning to amend WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance?

Hearing Location(s): On September 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than September 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 21, 2021.

Assistance for Persons with Disabilities: Contact DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by 5:00 p.m., September 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Planned amendments will align diversion cash assistance (DCA) program rules with SHB 2441 (chapter 338, Laws of 2020) changes implemented on July 1, 2021. These amendments will allow families whose temporary assistance for needy families closed in sanction between July 2010 and July 2021 to potentially qualify for DCA.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.660, 74.08.090, and 74.08A.230.

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: Sarah Garcia, P.O. Box 45470, Olympia, WA 98504, 360-522-2214.

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.

August 12, 2021

Katherine I. Vasquez
Rules Coordinator

SHS-4867.1

AMENDATORY SECTION (Amending WSR 17-07-042, filed 3/8/17, effective 4/8/17)

WAC 388-432-0005 Can I get help from DSHS for a family emergency without receiving monthly cash assistance? The department of social and health services (DSHS) has a program called diversion cash assistance (DCA). If your family needs an emergency cash payment but does not need ongoing monthly cash assistance, you may be eligible for this program.

(1) To get DCA, you must:

(a) Meet all the eligibility rules for temporary assistance for needy families (TANF)/state family assistance (SFA), and once DSHS finds you eligible, you are not required to fulfill the following TANF-related requirements:

(i) Participation in (~~workfirst~~) WorkFirst as defined in chapter 388-310 WAC; and

(ii) Assignment of child support rights or cooperation with the division of child support as defined in chapter 388-422 WAC;

(b) Have a current bona fide or approved need for living expenses;

(c) Provide proof that your need for DCA exists; and

(d) Have or expect to get enough income or resources to support you and your family for at least twelve months.

(2) You may get DCA to help pay for one or more of the following needs:

(a) Child care;

(b) Housing;

(c) Transportation;

(d) Expenses to get or keep a job;

(e) Food costs, but not if an adult member of your family has been disqualified for food stamps;

(f) Medical costs, except when an adult member of your family is not eligible because he or she failed to provide third party liability (TPL) information as defined in WAC 182-503-0540.

(3) DCA payments are limited to:

(a) One thousand two hundred fifty dollars once in a twelve-month period that starts with the month DCA benefits begin; and

(b) The cost of your need.

(4) We do not budget your income or make you use your resources to lower the amount of DCA payments you can receive.

(5) DSHS may make DCA payments:

(a) All at once; or

(b) As separate payments over a thirty-day period that starts on the date of your first DCA payment.

(6) We will pay your DCA benefit directly to the service provider when possible.

(7) You are not eligible for DCA if one or more of the following applies:

- (a) Any adult member of your assistance unit got DCA within the last twelve months;
- (b) Any adult member of your assistance unit gets TANF/SFA currently;
- (c) Any adult member of your assistance unit is not eligible for cash assistance for any reason unless one parent in a two-parent-assistance unit currently receives SSI;
- (d) Your assistance unit does not have a needy adult, such as when you do not receive TANF/SFA for yourself but for your children only;
- (e) Any adult member of your assistance unit is not eligible for cash assistance for any one of the following sanctions:
- (i) TANF/SFA closure because of a noncompliance sanction (NCS) termination;
- (ii) TANF/SFA closure while in (~~workfirst~~) WorkFirst sanction on or after July 1, (~~2010~~) 2021; or
- (iii) Noncooperation with division of child support.
- (8) If you apply for DCA after your TANF/SFA grant is terminated, we consider you an applicant for DCA.
- (9) If you apply for TANF/SFA and you received DCA less than twelve months ago, we set up a DCA loan:
- (a) The amount of the DCA loan is one-twelfth of the total DCA benefit times the number of months that are left in the twelve-month period;
- (b) The first month begins with the month your DCA benefits began; and
- (c) We will collect the loan only by reducing your TANF/SFA grant by five percent each month.
- (10) If you stop getting TANF/SFA before you have repaid your DCA loan, we will stop collecting the loan unless you get back on TANF/SFA.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.210, and 74.62.030. WSR 17-07-042, § 388-432-0005, filed 3/8/17, effective 4/8/17. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 2011 1st sp.s. c 15. WSR 13-18-004, § 388-432-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-064, § 388-432-0005, filed 11/30/10, effective 12/31/10. Statutory Authority: RCW 74.08.090, 74.04.050. WSR 01-03-066, § 388-432-0005, filed 1/12/01, effective 3/1/01.]

WSR 21-17-103
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed August 13, 2021, 4:07 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Sections 3.11 (Civil Penalties) and 3.25 (Federal Regulation Reference Date).

Hearing Location(s): On September 23, 2021, at 8:30 a.m. The public hearing will be conducted using Zoom, and can be accessed using the following information <https://us06web.zoom.us/j/87567272573?pwd=UjVNN2lhTk8vMkhIdzNlTTkrWjZ3QT09>, Meeting ID 875 6727 2573, Passcode 906504, Call-in 888-788-0099 (US Toll-free).

Date of Intended Adoption: September 23, 2021.

Submit Written Comments to: Robert Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, email robs@psccleanair.gov, fax 206-343-7522, by September 22, 2021.

Assistance for Persons with Disabilities: Contact agency receptionist, phone 206-689-4010, fax 206-343-7522, TTY 800-833-6388 or 800-833-6385 (Braille), email robs@psccleanair.gov, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11** - The agency's practice for many years has been to annually adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70A.15.3160 (formerly RCW 70.94.431) and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index (CPI) for the Seattle/Tacoma/Bellevue area increased by 1.58 percent for the 2020 calendar year, which amounts to an increase of \$325.00 in the maximum civil penalty amount. The agency has used the consumer price index for wage earners (CPI-W) in the Puget Sound region for many years to make this inflation-based adjustment because it reflects the data of what happened (i.e. not a forecast) and it represents local economic information.

The proposed amendment does not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 - This section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2020. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2021.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, 206-689-4052.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70A.15.2040.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW does not appear to apply to local air agencies.

August 13, 2021
Craig Kenworthy
Executive Director

AMENDATORY SECTION
SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed ~~\$(20,541.00)~~ 20,866.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than ~~\$(20,541.00)~~ 20,866.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following: (1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

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

AMENDATORY SECTION

SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, (~~2020~~) 2021.

WSR 21-17-106
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 16, 2021, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-23-084.

Title of Rule and Other Identifying Information: WAC 392-410-350
Seal of biliteracy.

Hearing Location(s): On September 21, 2021, at 11:00 a.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 (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit office of superintendent of public instruction's (OSPI) website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email Kristin.murphy@k12.wa.us.

Date of Intended Adoption: September 24, 2021.

Submit Written Comments to: Veronica Trapani, OSPI, P.O. Box 47200, Olympia, WA 98504, email veronica.trapani@k12.wa.us, 360-819-0950, by September 21, 2021.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by September 14, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing rule making concerning the seal of biliteracy to expand options for demonstrating English language proficiency to be consistent with section 201 (4) (b) (i)-(v) of HB 1599 (2019). Further, OSPI is proposing to update and clarify the rule to ensure tribal languages, American sign language, and languages that may only be communicated orally (not through writing or reading) can be included in the criteria for awarding the seal of biliteracy.

Reasons Supporting Proposal: The proposed changes are intended to ensure that language does not inadvertently impede access for groups of students.

Statutory Authority for Adoption: RCW 28A.300.575.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Veronica Trapani, OSPI, 600 South Washington Street, Olympia, WA.

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).

August 16, 2021
Chris P. S. Reykdal

State Superintendent
of Public Instruction

OTS-3202.1

AMENDATORY SECTION (Amending WSR 15-09-123, filed 4/21/15, effective 5/22/15)

WAC 392-410-350 Seal of biliteracy. (1) ~~((The authority for this section is RCW 28A.300.575, which authorizes the office of the superintendent of public instruction to adopt rules establishing criteria for award of the Washington state seal of biliteracy.~~

~~(2))~~ Graduating high school students must meet the following criteria to be awarded the Washington state seal of biliteracy:

(a) Students must demonstrate proficiency in English by ~~((i))~~ meeting the statewide minimum graduation requirements in English ~~((under WAC 180-51-066 through 180-51-068, as amended; and (ii) meeting the state standard on the reading and writing or English language arts assessments under RCW 28A.655.061))~~ in compliance with RCW 28A.655.250; and

(b) Students must demonstrate proficiency in one or more world languages ~~((through any one of the following methods:~~

~~(i) Passing a foreign language advanced placement examination with a score of three or higher;~~

~~(ii) Passing an International Baccalaureate examination with a score of four or higher;~~

~~(iii))~~, which includes heritage and tribal languages, by one of the following:

(i) Demonstrating intermediate-mid level proficiency or higher on all components in the world language based on the American Council on the Teaching of Foreign Languages (ACTFL) proficiency guidelines, using a national or international assessment((s)) approved by the office of the superintendent of public instruction ((for competency-based credits;

~~(iv) Qualifying for); or~~

(ii) Earning four competency-based credits ((by demonstrating proficiency in the world language at intermediate-mid level or higher based on the ACTFL proficiency guidelines,)) according to the school district's policy and procedure for competency-based credits for world languages; or

~~((v))~~ (iii) Demonstrating proficiency in ((speaking, writing, and reading the world language through other national or international assessments approved by the office of superintendent of public instruction at a level comparable to intermediate-mid level or higher based on the ACTFL proficiency guidelines.

~~(3) "Foreign language" and "world language" as used in this section means a language other than English, and includes, without limitation, American sign language, Latin, and Native American or other indigenous languages or dialects))~~ tribal or Native American languages; or

(iv) Demonstrating intermediate-mid proficiency in American Sign Language (ASL); or

(v) Passing an International Baccalaureate examination with a score of four or higher; or

(vi) Passing a world language Advanced Placement examination with a score of three or higher.

(2) Proficiency in tribal or Native American languages under subsection (1)(b)(iii) of this section is determined by the sovereign tribal government.

(a) Students of Native American languages spoken by Washington's twenty-nine federally recognized tribes must be assessed by a first peoples' first language, culture, and oral traditions certified educator under WAC 181-78A-700 and 181-79A-140.

(b) For Native and tribal languages that are outside of Washington's twenty-nine federally recognized tribes, consult the office of native education.

[Statutory Authority: RCW 28A.230.125, 28A.300.575. WSR 15-09-123, § 392-410-350, filed 4/21/15, effective 5/22/15.]

WSR 21-17-111
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 16, 2021, 1:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-126.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On September 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than September 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 21, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by 5:00 p.m., September 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments are necessary to support legislative changes passed in 2SSB 5214 (chapter 239, Laws of 2021) and the operating budget (chapter 334, Laws of 2021) regarding temporary assistance for needy families time limit extensions.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and 74.08A.010.

Statute Being Implemented: RCW 74.08A.010; and operating budget (chapter 334, Laws of 2021).

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.

August 16, 2021

Katherine I. Vasquez
Rules Coordinator

SHS-4875.1

AMENDATORY SECTION (Amending WSR 21-12-077, filed 5/28/21, effective 7/1/21)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42, U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020((-)); or

(vii) Are an active TANF recipient from July 1, 2021 through June 30, 2022; or

(viii) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the state's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b)(viii) is equal to the number of months that you received TANF on or after

March 1, 2020, when the state's unemployment rate was at seven percent or above.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my Work-First participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 2020 c 320 and C.F.R. 20 § 416.2095 through 416.2099. WSR 21-12-077, § 388-484-0006, filed 5/28/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, effective 3/12/12. 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, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, 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, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

WSR 21-17-115
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 17, 2021, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-159.

Title of Rule and Other Identifying Information: Prevailing wage intent and affidavit filing fees; chapter 296-127 WAC, Prevailing wage.

Hearing Location(s): On September 21, 2021, at 1 p.m. Virtual and telephonic hearing only. Please join on your computer or mobile app (Microsoft Teams) [https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjEzOTU4YWUtNjEzNy00MzM3LWFiOTMtYThhNGU4MjUyOTY3%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjEzOTU4YWUtNjEzNy00MzM3LWFiOTMtYThhNGU4MjUyOTY3%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d)

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%220id%22%3a%22d2b1cfc2-5d3b-4cf8-8fbd-a94ce8c92ef1%22%7d, or call in (audio only) +1 253-372-2181, Phone conference ID 928 608 41# (pound sign must be entered). The virtual/telephonic hearing starts at 1:00 p.m. and will continue until all oral comments are received.

Date of Intended Adoption: September 28, 2021.

Submit Written Comments to: Beverly Clark, P.O. Box 44400, Olympia, WA 98504-4400, email Beverly.Clark@Lni.wa.gov, fax 360-902-5292, by 5:00 p.m. on September 21, 2021.

Assistance for Persons with Disabilities: Contact Beverly Clark, phone 360-902-6272, fax 360-902-5292, email Beverly.Clark@Lni.wa.gov, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is proposing rules to amend chapter 296-127 WAC, Prevailing wage, in order to implement the legislative changes made within 2019's Prevailing wage program fees—Determination—Limit Act (chapter 193, Laws of 2019, SB 5566) that will address fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages.

SB 5566 amended RCW 39.12.070 to allow for a filing fee for intents and affidavits to be \$40 or less, and specifically for the 2019-2021 biennium fees to not be more than twenty dollars.

This rule making is proposed to be consistent with RCW 39.12.070, which allows for L&I to set the fee, and states the fee must be \$40 or less. In order for L&I to continue to process and approve or certify the intent and affidavit forms, rule making is required to set the intent and affidavit filing fees that will be charged after the end of the 2019-2021 biennium.

Reasons Supporting Proposal: There are approximately one thousand public agencies that contract for public work in Washington state. Under the provisions of RCW 39.12.040, these agencies cannot make payment, release contract retainage, or accept the contract work as complete without the required approved and certified intent and affidavit forms. This means a rule setting the filing fees that allow processing of these forms must be in place or many payments on public works will not be possible under the law. Without the legal ability to make payments, public works will come to a statewide standstill.

Statutory Authority for Adoption: Chapter 193, Laws of 2019, SB 5566; and RCW 39.12.070.

Statute Being Implemented: RCW 39.12.070.

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, Implementation, and Enforcement: Jim Christensen, Tumwater, Washington, 360-902-5330.

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 in accordance with RCW 34.05.328 (5)(b)(iii), as these rules are RCW 34.05.328 (5)(b)(vi) adjusting certain fees.

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.

August 17, 2021

Joel Sacks

Director

OTS-3153.3

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-040 Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a forty-dollar filing fee for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

AMENDATORY SECTION (Amending WSR 08-17-072, filed 8/19/08, effective 9/19/08)

WAC 296-127-045 Affidavit of wages paid. (1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by (~~the fee set in RCW 39.12.070~~) a forty-dollar filing fee for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. WSR 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. WSR 94-01-100, § 296-127-045, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. WSR 90-24-053, § 296-127-045, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. WSR 88-22-046 (Order 88-22), § 296-127-045, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. WSR 82-18-041 (Order 82-28), § 296-127-045, filed 8/27/82.]

WSR 21-17-117
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed August 17, 2021, 10:12 a.m.]

Continuance of WSR 21-14-077.

Preproposal statement of inquiry was filed as WSR 21-01-200.

Title of Rule and Other Identifying Information: WAC

296-900-13015 Posting citation and notices.

Hearing Location(s): On September 22, 2021, at 11:00 a.m. Join Zoom meeting <https://lni-wa-gov.zoom.us/j/86044671815>, Meeting ID 860 4467 1815, Passcode Posting@11, Phone +1 253 215 8782, Meeting ID 860 4467 1815, Passcode 7017133855. The hearing will continue until all oral comments are received.

Date of Intended Adoption: November 2, 2021.

Submit Written Comments to: Tari Enos, P.O. Box 44620, Olympia, WA 98504-4620, email tari.enos@lni.wa.gov, fax 360-902-5619, by September 29, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this continuance is to provide another public hearing for the WAC 296-900-13015 Posting citation and notices, rule making. The original public hearing virtual meeting link posted on WSR 21-14-077 was faulty, and did not allow the hearing to occur as scheduled. The comment period is also being extended.

The purpose of the rule making filed under WSR-21-14-077 was to change the length of time that a citation and notice needs to be posted on an employee safety bulletin board; this includes any correspondence related to an employee complaint. The department of labor and industries (L&I) proposed to change the amount of time a citation and notice is posted from three working days to seven working days, and add language clarifying that weekends and holidays are not included in the posting time period. L&I also proposed adding language giving the employer the option to use electronic means to supplement the safety bulletin board for those employees that don't work where the physical board is located, such as those who telework.

Reasons Supporting Proposal: Employers are currently required to post a citation and notice for three working days for employees to see. There are employees who work nonstandard shifts that may not have access to this information due to the short amount of time the citation and notice is actually posted. L&I believes worker safety could be improved if all employees have access to corrective action information.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.120.

Statute Being Implemented: Chapter 49.17 RCW.

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: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Craig Blackwood, Acting Assistant Director, Tumwater, Washington, 360-902-5828.

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

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. It was determined that leaving the citation and notice on the bulletin board for the additional workdays does not create any new costs for employers. Employers must already post citations and notices and oftentimes notices are left up longer than three days already. The proposed language allows employers to use electronic means as an option of posting citations and notices for their employees. There are no mandated costs since using technology to give employees access to the citations and notices is voluntary.

August 17, 2021

Joel Sacks

Director

OTS-2690.3

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13015 Posting citation and notices. (1) You must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for ~~((three))~~ seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) You must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

- (a) A designated employee representative.
- (b) Safety representatives.
- (c) The safety committee.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 17-18-075, § 296-900-13015, filed 9/5/17, effective 10/6/17; WSR 06-06-020, § 296-900-13015, filed 2/21/06, effective 6/1/06.]

WSR 21-17-118
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed August 17, 2021, 10:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-07-113.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): On September 21, 2021, at 10:00 a.m. Join by Zoom meeting at <https://lmi-wa-gov.zoom.us/j/88416127480>, Meeting ID 884 1612 7480, Passcode Sept2121!. Join by phone, dial by your location +1 253 215 8782 US (Tacoma), Meeting ID 884 1612 7480, Passcode 823050883. The Zoom hearing starts at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: November 2, 2021.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, email JoAnne.Attwood@lmi.wa.gov, fax 360-902-4988, by September 21, 2021, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jo Anne Attwood, phone 360-902-4777, fax 360-902-4988, TTY 360-902-5797, email JoAnne.Attwood@lmi.wa.gov, by September 16, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number, and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not impact employer rates.

As part of this rule making, the department of labor and industries (L&I) reviewed these chapters for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Proposed amendments include:

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17-31028	Closing accounts	Updating rule to reflect online filing reference.	Rule was written before online filing was an option.
296-17A-0519	Building construction sheet metal work, N.O.C.	Adding clarification that 0519 includes sheet metal work on wood frames.	Staff confusion when applying classification.

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17A-1003 296-17A-3510 296-17A-3802 296-17A-3906	Pole yards Plastics manufacturing Soft goods manufacturing Bakeries, cracker, potato chip, ravioli/ tamale, pasta, and pizza manufacturing N.O.C.	Reducing the number of subclassifications.	We are combining subclassifications as part of our plan to reduce the overall number of subclassifications in the classification plan to ease administrative burden for customers and staff. Some reasons for collapsing: • Low number of employers/hours reporting in subclassification (low credibility from actuarial view) • Subclassification [Subclassification] does not represent separate risks from overall risk classification • Low loss data • No longer need to track these subclassifications separately
296-17A-3701	Hazardous/toxic material; repackaging for disposal	Correct reference in note from 3701-21 to 3701-27.	Typographical error corrected.
296-17A-4903	Marine appraising	Updating format of all subclassifications in the rule with bullets for easier readability.	Improve clarity to promote consistent accurate application of the rules.

Reasons Supporting Proposal: L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). The proposed rule will amend some classifications to increase ease of reporting, and ensure consistent and equitable treatment to businesses.

This rule making will potentially benefit all state fund employers by making it easier to do business with L&I. This rule making will also allow department staff to provide more consistent service to our customers.

Statutory Authority for Adoption: RCW 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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: Jo Anne Attwood, Tumwater, 360-902-4777; Implementation: Keith Bingham, Tumwater, 360-902-4826; and Enforcement: Victoria Kennedy, Tumwater, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (b) (vi), as the proposed rules adjust 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 rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

August 17, 2021

Joel Sacks
Director

OTS-3218.1

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31028 Closing accounts. What are my responsibilities when I close my business, or when I no longer have employees? You must notify us in writing when you close your business or when you no longer have employees. You may ~~((either))~~ send a letter, email, or ~~((include a note on))~~ request to have your account closed when you file your final quarterly report. We will not close your account from a telephone call.

[Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-31028, filed 8/28/98, effective 10/1/98.]

OTS-3172.3

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0519 Classification 0519.**0519-00 ~~((Building construction))~~ Sheet metal work ~~((,))~~ in building construction N.O.C.**

Applies to contractors engaged in the installation or repair of sheet metal work in building construction, not covered by another classification (N.O.C.). Work contemplated by this classification applies to interior and exterior sheet metal work for residential or commercial buildings ~~((and));~~ this includes sheet metal work on wood frame, pole buildings, and nonwood frame buildings. This classification includes the installation of metal siding, gutters and downspouts, nonstructural sheet metal patio covers/carports, metal industrial shelving, stainless steel counter tops, and interior wall panels (such as the back splash behind stoves or sinks). Contractors who operate a sheet metal fabrication shop or prefabricate the gutters, downspouts and posts in a shop away from the construction site are to be assigned classification 3404 for the shop operations. When a contractor's business is assigned classification 3404 for shop operations then classification 5206 "Permanent yard or shop" is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes sheet metal work as part of heating ventilation and air conditioning systems installation which is to be reported separately in classification 0307; the installation of aluminum or sheet metal as part of roof work which is to be reported separately.

rately in classification 0507; the installation of light weight sheet metal tool sheds which is to be reported separately in classification 0516; and the installation of commercial metal carports and service station canopies which is to be reported separately in classification 0518.

[WSR 07-01-014, recodified as § 296-17A-0519, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 99-18-068, § 296-17-52111, filed 8/31/99, effective 10/1/99; WSR 98-18-042, § 296-17-52111, filed 8/28/98, effective 10/1/98. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 89-24-051 (Order 89-22), § 296-17-52111, filed 12/1/89, effective 1/1/90.]

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-1003 Classification 1003.

~~((1003-02 Dry kiln operations~~

~~Applies to establishments engaged in kiln drying of wood as a service for customers in the wood products industry. They may also purchase and dry wood themselves for later sale to a wood product manufacturer. Operations contemplated by this classification include, but are not limited to, receiving green lumber or logs, peeling (mechanized or manual), any incidental machining or turning, layering on a trolley (with spacers in between to allow for air circulation), drying in the heated kiln, and the incidental application of preservative, fire retardant, or insecticide treatments, storing, and delivery. Preservatives may be oil or water based and may be applied through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping) or by soaking in tanks. Machinery and equipment includes, but is not limited to, log handling and trimming machinery, kilns, boilers that heat the kilns, autoclaves, storage tanks, trolley cars, fork lifts, hand tools and delivery trucks.~~

~~This classification excludes dry kiln operations that are part of a wood, veneer or lumber product manufacturing or remanufacturing operation which are to be reported separately in the classification applicable for the operation being performed; all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.~~

~~1003-03 Creosote works; pile and pole treating~~

~~Applies to establishments engaged in treating wood poles with creosote or other chemicals to inhibit deterioration. Poles produced by this type of business are intended for use as utility line poles, supports for bridges and trestles, or piles to be driven into the ground as part of the support for a pier or other structure. Operations contemplated by this classification include, but are not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), any incidental machining and turning (which may include cutting material into ties or cross arms), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heat-~~

ed, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-04 Pole yards

Applies to establishments engaged in producing wood poles to a customer's specifications or for their own resale. These poles are intended for a variety of uses and are finished to varying requirements. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), incidental machining or turning (which may include cutting some material into cross arms, cutting and boring), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-05 Masts and spars yards

Applies to establishments engaged in producing wood masts and spars. Masts and spars are the main and secondary supports, respectively, for sails and running rigging on sailing vessels. These businesses may also produce poles for other uses which may need to be more precisely shaped and finished than those produced in 1003-04. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling the logs (mechanized or manual), machining and turning to size (which may include cutting and boring holes), application of chemical preservative, sanding if necessary, and pick up and delivery. The application of wood finish is also included when performed by employees of an employer having operations subject to this classification. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, wood finishing equipment, hand tools, and trucks. This classification includes the production of finished logs that will be used in the manufacture of log houses or cabins.

~~This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.~~

~~1003-06 Log home manufacturing~~

~~Applies to establishments that receive logs either peeled or unpeeled. Work contemplated by this classification includes the use of hand tools such as, but not limited to, planers, grinders, skids, drawn knives, and slicks to peel or bring back the new appearance of the logs. Chainsaws and chisels are used to notch out the logs to assemble them together. Equipment such as loaders, forklifts, or cranes are used to maneuver the logs around the yard or to help in the assembly of the log home. Once the shell is assembled, it is numbered. The shell is then unassembled and is shipped to the customer's site to be erected. The erection of the log home shell at the customer's site is to be reported in 0510-00. This classification excludes all other phases of construction which will be reported in the applicable construction classifications.~~

~~Log home manufacturing performed in a sawmill environment using dimensional lumber is to be reported in 2903-12.)~~

1003-03 Creosote works; pile and pole treating, dry kiln operations, pole yards, masts and spars yards and log home manufacturing

Applies to:

Businesses engaged in treating wood poles with creosote or other chemicals to inhibit deterioration, kiln drying of wood as a service for customers or for their own resale, producing wood poles to customer's specifications or for their own resale, producing wood masts and spars, and log home manufacturing/assembly in a yard operation.

Products manufactured or applied with preservatives include, but are not limited to:

- Utility poles;
- Supports for bridges/trestles;
- Piles to be driven into ground for support for a pier or other structure;
- Supports for sails and rigging on sailing vessels;
- Logs for log homes.

Work process/activities include, but are not limited to:

- Receiving in lumber or logs;
- Peeling of logs (mechanized or manual);
- Machining or turning of lumber, including cutting material into ties or cross arms;
- Drying/seasoning in kiln;
- Application of preservative, retardant, or insecticide treatment (heated, pressurized vacuum process in autoclave, or by surface application, spraying, brushing, and dipping, or soaking in tanks);
- Notching logs to assemble them together;
- Delivery.

Machinery and equipment used include, but are not limited to:

- Log handling and trimming/cutting machinery;
- Kilns;
- Autoclaves;
- Storage tanks;

- Wood finishing equipment;
- Hand tools (planers, grinders, skids, drawn knives, slicks, chisels);
- Trolley cars;
- Chain saws;
- Loaders/cranes;
- Fork lifts.

Exclusions:

- Dry kiln operations that are part of a wood, veneer, or lumber product manufacturing or remanufacturing operation are classified in the classification applicable for the operation being performed.
- Worker hours engaged in all operations conducted in the woods, such as the felling of timber, are reported separately in the applicable logging classification.
- Worker hours conducted away from the shop or yard, except delivery, is reported separately in the classification applicable for the work being performed.
- Log home manufacturing performed in a sawmill environment using dimensional lumber is classified in 2903-12.
- Worker hours engaged in the erection of log home shells at the customer's site are reported separately in classification 0510-00.
- All other phases of construction are classified in the applicable construction classification.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

[Statutory Authority: RCW 51.16.035 and 51.16.100. WSR 07-12-047, § 296-17A-1003, filed 5/31/07, effective 7/1/07. WSR 07-01-014, recodified as § 296-17A-1003, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-535, filed 8/28/98, effective 10/1/98; WSR 85-24-032 (Order 85-33), § 296-17-535, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-535, filed 11/30/83, effective 1/1/84; Order 77-27, § 296-17-535, filed 11/30/77, effective 1/1/78; Order 74-40, § 296-17-535, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-535, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3510 Classification 3510.

(~~3510-02 Plastics: Artificial marble manufacturing~~)

Applies to establishments engaged in the manufacture of plastic articles by molding a calcium carbonate material mixed with feed stock, a catalyst and dyes which are purchased from outside sources. When this material solidifies it resembles marble, and is used to make counter tops, sinks, novelty items such as, but not limited to, soap dishes, clock cases, and statues. Raw materials are mixed in large mixers until it has the consistency of bread dough. A release agent is sprayed onto empty molds so the finished items can be easily removed after they are set; then the mixture is poured directly into molds, placed into molds by hand, or forced into molds under pressure. The materials are cured at room temperature or with moderate heat (up to 140 degrees F). When the material has hardened, items are removed from

~~the molds and trimmed, sanded or otherwise finished. Sanding may be done with power rotary sanders which create clouds of dust and require the use of respirators.~~

~~This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.~~

3510-03 Plastics: Extrusion, blow molding

~~Applies to establishments engaged in the manufacture of plastic articles by blow molding or extruding. Processes vary, but all usually require the heating and melting of feed stock and mixing of other additives purchased from outside sources. Extrusion involves forcing material through dies; blow molding blows a bubble of plastic into the air and processes it through machinery, or forms an object in a mold by blowing air and material into it. Plastic items such as containers for milk, motor oil, bleach, or other liquids are typically made with a blow molding process, which is a fast, high volume operation. A bubble of molten plastic is blown into a mold and expanded to the shape of the mold with compressed air. The mold is kept cool with a liquid coolant that circulates through its cavities; when hot plastic is pressed against the mold, it cools and hardens in seconds. Sheets of plastic film are usually made by extruding a tube of hot plastic, expanding it with air pressure, then passing it through a series of rollers and cutters which roll it flat and cut it into two separate sheets. Plastic film is used for making plastic bags and other products. This classification includes the manufacture of plastic bags when the extrusion of plastic sheets is performed by employees of the plastic bag manufacturer. Other extrusion processes are used in the manufacture of window frame molding, gutters, pipe, and similar items.~~

~~This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.~~

3510-04 Plastics: Vacuum forming

~~Applies to establishments engaged in the manufacture of plastic goods through a vacuum forming process. Articles manufactured by this method include, but are not limited to, signs, display stands, windshields for boats and motorcycles, boat paddles, skylight windows, trays for packaging food or other items. Sheet goods are heated in an oven or in the molding area, and a vacuum is pulled on the mold, sucking the plastic in to conform to the shape of the mold. Items produced by this method harden and cool in a few minutes. In other techniques, liquid plastic is poured into a mold, a seal of mylar plastic is placed over it, then a vacuum is pulled on the mold forming the liquid to the mold. This method produces a smooth, glossy surface similar to those produced by injection molding, but without the high-cost machinery. For either method, once the plastic material hardens, the "flashing" (excess plastic) is trimmed from the formed article. This is called "deflashing" and may be done with a hand-held knife, a router, or a lathe. There is some assembly in certain manufacturing opera-~~

tions such as attaching components with screws, rivets, bolts, or glue, which is incidental to the manufacturing process and is included in the classification.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and establishments engaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511.

Special note: The painting or lettering of signs is included in the plastic goods manufacturing classification when done by employees of an employer making signs. Establishments that purchase premanufactured plastic "mediums" from others, then paint lettering or designs or attach vinyl lettering to them in their own shops are to be reported separately in classification 4109.

3510-05 Plastics: Foam molding, rotary molding, liquid molding

Applies to establishments engaged in the manufacture of plastic goods through foam molding, rotary molding or liquid molding processes. Raw materials, which may be received in barrels, drums, or rail cars, include, but are not limited to, small plastic beads, powder, pellets or liquids, and foaming agents. Establishments in this classification will frequently employ laboratory employees such as chemists or chemical engineers to formulate their own plastic compounds to meet specifications as to rigidity, flexibility, or fire retardation. Liquid polymer is mixed with one or more ingredients, in some cases including a foaming agent, then heated to control the foaming action. It may be forced through pipes or hoses from a dispensing machine into the mold, or workers may carry it in buckets from the mixing pot and pour it into the molds. The top of the mold is put in place and secured. Heat and air pressure is applied inside the mold, which causes the foam to rise and form the shape of the object being made. Workers may wear respirator masks during this phase. The mold may be lined with vinyl or other fabric, or wire frames may be placed inside the molds when making items such as armrests, cushions, dashboards for vehicles, boats, or aircraft. Goods usually set overnight, then the flashing (excess plastic) is trimmed off. Liquid plastic, such as urethane, without a foaming agent, is also used to make products that are extremely tough. Products made from this type of liquid mixture include, but are not limited to, parts for aircraft or industrial machinery. Liquid mixtures are poured into molds and cured in ovens. Styrofoam products such as, but not limited to cups or plates, packaging materials are made from small styrofoam beads that are expanded by heating, then forced or blown into a mold and heat-expanded to form the product. Logos or brand names may be printed onto the products with a special offset press. Rotary molding is used for large hollow items like garbage cans or buckets. Plastic powder, mixed with color, is poured into molds; molds are closed and moved on a rotating arm through a large oven in a tumbling action while the mold heats. The plastic powder sticks to the inside of the mold and melts. The mold is removed from the oven while still tumbling, and air and/or water cooled. Finished products are then removed from the molds.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which is to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be

reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.

3510-06 Plastics: Injection molding

Applies to establishments engaged in the manufacture of plastic goods through an injection molding process. Articles made by injection molding range widely; they include, but are not limited to, key chain holders, writing pens, combs, medicine bottles, novelty items, sporting goods, and cargo baskets for industrial use. The size of injection molding machines ranges widely, depending on the products being made. Raw materials, which are usually in the form of tiny plastic beads, are received from outside sources in barrels, drums or rail cars. The pellets are placed in a dryer to remove any moisture, then fed through a hopper on the injection molding machine into an air-free chamber where they are melted at high temperatures, then forced with an auger-type screw, ram piston or similar device, into the mold. The mold is cooled by a coolant to allow the plastic to solidify rapidly. When solidified, the item is ejected from the mold by air pressure, hydraulics, or a mechanical ram. Items may be trimmed, polished, assembled, plated, or otherwise finished. Establishments in this classification may make molds for their own use, or the customer brings molds for specific items they order. The manufacture or repair of their own or their customer's molds is included within the scope of this classification when done by employees of an employer subject to this classification.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.

3510-07 Plastics: Manufacture, N.O.C.

Applies to establishments engaged in the manufacture of plastic goods not covered by another classification (N.O.C.) using several of the operations described in the other plastics manufacturing classifications, but not having one predominate process. This classification could include the application of fiberglass resins with a brushing or spreading technique (sometimes referred to as "lay-up"). In the lay-up method, fabric is fitted over molds, then layers of fiberglass resins, hardeners, and fillers are applied over the fabric with a brush or trowel. In some applications, a thin foam material is fitted into a mold, then covered with fiberglass resins and hardeners; when the product is removed from the mold, the other side is coated, producing an exceptionally strong, lightweight product. Once removed from the molds, items are heated in ovens to harden and set. This classification also includes establishments that make pellets (feed stock) from recyclable plastic goods. Scraps or recyclable goods are ground or pulverized, then formed into pellets which can be used again in manufacturing processes, or further processed into oil by other manufacturers.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and establishments en-

gaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511.

Special notes: When the manufacture of plastic goods includes any fiberglass work using the spraying technique with a chopper gun, the entire operation is to be reported separately in classification 3511. Incidental hand brushing or troweling of fiberglass resins or epoxy over a fabric or foam material, is sometimes an integral part of manufacturing processes covered under other manufacturing classifications. A review of the manufacturing process must be made to determine the proper classification applicable to that manufacturing process.

3510-08 Graphite composite goods: Manufacturing

Applies to establishments engaged in the manufacture of fiber reinforced plastic goods. Products manufactured by establishments subject to this classification include, but are not limited to, golf club shafts, fishing poles and rod blanks, garden carts, hose reels, wind board sail masts, bicycle frames, tennis racquets, snow skis and auto parts. While the classification specifies graphite composite goods, other fiber reinforced plastics are used to make similar products and are covered by this classification. Graphite composites are also known as carbon reinforced composites. Irrespective of the product made, the processes used to produce the end products are similar. For example, the making of tube-like products such as, but not limited to, golf shafts, wind board sail masts, and fishing poles, consists of cutting a fabric-like material which is purchased from others to the specified dimension needed to make the product; rolling the material onto a mandrel (rod) or wrapping the material around a mold; securing the fabric material with a plastic (cellophane) tape; curing the product in an oven; removing the cellophane wrap; removing the mandrel or mold; sanding the product to remove the lines left by the cello wrap; and applying the finish.

This classification excludes the manufacture of nonfiber reinforced plastic goods or products which are to be reported separately in classification 3510 as applicable; fiberglass reinforced goods or products which are to be reported separately in classification 3511; and plastic goods manufacturing from premanufactured components including the cutting, bending and milling of plastic which are to be reported separately in classification 3512.

Special note: Care should be taken when encountering the term "graphite composite." Graphite is a material common to many products such as, but not limited to, lead pencils, paints, lubricants and protective coatings, none of which are covered by classification 3510.))

3510-05 Plastics: Foam molding, rotary molding, liquid molding

Applies to:

Businesses engaged in manufacturing plastics using the foam molding, rotary molding, or liquid molding process.

Processes used include:

• Foam molding - Liquid polymer is mixed with one or more ingredients, including a foaming agent, then heated to control the foaming action. It may be forced through pipes or hoses from a dispensing machine into the mold, or workers may carry it in buckets from the mixing pot and pour it into the molds. The top of the mold is put in place and secured. Heat and air pressure is applied inside the mold, which causes the foam to rise and form the shape of the object made. The mold may be lined with vinyl or other fabric, or wire frames may

be placed inside the molds. Goods usually set overnight, and then the flashing (excess plastic) trimmed off.

- Liquid molding - Liquid plastic, such as urethane, without a foaming agent, is used to make products that are extremely tough. Liquid mixtures are poured into molds and cured in ovens.

- Styrofoam molding - Small styrofoam beads that expand by heating, then forced or blown into a mold and heat-expanded to form the product.

- Rotary molding - Rotary molding is used for large hollow items like garbage cans or buckets. Plastic powder, mixed with color, is poured into molds. The molds are closed and moved on a rotating arm through a large oven in a tumbling action while the mold heats. The plastic powder sticks to the inside of the mold and melts. The mold is removed from the oven while still tumbling, and air and/or water-cooled. Finished products are removed from the molds.

Product manufactured include, but are not limited to:

- Aircraft or machinery parts;
- Armrests, cushions, or dashboards for vehicles, boat, or aircraft;
- Styrofoam cups or plates;
- Styrofoam packing materials;
- Garbage cans;
- Buckets.

Raw materials usually received in barrels, drums or rail cars.

Materials used include, but are not limited to:

- Plastic beads;
- Pellets;
- Powders;
- Liquids;
- Foaming agents.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Molds;
- Respirators;
- Sanders.

Work activities include, but are not limited to:

- Laboratory personnel formulate plastic compounds to meet specifications such as rigidity, flexibility, or fire retardation;
- Workers may carry materials in buckets to the molds;
- Workers secure and seal the tops of molds;
- Flashing (seams and excess plastic) trimmed;
- Brand names may be printed onto the product using a special offset press;
- Finished products are removed from molds.

Exclusions:

- Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.
- Manufacturing graphite composite goods is classified in 3510-07.

• Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511.

3510-06 Plastics: Injection molding

Applies to:

Businesses engaged in manufacturing plastics using the injection molding process.

Note: Businesses in this classification may manufacture molds used in injection molding or they may use molds supplied by their customers. Repairing molds is included in this classification.

Processes used include:

• Injection molding - Plastic pellets are placed in a dryer to remove any moisture, then fed through a hopper on the injection molding machine into an air-free chamber where they are melted at high temperatures, then forced with an auger-type screw, ram piston or similar device, into the mold. A coolant to allow the plastic to solidify rapidly cools the mold. When solidified, the item is ejected from the mold by air pressure, hydraulics, or a mechanical ram. Items may be trimmed, polished, assembled, plated, or otherwise finished.

Products manufactured include, but are not limited to:

- Cargo baskets for industrial use;
- Combs;
- Key chain holders;
- Medicine bottles;
- Novelty items;
- Sporting goods;
- Writing pens.

Raw materials, usually in the form of plastic beads, arrive in barrels, drums, or rail cars.

Materials used include, but are not limited to:

- Plastic beads;
- Pellets.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Injection molding machines;
- Molds;
- Respirators;
- Sanders.

Exclusions:

• Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.

• Manufacturing graphite composite goods is classified in 3510-07.

• Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511.

3510-07 Plastics manufacture, N.O.C.

Applies to:

Businesses engaged in all other forms of plastics manufacturing including, but not limited to:

- Artificial marble manufacture;
- Extrusion, blow molding manufacture;
- Graphite composite goods manufacture;
- Vacuum forming manufacture;
- Plastics manufacturing using multiple methods, but foam molding, liquid molding, rotary molding, or injection molding are not the primary method.

Products manufactured include, but are not limited to:

- Boat paddles;
- Clock cases;
- Counter tops;
- Display stands;
- Fiber reinforced plastic goods such as:
 - Auto parts;
 - Bicycle frames;
 - Fishing poles;
 - Garden carts;
 - Golf club shafts;
 - Hose reels;
 - Rod blanks;
 - Snow skies;
 - Tennis racquets;
 - Wind board sail masts.
- Novelty items;
- Plastic bags;
- Plastic bleach containers;
- Plastic film;
- Plastic feed stock from recyclable plastic goods;
- Plastic gutters;
- Plastic milk containers;
- Plastic motor oil containers;
- Plastic pipe;
- Plastic window frames;
- Signs;
- Sinks;
- Skylight windows;
- Soap dishes;
- Statues;
- Trays for packing food or other items;
- Windshields for boats and motorcycles.

These businesses:

• Materials processed to resemble marble, to manufacture plastic articles through the blow molding or extrusion process, to manufacture plastic articles through the vacuum form process, or to manufacture fiber-reinforced goods or to manufacture through a fiberglass resin process.

• Mold a (for example calcium carbonate) material mixed with feed stock.

• Processes vary but all use the heating and melting of feed stock.

• Some processes involve the addition of additives.

Processes include, but are not limited to:

• Artificial marble manufacturing - Molding calcium carbonate material is mixed with feedstock, catalyst, and dyes to resemble marble

when it solidifies. A release agent is sprayed into empty molds to allow the release of the item. Raw materials are mixed in large mixers. The mixture is poured directly into molds, placed into molds by hand, or forced into molds under pressure. The materials harden at room temperature. Items are removed from the molds and sanded, trimmed, or finished.

- Blow molding - Plastic feedstock is melted and mixed with other additives. A bubble of molten plastic is blown into a mold and expanded to the shape of the mold with compressed air. The mold is kept cool with a liquid coolant that circulates through its cavities. When hot plastic is pressed against the mold, it cools and hardens in seconds. Blow molding is usually a fast, high-volume operation.

- Extrusion molding - Plastic feedstock is melted and mixed with other additives and then extruded through dies. Sheets of plastic film are usually made by extruding a tube of hot plastic, expanding it with air pressure, then passing it through a series of rollers and cutters, which roll it flat and cut it into two separate sheets. Plastic film is used for making plastic bags and other products.

- Fiberglass molding using lay-up method - In the lay-up method, fabric is fitted over molds, then layers of fiberglass resins, hardeners, and fillers are applied over the fabric with a brush or trowel. In some applications, a thin foam material is fitted into a mold, and covered with fiberglass resins and hardeners. When the product is removed from the mold, the other side is coated, producing an exceptionally strong, lightweight product. Once removed from the molds, items are heated in ovens to harden and set.

- Fiber reinforced plastic goods - The processes used to produce the product are similar regardless of the product made. For example: The making of tube-like products consist of cutting a fabric-like material, which is purchased from others. It is cut to the specified dimension needed to make the product. The process rolls the material onto a mandrel (rod) or wraps the material around a mold, secures the fabric material with a plastic (cellophane) tape. The product cures in an oven. The cellophane wrap and mold or mandrel are removed. The product sanded to remove the lines left by the cellophane wrap and the finish applied.

- Making feedstock from recyclable plastic goods - Scraps or recyclable goods are ground or pulverized and formed into pellets. The pellets can be used again in manufacturing or further processed into oil by other manufacturers.

- Vacuum forming - Sheet goods are heated in an oven or in the molding area, and a vacuum is pulled on the mold, sucking the plastic in to conform to the shape of the mold. Items produced by this method harden and cool in a few minutes. In another technique, liquid plastic poured into a mold, a seal of plastic placed over the item, and a vacuum pulled on the mold forming the liquid to the mold. This method produces a smooth, glossy surface. For either method, once the plastic material hardens, the "flashing" (excess plastic) is trimmed from the formed article. This process is "deflashing." It is done with a hand-held knife, a router, or a lathe. There is some assembly in certain manufacturing operations such as attaching components with screws, rivets, bolts, or glue, which is incidental to the manufacturing process and is included in the classification.

Special note: The painting or lettering of signs is included within the vacuum forming industry when done by employees of the employer assigned this classification. Businesses within this classification who purchase premanufactured signs from others, then paint let-

tering or designs or who then attach vinyl lettering within their own shops report separately in classification 4101 for their shop operations.

Materials used include, but are not limited to:

- Calcium carbonate;
- Catalysts;
- Dyes;
- Fiberglass resins;
- Liquid hardeners;
- Plastic feed stock;
- Plastic sheets;
- Recyclable plastic goods;
- Reinforcement fabrics;
- Release agents.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Molds;
- Respirators;
- Sanders.

Exclusions:

- Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.
- Plastic manufacturing through the foam molding, rotary molding, or liquid molding processes, classified in 3510-05.
- Plastic manufacturing through the injection molding process classified in 3510-06.
- Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511. Any fiberglass application of the spraying technique using a chopper gun requires the entire business is reported separately within classification 3511. Incidental hand brushing or troweling of fiberglass resins or laying of epoxy over fabric occurs among other manufacturing industries. There should be a complete review of the manufacturing process in assigning the correct classification.

[WSR 07-01-014, recodified as § 296-17A-3510, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-59202, filed 8/28/98, effective 10/1/98; WSR 96-12-039, § 296-17-59202, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 91-12-014, § 296-17-59202, filed 5/31/91, effective 7/1/91; WSR 90-13-018, § 296-17-59202, filed 6/8/90, effective 7/9/90.]

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-3701 Classification 3701.

3701-06 Chemicals, N.O.C.: Manufacturing chemical mixing, blending, and repackaging nitrate recovery from X-ray and photo films

Applies to:

Businesses engaged in manufacturing:

- Acetylene gas;
- Acid;
- Ammonia;
- Ammonia nitrate;
- Borax;
- Carbonic acid gas, also known as phenol;
- Chemicals using a nitration, alkylation or oxidation process;
- Dry ice;
- Dyes, including dye and chemicals used for tinting candles;
- Fireworks;
- Nitrogen;
- Oxygen and hydrogen;
- Potash;
- Salt.

Businesses engaged in:

- Recovering nitrate or silver from X-ray and photo films.
- Mixing, blending or repackaging chemicals, but not manufacturing the ingredients.

Products manufactured and processes used include, but are not limited to:

- Acetylene gas - Highly flammable but nontoxic gas that is manufactured by reacting calcium carbide with water in a pressure generator, which combines carbon and lime to form the product.
- Ammonia - Colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. Involves combining hydrogen and nitrogen gases with a catalyst, which causes a reaction between the two gases when heated in a generator.
- Ammonia nitrate - Crystalline compound used mainly in fertilizers, explosives and propellants. Involves combining ammonia and nitric acid in a reactor.
- Borax - Used in manufacture of glass, glazes, soap, and boric acid. Produced by separating it from the potash by a rapid cooling process. Evaporated by heating in a partial vacuum to produce crystals or granules which are dried.
- Carbonic acid gas, also known as phenol - Caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.
- Chemicals using a nitration, alkylation or oxidation process:
 - Alkylation - Involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products.
 - Nitration - Involves the combining of nitrate with an organic compound to produce nitrobenzene used in solvents, fertilizers and acids.
 - Oxidation - Involves the combining of oxygen with other substances to produce products such as; but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.
- Dry ice - Carbon dioxide in a solid form.
- Dyes, including dye and chemicals used for tinting candles - Made from organic and inorganic compounds. Manufacturing methods include weighing raw materials, pumping them into vats, heating, agitat-

ing, cooling, filtering through presses, and packaging. May also include drying and grinding into powder or may be left in liquid or paste forms.

- Fireworks.
- Mixing, blending or repackaging chemicals, but not manufacturing the ingredients - Mixed by hand or through a mechanical process.
- Nitrogen - Colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.
- Oxygen and hydrogen - Involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. Liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium.
- Potash - Used in fertilizer. Refined by adding an amine to the brine, which causes the salts to float to the surface where they are skimmed off. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.
- Salt - Used in chemicals and food processing. Salt ores are dissolved in water to produce a brine of the desired concentration. Refined into common salt by adding caustic soda and soda ash. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.
- Recovering nitrate or silver from X-ray and photo films - Placing films in developing solutions, ionizing the solution and separating the elements.

Equipment includes, but is not limited to:

- Pressurized tanks;
- Vats;
- Screens;
- Ovens;
- Grinding machines;
- Mixing and blending machinery;
- Filling and packaging machinery;
- Fork lifts;
- Trucks.

Exclusions:

- Technicians who set up and carry out fireworks displays are classified in 6207.
- The production of salt ores used in the manufacture of salt, borax, and potash.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-08 Cosmetic, pharmaceutical, serum: Manufacturing

Applies to:

Businesses engaged in the manufacture of cosmetics, pharmaceuticals, serums, antitoxins or viruses.

Products include, but are not limited to:

- Soaps;
- Shampoo/conditioners;
- Creams, gels or lotions;
- Baby powder;
- Lipstick;
- Nail polish;

- Bath oils/salts;
- Tablets/pills;
- Ointments;
- Liquids/powders (pharmaceutical);
- Serums.

Work activities include, but are not limited to:

• Mixing of premanufactured ingredients.
 • Mixing or blending of base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings and waxes used for coatings.

- Bottling/packaging/labeling and laboratory equipment.
- Pulverizing, distilling, heating and drying product.
- Microscopic laboratory work.
- Working with animals, injecting with bacteria and viruses (eventually killing animal).

Killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

Equipment includes, but is not limited to:

- Storage tanks;
- Mixers;
- Heating devices;
- Bottling/packaging/labeling equipment;
- Laboratory equipment.

Exclusions:

- Manufacture of ingredients used in the mixing of the cosmetics.
- Manufacture or harvest of ingredients used in the manufacture of the pharmaceuticals.
- Retail compounding pharmacy stores are classified in 6406-16.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-14 Extract, alcohol, perfume manufacturing; mint, including distillation of essential oils N.O.C.

Applies to:

Businesses engaged in manufacturing or distilling:

- Alcohol - Not for ingestion.
- Extracts - Extracts are the concentrated forms of the essential components of a food or a plant.
- Mint.
- Perfumes.

Processes used include, but are not limited to:

• Alcohol - All use a distillation process, which involves the heating of liquids and resulting condensation of vapors to purify or create a substance contained in the original wood or grain product.

• Extracts - The process for obtaining extracts involves pressing, cooking, steaming, or distillation from plants, herbs, or fruit peelings. Extracts may be mixed or blended with other ingredients for greater strength, color, or consistency. Products are bottled or canned.

• Mint - Mint distillation may begin with the use of mint oil distilled by a supplier or with the distillation of the mint into mint oil. Mint leaves are chopped and blown into a steamer, which lifts the

moisture and oils. Steam then passes through a series of condensation lines. Water is added to bring the oil to the top of the liquid. The mint oil is heated for purification and fragrance. Various mint oils may be blended together to produce distinctive products such as spearmint or peppermint.

- Perfumes - The process may involve distillation, cooking, grinding, compounding, drying, blending or liquidizing of ingredients. Ingredients may include extracts, oils, colors, and binders.

Products include, but are not limited to:

- Methanol (wood alcohol);
- Ethanol (grain alcohol);
- Denatured alcohol (combination of methanol and ethanol);
- Solvents;
- Germicides;
- Pesticides;
- Antiseptics;
- Materials intended for use in other products such as varnish or shellac;
- Flavorings, including mint, spearmint, and peppermint;
- Perfumes used to manufacture other products such as scented candles;
- Personal fragrances;
- Essential oils;
- Sachet powders;
- Ingredients for skin conditioners;
- Hop extracts used in the brewing of beer.

Equipment includes, but is not limited to:

- Distillation equipment;
- Steam cookers;
- Presses;
- Filters;
- Grinders;
- Vats;
- Vapor extraction equipment;
- Storage tanks;
- Mixers;
- Heating equipment;
- Forklifts;
- Laboratory equipment;
- Bottling, packaging, labeling equipment;
- Delivery trucks.

Exclusions:

- Manufacturing of spirituous liquor for ingestion is classified in 3702.
- Candle manufacturing is classified in 3701-22.
- Worker hours engaged in gasohol manufacturing or refining are reported separately in classification 3407.
- Worker hours engaged in hop pellet manufacturing are reported separately in classification 2101.
- Worker hours engaged in mint raising or harvesting are reported separately in classification 4811.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-22 Pigment solutions or emulsion: Manufacturing

Applies to:

Businesses engaged in manufacturing a variety of chemical products including, but not limited to:

- Candles;
- Crayons;
- Dressings, see polish;
- Enamel, see paint;
- Glue;
- Ink, all types;
- Lacquer, see paint;
- Paint;
- Paint removers and thinners;
- Paste, see glue;
- Polish, also known as dressings include, but are not limited

to:

- Shoe polish;
- Leather polish;
- Furniture polish;
- Automobile polish;
- Metal polish.
- Putty;
- Shellac, see paint;
- Synthetic resin, see putty;
- Varnish.

Processes used include, but are not limited to:

- Candles - Wax is heated. Wicks are dipped in the wax either by hand or machine. Fragrances are added for scented candles. When the candles are dried, their wicks are cut and they are placed in molds to shape the base. Color may be added by hand or by machine. The candles are inspected, wrapped, packaged, and labeled.

- Crayons - Similar to candles, but crayons are molded instead of dipped.

- Dressings or polish - Ingredients and processes vary dependent upon the product. Process may be simple and involve only mixing, or process may be detailed and involve heating or cooking and forming into a mold or stick form.

- Paint, enamel, lacquer, shellac - Involves a series of mixing and grinding operations. Solid pigments are blended with liquid resins. Paint extender may be added. Paint is pumped into filling stations. Containers of paint are packaged, labeled and shipped.

- Glue or paste - Involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

- Ink - Involves cooking of oils and resin. Pigments and dryers are blended into the resin, which is then diluted to the proper consistency.

- Putty or synthetic resin - Putty is a finely powdered chalk mixed with linseed oil. Putty and synthetic resins have the same ingredients. Both are made by grinding and mixing.

- Varnish - Similar to paint manufacturing process. Manufacturing varnish also includes a cooking process.

Ingredients used include, but are not limited to:

- Beeswax;
- Paraffin;
- Stearin;

- Wicks;
- Powder or granule Arabic gum;
- Modified starch received from others;
- Pigments or coloring;
- Oils;
- Other waxes;
- Resins;
- Detergents;
- Methanol;
- Solvents;
- Water;
- Ground chalk;
- Limestone;
- Calcite;
- Preservatives.

Equipment includes, but is not limited to:

- Weighing and measuring scales;
- Mixers;
- Stoves;
- Molding apparatus;
- Automatic filing, labeling, and packaging machines;
- Forklifts;
- Delivery trucks.

Exclusions:

- The production of raw materials used to manufacture listed products.
- Worker hours engaged in glue manufacturing from animal substances are reported separately in classification 4301.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-27 Hazardous/toxic material: Repackaging for disposal

Applies to:

Businesses engaged in identifying and repackaging hazardous/toxic materials for disposal.

Note: This class is distinguished from classification 4305-20, in that classification ((3701-24)) 3701-27 applies to the identifying and repackaging for disposal of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the processing or handling of such materials as medical or septic tank waste, drug lab or hazardous spill cleanup, and reprocessing or handling of low-level radioactive materials.

Work activities include, but are not limited to:

- Visual inspection of materials.
- Sending sample of materials to lab for analysis.
- Identifying components of material.
- Labeling of containers, by appropriate groupings.
- Materials are put into drums with protective material to prevent breakage.
- Complete paperwork required by various governmental agencies.
- Transport of material to disposal site.
- Lab analysis - Businesses may have their own lab facilities or may send to outside lab.

Protective clothing and equipment includes:

- Respirators;
- Steel toed boots;
- Protective gloves;
- Safety glasses;

- Protective clothing.

Exclusions:

- Worker hours engaged in hazardous/toxic materials processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup, reprocessing or handling of low-level radioactive materials must be reported separately in classification 4305-20.
- Worker hours engaged in the replacement of nontoxic toner in cartridges used in business machines are reported separately in classification 4107.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 20-20-108, § 296-17A-3701, filed 10/6/20, effective 1/1/21; WSR 14-17-085, § 296-17A-3701, filed 8/19/14, effective 9/19/14. Statutory Authority: RCW 51.16.035, 51.16.100, 51.04.020(1). WSR 10-24-118, § 296-17A-3701, filed 12/1/10, effective 1/1/11. WSR 07-01-014, recodified as § 296-17A-3701, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-599, filed 8/28/98, effective 10/1/98; WSR 96-12-039, § 296-17-599, filed 5/31/96, effective 7/1/96; WSR 85-24-032 (Order 85-33), § 296-17-599, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-599, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-599, filed 11/29/82, effective 1/1/83. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 78-12-043 (Order 78-23), § 296-17-599, filed 11/27/78, effective 1/1/79; Order 74-40, § 296-17-599, filed 11/27/74, effective 1/1/75; Order 73-22, § 296-17-599, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3802 Classification 3802.

~~((3802-13 Handbag or pack: Manufacturing~~

~~Applies to establishments engaged in the manufacture of a variety of bags on a mass production or quantity basis. Types of bags include, but are not limited to, handbags, backpacks, fanny packs, picnic bags, softside luggage, and other bags normally carried on the person, and such items as literature or document pockets used in airplanes or automobiles. The screen printing or embroidering of the manufacturers' own products is included in this classification when performed by employees of an employer having operations subject to this classification. Materials include, but are not limited to, natural or synthetic fabric, leather, webbing or strapping for handles, buttons, hooks, buckles, Velcro, and other sewing notions purchased from outside sources. Operations include cutting to size or pattern, hand or machine sewing, finishing, labeling, pressing. Tools and equipment include hand or power cutting tools, clicker die cutters, sewing machines that perform a variety of functions, eyelet punchers, and household irons.~~

~~This classification excludes establishments engaged in the manufacture of industrial bags from natural or synthetic cloth used to package commodities such as bulk flour, sugar, produce, fertilizer, building materials, which are to be reported separately in classifica-~~

tion 3708; establishments engaged in the manufacture of paper bags which are to be reported separately in classification 6908; establishments engaged in the manufacture of plastic bags which are to be reported separately in classification 3510; and establishments engaged in the manufacture of hard sided luggage or carrying cases which are to be reported separately in classification 3708.

3802-28 Millinery: Manufacturing; Artificial feather or flower, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of hats made of felt, wool, or other textiles, fur, or leather received from outside sources. Other materials received from outside sources include woven hat bodies, braided straw, sweatbands, linings, rims or brims, ribbons, artificial flowers, feathers, or other trimmings. For fabric hats, fabric is cut to standard hat sizes, sewn, steamed on molds or blocked in hydraulic presses, and trimmings attached. For straw hats, straw stripping is roughly sewn into crowns and brims and stitched to the woven straw body. Finishing operations involve sizing, hand blocking, iron and machine blocking in hydraulic presses, then hand sewing bands and trimming onto them. For felt hats, bodies are steamed, sized, shaped, ironed or press blocked under hydraulic presses; trims are usually sewn on by hand. This classification also applies to establishments engaged in the manufacture of artificial feathers or flowers whose operations are not covered by another classification. Crepe paper, fabric, covered paper stakes, glue, and wire are received from outside sources. Paper or fabric is cut, hand rolled and assembled with wire to form the product.

This classification excludes establishments engaged in the manufacture of hats knitted to form on knitting machines which are to be reported separately in classification 3802-42 and establishments engaged in the dressing of fur or the tanning of leather which are to be reported separately in classification 4301.

3802-29 Wig: Manufacturing

Applies to establishments engaged in the manufacture of wigs and hair pieces made from real hair or synthetic hair. Human hair is usually purchased from beauty shops. After being washed in hot disinfectant, hair is dried in ovens. The strands are bleached in peroxide or ammonia, then colored with dyes to desired shades. Strands are secured to webbed caps with sewing machines or woven into the cap and cemented by hand. The final steps include clipping, curling, and styling. Materials include human hair, synthetic hair, disinfectants, adhesives and webbing fabrics. Tools and equipment include, but are not limited to, scissors, combs, brushes, curling irons, washing, bleaching and dyeing vats, drying ovens, and sewing machines.

3802-34 Screen printing of cloth or garments

Applies to establishments that provide screen printing services to others on cloth items such as, but not limited to, shirts, jackets, caps, and aprons. Most screen printing establishments display a limited quantity of garments as samples from which customers can order to outfit a team, club, or other group. The screen print shop may order the garments from their suppliers, perform the screen printing, and sell the garments to their customers, or the customers may provide their own garments. However, the principal business operation is the service of screen printing. Screen printing of individual garments may be done by hand or with a machine. Screen printing businesses will create designs in their art department, or customers can furnish their

own design. The process begins with the transfer of a design onto a framed silk screen. A light-sensitive material is coated over the silk screen, then exposed to light. The screens are placed on a multipoint machine with a number of press boards onto which garments, such as shirts, jackets, hats, aprons are loaded at one time. One color of ink is squeezed over the screen and as the machine revolves, the color for that portion of the design is applied to each garment. When the first color of the design is applied, garments move on a conveyor through a dryer oven to set the ink. This process is repeated with other colors until the complete design is reproduced on each garment. Screens are washed and cleaned so they can be reused. To screen print designs on lengths of cloth, the process is similar, but machinery for this type of application resembles commercial printing presses used in print shops. Materials include art supplies, colored ink, paint thinners, cleaning solvents. Tools and equipment include, but are not limited to, ink dispensers and squeegees, hand cutting tools, frames and screens, manual and automatic presses, dryer ovens with conveyors, drying racks, pressure spray washer units or sinks, and work tables.

Special notes: The screen printing of a manufacturer's product, when done as part of the manufacturing process by employees of the manufacturer, is included in the classification applicable to the product being produced.

Establishments in classification 6305 that are primarily engaged in the retail sale of clothing such as tee shirts, athletic sweat suits, or hats, may custom screen print or apply iron-on transfers on individual garments sold. Individualized printing or application of transfers is an incidental part of the sales operation and is included in the store classification.

Wholesale distributors of clothing or cloth goods who perform *incidental* screen printing on a small portion of their own product are to be reported separately in classification 6407. Care must be taken when considering classification 6407 to ensure that the nature of the business is the wholesale operation, not a screen print service, and that screen printing is only incidental to the sales operation.

3802-37 Hand carved or inlaid rug: Manufacturing

Applies to establishments engaged in the manufacture of custom-designed inlaid or hand carved rugs or carpets from carpeting purchased from outside sources. These are usually small businesses whose primary customers are interior designers or architects who want one-of-a-kind rugs to complement the design of a room. The designer pieces can be installed as wall-to-wall carpets or used as area rugs or wall hangings. Materials include, but are not limited to, pattern paper, netting, monk cloth, binding or fusing tape, fringed edging, carpet rolls, latex glue, and thread. Tools and equipment include small cutting tools such as hot knives, tracing wheels, rulers, glue guns, air spray guns, seamers for attaching the metallic tape, carpet carvers, and sewing machines. Carpet carvers resemble a household canister vacuum cleaner. A suction hose joins the carving blades to the canister so the fibers are vacuumed as they are cut.

Inlaid: First, a design is drawn onto pattern paper, then traced onto a piece of carpet with a tracing wheel. Powder rubbed across the paper goes through the perforations to form the design on the carpet. This step is repeated for each different colored piece in the design. The complete design is also cut out of the main carpet piece. The pattern pieces are cut out with a hot knife and placed into the main carpet backing piece which will become the finished rug. The pieces are

glued to the backing with fusing tape or joined with metallic seaming tape. (Carpet designers refer to this as quilting.) Hand carving (clipping around the edges of the design with the carpet carver) adds dimension. Netting is attached with latex to the back side of the design to secure it. Monk cloth or similar fabric is applied as a backing.

Hand Carved: The pattern is transferred directly onto the main carpet piece and carved along the edges of the design to give it dimension.

This classification excludes establishments engaged in the manufacture of carpets or rugs by tufting or weaving which are to be reported separately in classification 3708 and establishments engaged in the installation of carpets which are to be reported separately in classification 0502.

3802-38 Embroidery services; lace: Manufacturing

Applies to establishments that provide embroidery services to others on cloth items such as, but not limited to, shirts, jackets, caps, aprons, and patches. Most embroidery establishments display a limited quantity of garments as samples from which customers can order to outfit a team, club, or other group. The embroidery shop may order the garments from their suppliers, perform the embroidery, and sell the garments to their customers, or the customers may provide their own garments. Their principal business operation, however, is the embroidery service. Paper templates, computer tapes, natural or synthetic thread, backing materials, fabrics for patches, are received from outside sources. Designs or logos are punched onto paper strips. The strips are fed through the embroidery machines which simultaneously stitch the design onto numerous garments or cloth items which have been positioned on the machine. In computerized machines, the design is programmed onto paper computer tapes which are placed in the embroidery machine instead of the paper strips. The rest of the operations are the same. To make patches, the design is embroidered numerous times on a length of fabric. Individual patches are cut out and the edges finished on a serger sewing machine. This classification also applies to establishments engaged in the manufacture of lace. Natural or synthetic threads are received in skeins from outside sources. The thread is wound upon spools and bobbins which are placed onto the shuttles of the looms. The designs in the lace are created by various harness and shuttle movements of the loom, controlled electronically or by perforated pattern cards. After removal from the loom, the lace is inspected, mended by hand or sewing machine if needed, washed, bleached, dried, trimmed, starched, and ironed.

Special notes: The embroidery of a manufacturer's own product, when done as part of the manufacturing process by employees of the manufacturer, is to be included in the classification applicable to the garment or product being made.

Establishments in classification 6305 who are primarily engaged in the retail sale of clothing such as tee shirts, athletic sweat suits, hats, may embroider designs or lettering on individual garments sold. Individualized embroidery is an incidental part of the sales operation and is included in the store classification.

Wholesale distributors of clothing or cloth goods who perform *incidental* embroidery on a small portion of their own product are to be reported separately in classification 6407. Care must be taken when considering classification 6407 to ensure that the nature of the busi-

ness is the wholesale operation, not an embroidery service, and that embroidery is only incidental to the sales operation.

3802-39 Household furnishings: Manufacturing

Applies to establishments engaged in the manufacture of household furnishings such as, but not limited to, draperies, pillows and cushions, futons, sleeping bags or comforters. Businesses that make draperies may make other window treatments such as swags, valances, cornice boards, pull-down roller shades (window blinds) and other accessory items such as, but not limited to, throw pillows, and slip covers. If the window coverings are custom made, the shop usually includes a showroom displaying samples of drapery fabric, drapery rods, window coverings, accessories, floor coverings, wall paper or other household furnishings. These accessory items are not usually stocked, but are obtained from suppliers or manufacturers as customers order them. The sale of these items by establishments engaged in the manufacture of household furnishings is included in this classification. A separate store classification is not applicable in these situations. Draperies and curtains are cut to size, pleated, sewn, and finished by steaming or ironing. Vinyl pull-down shades or blinds are cut to size; one end is stapled to a wooden roller, then the shade is wound around the roller. The other end is creased and stitched to form a hem into which a wood slat is placed to give the blind a solid edge. Pulls, tassels, fringes, or other trims are attached. Sleeping bags, comforters, futons, and pillows are cut, sewn, and stuffed with padding materials purchased elsewhere. This classification also includes the manufacture of lamp shades. Plain or pleated fabric or laminated parchment and metal frames are purchased from outside sources. Material is cut to pattern, then attached to frames by gluing or sewing bindings around the frame and fabric. Materials include, but are not limited to, various fabrics, vinyl-coated cloth, transparent vinyl, parchment, linings, stuffings, trims, drapery hooks, rods, wooden rollers and slats, pulls or handles, hinges, wire frames for lamp shades, and sewing notions which are purchased from outside sources. Tools and machinery include scissors or other hand or power cutting tools, irons, sewing machines that perform a variety of functions such as straight stitching, hemming, serging, pleating, or tacking, drapery-folding devices, lighted surface to inspect cloth for flaws prior to cutting draperies, work tables for cutting or with a padded surface for ironing, pressing machines or irons. Drapery manufacturers may have a jig saw, saber saw or miter saw for the incidental cutting of cornice boards which is included in this classification.

This classification excludes establishments engaged in the manufacture of batting, wadding, or waste which are to be reported separately in classification 3708 and establishments engaged in the installation of draperies which are to be reported separately in classification 0607.

3802-40 Garments, slippers, accessories, miscellaneous soft goods, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of garments, wet suits, accessories, slippers, and miscellaneous soft goods not covered by another classification (N.O.C.), including, but not limited to, tie downs or animal restraints made from fabric strapping, art and craft or novelty items, stuffed toys, award ribbons, medical supports, umbrellas, and parachutes on a mass production or quantity basis. The production involves cutting to size or pattern, sewing, gluing, fabric welding, inserting stuffing materials, labeling, pressing, inspecting

and packaging. Screen printing or embroidering of the manufacturer's own products, and finishing processes such as dyeing or bleaching is included in this classification when performed by employees of an employer having operations subject to this classification. Manufacture of these items often includes primarily hand work or hand work incidental to machine operations. Items are produced from all types of natural or synthetic cloth or fibers; some of the trims or patches may be leather or other pliable materials. Materials include, but are not limited to, natural fabrics, synthetic fabrics such as neoprene, fur, leather, strapping or webbing, yarn, sewing notions, glue, decorative trims, ribbons or patches, imitation eyes for toys, stuffing materials, buttons, buckles, hooks, or handles which are purchased from outside sources. Tools include household irons, scissors or cutting wheels, measuring tapes, tracing wheels, brushes, power cutting tools (some types have hot blades or wires to seal frayed edges of cut pieces), glue guns, staplers, and clamps. Machinery includes, but is not limited to, cutting tables, sewing machines that perform a variety of functions such as straight or zigzag stitching, pleating, tacking or serging, clicker die cutters, iron presses, packaging equipment and various table-top or foot operated devices such as eyelet punchers, button covering machines, and hot-stamping foil presses.

This classification excludes establishments engaged in the manufacture of batting, wadding, or waste which are to be reported separately in classification 3708; establishments engaged in manufacturing operations using large factory machinery that performs functions such as, but not limited to, winding/rewinding, blowing, spinning, twisting, braiding, weaving, picking, tufting, quilting, shredding, or grinding, which are to be reported separately in classification 3708; and establishments engaged in the tanning of leather or dressing of fur which are to be reported separately in classification 4301.

3802-41 Gloves, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of gloves not covered by another classification (N.O.C.) made of fabric or leather on a mass production or quantity basis. Fabric, leather, and sewing notions are purchased from outside sources. Manufacturers may quilt lining materials to the glove fabric on quilting machines. Glove pieces are cut from numerous layers of fabric or leather with a die cutter; printing of a logo or brand name may be applied to pieces prior to stitching. Seamstresses sew the pieces together inside out, adding cuffs or trims. After stitching, each finger is individually turned right side out on a turner which is a table-mounted device with a vertically moving rod. Gloves are then placed onto heated, hand-shaped molds for steaming and shaping.

This classification excludes establishments engaged in the manufacture of gloves knitted to form on knitting machines which are to be reported separately in classification 3802-42; establishments engaged in the manufacture of rubber gloves made by molding or mixing rubber which are to be reported separately in classification 3513; and establishments engaged in the tanning of leather which are to be reported separately in classification 4301.

3802-42 Knitted fabric or garments or hosiery: Manufacturing

Applies to establishments engaged in the fabrication of knitted cloth, the subsequent manufacture of garments from the knitted cloth, and the manufacture of gloves, mittens, and hats knitted to form on knitting machines on a mass production or quantity basis. Natural or synthetic yarn (also referred to as thread), buttons or other fasten-

ers are received from outside sources. The knit cloth is produced on looms either mechanically or electronically controlled. Circular or flat knitting machines (some of which resemble sewing machines) are also used. The manufacturer of the knitted cloth may make wearing apparel from it, or may sell the knitted cloth to other manufacturers. Garments, such as sweaters, may be knitted to form, or pieces may be cut from the cloth and sewn together. Gloves or mittens are knitted to basic shapes on special machines. Tips of fingers are sewn closed, the glove is turned right side out, then shaped and steamed on electrically heated forms. This classification also applies to the manufacture of hosiery on a mass production or quantity basis. Skeins of natural or synthetic yarn, generally dyed, are received from outside sources. The yarn is unwound onto bobbins or cones, then placed in small circular automatic knitting machines which form the leg and heel. The leg/heel pieces are sewn into a continuous piece, then toes and tops added with looper machines. Hosiery is then washed, dried, shaped. This classification also applies to establishments that perform finishing operations on hosiery that is manufactured by others.

Special note: The looms and knitting machines used to make knitted cloth are generally smaller than the weaving and spinning machines used for the manufacture of woven textile fabrics which are formed into long, continuous lengths and sold in large bolts to cloth goods manufacturers.

3802-43 Leather goods, N.O.C.: Manufacture or repair

Applies to establishments engaged in the manufacture or repair of leather goods not covered by another classification (N.O.C.) including, but not limited to, belts, tack, holsters and other gun carrying accessories, knife sheaths, sports balls, or belts. Products manufactured in this classification can usually be worn or carried on the person and are often made individually. Tanned leather or imitation leather, glue, buckles, hooks, snaps and other fasteners, are purchased from outside sources. Leather may be skived (split) to desired thickness. Items are cut out on small die cutters or by hand, and the edges sanded and smoothed. Depending on the item being made, the leather is bent into shape, glued or sewn either by machine or hand. Imitation leather or vinyl products are sometimes joined by heat sealing instead of gluing or sewing. Items may be dyed, which involves dipping in vats of dye for about 15 or 20 minutes, hanging until dry, then rubbing with rags. Guns are placed inside custom-made holsters and laid in a forming press to form the leather around the gun for a precise fit. Next, items are placed in dryers to dry and cure; then snaps, grommets or other finishing pieces are attached with hand tools. Tools and equipment include cutting blades, edge beveling tools, mallets, snap setters, and other hand tools, die cutters, sanders, sewing machines, forming presses, and small dryers. This classification also applies to establishments engaged in the manufacture and repair of sports balls such as footballs, soccer balls, and basketballs. Leather or vinyl, lining material, bladders (deflated balloon shapes made of synthetic rubber material with valves inserted), twine, thread, foil ribbon, paint, spray cleaners are received from outside sources. Pieces are cut from leather or vinyl on die cutters, sewn together inside out forming a shell, then eyelets are inserted with eyelet punches. Logos or names may be stamped on with a hot foil stamping machine. The seams are pounded out with mallets to smooth them, then the shell is turned right side out on table-mounted turners. The shells are placed onto table-mounted, ball-shaped molds, the bladders

inserted, and air blown into the bladders with air compressors, forming the balls. The balls are placed onto holders, laced and closed with twine. Further designs may be applied with paint; balls are cleaned with a spray cleaner before packaging.

This classification excludes the tanning of leather which is to be reported separately in classification 4301 and the manufacture of bladders by rubber mixing or molding which is to be reported separately in classification 3513.

3802-44 Shoe or boot: Manufacturing or repair

Applies to establishments engaged in the manufacture of boots or shoes from raw materials such as leather, imitation leather, lining materials, rubber heels and soles, padding, thread and string, eyelets, tacks, buckles, rubber cement, dyes, waxes and polishes purchased from outside sources. Shoe or boot manufacturers may purchase shoe parts already cut to pattern, or may cut out their own patterns either by hand or on small dies. There are only a few shoemakers in Washington, most of whom make custom, hand-crafted boots or shoes. Operations include measuring feet to make molds or patterns, sewing by hand or machine, gluing, attaching eyelets or studs, tacking the upper pieces to the soles and heels, smoothing edges with grinders, dyeing, waxing, buffing, brushing and cleaning. Tools and equipment include tack hammers, awls, lasts (foot forms), hand cutting and punching tools, sewing machines, shoe jacks, foot-operated eyelet punching presses, sole stitchers (to stitch soles onto upper pieces), belt sanders and brush finishers. This classification also applies to shoe repair shops which use the same type of materials, tools and equipment used to make shoes and boots. Most shoe repair shops sell shoe accessories such as laces, insoles, polishes, which are usually displayed at the front of the shop; the sale of those items is included within the scope of this classification. The shops usually employ only one or two persons and are often located in malls or strip malls.

This classification excludes the manufacture of molded rubber shoe parts such as heels, soles, which is to be reported separately in classification 3513; establishments engaged in tanning leather which are to be reported separately in classification 4301; and the manufacture of any other materials used in making shoes or boots which is to be reported separately as applicable.

3802-45 Rubber or pliable goods: Manufacturing by cutting or gluing

Applies to establishments engaged in the manufacture of rubber or pliable goods from premanufactured materials by hand cutting, die cutting, gluing, or heat bonding. Items manufactured in this classification include, but are not limited to, gaskets, seals, bindings for skis, grips for pens or handle bars on bicycles or motorcycles. Raw materials which are lightweight, flexible and generally do not exceed about 3/8" thickness or 1" in diameter, include, but are not limited to, neoprene (a man-made rubber), cork, or other compressed sheets made of materials such as felt, paper, foam, plastic, graphite, Teflon, strips of extruded rubber. Many of the products are made simply by die cutting flat materials into the desired shapes. Other products, such as O-rings, are made by cutting lengths of extruded rubber and joining the ends by gluing or heat-bonding them together to form a circle. Grips for pens or handle bars can be made by cutting rubber tubing to length and grinding the ends for a smooth finish.

This classification excludes establishments engaged in the manufacture of rubber products by molding processes which are to be reported separately in classification 3513.

3802-46 Tent, tarp, awning or shade, boat cover or sail: Manufacturing

~~Applies to establishments engaged in the manufacture or repair of tents, awnings or outside window shades, boat or automobile tops and covers, sails, fruit picking bags, or similar items made from canvas, duck and synthetic water resistant fabrics. Other materials purchased from outside sources include grommets, hooks, tie rope, netting, binding, trimmings, strapping, pipe or tubing, and metal tops for fruit picking bags. Operations include cutting, sewing or fabric welding which joins pieces by heat sealing the edges, attaching grommets, and bending pipe or rods for frames. Tools and equipment include hand cutting or punching tools, powered material cutters, sewing machines, grommet punchers, pipe cutters and benders, and staplers.~~

~~This classification excludes establishments engaged in the welding of metal awning frames or supports and establishments engaged in the manufacture of metal awnings which are to be reported separately in the applicable metal goods classification; and the installation of any product manufactured in this classification which is to be reported separately in the classification applicable to the work being performed.)~~

3802-34 Embroidery or screen printing services on fabric products or garments; knitted fabric; knitted garments; or wigs: Manufacturing**Applies to:**

- Businesses whose principle operation is the service of screen printing or embroidery for others on cloth items such as, but not limited to, shirts, jackets, caps, aprons and patches.
- Businesses manufacturing knitted cloth.
- Businesses manufacturing garments from cloth that the same business knitted.
- Businesses manufacturing knitted garments or accessories to form on knitting machines.
- Businesses manufacturing hosiery or performing finishing operations on hosiery that is manufactured by others.
- Businesses manufacturing wigs or hair pieces made from real or synthetic hair.
- Businesses manufacturing lace.

Businesses included in this subclassification perform work mainly by hand or by using machines other than sewing machines including, but not limited to, knitting machines or screen printing equipment.

Note: The screen printing of a manufacturer's product, when done as part of the manufacturing process by employees of the manufacturer, is included in the classification applicable to the product being produced.

Products manufactured include, but are not limited to:

- Embroidered garments;
- Garments made from cloth that were knitted under this subclassification;
- Knitted cloth;
- Knitted gloves, mittens, hosiery, or hats; and
- Screen printed garments.

Processes include, but are not limited to:

- Bleaching;
- Cutting and styling wigs;
- Disinfecting fibers;
- Dying;
- Embroidery;
- Ironing;

- Screen printing on cloth;
- Sewing; and
- Starching.

Material used include, but are not limited to:

- Cleaning solvents;
- Colored ink;
- Disinfectants;
- Fasteners;
- Glues;
- Natural or synthetic hair;
- Natural or synthetic yarn or thread;
- Paint thinners;
- Paper templates; and
- Webbing fabric.

Tool and machinery used include, but are not limited to:

- Circular or flat knitting machines or looms;
- Combs and brushes;
- Curling irons;
- Cutting tools;
- Dryer ovens;
- Drying racks;
- Embroidery machines;
- Framed screens;
- Ink dispensers;
- Lace looms;
- Manual or automatic presses;
- Pressure spray washer units;
- Screen printing machines, single or multiport;
- Sewing machines; and
- Squeegees.

Note: The looms and knitting machines used to make knitted cloth are generally smaller than the weaving and spinning machines used for manufacturing woven textile fabrics, which are formed into long, continuous lengths and sold in large bolts to cloth good manufacturers. Businesses manufacturing woven textile fabrics sold in bolts are classified in 3708.

Exclusions:

- Manufacturing woven textile fabrics is classified in 3708.
- Retail clothing sales with incidental custom screen printing, embroidery, or application of iron-on transfers is classified in 6305.
- Wholesale clothing or cloth goods distribution with incidental screen printing or embroidery on a small portion of their own product is classified in 6407. Care must be taken when considering classification 6407 to ensure that the nature of the business is the wholesale operation, not a screen print service, and that screen printing is only incidental to the sales operation.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3802-40 Miscellaneous soft goods manufacturing: Hand or machine sewing N.O.C.

Applies to:

- Businesses manufacturing soft goods not covered by another classification (N.O.C.).
- Businesses included in this subclassification perform significant sewing by hand or by sewing machine.
- Screen printing or embroidering of the manufacturer's own products and finishing processes such as dyeing or bleaching are included

in this subclassification when performed by employees of an employer having operations subject to this subclassification.

Products manufactured include, but are not limited to:

- Art, craft, or novelty items;
- Awnings;
- Backpacks or other bags normally carried on the person;
- Boat tops or covers;
- Comforters;
- Draperies - Including window treatments such as: Swags, valances, cornice boards, pull-down roller shades or blinds;
- Fashion accessories;
- Fruit picking bags;
- Futons;
- Garments;
- Gloves;
- Handbags;
- Leather goods such as belts, tack, holsters or sports balls;
- Outdoor window shades;
- Parachutes;
- Pillows;
- Sails;
- Sleeping bags;
- Slippers;
- Soft luggage;
- Stuffed toys;
- Tarps;
- Tents;
- Tie downs or animal restraints made from fabric strapping; and
- Wet suits.

Note:

Businesses that manufacture window coverings sometimes have showrooms displaying samples of drapery fabric, drapery rods, window coverings, accessories, floor coverings, wallpaper or other household furnishings. These accessory items are not usually stocked, but are obtained from suppliers or manufacturers when customers order them. The sale of these items by businesses engaged in the manufacture of household furnishings is included in this subclassification. A separate store classification is not applicable unless the conditions of the general reporting rules covering the operation of multiple enterprises have been met.

Processes include, but are not limited to:

- Bending pipe or tubing for frames;
- Cutting materials to size or pattern;
- Fabric welding;
- Gluing;
- Inserting stuffing materials;
- Inspecting;
- Labeling;
- Leather skiving;
- Packaging;
- Pressing;
- Sewing; and
- Steaming.

Materials used include, but are not limited to:

- Bladders for sports balls;
- Canvas;
- Decorative trims;
- Drapery hooks;
- Fabrics;
- Fur;
- Glue;
- Imitation eyes for toys;

- Leather or imitation leather;
- Natural fabrics;
- Pipe or tubing;
- Rods;
- Sewing notions;
- Strapping or webbing;
- Stuffing materials;
- Thread;
- Velcro;
- Vinyl;
- Vinyl-coated cloth;
- Wooden rollers for shades; and
- Yarn.

Tool and machinery used include, but are not limited to:

- Cutting tables;
- Die cutters;
- Drapery folding devices;
- Jig saws, saber saws, or miter saws;
- Dryers;
- Forming presses;
- Glue guns;
- Hot blades or wires for cutting or sealing frayed edges of cut pieces;
- Household irons;
- Iron presses;
- Lighted surfaces to inspect cloth for flaws;
- Mallets;
- Measuring tools;
- Molds;
- Packaging equipment;
- Pipe cutters and benders;
- Quilting machines;
- Scissors or cutting wheels;
- Sergers or overlocking machines;
- Sewing machines;
- Sewing needles;
- Snap setters;
- Staplers;
- Table-top or foot operated devices such as eyelet punchers, or hot-stamping foil presses; and
- Tracing wheels.

Exclusions:

- Worker hours engaged in tanning leather or dressing of fur are reported separately in classification 4301.
- Worker hours engaged in manufacturing metal awnings or welding of metal awning frames or supports are reported separately in the applicable metal goods classifications.
- Worker hours engaged in the installation of draperies are reported separately in classification 0607.
- Worker hours engaged in the installation of any product manufactured in this classification are reported separately in the classification applicable to the work being performed.
- Screen printing or embroidery for others on cloth items manufactured by others is classified in 3802-34.
- Manufacturing gloves knitted to form on knitting machines is classified in 3802-34.

- Manufacturing mattresses is classified in 3708.
- Manufacturing garments from cloth that was first knitted by the same business is classified in 3802-34.
- Manufacturing rubber gloves made by molding or mixing rubber is classified in 3513.
- Manufacturing bladders for sports balls by rubber mixing or molding is classified in 3513.
- Manufacturing of batting, wadding, or waste is classified in 3708.
- Manufacturing operations using large factory machinery that performs functions such as, but not limited to, winding/rewinding, blowing, spinning, twisting, braiding, weaving, picking, tufting, quilting, shredding, or grinding, are classified in 3708.
- Manufacturing industrial bags used to package commodities such as bulk flour, sugar, produce, fertilizer, or building materials is classified in 3708.
- Custom dressmaking, tailoring, or clothing alteration services are classified in 6305.
- Manufacturing paper bags is classified in 6908.
- Manufacturing plastic bags is classified in 3510.
- Manufacturing hard sided luggage or carrying cases is classified in 3708.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3802-44 Shoe, boot, hat, artificial feather, artificial flower, hand-carved rug or inlaid rug: Manufacturing; Rubber or pliable goods manufacturing by cutting or gluing, N.O.C.

Applies to:

- Businesses manufacturing rubber or pliable goods from premanufactured materials by hand cutting, die cutting, gluing or heat bonding, not covered by another classification (N.O.C.).
 - Businesses manufacturing or repairing shoes or boots.
 - Businesses manufacturing hats (millinery).
 - Businesses manufacturing artificial feathers or flowers whose operations are not covered by another classification.
 - Businesses manufacturing custom-designed inlaid or hand-carved rugs from carpeting purchased from outside sources.
- Businesses included in this subclassification perform significant hand or machine cutting or gluing.

Products manufactured include, but are not limited to:

- Artificial feathers;
- Artificial flowers;
- Bindings for skis;
- Boots;
- Custom hand-carved rugs or carpets;
- Custom inlaid rugs or carpets;
- Gaskets;
- Grips for pens;
- Grips for handle bars;
- Hats; and
- Shoes.

Note: Most shoe repair shops sell shoe accessories such as laces, insoles, and polishes. The sale of these types of items is included in this classification.

Processes include, but are not limited to:

- Attaching eyelets or studs;

- Blocking hats;
- Cutting to shape or length;
- Die cutting;
- Dying;
- Gluing;
- Grinding;
- Heat bonding;
- Making molds and patterns;
- Sewing;
- Smoothing;
- Steaming; and
- Waxing.

Material used include, but are not limited to:

- Artificial flowers, feathers, or other trimmings;
- Binding or fusing tape;
- Braided straw;
- Buckles;
- Carpet rolls;
- Cork;
- Crepe paper;
- Edging;
- Eyelets;
- Felt;
- Foam;
- Fur;
- Glue;
- Graphite;
- Hat rims or brims;
- Leather or imitation leather;
- Lightweight, flexible rubber;
- Lining materials;
- Monk cloth;
- Neoprene;
- Netting;
- Paper;
- Paper covered stakes;
- Plastic;
- Ribbons;
- Rubber cement;
- Rubber heels and soles;
- Strips of extruded rubber;
- Teflon;
- Wire;
- Wool; and
- Woven hat bodies.

Tool and machinery used include, but are not limited to:

- Awls;
- Belt sanders;
- Brush finishers;
- Carpet carvers;
- Eyelet punching presses;
- Glue guns;
- Hand cutting and punching tools;
- Hot knives;
- Hydraulic presses for machine blocking hats;
- Lasts (foot forms);

- Sewing machines;
- Shoe jacks;
- Sole stitchers (to stitch soles onto upper pieces); and
- Tack hammers.

Exclusions:

- Worker hours engaged in manufacturing molded rubber shoe parts such as heels or soles are reported separately in classification 3513.
- Worker hours engaged in tanning leather or dressing of fur are reported separately in classification 4301.
- Worker hours engaged in manufacturing other components, such as eyelets, used in making shoes or boots are reported separately in the applicable classification.
- Worker hours engaged in the installation of carpet are reported separately in classification 0502.
- Manufacturing hats knitted to form is classified in 3802-34.
- Manufacturing rugs or carpets by tufting or weaving is classified in 3708.
- Manufacturing rubber products by using a molding process is classified in 3513.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

[WSR 07-01-014, recodified as § 296-17A-3802, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-606, filed 8/28/98, effective 10/1/98; WSR 96-12-039, § 296-17-606, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 51.04.020(1) and 51.16.035. WSR 93-12-093, § 296-17-606, filed 5/31/93, effective 7/1/93; WSR 91-12-014, § 296-17-606, filed 5/31/91, effective 7/1/91. Statutory Authority: RCW 51.16.035. WSR 85-24-032 (Order 85-33), § 296-17-606, filed 11/27/85, effective 1/1/86; WSR 83-24-017 (Order 83-36), § 296-17-606, filed 11/30/83, effective 1/1/84; WSR 82-24-047 (Order 82-38), § 296-17-606, filed 11/29/82, effective 1/1/83; Order 75-38, § 296-17-606, filed 11/24/75, effective 1/1/76; Order 73-22, § 296-17-606, filed 11/9/73, effective 1/1/74.]

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3906 Classification 3906.

(~~3906-00 Bakeries, N.O.C.~~)

~~Applies to establishments engaged in the manufacture of baked goods not covered by another classification (N.O.C.) such as, but not limited to, bread, rolls, tarts, pies, cakes, cookies, bread stuffing and bread crumbs, for sale to supermarkets, restaurants, distributors, and other wholesale customers. Processes for making baked goods vary somewhat, but most are similar to that of baking bread. To make bread, ingredients such as, but not limited to, flour, water, salt, leavening, eggs, milk, sugar, shortening, and preservatives are mixed by machine or by hand and formed into dough. The dough is fed into a hopper which further kneads it and shapes it into a ball. Molders shape the dough balls into cylinders that are ready to be placed in pans. Automatic loaders move the pans through tunnel ovens. After baking, products are mechanically sliced and wrapped, then shipped to customers as quickly as possible due to the relatively short shelf life of baked~~

goods. Machinery includes, but is not limited to, dough troughs, cake depositors, filler and icing machines, conveyors, deep fryers, bun machines, molders, ovens, mixers, flour dust collectors, and racks.

This classification excludes retail bakeries which are to be reported separately in classification 3901; route delivery drivers who are not employees of the bakery who are to be reported separately in classification 1101; and establishments engaged in the manufacture of other foods which are to be reported separately as applicable.

3906-01 Cracker: Manufacturing N.O.C.

Applies to establishments engaged in the manufacture of crackers, and other "dry" bakery products not covered by another classification (N.O.C.) such as, but not limited to, biscuits, wafers, and pretzels for sale to supermarkets, restaurants, distributors and other wholesale customers. Depending on the specific product being made, ingredients such as, but not limited to, flour, sugar, water, salt, soda, yeast, flavorings, and additives are mixed together and formed into dough. The dough is fed through a hopper into a roller, then shaped into product and baked in ovens. Machinery includes, but is not limited to, mixers, ovens, conveyors, packaging and package-handling equipment.

This classification excludes retail bakeries which are to be reported separately in classification 3901 and route delivery drivers who are not employees of the dry bakery goods manufacturer who are to be reported separately in classification 1101.

3906-02 Potato chip: Manufacturing N.O.C.

Applies to establishments engaged in the manufacture of potato chips and similar snack foods not covered by another classification (N.O.C.) such as, but not limited to, fried corn or cheese chips for sale to wholesale customers. To make potato chips, potatoes are washed, sliced, salted, and fried in cooking vats. Automatic rakes stir the potato slices to ensure uniform cooking. As chips emerge from the vats onto conveyors, they are inspected for color and quality. Burned, discolored, or broken chips are discarded; the rest are packaged for sale. Other types of fried chips are made by mixing dry ingredients which are then deep fried, inspected and packaged. Machinery includes, but is not limited to, slicing equipment, mixers, deep fryers or cooking vats, pan greasers, ovens, conveyors, packaging and package-handling equipment. This classification includes delivery of the product when done by employees of an employer subject to this classification.

This classification excludes route drivers who are not employees of the chip manufacturer who are to be reported separately in classification 1101.

3906-03 Ravioli and tamale: Manufacturing

Applies to establishments engaged in the manufacture of ravioli, tamales, tortellini or similar frozen or ready-to-cook foods, for sale to wholesale customers. Ingredients include, but are not limited to, cornmeal, flour, ground meats, cheeses, seasonings, tomatoes or tomato paste, sauces, and corn husks. Depending on the specific product being made, ingredients are mixed together, placed in shells, pasta or corn husks, or otherwise prepared, cooked, inspected, wrapped, packaged and, in some cases, frozen. Machinery includes, but is not limited to, mixing or blending machines, deep fryers or cooking vats, ovens, conveyors, packaging and package-handling equipment, and freezers.

~~This classification excludes route drivers who are not employees of the food product manufacturer who are to be reported separately in classification 1101.~~

~~3906-04 Pasta: Manufacturing~~

~~Applies to establishments engaged in the manufacture of pasta products such as, but not limited to, macaroni, spaghetti, or noodles for sale to supermarkets, restaurants, distributors and other wholesale customers. Ingredients such as, but not limited to, flour, sugar, salt, seasonings, preservatives, oils, and water are mixed in mixing machines to form the dough. The dough is further mixed and kneaded, pressed through rollers to regulate thickness, cut with machinery or by hand to desired size and shape, then wrapped in cellophane or packaged in cartons. Machinery includes, but is not limited to, dough mixers, dough kneaders, rollers, cutting and slitting machines, hydraulic presses, ovens, conveyors, and packaging and package handling equipment.~~

~~This classification excludes route drivers who are not employees of the manufacturer who are to be reported separately in classification 1101.~~

~~3906-05 Confectionery, chewing gum or cough drop: Manufacturing~~

~~Applies to establishments engaged in the manufacture of confectionery products, chewing gum or cough drops for sale to wholesale customers. Confections include, but are not limited to, candies such as creams, caramels, mints, hard candies, gum drops, glazed fruits, nut brittle, a wide variety of chocolate candy, and molded sugar cake decorations, such as, but not limited to, rosettes, candle holders, and colorful edible images used to decorate cakes or cookies. This classification includes both cooked and uncooked confection products. Because of the variety of candies and confections included in this classification, preparation and finishing processes which individualize the product may vary widely. Ingredients include, but are not limited to, sugar, flour, starch, nuts, milk, water, flavorings, cocoa, and coloring. Depending on specific product being made, ingredients are weighed, mixed or beat. Further processing may include heating, pressure cooking, baking, or forming uncooked mixtures (referred to as "paste" or frosting) into products by twirling, pressing, molding, or otherwise shaping. Confection products may be individually wrapped or packed in boxes, cans, trays, or other containers. Machinery includes, but is not limited to, ranges, burners, various sized kettles, pots, pressure cookers, trays, mixing, cutting, or filling machines, hoppers, conveyors, die cutters, presses, coolers, and packaging and package handling equipment. The manufacture of chewing gum and cough drops is similar although ingredients vary somewhat.~~

~~This classification excludes route drivers who are not employees of the confection manufacturer who are to be reported separately in classification 1101; candy store operations with on-premise manufacturing which are to be reported separately in classification 3905-13; and candy store operations with no manufacturing which are to be reported separately in classification 6406.~~

~~3906-07 Pizza: Manufacturing, N.O.C.~~

~~Applies to establishments engaged in the manufacture of frozen or ready-to-bake pizza not covered by another classification (N.O.C.) for sale to wholesale customers. Dough is mixed and rolled out to form the crust; sauce and a variety of toppings such as meats, cheese, vegetables are arranged on top of the crust. Pizzas are wrapped in plastic~~

wrap, packaged, and stored in freezers prior to delivery. Machinery includes, but is not limited to, mixers, rolling devices, ovens, conveyors, packaging and package-handling equipment, and freezers.

~~This classification excludes route drivers who are not employees of the pizza manufacturer who are to be reported separately in classification 1101; pizza parlors which are to be reported separately in classification 3905; and U-bake pizza stores which are to be reported separately in classification 6403.)~~

3906-00 Bakeries, cracker, potato chip, ravioli/tamale, pasta, and pizza: Manufacturing N.O.C.

Applies to:

Businesses engaged in manufacture of baked goods, pastas, tamales, pizza, dry bakery products, and variety of snack foods. These businesses primarily sell to wholesale customers like supermarkets, restaurants, and distributors.

Products manufactured include, but are not limited to:

- Biscuits;
- Breads;
- Bread stuffing/bread crumbs;
- Cakes/cookies;
- Crackers;
- Pasta products (macaroni, spaghetti, or noodles);
- Pies;
- Pizza (frozen or ready to bake);
- Potato chips/snack foods;
- Pretzels;
- Ravioli, tamales, tortellini or similar frozen or ready to cook foods;
- Tarts;
- Wafers.

Ingredients include, but are not limited to:

- Eggs;
- Flour/cornmeal;
- Ground meats/cheeses/vegetables/sauces;
- Milk;
- Potatoes;
- Preservatives/seasonings;
- Salt;
- Shortening;
- Soda/yeast;
- Sugar;
- Water.

Work activities include, but are not limited to:

- Mixing ingredients by machine or hand and forming into dough;
- Feeding dough into hoppers, which kneads and shapes product;
- Placing mixed ingredients into shells, pasta or corn husks;
- Rolling dough to form products;
- Adding sauce and variety of toppings such as meats, cheeses and vegetables;
- Cooking, inspecting, wrapping and packaging product;
- Mechanically slicing and wrapping product;
- Slicing and frying potatoes or similar snacks in cooking vats;
- Shipping product.

Machinery and equipment used include, but are not limited to:

- Bun machines;
- Cake depositors;
- Conveyors;
- Cutting and slicing equipment;
- Deep fryers;
- Dough troughs;
- Filling and icing machines;
- Hydraulic presses;
- Mixers/blending/rolling machines;
- Mold machines;
- Ovens;
- Packaging and handling equipment.

Exclusions:

- Retail bakeries are classified in 3901;
- Pizza parlors are classified in 3905;
- U-Bake pizza stores are classified in 6403;
- Route delivery drivers who are not employees of the food product manufacturer are classified in 1101;
- Businesses engaged in the manufacture of other foods are classified separately in the applicable classification.

3906-05 Confectionery, chewing gum or cough drop: Manufacturing

Applies to:

Businesses engaged in the manufacture of confectionery products, chewing gum or cough drops.

Products manufactured include, but are not limited to:

- Candies:
 - Caramels;
 - Chocolate candies;
 - Creams;
 - Glazed fruits;
 - Gum drops;
 - Hard candies;
 - Nut brittle;
 - Chewing gum;
 - Cough drops.
- Molded sugar cake decorations:
 - Candle holders;
 - Edible images used to decorate cakes or cookies;
 - Rosettes.

Ingredients include, but are not limited to:

- Cocoa;
- Coloring;
- Flavorings;
- Flour;
- Milk;
- Nuts;
- Starch;
- Sugar;
- Water.

Work activities include, but are not limited to:

- Weighing, mixing and beating ingredients;
- Heating, pressure cooking, baking, and forming uncooked mixtures into products by twirling, pressing, molding, or shaping;
- Wrapping and packaging product.

Machinery and equipment used include, but are not limited to:

- Burners/ranges;
- Coolers;
- Conveyors;
- Die cutters;
- Filling/cutting/mixing machines;
- Hoppers;
- Kettle/pots;
- Packaging and package-handling equipment;
- Presses;
- Pressure cookers.

Exclusions:

- Candy store operations with on-premise retail manufacturing are classified in 3905;
- Candy store operations with no manufacturing are classified in 6406;
- Route delivery drivers who are not employees of the confection manufacturer are classified in 1101.

[WSR 07-01-014, recodified as § 296-17A-3906, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-61801, filed 8/28/98, effective 10/1/98; WSR 85-24-032 (Order 85-33), § 296-17-61801, filed 11/27/85, effective 1/1/86; WSR 85-06-026 (Order 85-7), § 296-17-61801, filed 2/28/85, effective 4/1/85; WSR 83-24-017 (Order 83-36), § 296-17-61801, filed 11/30/83, effective 1/1/84. Statutory Authority: RCW 51.04.030 and 51.16.035. WSR 79-12-086 (Order 79-18), § 296-17-61801, filed 11/30/79, effective 1/1/80.]

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-4903 Classification 4903.**4903-06 Marine appraising**

Applies to ~~((establishments engaged in))~~:

Businesses providing marine appraisal and inspection services to prospective buyers or to insurance companies for determining the value of a piece of property or for evaluating damage.

Types of property appraised includes, but ~~((is))~~ **are not limited to** ~~((, boats, yachts, marinas, wharves, and dry docks. This service may be provided to a prospective buyer or to insurance companies for determining the value of a piece of property or for evaluating damage. This classification excludes))~~:

- Boats;
- Dry-docks;
- Marinas;
- Wharves; and
- Yachts.

Exclusions:

• Maritime appraisers ~~((who provide))~~ providing their service exclusively to insurance companies ~~((who))~~ are ~~((to be reported separately))~~ classified in ~~((classification))~~ 4903-09 ~~((, and))~~.

• Nonmaritime building appraisers (~~(who)~~) are (~~(to be reported separately)~~) classified in the classification applicable to the employer's business.

Note: This subclassification to be assigned only after consulting the maritime underwriter.

4903-07 Boiler inspecting, N.O.C.

Applies to (~~(establishments engaged in)~~):

Businesses providing boiler inspection services not covered by another classification (N.O.C.). Inspections will generally be conducted at the request of a manufacturer or an insurance company. These (~~(establishments)~~) businesses inspect equipment such as, but not limited to:

• Boilers and other pressurized vessels, (~~(including)~~) such as air tanks and liquefied gas tanks (~~(, in addition to boilers. The inspections involve determining)~~).

Inspections determine if a vessel conforms to safety standards in regard to (~~(their)~~):

- Design (~~(,)~~);
- Fabrication (~~(,)~~);
- Installation (~~(,)~~);
- Operation; and

• Repair (~~(and operation. The inspections may take place at a manufacturer's plant or where the vessel has been installed. These inspections will generally be conducted at the request of a manufacturer or an insurance company)~~).

Note: Inspections may take place at a manufacturer's plant or where the vessel is installed.

Work activities (~~(of the inspectors)~~) **include, but are not limited to** (~~(,)~~):

- Calculating allowable limits of pressure;
- Inspecting the safety devices and welding (~~(,)~~);
- Investigating accidents involving pressurized vessels;
- Performing tests to verify the condition (~~(, calculating allowable limits of pressure,)~~); and
- Recommending changes to correct unsafe conditions (~~(, and investigating accidents involving pressurized vessels. This classification excludes)~~).

Exclusions:

• Boiler inspectors employed by a state agency or municipality (~~(who)~~) are (~~(to be reported separately)~~) classified in the (~~(appropriate)~~) applicable state agency or municipality classification (~~(,)~~).

• Boiler manufacturing, repair or installation (~~(which)~~) is (~~(to be reported separately)~~) classified in the (~~(appropriate)~~) applicable manufacturing, repair or installation classification (~~(,)~~).

• Inspectors of (~~(the)~~) a manufacturing company (~~(who)~~) are (~~(to be reported separately)~~) classified in the classification applicable to the employer's business (~~(, and establishments who provide)~~).

• Businesses providing inspections exclusively for insurance companies (~~(who)~~) are (~~(to be reported separately in classification)~~) classified in 4903-09.

4903-08 Elevator inspecting

Applies to (~~(establishments engaged in)~~):

Businesses providing elevator inspection services. (~~(Types of)~~) Inspections are usually conducted at the request of a manufacturer or

an insurance company. Inspections determine if the device conforms to safety standards in connection with:

- Design;
- Fabrication;
- Installation;
- Operation; and
- Repair.

Note: The inspections may take place at the manufacturing plant or where the conveyance device is installed.

Devices inspected include, but are not limited to ((τ)):

- Amusement rides;
- Elevators((τ));
- Escalators((τ));
- Moving sidewalks; and
- Ski lifts((τ amusement rides and moving sidewalks)).

~~((The inspections involve determining if the device conforms to safety standards in connection with their design, fabrication, installation, repair and operation. The inspections may take place at the manufacturing plant or where the conveyance device has been installed. These inspections are usually conducted at the request of a manufacturer or an insurance company.))~~

Work activities ((of the inspectors)) include, but are not limited to((τ)):

- Computing allowable load;
- Conducting time tests for speed;
- Inspecting the cables and guide rails;
- Inspecting the mechanical and electrical features;
- Investigating accidents involving conveyance devices;
- Reviewing the design((τ inspecting the mechanical and electrical features, inspecting the cables and guide rails, conducting time tests for speed, computing allowable load,τ));
- Observing running and drop tests to determine if brakes and safety devices are working properly((τ)); and
- Recommending changes to correct unsafe conditions((τ and investigating accidents involving conveyance devices. This classification excludes)).

Exclusions:

- Elevator inspectors employed by a state agency or municipality ((who)) are ((to be reported separately)) classified in the ((appropriate)) applicable state agency or municipality classification((τ)).
- Repair or service to the elevator or conveyance device which is ((to be reported separately)) classified in the ((appropriate)) applicable repair classification assigned to the type of conveyance device((τ)).
- Inspectors employed by the manufacturer ((who)) are ((to be reported)) classified in the ((appropriate)) applicable manufacturing classification((τ; and establishments who provide)).
- Businesses providing inspections exclusively for insurance companies ((who)) are ((to be reported separately)) classified in ((classification)) 4903-09.

4903-09 Inspection for insurance or valuation

Applies to ((establishments engaged in)):

Businesses providing inspection and valuation services exclusively for insurance companies. These ((establishments)) businesses inspect damaged goods or property for loss valuation or to determine the value of an article or property the insurance company is underwriting.

~~((The)) **Property inspected includes, but is not limited to** ((~~τ~~)):~~

- ~~• Manufactured goods;~~
 - ~~• Personal property ((~~τ~~)); and~~
 - ~~• Real estate ((~~τ~~ and ~~manufactured goods.~~~~
- ~~This classification excludes))~~.

Exclusions:

- ~~• Inspectors employed by a state agency or municipality ((~~who~~)) are ((~~to be reported separately~~)) classified in the ((~~appropriate~~)) applicable state agency or municipality classification ((~~and~~)).~~
- ~~• Boiler, elevator, or building inspectors or maritime appraisers who do not provide service to insurance companies exclusively ((~~who~~)) are ((~~to be reported separately~~)) classified in ((~~classifications~~)) 4903-07, 4903-08, 4903-10 or 4903-06 as applicable ((~~and employees of~~)).~~
- ~~• Inspectors employed by insurance companies ((~~who~~)) are ((~~to be reported separately~~)) classified in the applicable insurance company classifications ((~~τ~~ and)).~~
- ~~• Independent appraisal businesses not working exclusively for insurance companies ((~~which~~)) are ((~~to be reported~~)) classified in ((~~classification~~)) 6303.~~

4903-10 Inspection of buildings

Applies to ((~~establishments engaged in~~)):

~~Businesses providing building inspection services. ((~~These establishments inspect all types of~~)) Inspections may be provided for, but not limited to:~~

- ~~• Contractors to assist in interpreting legal requirements and recommending procedures for compliance;~~
- ~~• Insurance companies in assessing damages; and~~
- ~~• Prospective buyers to determine the condition of the building.~~

Buildings ((~~including~~)) **inspected include, but are not limited to:**

- ~~• Commercial;~~
- ~~• Multifamily;~~
- ~~• New or existing residential ((~~τ~~ commercial ~~τ~~));~~
- ~~• Industrial ((~~τ~~ multifamily, and)); and~~
- ~~• Temporary structures. ((~~The inspections may be provided for prospective buyers to determine the condition of the building, for contractors to assist in interpreting legal requirements and recommending procedures for compliance, or for insurance companies in assessing damages.~~))~~

Work activities ((~~of the inspectors~~)) **include, but are not limited to, inspecting all components of a building for** ((~~structural soundness~~ ~~τ~~)):

- ~~• Compliance with grading, zoning, and safety laws;~~
 - ~~• Dry rot ((~~τ~~));~~
 - ~~• Energy efficiency;~~
 - ~~• Pest problems ((~~τ~~ energy efficiency, and ~~compliance with grading, zoning and safety laws.~~~~
- ~~This classification excludes)); and~~
- ~~• Structural soundness.~~

Exclusions:

- ~~• Building inspectors employed by a state agency or municipality ((~~who~~)) are ((~~to be reported separately~~)) classified in the ((~~appro-~~~~

priate) applicable state agency or municipality classification ((and establishments who provide)).

• Businesses providing inspections exclusively for insurance companies ((who)) are ((to be reported separately)) classified in ((classification)) 4903-09.

[Statutory Authority: RCW 51.04.020 and 51.16.035. WSR 19-11-109, § 296-17A-4903, filed 5/21/19, effective 7/1/19. WSR 07-01-014, recodified as § 296-17A-4903, filed 12/8/06, effective 12/8/06. Statutory Authority: RCW 51.16.035. WSR 98-18-042, § 296-17-652, filed 8/28/98, effective 10/1/98; WSR 85-24-032 (Order 85-33), § 296-17-652, filed 11/27/85, effective 1/1/86; WSR 81-24-042 (Order 81-30), § 296-17-652, filed 11/30/81, effective 1/1/82; WSR 80-17-016 (Order 80-23), § 296-17-652, filed 11/13/80, effective 1/1/81; Order 73-22, § 296-17-652, filed 11/9/73, effective 1/1/74.]

WSR 21-17-120
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 17, 2021, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-107.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0010 Who is exempt from work registration while receiving basic food.

Hearing Location(s): On September 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than September 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., September 21, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email DSHSRPAURulesCoordinator@dshs.wa.gov, by 5:00 p.m., September 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2020, the Washington legislature passed 3SSB 5164 (chapter 136, Laws of 2020) allowing undocumented individuals applying for T and U visas, asylum, and "victims of human trafficking" to be eligible for the state-funded food assistance program (FAP). As these individuals are not eligible to work in the United States they cannot register for work, which is currently required by FAP. This proposed amendment will add an exemption from work registration for individuals who are not legally able to work due to their immigration status.

Reasons Supporting Proposal: Planned amendments are necessary to implement 3SSB 5164 (chapter 136, Laws of 2020) which takes effect on February 1, 2022, and assists survivors of certain crimes.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and 74.09.035.

Statute Being Implemented: RCW 74.04.005, 74.08A.120, and 74.09.035.

Rule is necessary because of federal law, 7 C.F.R. 273.10 (g) (1) (ii).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504, 360-764-0068.

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)(iii) which states in part, "This section does not apply to ... rules adopting or incorporating by reference without material change federal statutes or

regulations, Washington state statues [statutes] ... Also exempt under RCW 34.05.328 (5) (b) (vii).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.10 (g) (1) (ii).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: Applies only to DSHS client eligibility.

August 16, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4884.1

AMENDATORY SECTION (Amending WSR 21-07-132, filed 3/23/21, effective 4/23/21)

WAC 388-444-0010 Who is exempt from work registration while receiving basic food? If you receive basic food, you are exempt from work registration and the requirements in chapter 388-444 WAC if you meet any one of the following conditions:

- (1) Are age sixteen or seventeen, and:
 - (a) Not the head of household;
 - (b) Attend school; or
 - (c) Are enrolled at least half time (using the institutions definition) in an employment and training program under:
 - (i) The Workforce Innovation and Opportunity Act of 2014 (WIOA);
 - (ii) Section 236 of the Trade Act of 1974; or
 - (iii) A state or local employment and training program.
- (2) You are a student age eighteen or older enrolled at least half time as defined by the institution in:
 - (a) Any accredited school;
 - (b) A training program; or
 - (c) An institution of higher education. If you are enrolled in higher education, you must meet the requirements under WAC 388-482-0005 to be eligible for basic food benefits.
- (3) You are an employed or self-employed person working at least thirty hours per week, or receiving weekly earnings equal to the federal minimum wage multiplied by thirty;
- (4) You are complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);
- (5) You receive unemployment compensation (UC) benefits or have an application pending for UC benefits;
- (6) You are responsible to care for:
 - (a) A dependent child under age six; or

(b) A person with an incapacity that meets the requirements of WAC 388-310-0350 (1)(d)(i), (ii), (iv), and (v), except the person does not need to be related to you as stated in (1)(d)(v).

(7) You are physically or mentally unable to work as determined below:

(a) A DSHS SSI facilitator has assessed you 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) and your SSI application status may be verified through either the SSI facilitator or state data exchange, or both;

(b) You have a severe and chronic mental, physical, emotional, or cognitive disability that prevents you from participating in work or work activities for at least thirty hours a week; or

(c) We verify your disability using documentation from DDA, DVR, HCS, MHD, or RSN, or by one of the medical or mental health professionals listed in WAC 388-310-0350(2).

(8) You regularly participate in a drug addiction or alcoholic treatment and rehabilitation program as defined by the Food Stamp Act of 1977.

(9) You are not legally able to work due to your immigration status.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. 273.7, 7 C.F.R. 273.24. WSR 21-07-132, § 388-444-0010, filed 3/23/21, effective 4/23/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.7 and 273.24. WSR 16-04-046, § 388-444-0010, filed 1/27/16, effective 2/27/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.250, and 2013 c 39. WSR 13-24-043, § 388-444-0010, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 U.S.C. 2015 (d)(1); 7 C.F.R. § 273.7. WSR 10-18-048, § 388-444-0010, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-444-0010, filed 7/31/98, effective 9/1/98.]

WSR 21-17-122
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-03—Filed August 17, 2021, 12:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-135.

Title of Rule and Other Identifying Information: Resident adjuster continuing education requirements.

Hearing Location(s): On Thursday September 23, 2021, at 10:00 a.m., Zoom: Detailed information for attending the Zoom meeting here <https://www.insurance.wa.gov/adjuster-continuing-education-requirements-r-2021-03>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: September 24, 2021.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by September 22, 2021.

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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 2, chapter 22, Laws of 2021 (SHB 1037) necessitates resident adjusters have continuing education requirements, therefore, the commissioner is considering rule making to further clarify resident independent adjusters and public adjusters continuing education protocols.

The amended WAC simply include resident adjusters as requiring continuing education requirements.

Reasons Supporting Proposal: The intent is to match the National Association of Insurance Commissioners standard of 24 continuing education hours, including three hours of ethics, every two years. Having Washington state resident independent adjusters and public insurance adjusters have continuing education requirements is in alignment with other states. It is a benefit for our Washington state consumers to have a workforce that is continuing to receive updates on their profession. Finally, it will help our resident adjusters that work in other states find it easier to satisfy their continuing education requirements in those states if they are offered here in their home state.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.17.150.

Statute Being Implemented: Section 2, chapter 22, Laws of 2021 (SHB 1037).

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 and Enforcement: Todd Dixon, 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 19.85.030 (1)(a).

Explanation of exemptions: The proposed rule does not impose more than minor costs. See explanation following.

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. RCW 19.85.030 (1)(a) states that " ... an agency shall prepare a small business economic impact state: (i) If the proposed rule will impose more than minor costs on businesses in an industry ... " An analysis conducted by the office of the insurance commissioner determined that this rule would not impose [impose] more than minor costs on businesses.

A survey was administered to resident independent and public adjuster business entities. The survey was used to determine how many individuals a business employed and how much the rule would cost. For one of the baseline questions, "How many people does your business employ?," we received 32 responses. Of those 32 responses, 25 (78 percent) were classified as small businesses as defined by RCW 19.85.020(3), " ... any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees." The below table details anticipated annual cost to business entities based on the survey responses:

Table 1: Details on the analysis can be seen in the cost-benefit analysis. Figures are from a sample of 32 business entities.

Business Size	Average Number of Employees	Estimated Cost of Rule per Year
Small Businesses	5	\$471.43
Large Businesses	7,613	\$385.50
All Businesses Together	1,434	\$422.73

Small businesses are expected to pay slightly more annually than larger businesses based on our analysis. This is because generally large businesses where more likely to already reimburse resident adjusters for continuing education credits to comply with other states' requirements. The estimated cost of the rule per year on small businesses was used as the estimated cost of compliance when determining whether the cost was greater than the minor cost threshold. The following table details the cost and minor cost threshold for property and casualty insurance carriers and claims adjusters:

2017 Industry NAICS Code	Estimated Cost of Compliance	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524126	\$471.43	Direct Property and Casualty Insurance Carriers	\$33,951.09	\$33,951.09	\$2,571.20
524291	\$471.43	Claims Adjusting	\$4,302.81	\$4,302.81	\$2,779.17

Evidently, the estimated cost of compliance is below the minor cost threshold. The figures used for this calculation are drawn from the 2020 Washington State Employment Security Department's Quarterly Census of Employment and Wages.

August 17, 2021
Mike Kreidler

OTS-3217.1

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-200 Insurance continuing education—Purpose. WAC 284-17-200 through 284-17-312 establish the minimum continuing education requirements that must be met prior to the renewal of an insurance producer or adjuster license, and specify the minimum criteria that continuing education courses must meet to be approved by the commissioner.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-200, filed 6/10/15, effective 7/11/15. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-200, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-200, filed 3/17/05, effective 4/17/05. Statutory Authority: RCW 48.02.060. WSR 89-19-037 (Order R 89-10), § 284-17-200, filed 9/15/89, effective 10/16/89. Statutory Authority: RCW 48.17.150 as amended by 1979 ex.s. c 269 §§ 7,10. WSR 80-04-042 (Order R 80-3), § 284-17-200, filed 3/20/80.]

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-220 Insurance continuing education required—Resident licensees. (1) Except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all individual residents licensed to transact life, disability, personal lines, property, casualty or variable life and variable annuity products lines of authority must meet the continuing education requirements of this chapter.

(2) All individual residents licensed as independent adjuster, public adjuster, or crop adjuster must meet the continuing education requirements of this chapter.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-220, filed 6/10/15, effective 7/11/15. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-220, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060 and 48.17.150. WSR 08-07-102 (Matter No. R 2007-16), § 284-17-220, filed 3/19/08, effective 4/19/08; WSR 06-23-105 (Matter No. R 2006-07), § 284-17-220, filed 11/16/06, effective 12/17/06. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-220, filed 3/17/05, effective 4/17/05. Statutory Authority: RCW 48.02.060 and 48.17.150. WSR 98-11-090 (Matter No.

R 98-9), § 284-17-220, filed 5/20/98, effective 6/20/98. Statutory Authority: RCW 48.02.060, 48.17.150 and 48.85.030. WSR 97-19-007, § 284-17-220, filed 9/4/97, effective 10/5/97. Statutory Authority: RCW 48.02.060, 48.17.150, 48.20.450, 48.85.030 and 48.85.040. WSR 96-17-029 (Matter No. R 95-16), § 284-17-220, filed 8/13/96, effective 9/13/96. Statutory Authority: RCW 48.01.030, 48.02.060(3), 48.14.010, 48.17.150(2), 48.17.160 (1)(5) and 48.17.500(3). WSR 94-14-033 (Order R 94-14), § 284-17-220, filed 6/28/94, effective 7/29/94. Statutory Authority: RCW 48.02.060. WSR 89-19-037 (Order R 89-10), § 284-17-220, filed 9/15/89, effective 10/16/89. Statutory Authority: RCW 48.02.060 and 48.17.150. WSR 81-18-049 (Order R 81-5), § 284-17-220, filed 8/31/81. Statutory Authority: RCW 48.17.150 as amended by 1979 ex.s. c 269 §§ 7,10. WSR 80-04-042 (Order R 80-3), § 284-17-220, filed 3/20/80.]

AMENDATORY SECTION (Amending WSR 09-02-073, filed 1/6/09, effective 7/1/09)

WAC 284-17-222 Continuing insurance education exemptions.

((Resident adjusters and)) Individuals holding only limited credit insurance, travel insurance, or surety licenses are exempt from the continuing insurance education requirements of this chapter.

[Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-222, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060 and 48.17.150. WSR 08-07-102 (Matter No. R 2007-16), § 284-17-222, filed 3/19/08, effective 4/19/08. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-222, filed 3/17/05, effective 4/17/05.]

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-224 Insurance continuing education—Required credit hours—Producers and adjusters. Timely completion of this state's continuing insurance education requirement is a prerequisite for renewal or reinstatement of a license. Before applying for renewal or reinstatement of a license, except as provided in WAC 284-17-222 or waived in accordance with WAC 284-17-254, all resident producers licensed for personal lines, life, disability, property, casualty or variable life and variable annuity product lines of authority and all resident licensed adjusters must complete twenty-four credit hours of approved insurance continuing education. The twenty-four hours of education must include three credit hours of ethics education during every license continuation period.

(1) Courses must be completed within the twenty-four month period prior to the:

- (a) Expiration date of the license;
- (b) Date of late renewal; or
- (c) Date of the request for reinstatement.

(2) ((Producers)) Licensees must maintain each continuing education certificate of completion for three years.

(3) For producers required to complete the annuity suitability training, flood training or long-term care training, producers should maintain certificates for as long as the producer transacts business for these products, but not less than three years.

(4) Adjusters must take either property and casualty insurance related continuing education courses, or insurance claim adjusting related continuing education courses, or both.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-224, filed 6/10/15, effective 7/11/15. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-224, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-224, filed 3/17/05, effective 4/17/05.]

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-273 Continuing insurance education attendance register. A continuing education provider must use an attendance register in the format required by the commissioner to document attendance for a classroom or webinar course. The attendance register must include the following:

- (1) Continuing education provider's name and provider number;
- (2) Course title and course number;
- (3) Location of the classroom or instructor's location for a webinar;
- (4) Signature of the instructor or monitor for a classroom course;
- (5) For a classroom course, the attendee's:
 - (a) Name and phone number;
 - (b) Washington ((producer)) license number;
 - (c) Arrival time;
 - (d) Signature; and
 - (e) Departure time with the attendee's initials.

An attendance register form for a classroom course is available on the insurance commissioner's web site.

- (6) For a webinar course, the attendee's:
 - (a) Name and phone number;
 - (b) Washington ((producer)) license number;
 - (c) Log-in time to join the class;
 - (d) Chat history and polling responses; and
 - (e) Log-out time that the attendee exited the class.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-273, filed 6/10/15, effective 7/11/15.]

AMENDATORY SECTION (Amending WSR 16-12-034, filed 5/24/16, effective 6/24/16)

WAC 284-17-278 Approval of an insurance continuing education course. (1) An application for approval of a continuing insurance education course or a new instruction method of a previously approved course must be submitted electronically or via email to the commissioner's education mailbox no fewer than twenty days prior to the first date the course is offered for credit.

(a) If the continuing education provider does not know the first date the course will be offered at the time the provider submits the application, then if the commissioner approves the course, the provider cannot offer the course until twenty days after the commissioner receives the course application;

(b) The provider can advertise a course after the approval date, but cannot offer the course until the effective date;

(c) The commissioner will not process a new course application submitted by a provider until after the commissioner has sent the provider's continuing education course renewal notice. The provider must immediately submit the continuing education course renewal request for processing. After the commissioner processes the provider's course renewal request, the commissioner will continue reviewing the provider's new course application.

(2) The request must include all of the following, as applicable:

(a) **Classroom courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the continuing education provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s); and

(iv) Sample of the attendance register form that the provider will use.

(b) **Webinar courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline, including a list of topics that the provider will cover and an estimate of the amount of time the provider will spend on each topic. The commissioner will not accept video presentation slides in lieu of the detailed course outline;

(iii) Biography or resume of instructor(s);

(iv) Polling questions or verification codes, including two for each credit hour of the course;

(v) Description of the process for monitoring and verifying attendance; and

(vi) Sample of the document the provider will use to record each attendee's attendance and participation.

(c) **Self-study courses:**

(i) Completed request for course and credit approval form or the National Association of Insurance Commissioners Uniform Continuing Education Reciprocity Course filing form;

(ii) Detailed course outline with word count for each chapter, section or module;

(iii) If ethics content is included, a separate word count for the ethics content;

(iv) Samples of the course reading material to assist the commissioner in determining course difficulty level;

(v) Sample of video content, if included in the course. If the course includes video exceeding fifty minutes and the information is mandatory for completing the course, one additional credit hour will be added to the course credit total;

(vi) Description of the verification process the provider will use to confirm that the licensee has completed the course study material before accessing the exam;

(vii) Resume of the course content developer showing education and work experience related to the course subject matter; and

(viii) Copy of the examination. All examination questions must be multiple choice.

(A) The provider must include a minimum of ten exam questions for a one credit hour course, with an additional five exam questions for each subsequent credit hour;

(B) To pass the exam, licensees must achieve a score of seventy percent or higher;

(C) If the licensee does not pass the first exam, the licensee must take a second exam that contains no more than fifty percent of the same questions from the first exam. If the licensee does not pass on the second attempt, the provider must alternate the exams until the licensee passes the exam.

(3) To be eligible for approval, a course must have a direct and specific application to insurance. A course about ethics or about laws and regulations specific to insurance is eligible. The subject matter should increase the (~~producer's~~) licensee's technical knowledge of insurance principles, insurance coverage, and insurance laws and regulations. The continuing education provider is responsible for the accuracy of facts and figures used in the course.

(4) The commissioner will not award credit for topics such as personal improvement, general education, sales, marketing, motivation, business management, time management, leadership, supportive office skills, internet use, social media use, automation, and other courses that are not directly and specifically related to insurance.

(5) Insurance prelicensing education courses are not eligible for approval for continuing insurance education credit.

[Statutory Authority: RCW 48.02.060, 48.17.005, and 48.17.150(1). WSR 16-12-034 (Matter No. R 2016-03), § 284-17-278, filed 5/24/16, effective 6/24/16. Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-278, filed 6/10/15, effective 7/11/15. Statutory Authority: RCW 48.15.015 and 48.17.005. WSR 11-04-067 (Matter No. R 2010-07), § 284-17-278, filed 1/28/11, effective 2/28/11. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-278, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-278, filed 3/17/05, effective 4/17/05.]

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-292 Certificates of completion of insurance continuing education courses—Form. The form of certificate of course completion required by the commissioner is available to continuing education providers by contacting the commissioner's office. The certificate and signature may be in electronic format.

(1) The certificate must indicate that it is a Washington approved insurance continuing education course; and

(2) The certificate must include the following:

(a) Licensee's name and Washington (~~producer~~) license number;

(b) Course title and number;

(c) Date of course completion;

(d) Total number of credit hours and ethics credit hours if included;

(e) Continuing education provider's name and number; and

(f) Signature of the authorized designee of the provider and date.

[Statutory Authority: RCW 48.02.060, 48.17.005, 48.17.150(1), and 48.01.030. WSR 15-13-061 (Matter No. R 2014-02), § 284-17-292, filed 6/10/15, effective 7/11/15. Statutory Authority: RCW 48.02.060, 48.17.005. WSR 09-02-073 (Matter No. R 2008-06), § 284-17-292, filed 1/6/09, effective 7/1/09. Statutory Authority: RCW 48.02.060, 48.17.150, 48.17.563, 48.85.040. WSR 05-07-091 (Matter No. R 2004-04), § 284-17-292, filed 3/17/05, effective 4/17/05.]

WSR 21-17-124
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-05—Filed August 17, 2021, 1:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-133.

Title of Rule and Other Identifying Information: Reinsurance agreements.

Hearing Location(s): On Thursday, September 23, 2021, at 9:00 a.m., Zoom: Detailed information for attending the Zoom meeting here <https://www.insurance.wa.gov/reinsurance-agreements-r-2021-05>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: September 23, 2021.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by September 22, 2021.

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.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed [proposed] rules is to advance collateral reform relating to reinsurance and assist Washington state maintain a competitive and secure insurance market.

Reasons Supporting Proposal: The National Association of Insurance Commissioners (NAIC) recently adopted two revisions to its Credit for Reinsurance Model Law. The amendments to the model law incorporate provisions of an agreement between the United States and the European Union (EU). The agreement eliminates reinsurance collateral and local presence requirements for EU reinsurers that maintain \$250 million of their own funds and 100 percent solvency capital. Conversely, the United States reinsurers that maintain similar capital and surplus would not be required to maintain a local presence in order to do business in the EU or in any EU jurisdiction. A similar agreement was signed with the United Kingdom and extends similar treatment to qualified jurisdictions and accredited NAIC jurisdictions. SB 5048 (2021) passed this past legislative session incorporating key components of the NAIC model. The commissioner is considering rule making to further align with the model law.

Statutory Authority for Adoption: RCW 48.02.060, 48.12.480; section 2, chapter 139, Laws of 2021, and section 4, chapter 138, Laws of 2021.

Statute Being Implemented: Chapter 138, Laws of 2021 (SB 5048).

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 and Enforcement: Melanie Anderson, 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 companies that are affected by this rule are large companies and are not small business 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 58 direct health and medical insurance carrier firms operating annually in Washington, the mean number of employees per firm is 118 (6,777/58). Direct life insurance carriers in Washington employ on average 2,787 individuals annually, and there are on average 38 firms. Therefore, there are estimated to be 73 employees per firm. By the same logic, direct property and casualty insurers employ on average 6,393 individuals annually, and there are on average 87 firms. Therefore, there are estimated to be 74 employees per firm. All these estimates are above the small business threshold of 50 employees 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.

August 17, 2021

Mike Kreidler

Insurance Commissioner

OTS-3219.1

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-536 Credit for reinsurance—Certain reinsurers maintaining trust funds—Liabilities defined. For purposes of WAC 284-13-520 through 284-13-538, liabilities means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are ((not)) otherwise secured by acceptable means, and, must include:

(1) For business ceded by domestic insurers authorized to write accident and disability, and property and casualty insurance:

(a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

(b) Reserves for losses reported and outstanding;

(c) Reserves for losses incurred but not reported;

(d) Reserves for allocated loss expenses; and

(e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability and annuity insurance:

(a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

(b) Aggregate reserves for accident and disability policies;

- (c) Deposit funds and other liabilities without life or disability contingencies; and
- (d) Liabilities for policy and contract claims.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-536, filed 12/2/15, effective 1/2/16.]

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-538 Specific securities provided to a ceding insurer.

A specific security provided to a ceding insurer by an assuming insurer under WAC ((~~284-13-53901~~)) 284-13-540 must be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer under WAC 284-13-520 through 284-13-538.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-538, filed 12/2/15, effective 1/2/16.]

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-539 Credit for reinsurance—Certified reinsurers.

(1) Under RCW 48.12.430, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed must be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security must be in a form consistent with RCW 48.12.430 and 48.12.460, and WAC 284-13-550, 284-13-560 or 284-13-570. The amount of security required in order for full credit to be allowed must correspond with the following requirements:

(a)

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner must require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer is not required to post security for a catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophe occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophe occurrence will be included in the deferral:

- (i) Line 1: Fire.
- (ii) Line 2: Allied lines.
- (iii) Line 3: Farmowners multiple peril.
- (iv) Line 4: Homeowners multiple peril.
- (v) Line 5: Commercial multiple peril.
- (vi) Line 9: Inland marine.
- (vii) Line 12: Earthquake.
- (viii) Line 21: Auto physical damage.

(e) Credit for reinsurance under this section applies only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, is only subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2) (a) The commissioner shall post notice on the commissioner's web site promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by (a) of this subsection.

(b) The commissioner shall issue notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer under subsection (1) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(c) In order to be eligible for certification, the assuming insurer must meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subsection (3) of this section.

(ii) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated under (d) (viii) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having a minimum capital and surplus

equivalent (net of liabilities) of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (A) Standard & Poor's;
- (B) Moody's Investors Service;
- (C) Fitch Ratings;
- (D) A.M. Best Company; or
- (E) Any other nationally recognized statistical rating organization.

(iv) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer must be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(i) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner must use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(ii) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(iii) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either schedule F (for property/casualty reinsurers) or schedule S (for life and disability reinsurers);

(iv) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and disability reinsurers) set forth in WAC 284-13-59502 through 284-13-59508;

(v) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(vi) Regulatory actions against the certified reinsurer;

(vii) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (d) (viii) of this subsection;

(viii) For certified reinsurers not domiciled in the United States, audited financial statements (~~((audited United States GAAP basis if available, audited IFRS basis statements are allowed but most include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company))~~), regulatory filings, and actuarial opinions (as filed with non-United States jurisdiction supervisor, with a translation into English). Upon the initial application for certification, the commissioner will consider audited financial statements for the last ~~((three))~~ two years filed with its non-United States jurisdiction supervisor;

(ix) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(x) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner must receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme arrangement; and

(xi) Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under (d) (v) of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner must, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (d) (i) of this subsection if the commissioner finds that:

(i) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or

(ii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.

(f) The assuming insurer must submit a properly executed Form CR-1 set forth under WAC 284-13-59501 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if

it resists enforcement of a final United States judgment. The commissioner will not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

(i) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

(ii) Annually, Form CR-F or CR-S, as applicable per the instructions posted on the National Association of Insurance Commissioner's web site;

(iii) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (g) (iv) of this subsection;

(iv) Annually, audited financial statements (~~((audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company))~~), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor, with a translation into English). Upon the initial certification, audited financial statements for the last ~~((three))~~ two years filed with the certified reinsurer's supervisor;

(v) At least annually, an audited list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(vi) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(vii) Any other information that the commissioner may reasonably require.

(h) Change in rating or revocation of certification.

(i) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner must upon notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (2) (d) (i) of this section.

(ii) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(iii) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner must require the certified reinsurer to post security un-

der the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner must require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(iv) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer is required to post security in accordance with WAC 284-13-540 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust under WAC 284-13-520 through 284-13-538, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(3) (a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner must publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner must evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner must determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner include, but are not limited to, the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

(viii) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(ix) Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under (b) (i) through (ix) of this subsection.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions.

(4) (a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed CR-1 and additional information as the commissioner requires. The assuming insurer is considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer must notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2) (h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification under subsection (2) (h) of this section, the certified reinsurer's certification remains in good standing in this state for a period of three months, which is extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) In addition to the clauses required under WAC 284-13-580, reinsurance contracts entered into or renewed under this section must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-539, filed 12/2/15, effective 1/2/16.]

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-53901 Credit for reinsurance required by law. Under RCW 48.12.435, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.430, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and lawful national government.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-53901, filed 12/2/15, effective 1/2/16.]

NEW SECTION

WAC 284-13-53902 Credit for reinsurance—Reciprocal jurisdiction. (1) Pursuant to section 2, chapter 138, Laws of 2021, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this regulation.

(2) A "reciprocal jurisdiction" is a jurisdiction, as designated by the commissioner that meets one of the following:

(a) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. Secs. 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(b) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(c) A qualified jurisdiction, as determined by the commissioner pursuant to RCW 48.12.430(3) and WAC 284-13-539(3), which is not otherwise described in (a) or (b) of this subsection and which the commissioner determines meets all of the following additional requirements:

(i) Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

(ii) Does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

(iii) Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the commissioner or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

(iv) Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the commissioner in accordance with a memorandum of understanding or similar document between the commissioner and such qualified jurisdiction including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(3) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31st or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in (g) of this subsection according to the methodology of its domiciliary jurisdiction, in the following amounts:

(i) No less than two hundred fifty million dollars; or

(ii) If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(A) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least two hundred fifty million dollars; and

(B) A central fund containing a balance of the equivalent of at least two hundred fifty million dollars.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

(i) If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in subsection (1)(a) of this section, the ratio specified in the applicable covered agreement;

(ii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(b) of this section, a risk-based capital (RBC) ratio of three hundred percent of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

(iii) If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in subsection (1)(c) of this section, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC committee process, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.

(d) The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1 (WAC 284-13-59509), of its agreement to the following:

(i) The assuming insurer must agree to provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in (b) or (c) of this subsection, or if any regulatory action is taken against it for serious noncompliance with applicable law.

(ii) The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process.

(A) The commissioner may also require that such consent be provided and included in each reinsurance agreement under the commissioner's jurisdiction.

(B) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.

(iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.

(iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable.

(v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of RCW 48.12.430 and 48.12.460 and WAC 284-13-550, 284-13-560, or 284-13-570. For purposes of this regulation, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject

to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction.

(vi) The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in (e) of this subsection.

(e) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, the following documentation to the commissioner:

(i) For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

(ii) For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

(iii) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

(iv) Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in (f) of this subsection.

(f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

(i) More than fifteen percent of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;

(ii) More than fifteen percent of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars, or as otherwise specified in a covered agreement; or

(iii) The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety days or more, exceeds fifty million dollars, or as otherwise specified in a covered agreement.

(g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with the requirements set forth in (b) and (c) of this subsection.

(h) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(4) The commissioner shall timely create and publish a list of reciprocal jurisdictions.

(a) A list of reciprocal jurisdictions is published through the NAIC committee process. The commissioner's list shall include any reciprocal jurisdiction as defined under subsection (2) (a) and (b) of this section, and shall consider any other reciprocal jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC committee process.

(b) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC committee process, except that the commissioner shall not remove from the list a reciprocal jurisdiction as defined under subsection (2)(a) and (b) of this section. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to RCW 48.12.400 through 48.12.499 or WAC 284-13-500 through 284-13-59509.

(5) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this section.

(a) If an NAIC accredited jurisdiction has determined that the conditions set forth in subsection (3) of this section have been met, the commissioner has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The commissioner may accept financial documentation filed with another NAIC accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (3) of this section.

(b) When requesting that the commissioner defer to another NAIC accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require. A state that has received such a request will notify other states through the NAIC committee process and provide relevant information with respect to the determination of eligibility.

(6) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this section, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this section.

(a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with WAC 284-13-540.

(b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of WAC 284-13-540.

(7) Before denying statement credit or imposing a requirement to post security with respect to subsection (6) of this section or adopting any similar requirement that will have substantially the same regulatory impact as security, the commissioner shall:

(a) Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (3) of this section;

(b) Provide the assuming insurer with thirty days from the initial communication to submit a plan to remedy the defect, and ninety

days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

(c) After the expiration of ninety days or less, as set out in (b) of this subsection, if the commissioner determines that no or insufficient action was taken by the assuming insurer, the commissioner may impose any of the requirements as set out in this subsection; and

(d) Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(8) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

[]

NEW SECTION

WAC 284-13-53903 Credit for reinsurance—Term and universal life insurance reserve financing. (1) Pursuant to section 5, chapter 138, Laws of 2021, the purpose and intent of this section is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in subsection (4) of this section, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics:

(a) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are issued by the ceding insurer or its affiliates;

(b) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer are not unconditionally available to satisfy the general account obligations of the ceding insurer; or

(c) Some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

(2) This section will apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in subsection (4)(b) of this section, issued by any life insurance company domiciled in this state. This section and WAC 284-13-500 through 284-13-59509 will both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and WAC 284-13-500 through 284-13-59509, the provisions of this regulation will apply, but only to the extent of the conflict.

(3) This section does not apply to:

(a) Reinsurance of:

(i) Policies that satisfy the criteria for exemption set forth in WAC 284-74-350(7); and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(ii) Portions of policies that satisfy the criteria for exemption set forth in WAC 284-74-350(6) and which are issued before the later of:

(A) The effective date of this regulation; and

(B) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves, but in no event later than January 1, 2020;

(iii) Any universal life policy that meets all of the following requirements:

(A) Secondary guarantee period, if any, is five years or less;

(B) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the commissioners standard ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

(C) The initial surrender charge is not less than one hundred percent of the first year annualized specified premium for the secondary guarantee period;

(iv) Credit life insurance;

(v) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(vi) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year.

(b) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.425; or

(c) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

(i) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to statement of statutory accounting principles No. 1 (SSAP 1); and

(ii) Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in RCW 48.05.440 through 48.05.455 when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(d) Reinsurance ceded to an assuming insurer that meets the applicable requirements of RCW 48.12.410, 48.12.415, or 48.12.420, and that, in addition:

- (i) Is not an affiliate, as that term is defined in RCW 48.31B.005, of:
- (A) The insurer ceding the business to the assuming insurer; or
 - (B) Any insurer that directly or indirectly ceded the business to that ceding insurer;
- (ii) Prepares statutory financial statements in compliance with the *NAIC Accounting Practices and Procedures Manual*;
- (iii) Is both:
- (A) Licensed or accredited in at least ten states (including its state of domicile); and
 - (B) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and
- (iv) Is not, or would not be, below five hundred percent of the authorized control level RBC as that term is defined in RCW 48.05.440 when its risk-based capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or
- (e) Reinsurance ceded to an assuming insurer that meets the requirements of section 5(5), chapter 138, Laws of 2021; or
- (f) Reinsurance not otherwise exempt under this section if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:
- (i) The risks are clearly outside of the intent and purpose of this regulation, as described in subsection (1) of this section;
 - (ii) The risks are included within the scope of this regulation only as a technicality; and
 - (iii) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders.
- (4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.
- (a) "Actuarial method" means the methodology used to determine the required level of primary security, as described in subsection (5) of this section.
- (b) "Covered policies" means the following: Subject to the exemptions described in subsection (3) of this section, covered policies are those policies, other than grandfathered policies, of the following policy types:
- (i) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or
 - (ii) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.
- (c) "Grandfathered policies" means policies of the types described in (a) and (b) of this subsection that were:
- (i) Issued prior to January 1, 2015; and
 - (ii) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4 had that section then been in effect.

(d) "Noncovered policies" means any policy that does not meet the definition of covered policies including grandfathered policies as defined in this section.

(e) "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(f) "Primary security" means the following forms of security:

(i) Cash meeting the requirements of RCW 48.12.460(1);

(ii) Securities listed by the Securities Valuation Office meeting the requirements of RCW 48.12.460(2), but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(iii) For security held in connection with funds withheld and modified coinsurance reinsurance treaties:

(A) Commercial loans in good standing of CM3 quality and higher;

(B) Policy loans; and

(C) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(g) "Other security" means any security acceptable to the commissioner other than security meeting the definition of primary security.

(h) "Valuation manual" means the *Valuation Manual* adopted by the NAIC as described in RCW 48.74.100 (2)(a) and WAC 284-74-610, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(i) "VM-20" means requirements for principle-based reserves for life products, including all relevant definitions, from the *Valuation Manual*.

(5)(a) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation must be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the *Valuation Manual* as then in effect, applied as follows:

(i) For covered policies described in subsection (4)(b)(i) of this section, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the *Valuation Manual*, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in subsection (4)(b)(ii) of this section, the ceding insurer may elect to instead use (a)(ii) of this subsection as the actuarial method for the entire reinsurance agreement. Whether this subsection (5)(a)(i) or (ii) of this section are used, the actuarial method must comply with any requirements or restrictions that the *Valuation Manual* imposes when aggregating these policy types for purposes of principle-based reserve calculations.

(ii) For covered policies described in subsection (4)(b)(ii) of this section, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

(iii) Except as provided in (a)(iv) of this subsection, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer.

(iv) If the reinsurance treaty cedes less than one hundred percent of the risk with respect to the covered policies, then the required level of primary security may be reduced as follows:

(A) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under (a)(iv)(C) of this subsection, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(B) If the reinsurance treaty in a nonexempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(C) If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed $[cx / (2 * \text{number of reinsurance premiums per year})]$ where cx is calculated using the same mortality table used in calculating the net premium reserve; and

(D) For any other treaty ceding a portion of risk to a different reinsurer including, but not limited to, stop loss, excess of loss and other nonproportional reinsurance treaties, there will be no reduction in the required level of primary security.

It is possible for any combination of (a)(iv) of this subsection to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent of the risk.

The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(v) In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded.

(vi) If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial

method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation;

(vii) If a reinsurance treaty subject to this regulation cedes risk on both covered and noncovered policies, credit for the ceded reserves will be determined as follows:

(A) The actuarial method must be used to determine the required level of primary security for the covered policies and subsection (6) of this section must be used to determine the reinsurance credit for the covered policy reserves; and

(B) Credit for the noncovered policy reserves will be granted only to the extent that security, in addition to the security held to satisfy the requirements of (a) (vii) (A) of this subsection, is held by or on behalf of the ceding insurer in accordance with section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460. Any primary security used to meet the requirements of this subsection may not be used to satisfy the required level of primary security for the covered policies.

(b) For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following will apply:

(i) For assets, including any such assets held in trust, that would be admitted under the *NAIC Accounting Practices and Procedures Manual* if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

(ii) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 must be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than the December 31st on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs must be incorporated into the actuarial method in the manner specified in VM-20.

(6) Requirements applicable to covered policies to obtain credit for reinsurance - Opportunity for remediation:

(a) Requirements are subject to the exemptions described in subsection (3) of this section and the provisions of (b) of this subsection, credit for reinsurance will be allowed with respect to ceded liabilities pertaining to covered policies pursuant to section 2, chapter 138, Laws of 2021 and RCW 48.12.410 through 48.12.460 if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(i) The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of chapter 48.74 RCW and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract;

(ii) The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner;

(iii) Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of RCW 48.12.460, on a funds withheld, trust, or modified coinsurance basis;

(iv) Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to (a)(iii) of this subsection, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of RCW 48.12.460;

(v) Any trust used to satisfy the requirements of this section must comply with all of the conditions and qualifications of WAC 284-13-550, except that:

(A) Funds consisting of primary security or other security held in trust, will for the purposes identified in subsection (5)(b) of this section, be valued according to the valuation rules set forth in subsection (5)(b) of this section, as applicable;

(B) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of (a)(iii) of this subsection;

(C) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by (a)(iii) of this subsection below one hundred two percent of the level required by (a)(iii) of this subsection at the time of the withdrawal or substitution; and

(D) The determination of reserve credit under WAC 284-13-550(5) must be determined according to the valuation rules set forth in subsection (5)(b) of this section, as applicable; and

(vi) The reinsurance treaty has been approved by the commissioner.

(b) Requirements at inception date and on an ongoing basis - Remediation:

(i) The requirements of (a) of this subsection must be satisfied as of the date that risks under covered policies are ceded on or after the effective date of this subsection and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under (a)(iii) or (iv) of this subsection with respect to any reinsurance treaty under which covered policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it will use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(ii) Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of subsection (2) of this section must perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which covered policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of (a)(iii) and (iv) of this subsection were satisfied. The ceding insurer will establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to (a)(iii) of this subsection, unless either:

(A) The requirements of (a)(iii) and (iv) of this subsection were fully satisfied as of the valuation date as to such reinsurance treaty; or

(B) Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of (a)(iii) and (iv) of this subsection to be fully satisfied as of the valuation date.

(iii) Nothing in (b)(ii) of this subsection will be construed to allow a ceding company to maintain any deficiency under (a)(iii) or (iv) of this subsection for any period of time longer than is reasonably necessary to eliminate it.

(7) If any provision of this section is held invalid, the remainder shall not be affected.

(8) No insurer that has covered policies as to which this regulation applies as set forth in section (2) of this section shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section (1) of this section.

[]

AMENDATORY SECTION (Amending WSR 15-24-126, filed 12/2/15, effective 1/2/16)

WAC 284-13-540 Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer not meeting the requirements of WAC 284-13-510 through ((284-13-53901)) 284-13-53903. Under RCW 48.12.460, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 2, chapter 138, Laws of 2021 and RCW 48.12.405 through 48.12.455, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution as defined in RCW 48.12.465(2). This security may be in the form of any of the following:

(1) (a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC, including those exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in RCW 48.12.465(1), effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's sub-

sequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer under this section is allowed only when the requirements of WAC 284-13-580 and the applicable portions of WAC 284-13-550, 284-13-560, or 284-13-570 have been satisfied.

[Statutory Authority: RCW 48.02.060, 48.12.430 (1)(b) and (c), (3)(b), (4), (5), 48.12.480, and 2015 c 63. WSR 15-24-126 (Matter No. R 2015-09), § 284-13-540, filed 12/2/15, effective 1/2/16. Statutory Authority: RCW 48.02.060, 48.12.160 and 1996 c 297 § 2. WSR 97-05-012 (Matter No. R 96-10), § 284-13-540, filed 2/10/97, effective 3/13/97. Statutory Authority: RCW 48.02.060 and 48.12.160. WSR 93-19-002 (Order R 93-6), § 284-13-540, filed 9/1/93, effective 10/2/93.]

NEW SECTION

WAC 284-13-59509 Form RJ-1.

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, _____, _____
(name of officer) (title of officer)

of _____, the
assuming insurer (name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in Washington state, in order to be considered for approval in this state, hereby certify that _____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in [Name of State] for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the commissioner. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted, by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.
2. Designates the Insurance Commissioner of Washington state as its lawful attorney in and for the Washington state upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.
3. Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.
4. Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.
5. Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in Washington state. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide one hundred percent security to the ceding insurer consistent with the terms of the scheme.
6. Agrees that in each reinsurance agreement it will provide security in an amount equal to one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.
7. Agrees to provide the documentation in accordance with Washington Administrative Code 284-13-53902(3)(e) for reciprocal jurisdiction reinsurers, if requested by the commissioner.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of office)

[]

WSR 21-17-142

PROPOSED RULES

DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed August 18, 2021, 11:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-015.

Title of Rule and Other Identifying Information: Chapter 246-918 WAC, Physician assistants—Washington medical commission (commission). Revising physician assistant (PA) rules pursuant to SHB 2378 (chapter 80, Laws of 2020) and updating PA rules to incorporate current, national standards and best practices.

Hearing Location(s): On September 22, 2021, at 4:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical 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. Register for this webinar <https://attendee.gotowebinar.com/register/4450920241377813775>.

Date of Intended Adoption: September 22, 2021.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by September 15, 2021.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email medical.rules@wmc.wa.gov, by September 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is updating the PA chapter to more closely align with current industry standards, modernize regulations to align with current national industry standards and best practices, and provide clearer rule language for licensed PAs.

Included in this rule making is incorporating the requirements of SHB 2378 concerning PAs. The commission is adding new requirements in accordance with SHB 2378. This bill combines the osteopathic PA licensing under the Washington medical commission effective July 1, 2021, and eliminates the profession of osteopathic PA. The bill instructs the commission to consult with the board of osteopathic medicine and surgery when investigating allegations of unprofessional conduct by a licensee under the supervision of an osteopathic physician. The bill also reduces administrative and regulatory burdens on PA practice by moving practice agreements from an agency-level approval process to [an] employment level process. Employers are required to keep agreements on file. The bill requires the commission to collect and file the agreements. Proposed amendments also change nomenclature from "delegation" to "practice" agreement and from "supervising physician" to "participating physician" agreement.

Reasons Supporting Proposal: RCW 43.70.041 requires the commission to review its administrative rules every five years to ensure that regulations are current and relevant.

SHB 2378 modernizes the practice of PAs in order to increase access to care, reduce barriers to employment of PAs, and optimize the manner in which PAs deliver quality medical care.

The proposed rules will benefit public health by ensuring PAs are informed and regulated by current national industry and best practice standards.

Statutory Authority for Adoption: RCW 18.71A.150, 18.130.050; chapter 18.71A RCW.

Statute Being Implemented: SHB 2378 (chapter 80, Laws of 2020).

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2727; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-236-2727, email amelia.boyd@wmc.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 rules do not impact businesses; these rules pertain only to provider licensing standards.

August 18, 2021

Melanie de Leon

Executive Director

Washington Medical Commission

OTS-3087.2

AMENDATORY SECTION (Amending WSR 20-08-069, filed 3/26/20, effective 4/26/20)

WAC 246-918-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington medical commission.

(2) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

(3) (~~"Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a sponsoring physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.~~

~~(4))~~ "NCCPA" means National Commission on Certification of Physician Assistants.

~~((5))~~ (4) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

~~((6))~~ (5) "Physician" means an individual licensed under chapter 18.71 RCW.

~~((7))~~ (6) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine to a

limited extent only under the supervision of a physician (~~as defined in chapter 18.71 RCW~~) or osteopathic physician.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

(7) "Practice agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a supervising physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

~~(8) ("Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.~~

~~(9)) "Supervising physician" means ((a sponsoring or alternate physician providing clinical oversight for a physician assistant.~~

~~(a) "Sponsoring physician" means)) any physician ((licensed under chapter 18.71 RCW and)) or osteopathic physician identified in a ((delegation)) practice agreement as providing primary clinical and administrative oversight for a physician assistant.~~

~~((b)) (9) "Alternate physician" means any physician ((licensed under chapter 18.71 or 18.57 RCW)) or osteopathic physician who provides clinical oversight of a physician assistant in place of or in addition to the ((sponsoring)) supervising physician.~~

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2019 c 55. WSR 20-08-069, § 246-918-005, filed 3/26/20, effective 4/26/20. Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-005, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017, 18.71.050 and chapter 18.71 RCW. WSR 01-18-085, § 246-918-005, filed 9/5/01, effective 10/6/01. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-005, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71A.020 and 18.71.060. WSR 93-21-016, § 246-918-005, filed 10/11/93, effective 11/11/93. Statutory Authority: RCW 18.71.017. WSR 92-12-089 (Order 278B), § 246-918-005, filed 6/3/92, effective 7/4/92.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-007 Application withdrawals. An applicant for a license or interim permit may not withdraw (~~his or her~~) their application if grounds for denial exist.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-007, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017, 18.71.050 and chapter 18.71 RCW. WSR 01-18-085, § 246-918-007, filed 9/5/01, effective 10/6/01. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-007, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71.017. WSR 92-12-089 (Order 278B), § 246-918-007, filed 6/3/92, effective 7/4/92.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-035 Prescriptions. (1) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice in an approved (~~delegation~~) practice agreement filed with the commission provided:

(a) The physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in (~~his or her~~) their prescribing privileges, unless otherwise authorized in writing by the commission.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-035, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-035, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71.017. WSR 92-12-089 (Order 278B), § 246-918-035, filed 6/3/92, effective 7/4/92. Statutory Authority: RCW 18.71A.020. WSR 91-08-007 (Order 153B), § 246-918-035, filed 3/26/91, effective 4/26/91.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-050 Physician assistant qualifications for interim permits. An interim permit is a limited license. The permit allows an individual who has graduated from a commission approved program within the previous twelve months to practice prior to successfully passing the commission approved licensing examination.

(1) An individual applying to the commission for an interim permit under RCW 18.71A.020(1) must have graduated from an accredited commission approved physician assistant program.

(2) An interim permit is valid for one year from completion of a commission approved physician assistant training program. The interim permit may not be renewed.

(3) An applicant for a physician assistant interim permit must submit to the commission:

- (a) A completed application on forms provided by the commission;
- (b) Applicable fees as specified in WAC 246-918-990; and
- (c) Requirements as specified in WAC 246-918-080.

~~((4) An interim permit holder may not work in a remote site.))~~

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-050, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017, 18.71.050 and chapter 18.71 RCW. WSR 01-18-085, § 246-918-050, filed 9/5/01, effective 10/6/01. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-050, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71.017. WSR 91-06-030 (Order 147B), recodified as § 246-918-050, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.71A.020. WSR 89-20-023, § 308-52-165, filed 9/27/89, effective 10/28/89.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-055 ((Delegation)) Practice agreements. ~~((1) The physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the commission. A physician assistant may not begin practicing without written commission approval of a delegation agreement.~~

~~(2) The delegation agreement must specify:~~

~~(a) The names and Washington state license numbers of the sponsoring physician and alternate physician, if any. In the case of a group practice, the alternate physicians do not need to be individually identified;~~

~~(b) A detailed description of the scope of practice of the physician assistant;~~

~~(c) A description of the supervision process for the practice;~~
and

~~(d) The location of the primary practice and all remote sites and the amount of time spent by the physician assistant at each site.~~

~~(3) The sponsoring physician and the physician assistant shall determine which services may be performed and the degree of supervision under which the physician assistant performs the services.~~

~~(4) The physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.~~

~~(5) A physician assistant practicing in a multispecialty group or organization may need more than one delegation agreement depending on the physician assistant's training and the scope of practice of the physician(s) the physician assistant will be working with.~~

~~(6) It is the joint responsibility of the physician assistant and the supervising physician(s) to notify the commission in writing of any significant changes in the scope of practice of the physician assistant. The commission or its designee will evaluate the changes and determine whether a new delegation agreement is required.~~

~~(7) A physician may enter into delegation agreements with up to five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision:~~

~~(a) More than three physician assistants who are working in remote sites as provided in WAC 246-918-120; or~~

~~(b) More physician assistants than the physician can adequately supervise.~~

~~(8) Within thirty days of termination of the working relationship, the sponsoring physician or the physician assistant shall submit a letter to the commission indicating the relationship has been terminated.~~

~~(9) Whenever a physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.) (1) A practice agreement must meet the requirements in RCW 18.71A.120.~~

(2) A physician assistant may have more than one supervising physician if the practice agreement is entered into with a group of physicians and the language of the practice agreement designates the supervising physicians.

(3) Pursuant to a practice agreement, a physician assistant may administer anesthesia, except the types of anesthesia described in subsection (4) of this section, without the personal presence of a supervising physician.

(4) Administration of general anesthesia or intrathecal anesthesia may be performed by a physician assistant with adequate education and training under direct supervision of a supervising anesthesiologist. Adequate education and training for administration of general or intrathecal anesthesia is defined as:

(a) Completion of an accredited anesthesiologist assistant program; or

(b) Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to the adoption date of this section.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-055, filed 2/3/15, effective 3/6/15.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-075 Background check—Temporary practice permit.

The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a ~~((delegation))~~ practice agreement ~~((approved by))~~ on file with the commission.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-075, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.130.064 and 18.130.075. WSR 10-05-029, § 246-918-075, filed 2/9/10, effective 2/11/10.]

AMENDATORY SECTION (Amending WSR 21-07-055, filed 3/12/21, effective 4/12/21)

WAC 246-918-080 Physician assistant—Requirements for licensure.

(1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

(d) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) A physician assistant may not begin practicing without ~~((written commission approval of a delegation agreement))~~ first filing a practice agreement with the commission.

(5) A physician assistant licensed under chapter 18.57A RCW prior to July 1, 2021, renewing their license on or after July 1, 2021, must do so with the commission. Individuals licensed under chapter 18.57A RCW and renewing their license after July 1, 2021, will follow the renewal schedule set forth in WAC 246-918-171. The commission shall issue a physician assistant license to the individuals described in this subsection without requiring full application or reapplication, but may require additional information from the renewing physician assistant.

[Statutory Authority: RCW 18.71.017 and 18.130.050. WSR 21-07-055, § 246-918-080, filed 3/12/21, effective 4/12/21. Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-080, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017, 18.71.050 and chapter 18.71 RCW. WSR 01-18-085, § 246-918-080, filed 9/5/01, effective 10/6/01. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-918-080, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-080, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71.017. WSR 91-06-030 (Order 147B), recodified as § 246-918-080, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.71A.020. WSR 89-06-077 (Order PM 822), § 308-52-139, filed 3/1/89. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 88-21-047 (Order PM 782), § 308-52-139, filed 10/13/88. Statutory Authority: RCW 18.71A.020. WSR 88-06-008 (Order PM 706), § 308-52-139, filed 2/23/88; WSR 86-12-031 (Order PM 599), § 308-52-139, filed 5/29/86; WSR 82-24-013 (Order PL 412), § 308-52-139, filed 11/19/82; WSR 81-03-078 (Order PL 368), § 308-52-139, filed 1/21/81; WSR 80-15-031 (Order PL-353), § 308-52-139, filed 10/8/80; WSR 78-04-029 (Order PL 285, Resolution No. 78-140), § 308-52-139, filed 3/14/78.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-105 Practice limitations due to disciplinary action.

(1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in (~~his or her~~) their prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their (~~sponsoring~~) supervising physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the (~~sponsoring~~) supervising physician or other supervising physicians of such matters as appropriate.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-105, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71A.020, 18.71A.040 and 18.130.186(2). WSR 94-15-065, § 246-918-105, filed 7/19/94, effective 8/19/94.]

AMENDATORY SECTION (Amending WSR 07-03-177, filed 1/24/07, effective 3/1/07)

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radio-frequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of the (~~sponsoring or~~) supervising physician, it is in compliance with the practice (~~arrangement plan approved by~~) agreement on file with the commission, and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a nonphysician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

- (iii) Selection criteria to screen patients for the appropriateness of treatments;
 - (iv) Identification of devices and settings to be used for patients who meet selection criteria;
 - (v) Methods by which the specified device is to be operated and maintained;
 - (vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and
 - (vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.
- (f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device.
- (g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

[Statutory Authority: RCW 18.71.017, 18.71A.020 and 18.130.050(12). WSR 07-03-177, § 246-918-125, filed 1/24/07, effective 3/1/07.]

AMENDATORY SECTION (Amending WSR 10-11-001, filed 5/5/10, effective 6/5/10)

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1)

The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfigurement, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

- (a) Surgery;
- (b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to the skin; this is covered in WAC 246-919-605 and 246-918-125;
- (c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;
- (d) The use of nonprescription devices; and
- (e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic

purposes, but are excluded under subsection (2) (b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

(b) (~~"Physician" means an individual licensed under chapter 18.71 RCW.~~

~~(c) "Physician assistant" means an individual licensed under chapter 18.71A RCW.~~

~~(d))~~ "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A physician assistant must ensure that the supervising (~~or sponsoring~~) physician is in full compliance with WAC 246-919-606.

(5) A physician assistant may not perform a nonsurgical cosmetic procedure unless (~~his or her~~) their supervising (~~or sponsoring~~) physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:

- (a) Techniques for each procedure;
- (b) Cutaneous medicine;
- (c) Indications and contraindications for each procedure;
- (d) Preprocedural and postprocedural care;
- (e) Recognition and acute management of potential complications that may result from the procedure; and
- (f) Infectious disease control involved with each treatment.

(7) The physician assistant must keep a record of (~~his or her~~) their training in the office and available for review upon request by a patient or a representative of the commission.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:

- (a) Take a history;
- (b) Perform an appropriate physical examination;
- (c) Make an appropriate diagnosis;
- (d) Recommend appropriate treatment;
- (e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;
- (f) Provide instructions for emergency and follow-up care; and
- (g) Prepare an appropriate medical record.

(9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

- (a) A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;
- (b) Selection criteria to screen patients for the appropriateness of treatment;
- (c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and
- (d) A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method

for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, so long as the physician assistant's (~~sponsoring or~~) supervising physician is on-site during the entire procedure.

~~(12) ((A physician assistant may perform a nonsurgical medical cosmetic procedure at a remote site. A physician assistant must comply with the established regulations governing physician assistants working in remote sites, including obtaining commission approval to work in a remote site under WAC 246-918-120.~~

~~(13))~~ A physician assistant must ensure that each treatment is documented in the patient's medical record.

~~((14))~~ (13) A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

~~((15))~~ (14) A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

~~((16))~~ (15) A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

[Statutory Authority: RCW 18.71.017, 18.71A.020 and 18.130.050(4). WSR 10-11-001, § 246-918-126, filed 5/5/10, effective 6/5/10.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-130 Physician assistant identification. (1) A physician assistant must clearly identify himself or herself as a physician assistant and must appropriately display on (~~his or her~~) their person identification as a physician assistant.

(2) A physician assistant must not present himself or herself in any manner which would tend to mislead the public as to (~~his or her~~) their title.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-130, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-130, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.71.017. WSR 92-12-089 (Order 278B), § 246-918-130, filed 6/3/92, effective 7/4/92; WSR 91-06-030 (Order 147B), recodified as § 246-918-130, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.71A.020. WSR 88-06-008 (Order PM 706), § 308-52-148, filed 2/23/88.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-171 Renewal and continuing medical education cycle.

(1) Under WAC 246-12-020, an initial credential issued within ninety days of the physician assistant's birthday does not expire until the physician assistant's next birthday.

(2) A physician assistant must renew (~~(his or her)~~) their license every two years on (~~(his or her)~~) their birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each physician assistant will have two years to meet the continuing medical education requirements in WAC 246-918-180. The review period begins on the first birthday after receiving the initial license.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-171, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017, 18.130.050(1), 18.130.040(4), 18.130.050(12) and 18.130.340. WSR 99-23-090, § 246-918-171, filed 11/16/99, effective 1/1/00.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, (~~Part 5,~~) excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician assistant with a retired active license must have a (~~delegation~~) practice agreement (~~(approved by)~~) on file with the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities or serving under chapter 70.15 RCW.

(3) A physician assistant with a retired active license may not receive compensation for health care services.

(4) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time non-permanent basis.

(5) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) A physician assistant with a retired active license shall report one hundred hours of continuing education at every renewal.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-175, filed 2/3/15, effective 3/6/15.]

AMENDATORY SECTION (Amending WSR 17-07-044, filed 3/8/17, effective 4/8/17)

WAC 246-918-185 Training in suicide assessment, treatment, and management. (1) A licensed physician assistant must complete a one-time training in suicide assessment, treatment, and management. The training must be at least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

(3) ~~((Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.~~

~~(4) Beginning July 1, 2017,))~~ The training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~((5))~~ (4) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-918-180.

~~((6))~~ (5) The commission exempts any licensed physician assistant from the training requirements of this section if the physician assistant has only brief ~~((or))~~ limited ~~((patient contact))~~, or no patient contact.

[Statutory Authority: RCW 18.71.017 and 43.70.442. WSR 17-07-044, § 246-918-185, filed 3/8/17, effective 4/8/17.]

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—Use and supervision. The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring ~~((his or her))~~ their compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and the supervising physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks ~~((he or she is))~~ they are authorized to perform

only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It is the responsibility of the supervising physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to (~~his or her~~) their professional activities as a PASA, the PASA shall clearly denominate (~~his or her~~) their profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to (~~his or her~~) their title.

[Statutory Authority: RCW 18.71.017, 18.130.050, chapter 18.71A RCW, and 2013 c 203. WSR 15-04-122, § 246-918-260, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 18.71.017 and 18.71A.020. WSR 96-03-073, § 246-918-260, filed 1/17/96, effective 2/17/96. Statutory Authority: RCW 18.130.250. WSR 93-11-008 (Order 360B), § 246-918-260, filed 5/5/93, effective 6/5/93. Statutory Authority: RCW 18.71.017. WSR 92-12-089 (Order 278B), § 246-918-260, filed 6/3/92, effective 7/4/92; WSR 91-06-030 (Order 147B), recodified as § 246-918-260, filed 2/26/91, effective 3/29/91. Statutory Authority: RCW 18.71A.020. WSR 89-13-002 (Order PM 850), § 308-52-660, filed 6/8/89, effective 9/30/89.]

AMENDATORY SECTION (Amending WSR 16-06-009, filed 2/18/16, effective 3/20/16)

WAC 246-918-410 Sexual misconduct. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

(a) Sexual intercourse or genital to genital contact;

- (b) Oral to genital contact;
 - (c) Genital to anal contact or oral to anal contact;
 - (d) Kissing in a romantic or sexual manner;
 - (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
 - (f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;
 - (g) Not allowing a patient the privacy to dress or undress;
 - (h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;
 - (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
 - (j) Soliciting a date;
 - (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.
- (3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:
- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
 - (b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.
- (4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.
- (5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors((7)) including, but not limited to, the following:
- (a) Documentation of formal termination;
 - (b) Transfer of the patient's care to another health care provider;
 - (c) The length of time that has passed;
 - (d) The length of time of the professional relationship;
 - (e) The extent to which the patient has confided personal or private information to the physician assistant;
 - (f) The nature of the patient's health problem;
 - (g) The degree of emotional dependence and vulnerability.
- (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.
- (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.
- (8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

[Statutory Authority: RCW 18.71.017, 18.130.062, and Executive Order 06-03. WSR 16-06-009, § 246-918-410, filed 2/18/16, effective 3/20/16. Statutory Authority: RCW 18.130.180, 18.71.017, and 18.71A.020. WSR 06-03-028, § 246-918-410, filed 1/9/06, effective 2/9/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|--|
| WAC 246-918-082 | Requirements for obtaining an allopathic physician assistant license for those who hold an active osteopathic physician assistant license. |
| WAC 246-918-095 | Scope of practice—Osteopathic alternate physician. |
| WAC 246-918-120 | Remote site. |