

WSR 17-11-023
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed May 10, 2017, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-017.

Title of Rule and Other Identifying Information: The department is proposing to repeal chapter 388-112 WAC, Residential long-term care services, and create new sections in new chapter 388-112A WAC, Residential long-term care services training. New chapter 388-112A WAC will provide training and certification requirements for long-term care workers in residential settings, and will also provide instructor and curricula standards.

Hearing Location(s): 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>), on July 11, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 12, 2017.

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., July 11, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 27, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the rules for long-term care worker training requirements and home care aide certification, update the provisions in specialty training curriculum and the requirements for instructors, and to add a new category of training and certification requirements for long-term care workers in enhanced services facilities. This proposal replaces existing chapter 388-112 WAC with the more current chapter 388-112A WAC. The entire new chapter 388-112A WAC is organized to provide clarity in long-term care worker training, certification, curricula, and instructor requirements.

Reasons Supporting Proposal: Stakeholders have requested that the department update and simplify the residential training and certification rules, and clarify the applicability of the training requirements. The last major update of these rules was in 2012, and the requirements have changed considerably since then. These rules are being proposed to provide clarity and to eliminate outdated rules on training that are no longer in use. New chapter 388-112A WAC provides current deadlines on training and certification requirements that were implemented in chapter 18.88B RCW but were not included in chapter 388-112 WAC. Chapter 388-112A WAC also implements other legislative developments including expanded and improved training under SSB 5630

for dementia and mental health, and also implements recommendations of the adult family home quality assurance panel.

Statutory Authority for Adoption: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20-270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030.

Statute Being Implemented: RCW 74.39A.074, 18.88B-021.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Suemary Trobaugh, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2516; Implementation and Enforcement: Lorrie Mahar, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2549.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules impact adult family homes, enhanced services facilities, assisted living facilities and community instructor training programs. DSHS aging and long-term support administration has analyzed the proposed rule amendments and has determined that the listed small businesses may be impacted by these changes. However, the department estimates that the costs are a "minor cost" as that term is defined in RCW 19.85.020.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Suemary Trobaugh, Aging and Long-Term Support Administration/Home and Community Services, 4450 10[th] Avenue S.E., Lacey, WA 98503, phone (360) 725-2516, fax (360) 725-2646, email trobass@dshs.wa.gov.

May 9, 2017
Katherine I. Vasquez
Rules Coordinator

Chapter 388-112A WAC

RESIDENTIAL LONG-TERM CARE SERVICES TRAINING

SECTION I—DEFINITIONS, PURPOSE, AND APPLICABILITY

NEW SECTION

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

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

(2) "**Applicant**" means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(3) "**Capable caregiving training**" is the name of the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements provided in RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes in both topics may be completed for continuing education credits.

(4) "**Care team**" includes the resident and everyone involved in his or her care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(5) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed.

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

(7) "**Competency testing**" including challenge testing, evaluates a student to determine if he or she can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(8) "**Date of hire**" for determining timeframes related to training and certification, means the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115.

(9) "**DDA**" means the developmental disabilities administration.

(10) "**Designee**" means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(11) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care.

(12) "**Direct supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(13) "**DSHS**" or "**department**" refers to the department of social and health services.

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

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

(16) "**Guardian**" means an individual as defined in chapter 11.88 RCW.

(17) "**Home**" refers to adult family homes, enhanced services facilities, and assisted living facilities.

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

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

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

(21) "**Long-term care worker**" includes:

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION

WAC 388-112A-0020 What are the purposes of this chapter? The purposes of this chapter are to describe the following:

- (1) Training and certification requirements that apply to adult family homes and assisted living facilities on or before January 6, 2012;
- (2) Training and certification requirements that apply to adult family homes and assisted living facilities on or after January 7, 2012;
- (3) Training and certification requirements that apply to enhanced services facilities on or after January 1, 2016; and
- (4) Curricula and instructor requirements.

NEW SECTION

WAC 388-112A-0030 Who do the training requirements apply to? The training requirements in this chapter apply to:

- (1) Adult family home providers, applicants, resident managers, entity representatives, long-term care workers, and volunteers;
- (2) Assisted living facility administrators, designees, long-term care workers, and volunteers; and
- (3) Enhanced services facility applicants, administrators, designees, long-term care workers, and volunteers.

NEW SECTION

WAC 388-112A-0040 When did training requirements go into effect? (1) The training requirements in this chapter for long-term care workers in adult family homes and assisted living facilities and their administrators or administrator designees went into effect January 7, 2012.

- (2) The long-term care worker basic training requirements in effect by their employer at the time on or before January 6, 2012 apply to individuals who:
 - (a) Were hired on or before January 6, 2012; and
 - (b) Completed basic training within the required time frames.

- (3) The long-term care worker training requirements for long-term care workers, administrators or administrator designees, and applicants in enhanced services facilities went into effect on January 1, 2016.

NEW SECTION

WAC 388-112A-0050 What are the training and certification requirements for volunteers and long-term care workers in adult family homes, adult family home providers, and adult family home applicants? (1) The following chart provides a summary of the training and certification requirements for volunteers and long-term care workers in adult family homes and adult family home providers:

| Who | Status | Facility Orientation | Safety/orien- tation training | Basic/popula- tion specific training | Specialty training | Continuing education (CE) | Certification as a home care aide (HCA) |
|--|---|------------------------------------|--|--|------------------------------------|---|---|
| (a) Adult family home resident manager, or long-term care worker in adult family home. | (i) An ARNP, RN, LPN, NA-C or other professionals listed in WAC 388-112A-0090. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Required per WAC 388-112A-0400. | Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required twelve hours per WAC 388-112A-0610 of NA-Cs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. | Not required. |
| | (ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112A-0090. | Required per WAC 388-112A-0200(1). | Not required | Not required. | Required per WAC 388-112A-0400. | Required twelve hours per WAC 388-112A-0610. | Not required. |
| | (iii) Employed in an adult family home and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets definition of long-term care worker in WAC 388-112A-0010. | Not required. | Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112-0400. | Required. Twelve hours per WAC 388-112A-0610. | Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065). |
| (b) Adult family home provider. | A person who has an adult family home license and does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section. This requirement applies to an entity representative of a licensed entity. WAC 388-76-1000. | Not required. | Completed prior to licens- ing. | Completed prior to licens- ing. | Completed prior to licens- ing. | Required. Twelve hours per WAC 388-112A-0610. | Completed prior to licens- ing. |

| Who | Status | Facility Orientation | Safety/orientation training | Basic/population specific training | Specialty training | Continuing education (CE) | Certification as a home care aide (HCA) |
|---|-------------------|------------------------------------|-----------------------------|------------------------------------|--------------------|---------------------------|---|
| (c) Volunteer staff in adult family home. | An unpaid person. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Not required. | Not required. | Not required. |

(2) The following chart provides a summary of the training and certification requirements for adult family home applicants prior to licensure and adult family home resident managers prior to assuming the duties of the position:

| Who | Status | Orientation and safety training | Basic/population specific training | Specialty training | Continuing education (CE) | Certification as a home care aide (HCA) |
|---|---|---|--|---------------------------------|--|---|
| (a) Adult family home applicant. | (i) An RN, LPN, ARNP, NA-C, and other professionals as listed in WAC 388-112A-0090. | Not required. | Not required. | Required per WAC 388-112A-0400. | Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required twelve hours per WAC 388-112A-0610 of NA-Cs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. The CE is not required during application process. | Not required. |
| | (ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire, WAC 388-112A-0090. | Not required. | Not required. | Required per WAC 388-112A-0400. | Required twelve hours per WAC 388-112A-0610. The CE is not required during application process. | Not required. |
| | (iii) Seeking a license to operate an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030. | Required. Five hours per WAC 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112A-0400. | Required twelve hours per WAC 388-112A-0610. The CE is not required during application process. | Required per WAC 388-112A-0105. |
| (b) Adult family home resident manager. | Employed or designated by the provider to manage an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030. | Required. Five hours per WAC 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112A-0400. | Required. Twelve hours per WAC 388-112A-0610. | Required per WAC 388-112A-0105. |

(3) The remainder of this chapter describes the training and certification requirements in more detail.

(4) The following training requirements are not listed in the charts in subsection (1) and (2) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560; and
- (c) Adult family home (AFH) administrator training under WAC 388-112A-0810.

NEW SECTION

WAC 388-112A-0060 What are the training and certification requirements for volunteers and long-term care workers in assisted living facilities and assisted living facility administrators? (1) The following chart provides a summary of the training and certification requirements for volunteers and long-term care workers in assisted living facilities and assisted living administrators and their designees:

| Who | Status | Facility orientation | Safety/orientation training | Basic/population specific training | Specialty training | Continuing education (CE) | Certification as a home care aide (HCA) |
|---|---|------------------------------------|--|--|---------------------------------|--|---|
| (a) Long-term care worker in assisted living facility. | (i) An ARNP, RN, LPN, NA-C or other professionals listed in WAC 388-112A-0090. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Required per WAC 388-112A-0400. | Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required. Twelve hours per WAC 388-112A-0610 of NA-Cs, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. | Not required. |
| | (ii) A long-term care worker employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on the date of his or her hire. WAC 388-112A-0090. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Required per WAC 388-112A-0400. | Required. Twelve hours per WAC 388-112A-0610. | Not required. |
| | (iii) Employed in an assisted living facility and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets the definition of long-term care worker in WAC 388-112A-0010. | Not required. | Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112A-0400. | Required. Twelve hours per WAC 388-112A-0610. | Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065). |
| (b) Assisted living facility administrator or designee. | A qualified assisted living facility administrator or designee who does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section. | Not required. | Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112A-0400. | Required. Twelve hours per WAC 388-112A-0610. | Required per WAC 388-112A-0105. |

| Who | Status | Facility orientation | Safety/orientation training | Basic/population specific training | Specialty training | Continuing education (CE) | Certification as a home care aide (HCA) |
|--|-------------------|------------------------------------|-----------------------------|------------------------------------|--------------------|---------------------------|---|
| (c) Volunteer staff in assisted living facility. | An unpaid person. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Not required. | Not required. | Not required. |

(2) The remainder of this chapter describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the charts in subsections (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560;
- (c) Assisted living facility (ALF) administrator training under WAC 388-78A-2521.

NEW SECTION

WAC 388-112A-0070 What are the training and certification requirements for applicants, administrators or their designees, volunteers, and long-term care workers in enhanced services facilities? (1) The following chart provides a summary of the training and certification requirements for applicants, administrators or their designees, volunteers, and long-term care workers in enhanced services facilities:

| Who | Status | Facility orientation | Safety/orientation training | Basic/population specific training | Specialty training | Continuing education (CE) | Quarterly in-service education | Certification as a home care aide (HCA) |
|---|--|-----------------------------------|--|--|---|--|---|--|
| (a) Enhanced services facility (ESF) applicant, administrator or their designee, or long-term care worker in ESF. | (i) An ARNP, RN, LPN, NA-C or other professionals listed in WAC 388-112A-0090. | Required by WAC 388-112A-0200(1). | Not required. | Not required. | Per WAC 388-107-0650 for applicants required prior to facility licensing and for administrators and long-term care workers prior to employment. | Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC. Required twelve hours per WAC 388-112A-0610 of NA-Cs, and other professionals listed in WAC 388-112A-0090, such as individuals with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. Per WAC 388-107-0670, ten hours must be in subject appropriate for residents served in the facility. | Required of employees per WAC 388-107-0680. | Not required. |
| | (ii) Enhanced services facility (ESF) applicant that does not meet the criteria in subsection (1)(a)(i) of this section. | Not required. | Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0340. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Per WAC 388-107-0650 for applicants required prior to facility licensing. | Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility. | Required of employees per WAC 388-107-0680. | Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 388-107- |

| Who | Status | Facility orientation | Safety/orientation training | Basic/population specific training | Specialty training | Continuing education (CE) | Quarterly in-service education | Certification as a home care aide (HCA) |
|---|---|------------------------------------|--|--|--|--|---|---|
| | | | | | | appropriate for residents served in the facility. | | 0630(6)(b). |
| | (iii) A long-term care worker who was employed on January 6, 2012 or was previously employed sometime between January 1, 2011 and January 6, 2012 and has completed the basic training requirements in effect on his or her hire date. WAC 388-112A-0090. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Required per WAC 388-112A-0400 and prior to employment per WAC 388-107-0650. | Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility. | Required of employees per WAC 388-107-0680. | Not required. |
| | (iv) Employed in an enhanced services facility and does not meet the criteria in subsection (1)(a)(i), (ii) or (iii) of this section. Meets definition of long-term care worker in WAC 388-112A-0010. | Not required. | Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220. | Required. Seventy hours per WAC 388-112A-0300 and 388-112A-0340. | Required per WAC 388-112A-0400 and prior to employment per WAC 388-107-0650. | Required. Twelve hours per WAC 388-112A-0610. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility. | Required of employees per WAC 388-107-0680. | Required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065). |
| (b) Volunteer staff in adult family home or assisted living facility. | An unpaid person. | Required per WAC 388-112A-0200(1). | Not required. | Not required. | Not required. | Not required. | Not required. | Not required. |

(2) The remainder of this chapter and chapter 388-107 WAC describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the chart in subsection (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720; and
- (b) Enhanced services facility (ESF) administrator training under WAC 388-112A-0800.

NEW SECTION

WAC 388-112A-0080 Who is required to complete basic training and by when? The following individuals must complete basic training unless exempt as described in WAC 388-112A-0090:

Adult family homes.

(1) Adult family home applicants must complete basic training and become certified before the adult family home is licensed.

(2) Adult family home entity representatives and resident managers before they assume the duties of their position in the adult family home.

(3) Long-term care workers in adult family homes within one hundred twenty days of date of hire. Long-term care workers must not provide personal care without direct supervision until they have completed basic training.

Assisted living facilities.

(4) Assisted living facility administrators or their designees within one hundred twenty days of date of hire.

(5) Long-term care workers in assisted living facilities within one hundred twenty days of their date of hire. Long-

term care workers must not provide personal care without direct supervision until they have completed basic training.

Enhanced services facilities.

(6) Enhanced services facility applicants must complete basic training and become certified before the enhanced services facility is licensed.

(7) Enhanced services facility administrators or their designees must complete basic training within one hundred twenty days of date of hire.

(8) Long-term care workers in enhanced services facilities must complete basic training within one hundred twenty days of their date of hire. Long-term care workers must not provide personal care without direct supervision until they have completed basic training.

(9) For certification requirements for individuals in subsections (2) through (8) in this section refer to WAC 388-112A-0105.

NEW SECTION

WAC 388-112A-0090 Which long-term care workers are exempt from the basic training requirement? The following long-term care workers are exempt from the basic training requirement:

(1) An applicant for an adult family home license on or before January 6, 2012 who met the basic training requirements in effect at the time of application;

(2) A person employed as a long-term care worker on January 6, 2012 who completed the basic training requirements in effect on the date of his or her hire;

(3) A person employed as a long-term care worker on January 6, 2012 who completed within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;

(4) A person previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012;

(5) Washington state department of health registered nurses, licensed practical nurses, and advanced registered nurse practitioners licensed under chapter 18.79 RCW;

(6) Washington state department of health nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within one hundred twenty days of the date of hire and the department of health has issued them their nursing assistant certified credential within two hundred days of the date of hire;

(7) A home health aide who was employed by a medicare certified home health agency within the year before he or she was hired as a long-term care worker and has met the requirements of 42 C.F.R. Sec. 484.36; and

(8) An individual with special education training with an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010.

NEW SECTION

WAC 388-112A-0095 What actions may the department take if a provider does not comply with the requirements of this chapter? (1) If a provider knowingly employs an individual who has not satisfied the training or certification requirements under this chapter, the department must take one or more of the following enforcement actions under:

(a) RCW 18.20.190(2), for assisted living facility providers;

(b) RCW 70.128.160(2), for adult family home providers;

(c) RCW 70.97.110, for enhanced services facilities.

(2) Except as required under subsection (1) of this section, if a provider fails to comply with any requirements under this chapter, the department may take one or more of the following enforcement actions under:

(a) RCW 18.20.190(2), for assisted living facility providers;

(b) RCW 70.128.160(2), for adult family home providers;

(c) RCW 70.97.110, for enhanced services facilities.

NEW SECTION

WAC 388-112A-0100 The department is authorized by RCW 74.39A.086 to take enforcement action for non-compliance related to training and home care aide certification requirements? The department is authorized under RCW 74.39A.086 to take enforcement action for noncompliance related to training and certification requirements.

NEW SECTION

WAC 388-112A-0105 Who is required to obtain home care aide certification and by when? Unless exempt under WAC 246-980-070, the following individuals must be certified by the department of health as a home care aide within the required timeframes:

(1) All long-term care workers, within two hundred days of the date of hire;

(2) If a long-term care worker is limited English proficient and the department of health has issued a provisional certification, within two hundred sixty days of the date of hire;

(3) Adult family home applicants, before licensure;

(4) Adult family home entity representatives and resident managers, before assuming the duties of the position;

(5) Assisted living facility administrators or their designees within two hundred calendar days of the date of hire.

(6) Enhanced services facility applicants, before licensure; and

(7) Enhanced services facility administrators or their designees within two hundred days of the date of hire.

NEW SECTION

WAC 388-112A-0110 May a home employ a long-term care worker who has not completed the training or certification requirements? (1) If an individual previously worked as a long-term care worker, but did not complete the

training or certification requirements under RCW 18.88B.041, 74.39A.074, 74.39A.076, and this chapter, an adult family home, enhanced services facility, or assisted living facility must not employ the individual to work as a long-term care worker until the individual has completed the required training or certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The original date of hire may be reset once for each home care aide applicant after a minimum of one year has passed since the initial date of hire.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new one hundred twenty days to complete training and a new two hundred days to become certified as a home care aide, if required by WAC 246-980-020.

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

NEW SECTION

WAC 388-112A-0115 How do we determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire under RCW 18.88B.021(1) by one of the following, whichever occurs first:

(a) The initial service begin date when hired as an individual provider;

(b) The date of hire when the individual was paid to provide personal care by a home care agency; or

(c) The date of hire when the individual was paid to provide personal care by a home licensed by the state.

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-112A-0110.

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

NEW SECTION

WAC 388-112A-0120 What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? (1) Successful completion of seventy-five hours of training must be documented on a DSHS seventy-five hour training certificate by an approved training entity verifying that a total of seventy-five hours of approved training have occurred.

(2) An approved training entity issuing and signing a DSHS seventy-five hour training certificate must verify that the long-term care worker has the certificates required documenting two hours of DSHS-approved orientation, three hours of DSHS-approved safety training, and seventy hours of DSHS-approved basic training, as described in this chapter. When applying to the department of health for home care aide certification, the long-term care worker may only submit a seventy-five hour training certificate that has been issued by the department or the training partnership.

(3) For home care aide recertification, successful completion of twelve hours of DSHS approved continuing educa-

tion training must be documented on a certificate(s) or transcript(s) issued by a department approved training entity.

(4) The long-term care worker and certified home care aide must retain any twelve hour training certificates or transcripts for as long as they are employed.

SECTION II—ORIENTATION AND SAFETY TRAINING

NEW SECTION

WAC 388-112A-0200 What is orientation training, who should complete it, and when should it be completed? There are two types of orientation training: Facility orientation training and long-term care worker orientation training.

(1) Facility orientation. Individuals who are exempt from certification as described in RCW 18.88B.041 and volunteers are required to complete facility orientation training before having routine interaction with residents. This training provides basic introductory information appropriate to the residential care setting and population served. The department does not approve this specific orientation program, materials, or trainers. No test is required for this orientation.

(2) Long-term care worker orientation. Individuals required to complete long-term care worker training must complete long-term care worker orientation, which is two hours of training regarding the long-term care worker's role and applicable terms of employment as described in WAC 388-112A-0210.

(a) All long-term care workers who are not exempt from certification as described in RCW 18.88B.041 hired on or after January 7, 2012, must complete two hours of long-term care worker orientation training before providing care to residents.

(b) Long-term care worker orientation training must be provided by qualified instructors that meet the requirements in WAC 388-112A-1260.

(3) The department must approve long-term care worker orientation curricula and instructors.

(4) There is no test for long-term care worker orientation.

NEW SECTION

WAC 388-112A-0210 What content must be included in facility and long-term care worker orientation? (1) For those individuals identified in WAC 388-112A-0200(1) who must complete facility orientation training:

(a) Orientation training may include the use of videotapes, audiotapes, and other media if the person overseeing the orientation is available to answer questions or concerns for the person(s) receiving the orientation. Facility orientation must include introductory information in the following areas:

(i) The care setting;

(ii) The characteristics and special needs of the population served;

(iii) Fire and life safety, including:

(A) Emergency communication (including phone system if one exists);

(B) Evacuation planning (including fire alarms and fire extinguishers where they exist);

(C) Ways to handle resident injuries and falls or other accidents;

(D) Potential risks to residents or staff (for instance, aggressive resident behaviors and how to handle them); and

(E) The location of home policies and procedures;

(iv) Communication skills and information, including:

(A) Methods for supporting effective communication among the resident/guardian, staff, and family members;

(B) Use of verbal and nonverbal communication;

(C) Review of written communications and documentation required for the job, including the resident's service plan;

(D) Expectations about communication with other home staff; and

(E) Who to contact about problems and concerns;

(v) Universal precautions and infection control, including:

(A) Proper hand washing techniques;

(B) Protection from exposure to blood and other body fluids;

(C) Appropriate disposal of contaminated/hazardous articles;

(D) Reporting exposure to contaminated articles, blood, or other body fluids; and

(E) What staff should do if they are ill;

(vi) Resident rights, including:

(A) The resident's right to confidentiality of information about the resident;

(B) The resident's right to participate in making decisions about the resident's care and to refuse care;

(C) Staff's duty to protect and promote the rights of each resident and assist the resident to exercise his or her rights;

(D) How staff should report concerns they may have about a resident's decision on his or her care and who they should report these concerns to;

(E) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of a resident;

(F) Advocates that are available to help residents (such as long-term care ombudsmen and organizations); and

(G) Complaint lines, hot lines, and resident grievance procedures; and

(b) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

(2) For long-term care worker orientation required of those individuals identified in WAC 388-112A-0200(2), long-term care worker orientation is a two hour training that must include introductory information in the following areas:

(a) The care setting and the characteristics and special needs of the population served;

(b) Basic job responsibilities and performance expectations;

(c) The care plan, including what it is and how to use it;

(d) The care team;

(e) Process, policies, and procedures for observation, documentation, and reporting;

(f) Resident rights protected by law, including the right to confidentiality and the right to participate in care decisions

or to refuse care and how the long-term care worker will protect and promote these rights;

(g) Mandatory reporter law and worker responsibilities; and

(h) Communication methods and techniques that may be used while working with a resident or guardian and other care team members.

(3) One hour of completed classroom instruction or other form of training (such as a video or online course) in long-term care orientation training equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112A-0220 What is safety training, who must complete it, and when should it be completed? (1)

Safety training is part of the long-term care worker requirements. It is a three hour training that must meet the requirements of WAC 388-112A-0230 and include basic safety precautions, emergency procedures, and infection control.

(2) The following individuals must complete safety training:

(a) All long-term care workers who are not exempt from certification as described in RCW 18.88B.041 hired after January 7, 2012, must complete three hours of safety training. This safety training must be provided by qualified instructors that meet the requirements in WAC 388-112A-1260.

(3) The department must approve safety training curricula and instructors.

(4) There is no test for safety training.

NEW SECTION

WAC 388-112A-0230 What content must be included in safety training? (1) Safety training must consist of introductory information in the following areas:

(a) Safety planning and accident prevention, including but not limited to:

(i) Proper body mechanics;

(ii) Fall prevention;

(iii) Fire safety;

(iv) In-home hazards;

(v) Long-term care worker safety; and

(vi) Emergency and disaster preparedness.

(b) Standard precautions and infection control, including but not limited to:

(i) Proper hand washing;

(ii) When to wear gloves and how to correctly put them on and take them off;

(iii) Basic methods to stop the spread of infection;

(iv) Protection from exposure to blood and other body fluids;

(v) Appropriate disposal of contaminated and hazardous articles;

(vi) Reporting exposure to contaminated articles; and

(vii) What to do when the worker or the resident is sick or injured, including who to report this to.

(c) Basic emergency procedures, including but not limited to:

(i) Evacuation preparedness;

- (ii) When and where to call for help in an emergency;
 - (iii) What to do when a resident is falling or falls;
 - (iv) Location of any advance directives if available; and
 - (v) Basic fire emergency procedures.
- (2) One hour of completed classroom instruction or other form of training (such as video or online course) equals one hour of training. The training entity must establish a way for the long-term care worker to ask the instructor questions.
- (3) In adult family homes, safe food handling information must be provided to all staff, prior to handling food for residents.

NEW SECTION

WAC 388-112A-0240 What documentation is required for facility orientation training? (1) The adult family home, enhanced services facility, and assisted living facility must maintain documentation that facility orientation training has been completed as required by this chapter. The training and documentation must be issued by the home or service provider familiar with the facility and must include:

- (a) The name of the student;
 - (b) The title of the training;
 - (c) The number of hours of the training;
 - (d) The signature of the instructor providing facility orientation training;
 - (e) The student's date of hire; and
 - (f) The date(s) of facility orientation.
- (2) The documentation required under this section must be kept in a manner consistent with chapter 388-76 WAC for adult family homes, chapter 388-107 WAC for enhanced services facilities, and chapter 388-78A WAC for assisted living facilities.

SECTION III—BASIC TRAINING

NEW SECTION

WAC 388-112A-0300 What is basic training? (1) Basic training is in addition to orientation and safety training. It is seventy hours and includes:

- (a) The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely;
 - (b) Practice and demonstration of skills; and
 - (c) Population specific competencies.
- (2) DSHS must approve basic training curricula.
- (3) On-the-job training may be applied to basic training for an amount that must be approved by the department;
- (4) The DSHS developed revised fundamentals of caregiving (RFOC) or another department approved training may be used to teach basic training but it must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-112A-1020. Examples of enhancements include, but are not limited to:
 - (a) More time for workers to practice skills including:
 - (i) The mechanics of completing the skill correctly;
 - (ii) Resident centered communication and problem solving associated with performing the skill;

(ii) The different levels of care required for each skill including independent, supervision, limited, extensive, and total;

- (iv) Working with assistive devices associated with a skill;
- (v) Helpful tips or best practices in working through common resident challenges associated with a skill; and
- (vi) Disease specific concerns or challenges associated with a skill.
 - (b) Augmenting or adding additional materials, student activities, videos, or guest speakers that:
 - (i) More deeply reinforce and fortify the learning outcomes required for basic training;
 - (ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care; and
 - (iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are not materials or activities that are one or more of the following:

- (i) Are out of the scope of practice for a long-term care worker such as content clearly written for registered nurses;
 - (ii) Are identical to, or a direct replacement of, those already included in the RFOC;
 - (iii) Fail to reinforce Washington state laws associated with resident rights and resident directed care;
 - (iv) Long-term care workers are not paid to provide;
 - (v) Are written above a high school reading level.
- (5) The delivery mode of basic training may be either in-person instruction or a hybrid of online and in-person modules. One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of training.

(a) Online modules must be an instructor led class, such as a webinar or an interactive online class that provides the student with access to the instructor and adheres to the DSHS online class standards posted on DSHS's website.

(b) The in-person portion of hybrid modules must be no less than twelve hours of the total basic training hours and include in-person instruction on the personal care assistance tasks supporting activities of daily living, commonly referred to as skills training.

(6) The long-term care worker must be able to ask the instructor questions during the training.

(7) There is no challenge test for basic training.

NEW SECTION

WAC 388-112A-0310 What topics must be taught in the core competencies of basic training for long-term care workers? Basic training for long-term care workers must include all of the competencies described in WAC 388-112A-0320 and the following topics:

- (1) Communication skills;
- (2) Long-term care worker self-care;
- (3) Problem solving;
- (4) Resident rights and maintaining dignity;
- (5) Abuse, abandonment, neglect, financial exploitation, and mandatory reporting;

- (6) Resident directed care;
- (7) Cultural sensitivity;
- (8) Body mechanics;
- (9) Fall prevention;
- (10) Skin and body care;
- (11) Long-term care worker roles and boundaries;
- (12) Supporting activities of daily living;
- (13) Food preparation and handling;
- (14) Medication assistance;
- (15) Infection control, blood-borne pathogens, HIV/AIDS; and
- (16) Grief and loss.

NEW SECTION

WAC 388-112A-0320 What are the core competencies and learning objectives for long-term care worker basic training? Long-term care worker basic training includes core competencies that describe the behavior and skills that a long-term care worker must exhibit when working with residents and the learning objectives associated with each competency as follows:

- (1) Regarding communication, communicate effectively and in a respectful and appropriate manner with residents, family members, and care team members:
 - (a) Recognize how verbal and nonverbal cues impact communication with the resident and care team;
 - (b) Engage and respect the resident through verbal and nonverbal communication;
 - (c) Listen attentively and determine that the resident, when able, understands what has been communicated;
 - (d) Recognize and acknowledge resident's communication including indicators of pain, confusion, or misunderstanding;
 - (e) Utilize communication strategies to deal with difficult situations; and
 - (f) Recognize common barriers to effective communication and identify how to eliminate them.
- (2) Regarding long-term care worker self-care:
 - (a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;
 - (b) Recognize common barriers to self-care and ways to overcome them; and
 - (c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and burnout, and the importance of taking action to practice self-care to avoid burnout.
- (3) Regarding the competency of effective problem solving, use effective problem solving skills:
 - (a) Explain why it is necessary to understand and utilize a problem solving method;
 - (b) Implement a problem solving process/method; and
 - (c) Identify obstacles to effective problem solving and ways to overcome them.
- (4) Regarding the competency of resident rights and dignity, take appropriate action to promote and protect a resident's legal and human rights as protected by federal and Washington state laws, including:
 - (a) Protect a resident's confidentiality including what is considered confidential information, who a long-term care

worker is allowed or not allowed to give confidential information to, and how to respond if a noncare team member asks for confidential information;

(b) Promote a resident's dignity and privacy and encourage and support a resident's maximum independence when providing care;

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use; and

(d) Protect and promote the resident's right to live free of abuse, neglect, abandonment, and financial exploitation.

(5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care workers' responsibilities as a mandatory reporter as described in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation.

(6) Regarding the competency of resident directed care, take appropriate action when following a resident's direction regarding his or her care:

(a) Describe a worker's role in resident directed care including determining, understanding, and supporting a resident's choices;

(b) Describe the importance and impact of resident directed care on a resident's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a resident's choice with personal safety; and

(d) Report concerns when a resident refuses care or makes choices that present a possible safety concern.

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care and use methods to determine and ensure that these are respected and considered when providing care.

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the service plan.

(9) Regarding the competency of fall prevention:

(a) Identify fall risk factors and take action to reduce fall risks for a resident; and

(b) Take proper steps to assist a resident who is falling or has fallen.

(10) Regarding the competency of skin and body care, use of personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a resident's skin, when to observe it and what to look for, including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what action to take if a resident appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a resident's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and who to report them to.

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a resident's condition or disease for which they are receiving services. Describe how to use this information to provide appropriate, individualized care;

(b) Describe a resident's baseline functioning level using information provided in the service plan and explain why it is important to know a resident's baseline;

(c) Identify changes in a resident's physical, mental, and emotional state through observation;

(d) Report changes from baseline and concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements (such as coming to work on time) and describe how maintaining these standards are critical to a resident's safety and well-being;

(f) Explain the purpose of a service plan and describe how it is created, used, and modified;

(g) Use a resident's service plan to direct a worker's job tasks and any resident directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-112A-0550, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in the care team;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them.

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping a resident walk;
- (ii) Transferring a resident from a bed to a wheelchair;
- (iii) Turning and repositioning a resident in bed;
- (iv) Providing oral care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;
- (viii) Providing foot care;
- (ix) Providing a bed bath;
- (x) Assisting a resident with a weak arm to dress;

(xi) Putting knee-high elastic stockings on a resident;

(xii) Providing passive range of motion for one shoulder;

(xiii) Providing passive range of motion for one knee and ankle;

(xiv) Assisting a resident to eat;

(xv) Assisting with peri-care;

(xvi) Assisting with the use of a bedpan;

(xvii) Assisting with catheter care;

(xviii) Assisting with condom catheter care; and

(xix) Providing medication assistance;

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate resident preferences, maintain privacy and dignity, support the resident's level of ability, and assure his or her comfort and safety;

(c) Appropriately utilize assistive device(s) specified on the service plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a resident's bowel and bladder functioning baseline and when to report changes.

(13) Regarding the core competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a resident's health;

(b) Plan, shop, and prepare meals for a resident according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions per the service plan and resident preferences;

(c) Describe common signs of poor nutrition and hydration, when to report concerns, and who to report concerns to;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a resident;

(e) Recognize when a resident's food choices vary from specifications on the care plan and describe when to report concerns and who to report them to;

(f) Describe what causes food borne illness, the risks associated with food borne illness, and examples of potentially hazardous foods;

(g) Describe appropriate food handling practices, including:

(i) Avoiding cross contamination from one food to another;

(ii) Safe storage requirements for cooling of leftover foods, including:

(A) Depth;

(B) Types of containers, and temperatures;

(D) The need to maintain food at proper temperatures to limit bacterial growth; and

(F) What are the safe food storage and holding temperatures for both cold and hot foods;

- (iii) Best practices for thawing and reheating food; and
 - (iv) Using clean gloves (if possible) and clean utensils when preparing food;
 - (h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and
 - (i) Describe why a long-term care worker with certain types of illnesses and symptoms must not prepare food.
- (14) Regarding the competency of medication assistance, appropriately assist with medications:
- (a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;
 - (b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;
 - (c) Identify common symptoms of medication side effects, when to report concerns, and who to report them to;
 - (d) Store medications according to safe practices and the label instructions;
 - (e) Describe, in the proper sequence, each of the five rights of medication assistance; and
 - (f) Identify what to do for medication-related concerns, including describing ways to work with a resident who refuses to take medications, identifying when to report when a resident refuses medication or there are other medication-related concerns and who to report these concerns to, and identifying what is considered a medication error, when to report a medication error, and who to report it to.
- (15) Regarding the competency of infection control and blood borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:
- (a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;
 - (b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;
 - (c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;
 - (d) Demonstrate proper hand washing and putting on and taking off gloves;
 - (e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;
 - (f) Describe laundry and housekeeping measures that help in controlling the spread of infection;
 - (g) Describe proper use of cleaning agents that destroy microorganisms on surfaces;
 - (h) Describe what blood-borne (BB) pathogens are and how they are transmitted;
 - (i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;
 - (j) Identify measures to take to prevent BB diseases;
 - (k) Describe what to do if exposed to BB pathogens and how to report an exposure;
 - (l) Describe how HIV works in the body;
 - (m) Explain that testing and counseling for HIV/AIDS is available;
 - (n) Describe the common symptoms of HIV/AIDS;

- (o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality, and nondiscrimination; and
 - (p) Explain the importance of emotional issues and support for residents and long-term care workers.
- (16) Regarding the competency on grief and loss, support yourself and the resident in the grieving process:
- (a) Define grief and loss;
 - (b) Describe common losses a resident and long-term care worker may experience;
 - (c) Identify common symptoms associated with grief and loss;
 - (d) Describe why self-care is important during the grieving process; and
 - (e) Identify beneficial ways and resources to work through feelings of grief and loss.
- (17) Long-term care workers who complete a DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.
- (18) Long-term care workers who complete a DSHS approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.
- (19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:
- (a) Identify common symptoms associated with hearing loss; and
 - (b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a resident who is experiencing hearing loss and identifying when and to whom to report when a resident's hearing ability changes.

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

NEW SECTION

WAC 388-112A-0330 What is on-the-job training?

- (1) Effective July 1, 2012, on-the-job training is a method of training where the long-term care worker successfully demonstrates core basic training personal care and infection control skills while working with a resident on the job, instead of in a practice training setting.
- (2) A qualified instructor as defined in WAC 388-112A-1240 provides on-the-job training and directly observes, coaches, and rein-forces skills training for up to two long-term care workers at a time. The qualified instructor who provides the on-the-job training:
- (a) Need not be the same instructor who taught the core competency training; and
 - (b) May be the immediate supervisor of the long-term care worker who receives the on-the-job training.
- (3) The person who oversees on-the-job training must:
- (a) Submit DSHS required forms and become an approved instructor for the core competency of basic training;
 - (b) Verify on a department approved skills checklist the long-term care worker's successful completion of the demonstrated skills; and

(c) Not relinquish his or her duties to trainee caregivers when acting as a trainer.

(4) The department must approve the number of on-the-job hours included in the seventy-five hour training.

NEW SECTION

WAC 388-112A-0340 What is the population specific component of basic training? (1) Population specific basic training is training on topics unique to the care needs of the population that the home or provider serves. Topics may include but are not limited to:

- (a) Dementia;
- (b) Mental health;
- (c) Developmental disabilities specialty training developed by the developmental disabilities administration;
- (d) Young adults with physical disabilities;
- (e) Aging and older adults; and
- (f) Nurse delegation core training and nurse delegation specialized diabetes training may be used to meet the population specific component of basic training for assisted living facility and adult family home long-term care workers.

(2) DSHS developed or approved specialty training may be used to meet the population specific component of basic training as required under WAC 388-112A-0400.

NEW SECTION

WAC 388-112A-0350 What documentation is required to show completion of the seventy hour basic and five hour orientation and safety training? (1) Long-term care worker basic training must be documented by a certificate of successful completion of seventy-five hours of training that is issued by the instructor or training entity and includes:

- (a) The name of the student;
- (b) The name of the training;
- (c) The number of hours of the training;
- (d) The name of the home or training entity giving the training;
- (e) The name and signature of the instructor that provided one of the classes listed in subsections (i) through (iii) of this section. Instructors must have an identification number (I-code) to be authorized to sign the certificate.
 - (i) Basic training;
 - (ii) Population specific training; or
 - (iii) Specialty training;
- (f) The name and identification number (I-code) of the instructor for core competencies and the home or training entity giving the training; and
- (g) The completion date of training.

(2) The student must be given an original certificate for proof of completion of the training that the student must retain for his or her records. The provider, and if applicable, the training entity must keep a copy of the certificate as described in WAC 388-76-10198 for adult family homes and as described in WAC 388-78A-2450 for assisted living facilities.

NEW SECTION

WAC 388-112A-0360 What other required training may be used to satisfy the population specific component of basic training? Homes or providers may use the following DSHS developed or approved curriculum to meet all or some of the population specific component of basic training depending on the needs of the population served:

- (1) Dementia specialty training;
- (2) Mental health specialty training;
- (3) Developmental disabilities specialty training;
- (4) Department developed or approved curriculum on population specific topics; and
- (5) Nurse delegation core training and nurse delegation specialized diabetes training for long-term care workers in assisted living facilities and adult family homes.

NEW SECTION

WAC 388-112A-0370 What are the requirements for using basic training to meet the specialty training requirements? When basic training is used to meet the specialty training requirements:

(1) The curriculum for specialty training must include the department developed competencies and learning objectives as described in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450. Homes or providers may enhance the specialty training component by adding additional competencies, learning objectives, content, or activities. If the department approves the enhancements and an increased number of training hours, the worker's training hours will apply to the seventy hour training requirement.

(2) Long-term care workers must pass the department competency test described in WAC 388-112A-0910 to meet the applicable licensing requirements for adult family homes, enhanced services facilities, and assisted living facilities for all specialty training.

SECTION IV—SPECIALTY TRAINING

NEW SECTION

WAC 388-112A-0400 What is specialty training and who is required to take it? (1) Specialty training refers to approved curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities.

(2) Specialty training classes are different for each population served and are not interchangeable. Specialty training curriculum must be DSHS developed, as described in WAC 388-112A-0010(3), or DSHS approved.

(a) In order for DSHS to approve a curriculum as a specialty training class, the class must use the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(i) Classes approved as alternative curriculum must update and submit their curricula for approval prior to June 30, 2018.

(ii) Classes not using the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450 must not be used to meet the specialty training requirement after July 1, 2018.

(b) Curricula approved as specialty training may be integrated with basic training if the complete content of each training is included.

(3) Assisted living facility administrators or their designees, enhanced services facility administrators or their designees, adult family home applicants or providers, resident managers, and entity representatives who are affiliated with homes that service residents who have special needs, including developmental disabilities, dementia, or mental health, must take one or more of the following specialty training curricula:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420;

(b) Dementia specialty training as described in WAC 388-112A-0440;

(c) Mental health specialty training as described in WAC 388-112A-0450.

(4) All long-term care workers including those exempt from basic training who work in an assisted living facility, enhanced services facility, or adult family home who serve residents with the special needs described in subsection (3) of this section, must take a class approved as specialty training. The specialty training applies to the type of residents served by the home as follows:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420.

(b) Dementia specialty training as described in WAC 388-112A-0440; and

(c) Mental health specialty training as described in WAC 388-112A-0450.

(5) Specialty training may be used to meet the requirements for the basic training population specific component if completed within one hundred twenty days of the date of hire.

(6) For long-term care workers who have completed the seventy-five hour training and do not have a specialty training certificate that indicates completion and competency testing, the long-term care worker must complete specialty training when employed by the adult family home, enhanced services facility, or assisted living facility that serves residents with special needs.

NEW SECTION

WAC 388-112A-0410 What specialty training is required if a resident has more than one special need? (1) If a resident has needs in more than one of the special needs areas, the adult family home, enhanced services facility, or assisted living facility must determine which of the specialty training classes will most appropriately address the overall needs of the resident and ensure that the appropriate specialty training class is completed as required.

(2) If additional training beyond the specialty training class is needed to meet all of the resident's needs, the adult family home, enhanced services facility, or assisted living facility must ensure that additional training is completed.

NEW SECTION

WAC 388-112A-0420 What topics must developmental disabilities specialty training include? (1) Developmental disabilities specialty training must include all of the competencies and learning objectives described in WAC 388-112A-0430 for the following topics:

(a) Overview of developmental disabilities;

(b) Values of service delivery;

(c) Effective communication;

(d) Introduction to interactive planning;

(e) Understanding behavior;

(f) Crisis prevention and intervention; and

(g) Overview of legal issues and resident rights.

(2) For adult family homes, the developmental disabilities administration (DDA) will provide in-home technical assistance to the adult family home upon admission of the first resident eligible for services from DDA and, thereafter, as determined necessary by DSHS.

NEW SECTION

WAC 388-112A-0430 What are the competencies and learning objectives for the long-term care worker developmental disability specialty training? The following developmental disabilities specialty competencies describe the behavior and skills a long-term care worker must exhibit when working with residents and include learning objectives associated with each competency:

(1) Regarding the competency on an overview of developmental disabilities, draw upon a basic understanding of developmental disabilities and demonstrate awareness of the unique needs of residents with developmental disabilities:

(a) Define developmental disability and describe intellectual disability, cerebral palsy, epilepsy, and autism;

(b) Identify common myths and misconceptions about developmental disabilities;

(c) Describe the negative effects of using labels such as "retarded" or "handicapped" to represent people and positive alternatives; and

(d) Differentiate between developmental disabilities and mental illness.

(2) Regarding the competency on values of service delivery, promote and support a resident's self-determination:

(a) Identify the principle of normalization and its significance to the work of long-term care workers;

(b) Explain how understanding each resident's needs leads to better services and supports, which lead to better outcomes for the resident;

(c) Describe each of the residential services guidelines and identify how the values represented in the guidelines are important in the lives of people with developmental disabilities;

(d) Describe the principle of self-determination; and

(e) Identify positive outcomes for residents with developmental disabilities when they are connected to the community they live in.

(3) Regarding the competency on communication, provide culturally compassionate and individualized care by utilizing a basic understanding of a resident or resident's history, experience, and cultural beliefs:

- (a) List the key elements of effective communication;
 - (b) Describe the impact communication has on the lives of residents with developmental disabilities;
 - (c) Explain the impact a long-term care worker's behavior can have on eliciting communication;
 - (d) Explain the impact of a resident's physical environment on his or her ability to communicate;
 - (e) Describe methods of communication, other than verbal, that long-term care workers might use when supporting residents with developmental disabilities; and
 - (f) List tips for communication with residents with developmental disabilities.
- (4) Regarding the competency on interactive planning, using person-centered and interactive planning when working with residents with developmental disabilities:
- (a) Identify the benefits of using a person-centered planning process rather than the traditional planning methods used to develop supports for people with developmental disabilities;
 - (b) Identify key elements involved in interactive planning;
 - (c) Identify ways to include people with developmental disabilities and their families in the planning process; and
 - (d) Identify the required planning document for the setting and list ways to have a positive impact on the plan.
- (5) Regarding the competency on challenging behaviors, use a problem solving approach and positive support principles when dealing with challenging behaviors:
- (a) Identify the essential components of the concept of positive behavioral supports;
 - (b) Define the "ABCs" and describe how to use that process to discover the function of behavior;
 - (c) Explain why it is critical to understand the function of behavior before developing a support plan;
 - (d) Define reinforcement and identify ways to utilize it as a tool to increase a resident's ability to be successful;
 - (e) Identify the problems with using punishment to manage behavior;
 - (f) Identify behavior management techniques that are not allowed under DSHS policies and applicable laws;
 - (g) Identify factors that can positively and negatively influence the behavior of residents with developmental disabilities; and
 - (h) List steps to be taken when crisis or danger to people is immediate.
- (6) Regarding the competency on crisis prevention, support a resident experiencing a crisis and get assistance when needed:
- (a) Identify behaviors in people with developmental disabilities that might constitute "normal stress;"
 - (b) Define "crisis;"
 - (c) Differentiate the behaviors a resident who is in crisis exhibits from mental illness;
 - (d) Identify the principles of crisis prevention and intervention;
 - (e) Identify what types of situations require outside assistance and at what point it becomes necessary; and
 - (f) Name several ways to provide support to a resident experiencing a crisis.

(7) Regarding the competency on legal rights, promote and protect the legal and resident rights of residents with developmental disabilities:

- (a) Explain how the rights of residents with disabilities compare to those of the general population;
- (b) List the rights of residents living in adult family homes and assisted living facilities and the laws that support those rights;
- (c) Describe how long-term care workers can help residents to exercise their rights;
- (d) List ways a caregiver or long-term care worker must safeguard each resident's confidentiality;
- (e) Describe the three types of guardianship a resident with developmental disabilities might be subject to and why;
- (f) List less restrictive alternatives to guardianship;
- (g) Describe the responsibilities, powers, and limitations of a guardian; and
- (h) Describe the relationship between long-term care workers and guardians/families.

NEW SECTION

WAC 388-112A-0440 What must dementia specialty training include? Curricula developed and approved as dementia specialty training must include all of the knowledge, skills, topics, competencies, and learning objectives described in this section.

- (1) Understanding dementia.
 - (a) Introduction to dementia. The caregiver will review common signs, symptoms, and types of dementia and identify the difference between dementia and conditions that might look like dementia.
 - (i) What is dementia: symptoms, causes, parts of the brain, types of dementia; and
 - (ii) What is not dementia: forgetfulness, depression, delirium, urinary tract infection, mild cognitive impairment.
 - (b) Hallucinations and delusions. The caregiver will identify common hallucinations and delusions a person with dementia may exhibit and identify physical, emotional, and environmental causes of hallucinations and delusions.
 - (i) What is baseline;
 - (ii) Hallucinations: visual, auditory, causes; and
 - (iii) Delusions: what are delusions, other causes.
 - (c) Setting the tone. The caregiver will distinguish between positive and negative interactions and ways to enhance quality of life for the individual.
 - (i) The role and characteristics of the caregiver: empathy, dependability, patience, strength, flexibility, creativity;
 - (ii) Self-care: reducing personal stress, setting goals, communicating effectively, asking for help, exercise, nutrition;
 - (iii) Learning from emotions;
 - (iv) Support;
 - (v) Environmental influences on the tone;
 - (vi) Enhancing the environment; and
 - (vii) Schedule planning.
 - (d) Working with families. The caregiver will recognize common emotions family members experience with a loved one who has dementia, identify some difficulties family

members may experience or express about their loved one's care, and provide resources for families.

- (i) Understanding the family unit;
 - (ii) Working with and supporting family members and friends; and
 - (iii) Building trust.
- (2) Living with dementia.
- (a) Sexuality and intimacy. The caregiver will identify safe and unsafe expressions of sexuality and steps to take in the best interest of the individual.
- (i) Sexuality and intimacy;
 - (ii) Sexualized behavior;
 - (iii) Do no harm;
 - (iv) Attitudes;
 - (v) Lesbian, gay, bisexual, transgender, questioning (LGBTQ);
 - (vi) Changes: reduced interest, increased interest, sexual aggression, inhibitions, coping and frustrations;
 - (vii) Client rights;
 - (viii) Consent;
 - (ix) Abuse;
 - (x) Talking to families about sex;
 - (xi) Caregiver responsibility; and
 - (xii) Reporting nonconsensual sexual contact.
- (b) Medications, treatments, and therapies. The caregiver will identify possible medication side effects, ways to respond to side effects, and recognize nondrug therapies to alleviate some symptoms of dementia.
- (i) Conventional medicine: general dementia medication, other drugs used with people who have dementia;
 - (ii) Medication side effects and reporting side effects;
 - (iii) Chemical restraints;
 - (iv) Medication refusal; and
 - (v) Nondrug therapies: natural medicine, cannabis, holistic therapies, nutrition.
- (3) Activities of daily living (ADL). The caregiver will identify ways to assist with activities of daily living such as bathing, dressing, eating, oral care, and toileting while focusing on the individual's strengths.
- (a) Helping with activities of daily living;
 - (b) Self-directed and staff-directed activities;
 - (c) Creating an environment to support activities;
 - (d) Assisting with challenging ADLs;
 - (e) Assisting with bathing;
 - (f) Assisting with dressing;
 - (g) Assisting with eating;
 - (h) Assisting with oral care; and
 - (i) Assisting with toileting.
- (4) Fostering communication and understanding.
- (a) Communicating with people who have dementia. The caregiver will be able to demonstrate an ability to recognize communication styles and ways to communicate effectively.
- (i) Verbal and nonverbal communication;
 - (ii) Progression of dementia and communication impact;
 - (iii) Early, middle, and late phase dementia; and
 - (iv) Approach: nonverbal gestures, giving and receiving information, listening and interpreting information, communicating respect, open-ended questions, reason, logic and time, asking not telling, saying less, gentle deception.

(b) Trauma informed care. The caregiver will recognize that past traumas can affect current thinking, behaviors, and actions, and will identify strategies to provide trauma informed care.

- (i) Coping mechanisms;
 - (ii) Impact of culture;
 - (iii) Trauma informed care;
 - (iv) Principles of trauma informed care: safety, trustworthiness, choice, collaboration, empowerment; and
 - (v) Strategies for care.
- (5) Challenging behaviors.
- (a) Approaching challenging behaviors. The caregiver will demonstrate the sequence of steps to approach challenging behaviors.
- (i) Strategy for approaching behaviors: Stop, identify, take action.
 - (A) Stop, identify, take action;
 - (B) Calming techniques;
 - (C) Expressing a need or desire;
 - (D) Physical, environmental, and emotional triggers;
 - (E) Minimizing or eliminating the trigger;
 - (F) Approaching a client; and
 - (ii) Document and report.
 - (b) Tips for dealing with specific challenging behaviors. The caregiver will demonstrate an understanding of navigating challenging situations.
 - (i) Anger;
 - (ii) Combative during personal care;
 - (iii) Cries and tearfulness;
 - (iv) Disrobes in public;
 - (v) Eats nonedible substances/objects;
 - (vi) Hallucinations and delusions;
 - (vii) Inappropriate toileting/menses activity;
 - (viii) Injures self;
 - (ix) Intimidates/threatens;
 - (x) Mood swings;
 - (xi) Repetitive anxious complaints or questions;
 - (xii) Repetitive physical movements and pacing;
 - (xiii) Resistive to care with words and gestures;
 - (xiv) Rummages through or takes belongings of others;
 - (xv) Seeks vulnerable sexual partner;
 - (xvi) Sexual acting out;
 - (xvii) Spitting;
 - (xviii) Unrealistic fears or suspicions;
 - (xix) Unsafe smoking;
 - (xx) Up at night while others are sleeping and requires interventions;
 - (xxi) Verbally abusive; and
 - (xxii) Wanders and is exit seeking.

NEW SECTION

WAC 388-112A-0450 What must mental health specialty training include? Curricula approved as mental health specialty training must include all of the knowledge, skills, topics, competencies and learning objectives described in this section.

(1) Introduction to mental disorders. The caregiver will review definitions, common signs, and symptoms and identify types of mental illness.

- (a) Understanding mental disorders;
- (b) Stigma and mental disorders;
- (c) Myths and facts;
- (d) Differentiating forms of mental disorders; and
- (e) Mental health conditions:
 - (i) Attention deficit hyperactivity disorder;
 - (ii) Anxiety disorder;
 - (iii) Autism;
 - (iv) Bipolar disorder;
 - (v) Borderline personality disorder;
 - (vi) Depression;
 - (vii) Dissociative disorder;
 - (viii) Eating disorders;
 - (ix) Obsessive-compulsive disorder;
 - (x) Posttraumatic stress disorder;
 - (xi) Schizoaffective disorder;
 - (xii) Schizophrenia; and
 - (xiii) Related conditions including but not limited to:
 - (A) Anosognosia,
 - (B) Dual diagnosis,
 - (C) Psychosis,
 - (D) Risk of suicide,
 - (E) Self-harm,
 - (F) Sleep disorders,
 - (G) Substance abuse.
- (2) Compassionate and trauma-informed caregiving for mental health. The caregiver will recognize that culture, generation, religion, and past trauma experiences can affect current thinking, behaviors, and actions, and will identify strategies to provide informed care and support resilience.
 - (a) Impact of culture and ethnicity;
 - (b) Impact of generation;
 - (c) Impact of religion;
 - (d) Trauma and mental disorders;
 - (e) Trauma informed care;
 - (f) Trauma informed approach; and
 - (g) Resilience.
- (3) Supports for wellness. The caregiver will identify possible medication side effects, ways to respond to side effects, and recognize individualized nondrug therapies to alleviate symptoms of mental illness.
 - (a) Baseline;
 - (b) What good mental health looks like;
 - (c) Person centered care planning; and
 - (d) Medication, treatments, and therapies.
- (i) Conventional medicine:
 - (A) Antipsychotic;
 - (B) Anti-mania;
 - (C) Anticonvulsants;
 - (D) Anti-anxiety; and
 - (E) Other drugs used with people who have mental disorders;
- (ii) Medication side effects and reporting side effects;
- (iii) Chemical restraints;
- (iv) Medication refusal; and
- (v) Nondrug therapies:
 - (A) Natural medicine;
 - (B) Cannabis;
 - (C) Holistic therapies; and
 - (D) Nutrition.

- (4) Getting help and self-care. The caregiver will recognize the importance of caregiver wellness and identify strategies to prevent secondary trauma and burnout.
 - (a) Caregiver mental wellness;
 - (b) Secondary trauma;
 - (c) Strategies to cope with caregiver burnout; and
 - (d) Seeking outside help.
- (5) Respectful communication. Communication dynamics. The care-giver will demonstrate an ability to recognize communication styles and ways to communicate effectively.
 - (a) Communication and privacy;
 - (b) Listening;
 - (c) Empathy;
 - (d) Nonverbal vs verbal communication;
 - (e) Seeking clarification;
 - (f) Communication and triggering challenging behaviors; and
 - (g) Behaviors impacting communication.
- (6) Boundaries. The caregiver will demonstrate an understanding of creating healthy professional boundaries.
 - (a) Importance of boundaries for good mental health;
 - (b) Personal and professional boundaries;
 - (c) Setting boundaries; and
 - (d) Assertiveness.
- (7) Creative approaches to challenging behaviors. The caregiver will demonstrate the sequence of steps to approach challenging behaviors.
 - (a) Approach: Stop, identify, take action;
 - (b) Set limits and providing consistency; and
 - (c) Specific behaviors and tips on how to respond:
 - (i) Anger;
 - (ii) Combative during personal care;
 - (iii) Cries and tearfulness;
 - (iv) Disrobes in public;
 - (v) Eats nonedible substances/objects;
 - (vi) Hallucinations and delusions;
 - (vii) Inappropriate toileting/menses activity;
 - (viii) Injures self;
 - (ix) Intimidates/threatens;
 - (x) Mood swings;
 - (xi) Repetitive anxious complaints or questions;
 - (xii) Repetitive physical movements and pacing;
 - (xiii) Resistive to care with words and gestures;
 - (xiv) Rummages through or takes belongings of others;
 - (xv) Seeks vulnerable sexual partner;
 - (xvi) Sexual acting out;
 - (xvii) Spitting;
 - (xviii) Unrealistic fears or suspicions;
 - (xiv) Unsafe smoking;
 - (xv) Up at night while others are sleeping and requires interventions;
 - (xvi) Verbally abusive; and
 - (xvii) Wanders and is exit seeking.
- (8) Crisis management. The caregiver will identify potential stressors to prevent crisis and demonstrate steps for de-escalation.
 - (a) What is crisis;
 - (b) Averting crisis;
 - (c) Decompensation;
 - (d) Aggression and violence; and

(e) When a crisis occurs.

(9) Suicide prevention. The caregiver will identify suicide facts, recognize warning signs, and communicate about suicide.

- (a) History;
- (b) Risk facts;
- (c) Indicators;
- (d) Asking questions;
- (e) Talking about suicide;
- (f) Resources;
- (g) Hazards;
- (h) Stigma;
- (i) History of the caregiver;
- (j) Medically assisted suicide; and
- (k) Grief support.

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

NEW SECTION

WAC 388-112A-0460 Who must complete competency testing for specialty training? The following individuals must pass the DSHS competency test as provided under this chapter for successful completion of the specialty training class:

- (1) All adult family home applicants or providers, resident managers or designees, entity representatives, and long-term care workers;
- (2) All assisted living facility administrators or designees, and long-term care workers; and
- (3) All enhanced services facility administrators or designees, and long-term care workers.

NEW SECTION

WAC 388-112A-0470 Is there a challenge test for specialty training classes? (1) Individuals may take the DSHS challenge test instead of the required specialty training class. A person who does not pass a challenge test on the first attempt must attend the specialty training class.

(2) A challenge test is not permitted when specialty training is taken to meet the population specifics of basic training under WAC 388-112A-0340.

NEW SECTION

WAC 388-112A-0480 What documentation is required for successful completion of specialty training?

(1) Specialty training must be documented by a DSHS issued certificate of successful completion, awarded by the instructor or training entity that includes:

- (a) The name of the student;
- (b) The name of the specialty training;
- (c) The number of training hours;
- (d) The name and identification number of the home or training entity;
- (e) The instructor's name; and
- (f) The date of completion.

(2) The training entity must give the student an original certificate. The employer must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0490 When must facility applicants, resident managers, administrators and other types of entity representatives complete specialty training? Adult family homes.

(1) Adult family home applicants, providers, entity representatives, and resident managers must complete specialty training or developmental disability caregiver training and demonstrate competency before the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete specialty training or developmental disability caregiver training and demonstrate competency.

Assisted living facilities.

(3) If an assisted living facility serves one or more residents with special needs, the assisted living facility administrator or his or her designee must complete specialty training or developmental disability caregiver training and demonstrate competency within one hundred twenty days of date of hire.

(4) If a resident develops special needs while living in an assisted living facility, the assisted living facility administrator or his or her designee has one hundred twenty days to complete specialty training and demonstrate competency.

Enhanced services facilities.

(5) Enhanced services facilities applicants, providers, entity representatives, and resident managers must complete dementia and mental health specialty training and demonstrate competency before the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(6) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete developmental disability specialty training and demonstrate competency.

NEW SECTION

WAC 388-112A-0495 What are the facility long-term care workers' specialty training deadlines and what is the requirement for supervision until the training is completed? (1) If an assisted living facility, enhanced services facility, or adult family home serves one or more residents with special needs, long-term care workers in those settings must complete and demonstrate competency in specialty training.

(2) The long-term care worker's deadline to complete and demonstrate competency in specialty training is determined based on the type of facility.

(a) Long-term care workers who work in enhanced services facilities must successfully complete the mental health and dementia specialty trainings prior to working in the home as described under WAC 388-107-0650.

(b) Long-term care workers who work in an adult family home or assisted living facility must complete the specialty training within one hundred twenty days of hire.

(3) During the period to complete the specialty training the long-term care worker must not provide personal care to a resident with special needs without direct supervision until that long-term care worker demonstrates competency in specialty training. However, if the long-term care worker meets the criteria described in subsections (4) through (6) of this section, the long-term care worker may have indirect supervision until that long-term care worker demonstrates competency in specialty training.

(4) The long-term care worker may have indirect supervision if the long-term care worker has a current credential in good standing in one or more of the following:

(a) The long-term care worker is a nursing assistant certified (NA-C) under chapter 18.88A RCW;

(b) The long-term care worker is a certified home care aide (HCA) under chapter 18.88B RCW;

(c) The long-term care worker is a licensed practical nurse (LPN) under chapter 18.79 RCW;

(d) The long-term care worker is a registered nurse (RN) under chapter 18.79 RCW.

(5) The long-term care worker may have indirect supervision when the worker works at an assisted living facility.

(6) The long-term care worker may have indirect supervision when the worker meets the exemption criteria described in WAC 388-112A-0090 and works at an adult family home.

(7) The long-term care worker in an adult family home that does not meet the criteria listed in subsections (4) through (6) of this section must not provide personal care to a resident with special needs without direct supervision until that long-term care worker demonstrates competency in specialty training.

(8) Long-term care workers are not required to complete specialty training if the adult family home or assisted living facility has no residents with a special need where the specialty training is required.

SECTION V—NURSE DELEGATION CORE TRAINING

NEW SECTION

WAC 388-112A-0500 What is nurse delegation core training? (1) Nurse delegation core training is required before certified or registered nursing assistants or certified home care aides may be delegated a nursing task.

(2) DSHS approves instructors for nurse delegation core training.

NEW SECTION

WAC 388-112A-0510 What knowledge and skills must nurse delegation core training include? Only the DSHS developed curriculum for nurse delegation entitled, "nurse delegation for nursing assistants & home care aides," meets the training requirement for nurse delegation core training.

NEW SECTION

WAC 388-112A-0520 Is competency testing required for nurse delegation core training? Passing the DSHS competency test is required for successful completion of nurse delegation core training, as provided under WAC 388-112A-0900 through 388-112A-0950.

NEW SECTION

WAC 388-112A-0530 Is there a challenge test for nurse delegation core training? There is no challenge test for nurse delegation core training.

NEW SECTION

WAC 388-112A-0540 What documentation is required for successful completion of nurse delegation core training? (1) Nurse delegation core training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes:

- (a) The name of the trainee;
- (b) The name of the training;
- (c) The name of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of training.

(2) The training entity must give the student an original certificate. Homes must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0550 Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training and by when? (1) Before performing any delegated nursing task, long-term care workers in adult family homes and assisted living facilities must:

(a) Successfully complete the DSHS designated nurse delegation core training, "nurse delegation for nursing assistants & home care aides";

(b) Be one or more of the following:

- (i) Certified home care aide under chapter 18.88B RCW;
- (ii) Nursing assistant certified under chapter 18.88A RCW;

(iii) If the long-term care worker is exempt from the home care aide certification under WAC 246-980-070, the long-term care worker must become a nursing assistant registered and complete the core competencies of basic training, unless he or she already completed the twenty-eight hours of revised fundamentals of care or a department approved alternative;

(iv) If nurse delegation is needed to implement a care plan earlier than home care aide certification can be obtained, the long-term care worker must become a nursing assistant registered and complete core competencies of basic training.

(2) Before long-term care workers in adult family homes and assisted living facilities may perform the task of insulin injections, the long-term care workers must:

(a) Meet the requirements in subsections (1)(a) and (b) of this section; and

(b) Successfully complete the DSHS designated specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0560 What is specialized diabetes nurse delegation training? Specialized diabetes nurse delegation training is the required training for certified or registered nursing assistants or certified home care aides, who will be delegated the task of insulin injections. DSHS approves the instructors for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0570 What knowledge and skills must specialized diabetes nurse delegation training include? Specialized diabetes nurse delegation training consists of three modules on diabetes, insulin, and injections. Only the curriculum developed by DSHS, "nurse delegation for nursing assistants: special focus on diabetes," may be used for the specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0575 Is competency testing required for the specialized diabetes nurse delegation training? Passing the DSHS competency test is required for successful completion of the specialized diabetes nurse delegation training, as provided under WAC 388-112A-0900 through 388-112A-0950.

NEW SECTION

WAC 388-112A-0580 Is there a challenge test for specialized diabetes nurse delegation training? There is no challenge test for specialized diabetes nurse delegation training.

NEW SECTION

WAC 388-112A-0585 What documentation is required for successful completion of specialized diabetes nurse delegation training? (1) Specialized diabetes nurse delegation training must be documented by a certificate of successful completion of training, issued by the instructor or training entity, that includes the following:

- (a) The name of the trainee;
- (b) The name of the training;
- (c) The name of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of the training.

(2) The instructor or training entity must give the trainee an original certificate. Adult family homes and assisted living facilities must keep a copy of the certificate on file.

NEW SECTION

WAC 388-112A-0590 May nurse delegation core and specialized diabetes training occur in the same year as basic training? (1) Nurse delegation core and specialized diabetes training may occur in the same year as basic training if required to be able to perform delegated tasks. The training hours may apply to the population specific component of the seventy hour training.

(2) Long-term care workers in enhanced services facilities are not permitted to perform nurse delegated tasks.

SECTION VI—CONTINUING EDUCATION

NEW SECTION

WAC 388-112A-0600 What is continuing education and what topics may be covered in continuing education? (1) Continuing education is annual training designed to promote professional development and increase a caregiver's knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course must not be repeated for credit unless it is a new or more advanced training on the same topic. However, long-term care workers may repeat up to five credit hours per year on the following topics:

- (a) Blood borne pathogens and infection control;
- (b) CPR training;
- (c) First aid training;
- (d) Food handling training;
- (e) Health insurance portability and accountability act (HIPAA);
- (f) Medication assistance;
- (g) Disaster preparedness;
- (h) Aging sensitivity;
- (i) Resident rights as it relates to caregiving issues in chapter 70.129 RCW;
- (j) Resident safety;
- (k) Abuse and neglect identification and mandatory reporting; and

(1) Topics where the assisted living facility, enhanced services facility, or adult family home can demonstrate a need for retraining.

(2) Continuing education must be on a topic relevant to the care setting, care needs of residents, or long-term care worker career development. In addition to the topics listed in subsection (1) of this section, topics or course may include:

- (a) Personal care services;
- (b) Mental illness;
- (c) Dementia;
- (d) Developmental disabilities;
- (e) Depression;
- (f) Communication skills;
- (g) Positive resident behavior support;
- (h) Developing or improving resident centered activities;
- (i) Dealing with wandering or aggressive resident behaviors;

- (j) De-escalating challenging behaviors; and
- (k) Medical conditions.

(3) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training hours may count towards continuing education.

(4) Specialty training, except if completed through a challenge test, may be used to meet continuing education requirements.

(5) When hours from a class approved as specialty training are counted toward basic training requirements, the hours must not be counted toward continuing education.

(6) Residential care administrator training under WAC 388-112A-0800 may be used to meet the continuing education requirements described in WAC 388-112A-0610 during the year it was completed.

(7) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied up to twelve hours of continuing education in the year it was completed.

NEW SECTION

WAC 388-112A-0610 Who is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed? (1) Adult family homes.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) If exempt from certification as described in RCW 18.88B.041, long-term care workers must complete twelve hours of continuing education by their birthday each year.

(c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(d) Continuing education must include one half hour per year on safe food handling in adult family homes as described in RCW 70.128.250 when the long-term worker does not maintain a food handler's permit.

(2) Assisted living facilities.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(c) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year.

(3) Enhanced services facilities.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period

is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(c) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year for each year he or she worked.

(d) Enhanced services facility certified home care aide staff and nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility as provided in WAC 388-107-0660.

(e) In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of staff education per quarter relevant to the needs of the population served.

(4) A long-term care worker who does not complete continuing education as required in subsections (1) through (3) of this section or RCW 74.39A.341 must not be paid to provide care until he or she completes the required continuing education.

(5) One hour of completed classroom instruction or other form of training (such as an online course) equals one hour of continuing education. For online courses, the training entity must establish a way for the long-term care worker to ask the instructor questions.

NEW SECTION

WAC 388-112A-0620 What are the documentation requirements for continuing education? (1) The adult family home, enhanced services facility, or assisted living facility must maintain written documentation of department approved continuing education in the form of a certificate or transcript that contains the following information:

- (a) The name of the student;
- (b) The title of the training;
- (c) The number of hours of the training;
- (d) The assigned curriculum approval code;
- (e) The instructor's name and signature;
- (f) The name of the home or training entity giving the training; and
- (g) The date(s) of the training.

(2) The instructor or training program must give the student an original certificate or other documentation of continuing education. The adult family home, enhanced services facility, or assisted living facility must keep a copy of the certificate or transcript on file as described in WAC 388-76-10198 for adult family homes, WAC 388-107-0630 for enhanced services facilities, and WAC 388-78A-2450 for assisted living facilities.

SECTION VII—CPR AND FIRST AID TRAINING

NEW SECTION

WAC 388-112A-0700 What is CPR training? Cardio-pulmonary resuscitation (CPR) training is training provided by an authorized CPR instructor. Trainees must successfully complete the written and skills demonstration tests.

NEW SECTION

WAC 388-112A-0710 What is CPR/first aid training? CPR/first aid training is training that meets the guidelines established by the Occupational Safety and Health Administration (OSHA). Under OSHA guidelines, training must include hands on skills development through the use of mannequins or trainee partners.

NEW SECTION

WAC 388-112A-0720 What are the CPR and first aid training requirements? (1) Adult family homes.

(a) Adult family home applicants, providers, entity representatives, and resident managers must have and maintain a valid CPR and first aid card or certificate before they obtain a license.

(b) Licensed nurses who work in adult family homes must have and maintain a valid CPR card or certificate within thirty days of their date of hire. If the licensed nurse is an adult family home provider or resident manager, he or she must obtain the valid CPR card or certificate prior to providing care for residents.

(c) Adult family home long-term care workers must obtain and maintain a valid CPR and first aid card or certificate as follows:

(i) Within thirty days of beginning to provide care for residents if directly supervised by a fully qualified long-term care worker with a valid first aid and CPR card or certificate; or

(ii) Before providing care for residents, if not directly supervised by a fully qualified long-term care worker with a valid first aid and CPR card or certificate.

(d) The form of the first aid or CPR card or certificate may be electronic or printed.

(2) Assisted living facilities.

(a) Assisted living facility administrators and long-term care workers who provide direct care must have and maintain a valid CPR and first aid card or certificate within thirty days of their date of hire.

(b) Licensed nurses working in assisted living facility must have and maintain a valid CPR card or certificate within thirty days of their date of hire.

(c) The form of the first aid or CPR card or certificate may be electronic or printed.

(3) Enhanced services facilities.

(a) Enhanced services facility administrators and long-term care workers who provide direct care must have and maintain a valid CPR and first aid card or certificate within thirty days of their date of hire.

(b) Licensed nurses working in an enhanced services facility must have and maintain a valid CPR card or certificate within thirty days of their date of hire.

(c) The form of the first aid or CPR card or certificate may be electronic or printed.

**SECTION VIII—RESIDENTIAL CARE
ADMINISTRATOR TRAINING**NEW SECTION

WAC 388-112A-0800 What is residential care administrator training? (1) Residential care administrator training is specific training on the administration of the care and services required to obtain a license or manage a facility. The training covers the facility specific Washington state statutes and administrative rules related to the operation of a long-term care facility.

(2) Adult family home (AFH) administrator training.

(a) AFH administrator training is a minimum of fifty-four hours of training on topics related to the management and licensing requirements of adult family homes described in chapter 388-76 WAC.

(b) DSHS must approve AFH administrator training curricula, instructors, and training programs in a community college setting.

(3) Assisted living facility (ALF) administrator training.

(a) ALF administrator training curricula must be based on the requirements described in chapter 388-78A WAC.

(b) DSHS will work with stakeholders to develop, update, and approve ALF administrator training curricula, instructors, and training programs.

(4) Enhanced services facility (ESF) administrator training.

(a) ESF administrator training curricula and learning objectives, as required by chapter 388-107 WAC, will be developed based on stakeholder input using national standards for the industry.

(b) DSHS must approve ESF administrator training curricula, instructors, and training programs.

NEW SECTION

WAC 388-112A-0810 Who must take the adult family home administrator training and by when? (1) New applicants for an adult family home (AFH) license must successfully complete the department approved adult family homes administrator training. The certificate is valid for up to three years after successful completion of the course.

(2) As described under WAC 388-76-10064, an applicant and entity representative must take the adult family home administrator class when the application is for an additional licensed home and the class has not already been successfully taken.

NEW SECTION

WAC 388-112A-0820 What knowledge and skills must adult family home administrator training include? At a minimum, adult family home (AFH) administrator training must include fifty-four hours of class time and all of the following subjects:

- (1) Business planning and marketing;
- (2) Fiscal planning and management;
- (3) Human resource planning;
- (4) Identifying resident health issues;

- (5) Person centered planning;
- (6) Negotiated care planning;
- (7) Emergency and disaster planning;
- (8) Nutrition and food service;
- (9) Working with people who are elderly, chronically mentally ill, or developmentally disabled;
- (10) The licensing process;
- (11) Social and recreational activities;
- (12) Resident rights;
- (13) Legal issues;
- (14) Physical maintenance and fire safety; and
- (15) Housekeeping.

NEW SECTION

WAC 388-112A-0830 Is competency testing required for adult family home administrator training? Competency testing is required for adult family home administrator training.

NEW SECTION

WAC 388-112A-0840 What documentation is required for adult family home administrator training?

(1) Adult family home administrator training must be documented by a certificate of successful completion of training, issued by the instructor or training entity. The certificate must include the following:

- (a) The trainee's name;
- (b) The name of the training;
- (c) The name of the training entity giving the training;
- (d) The instructor's name and signature; and
- (e) The date(s) of training.

(2) The instructor or training program must give the trainee an original certificate. The adult family home must maintain a copy of the certificate in its files.

SECTION IX—COMPETENCY TESTING

NEW SECTION

WAC 388-112A-0900 What is competency testing? Competency testing, including challenge testing, is evaluating a trainee to determine if he or she can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning outcomes of a particular course.

NEW SECTION

WAC 388-112A-0910 What components must competency testing include? (1) Competency testing must include the following components:

(a) Skills demonstration except as provided in (b) of this sub-section on the ability to perform and implement specific caregiving approaches and activities as appropriate for the training;

(b) Adult family home administrator training does not include a skills demonstration and student's progress and knowledge will be measured by assigned projects, quizzes, a final exam, and other means of measuring competency;

(c) Written evaluation to show the level of comprehension and knowledge of the training's learning objectives; and

(d) A scoring guide for the tester with clearly stated criteria and minimum proficiency standards.

(2) Instructors who conduct competency testing must have experience or training in assessing competencies.

NEW SECTION

WAC 388-112A-0920 What training must include the DSHS developed competency test? The following trainings must include the DSHS developed competency test:

(1) Curricula approved as specialty training, such as the following:

(a) DSHS dementia capable caregiving training, level one;

(b) DSHS mental health capable caregiving training, level one;

(c) DSHS long-term care worker dementia specialty training (this DSHS curriculum will be retired on December 30, 2017);

(d) DSHS long-term care worker mental health specialty training (this DSHS curriculum will be retired on December 30, 2018);

(e) DSHS manager dementia specialty training (this DSHS curriculum will be retired on June 30, 2017);

(f) DSHS manager mental health specialty training (this DSHS curriculum will be retired after June 30, 2018);

(g) Curriculum that DSHS approved as a dementia specialty training course (this approval must be renewed before June 30, 2018 based on updates to the training's competencies and learning objectives);

(h) Curriculum that DSHS approved as a mental health specialty training course (this approval must be renewed before June 30, 2018 based on updates to the training's competencies and learning objectives); and

(i) Developmental disabilities training;

(2) Adult family home administrator training;

(3) DSHS nurse delegation core training; and

(4) DSHS nurse delegation specialized diabetes training.

NEW SECTION

WAC 388-112A-0930 How must competency test administration be standardized? To standardize competency test administration, testing must include the following components:

(1) The person teaching the course must administer or supervise the administration of all testing; and

(2) The tester must follow DSHS guidelines for:

(a) The maximum length of time allowed for testing;

(b) The amount and nature of instruction given to students before beginning a test;

(c) The amount of assistance to students allowed during testing;

(d) The accommodation guidelines for students with disabilities; and

(e) Accessibility guidelines for students with limited English proficiency.

NEW SECTION

WAC 388-112A-0940 What form of identification must students provide before they take a competency or challenge test? Students must provide photo identification before they take a competency or challenge test for basic, specialty, adult family home administrator, and nurse delegation training.

NEW SECTION

WAC 388-112A-0950 How many times may a competency test be taken? (1) A competency test that is part of a course may be taken twice. If the test is failed a second time, the person must retake the course before any additional tests are administered.

(2) If a challenge test is available for a course, it may be taken only once. If the test is failed, the person must take the classroom course.

SECTION X—CURRICULUM APPROVALNEW SECTION

WAC 388-112A-1000 Which trainings require department approval of the curriculum and instructor?

(1) Except for facility orientation training under WAC 388-112A-0200(1), the department must preapprove the curriculum, including delivery mode, and instructors for all training required under this chapter.

(2) The following trainings must use only DSHS curriculum:

(a) Nurse delegation core and specialized diabetes nurse delegation training;

(b) Adult family home administrator training; and

(c) Developmental disabilities specialty training.

(3) The department's approval will be based on curriculum review as described in WAC 388-112A-1010.

(4) The department will approve adult family home, enhanced services facilities, and assisted living facility training programs and instructors for orientation and safety training under WAC 388-112A-0200(2) and 388-112A-0220 when the home is licensed. The facility training program may make changes to its training program as described in WAC 388-112A-1210.

NEW SECTION

WAC 388-112A-1010 What is the curriculum approval process for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education? In order to obtain the department's approval of the curriculum for orientation, safety training, basic training, population specific training, specialty training, residential care administrator training, and continuing education:

(1) Submit the required training application forms and any other materials required for specific curriculum to the department.

(2) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum.

(3) If the curriculum is not approved, the reason(s) for denial will be given and the submitter will be told what portion(s) of the training must be changed and resubmitted for review for the curriculum to be approved.

(4) The submitter may then make the requested changes and resubmit the curriculum for review.

(5) If after working with the department, the reasons why the curriculum was not approved cannot be resolved, the submitter may seek a review of the nonapproval decision from the assistant secretary of aging and long-term support administration (AL TSA). The assistant secretary's review decision will be DSHS's final decision. No other administrative review is available to the submitter.

NEW SECTION

WAC 388-112A-1020 What must be submitted to DSHS for curriculum approval? (1) If a training entity modifies a department developed curriculum in any manner, the training entity must submit the curriculum to the department for approval.

(2) **For orientation and safety training:**

(a) Submit an outline of what will be covered in each training offered, like a table of contents or a class syllabus, that shows where the required introductory topics listed in WAC 388-112A-0210 for orientation and WAC 388-112A-0230 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least forty-five days before the training is expected to be offered.

(c) Training cannot be offered before the department approves the curriculum and instructor.

(3) **For continuing education:**

(a) Continuing education curriculum delivery models must only include instructor led, online instructor led (such as a webinar), or online interactive self-paced learning with access to an instructor.

(b) Online classes must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the department's website.

(c) For continuing education classes, submit on a department developed form a summary of the class that includes the topic, a brief description of what the training will cover, a course outline, the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development.

(d) For online training courses, submit the information requested in (c) of this subsection and a description of how the instructor or training will assess that the students have integrated the information being taught.

(e) Department required continuing education training application forms must be submitted at least forty-five days in advance of the training. The department must approve the curriculum and instructor before the training may be offered.

(4) For basic training:

(a) If the instructor or training entity uses the DSHS developed revised fundamentals of caregiving learner's guide with enhancements, they must submit the DSHS form with all required information.

(b) If the instructor or training entity does not use a DSHS developed revised fundamentals of caregiving learner's guide with enhancements to teach the seventy hours required for basic training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives described in this chapter are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook, long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or curriculum outline, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112A-0320 (12)(a) and (b) and infection control skills such as hand washing and putting on and taking off gloves;

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Method of teaching, including learning activities that incorporate adult learning principles;

(C) Methods used to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum and if the primary source or reference is not a published citation, the instructor must provide detail on how the content is evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency, learning disabilities, or both; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(c) Curriculum submitted for the core competency section of basic training as described in WAC 388-112A-0320 must include how much time students will have to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities that submit curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

(5) For specialty training:

(a) For specialty training that is not the DSHS developed curriculum or other department approved curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts.

(b) To be approved, an alternative curriculum must at a minimum include:

(i) All the DSHS published learning outcomes and competencies for the course;

(ii) Printed student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(iii) The recommended sequence and delivery of the material;

(iv) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(A) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(B) Practice of skills to increase competency;

(C) Feedback to the student on knowledge and skills;

(D) An emphasis on facilitation by the teacher; and

(F) An integration of knowledge and skills from previous lessons to build skills;

(v) A list of the sources or references, if any, used to develop the curriculum;

(vi) Methods of teaching and student evaluation for students with either limited English proficiency, learning disabilities, or both;

(vii) A plan for updating material; and

(6) Substantial changes to a previous approved curriculum must be approved before they are used.

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.

SECTION XI—HOME-BASED TRAINING**NEW SECTION**

WAC 388-112A-1100 What are the requirements for an assisted living facility, enhanced services facility, or adult family home to conduct orientation, safety, basic, on-the-job, continuing education, or specialty training?

(1) An assisted living facility, enhanced services facility, or adult family home provider may conduct orientation, safety, basic, on-the-job, continuing education, and specialty trainings if the provider:

(a) Verifies, documents using the department's attestation process, keeps on file, and makes available to the department upon re-request that all instructors meet the minimum instructor qualifications in WAC 388-112A-1230 through 388-112A-1295 for the course they plan to teach;

(b) Teaches using a complete DSHS developed or approved curriculum;

(c) Notifies DSHS in writing of the provider's intent to conduct staff training prior to providing the provider's first training and when changing training plans, including:

(i) The provider's name;

(ii) Name of training(s) the provider will conduct;

(iii) Name of approved curriculum the provider will use;

(iv) Name of lead instructor and instructor's past employment in assisted living facility or adult family homes; and

(v) Whether the provider will train only the provider's staff or also other providers and if the provider will train staff outside the home or corporation, the instructor must become a DSHS contracted community instructor;

(d) Ensures that DSHS competency tests are administered as required under this chapter;

(e) Provides a certificate or transcript of completion of training to all staff that successfully complete the entire course;

(f) Keeps a copy of long-term care worker certificates on file for six years and gives the original certificate to the student;

(g) Reports training data to DSHS when requested by the department;

(2) The department may conduct a random audit at any time to review training and instructor qualifications.

NEW SECTION

WAC 388-112A-1110 When may DSHS prohibit a home from conducting its own training? (1) DSHS may prohibit a home from providing its own basic, specialty, and continuing education training when any one of the following occurs:

(a) DSHS determines that the training fails to meet the standards under this chapter;

(b) The home fails to notify DSHS of a change in curriculum prior to teaching the curriculum;

(c) The home provides false or misleading information to long-term care workers or the public concerning the courses offered or conducted;

(d) The home's instructor fails to meet the applicable qualifications described under this chapter;

(e) The home's instructor has been a licensee, assisted living facility administrator, enhanced services facility administrator, or adult family home resident manager, of any home subject to temporary management, revocation or summary suspension of the home's license, stop placement of admissions order, condition on the license related to resident care, or civil fine of five thousand dollars or more, while the instructor was the licensee, administrator, or resident manager;

(f) The home has been operated under temporary management or has been subject to a revocation or suspension of the home license, stop placement of admissions order, condition on the license related to resident care, or civil fine of five thousand dollars or more, within the previous eighteen months.

(2) Nothing in this section shall be construed to limit the authority of DSHS under this chapter to require the immediate enforcement, pending any appeal, of a condition on the home license prohibiting the home from conducting its own training programs.

SECTION XII—INSTRUCTOR APPROVAL

NEW SECTION

WAC 388-112A-1200 What are the training entity's responsibilities? The training entity is responsible for:

(1) Coordinating and teaching classes;

(2) Assuring that the curriculum used is taught as designed;

(3) Selecting qualified guest speakers where applicable;

(4) Establishing a method whereby the long-term care worker can ask the instructor questions;

(5) Administering or overseeing the administration of DSHS competency and challenge tests;

(6) Maintaining training records including long-term care worker tests, certificates, and attendance records for a minimum of six years;

(7) Reporting training data to DSHS when requested by the department; and

(8) Issuing or reissuing training certificates to long-term care workers.

NEW SECTION

WAC 388-112A-1210 Must training entities and their instructors be approved by DSHS? Training entities and their instructors must be approved by DSHS as follows:

(1) For DSHS contracted training entities:

(a) DSHS must approve or approve and contract with a training entity and its instructor(s) to conduct orientation, safety training, basic training, population specific training, residential care administrator training, specialty training, nurse delegation core and specialized diabetes training, on-the-job training, and continuing education.

(b) DSHS may select training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) Homes that conduct their own training using the training curricula developed by DSHS or another curriculum approved by DSHS must ensure, through an attestation process, that their instructors meet the minimum qualifications for instructors under this chapter.

(3) DSHS must approve all other training entities and their instructor(s) not described in subsections (1) and (2) of this section.

NEW SECTION

WAC 388-112A-1220 May DSHS deny or terminate a contract or rescind approval of an instructor or training entity? (1) DSHS may deny a person or organization seeking a contract with or approval by DSHS to conduct orientation, continuing education, or safety, basic, population specific, adult family home administrator, specialty, nurse delegation core, or specialized diabetes training. No administrative remedies are available to dispute DSHS's decision not to contract with or approve of a person or organization, except as may be provided through the contracting process.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's administrative remedies are limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct orientation, continuing education, or safety, basic, population specific, residential care

administrator, specialty, nurse delegation core, or diabetes training.

NEW SECTION

WAC 388-112A-1230 What is a guest speaker and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) May only teach a specific subject in which he or she has expertise and the guest speaker's background and experience demonstrates expertise on the topic he or she will teach.

(b) May not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select a guest speaker based on his or her knowledge and experience in the specific topic;

(b) Maintain documentation of the guest speaker's qualifications and experience;

(c) Supervise and monitor the guest speaker's performance; and

(d) Is responsible for insuring the required content is taught.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-112A-1240 What are the minimum qualifications for an instructor for basic, population specific, on-the-job, residential care administrator, nurse delegation core, and specialized diabetes training? An instructor for basic, population specific, on-the-job, residential care administrator, nurse delegation core, and nurse delegation specialized diabetes trainings must meet the following minimum qualifications:

(1) Twenty-one years of age;

(2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state; and

(3) Meets one or more of the following education or work experience requirements upon initial approval or hire:

(a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting;

(b) Has an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community based setting or an adult family home, enhanced services facility, assisted living facility, supported living through the developmental disabilities administration (DDA), or home care setting;

(c) Has a high school diploma or equivalent and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living, supported living through DDA, or home care setting;

(4) Meets one or more of the following teaching experience requirements:

(a) One hundred hours of experience teaching adults in an appropriate setting on topics directly related to basic training or basic training topics that may be offered as continuing education;

(b) Forty hours of teaching basic training while being mentored by an instructor who is approved to teach basic training;

(c) Instructors with adult family homes, enhanced services facilities, and assisted living facilities that do not meet the criteria in (a) or (b) of this subsection, must have and attest to the following experience in their application:

(i) Forty hours of informal teaching experiences unrelated to basic training topics such as guest lecturing, team teaching, and volunteer teaching with parks, local high schools, 4-H groups, English as a second language (ESL) groups, senior organizations, and religious organizations;

(ii) Three adult learning techniques that the instructor will implement in his or her long-term care worker training; and

(iii) Three ways the instructor plans on improving his or her instructional facilitation and the method the instructor will use to measure improvement such as submitting the continuous improvement plan feedback from the DSHS adult education class;

(d) Completion of a class on adult education that meets the requirements of WAC 388-112A-1297;

(5) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to teaching the course content or units taught;

(6) Instructors who will administer tests must have experience or training in assessment and competency testing;

(7) Community instructors for nurse delegation core and diabetes training must have a current Washington registered nurse (RN) license in good standing without practice restrictions;

(8) Facility instructors must be approved and contracted by the department as a community instructor in order to be approved to teach the following classes:

(a) Nurse delegation core;

(b) Nurse delegation diabetes training; or

(c) DSHS adult education training curriculum.

NEW SECTION

WAC 388-112A-1250 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum? (1) The minimum qualifications for community instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals twenty-four

semester credits in a semester system, thirty-six quarter credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years experience teaching long-term care workers; or

(ii) Two hundred hours experience teaching adult education or closely related subjects;

(d) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Instructor approved and contracted by the department as a community instructor.

(2) Instructors that administer tests must have experience or training in assessment and competency testing.

NEW SECTION

WAC 388-112A-1260 What are the minimum qualifications for an instructor for orientation, safety training, and continuing education? (1) An instructor for orientation and safety training, must be a registered nurse or other person with specific knowledge, training, and work experience relevant to the topics required in orientation and safety training. Facility training programs and their orientation and safety training instructors will be approved at the time of the facility licensing as provided in WAC 388-112A-1000(4).

(2) An instructor for continuing education must be a registered nurse or other person that is proficient in the content he or she covers in the course or have specific knowledge, training, or experience in the provision of direct, personal care, or other relevant services to the elderly or persons with disabilities requiring long-term care.

NEW SECTION

WAC 388-112A-1270 What are the minimum qualifications for community instructors for mental health specialty training? (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

(a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to mental health, including, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the mental health specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have a mental illness; and

(d) Teaching experience:

(i) Two hundred hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people who have a mental illness may substitute for either:

(a) The credential described in subsection (1)(b)(i) of this section; or

(ii) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(ii).

(3) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

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.

NEW SECTION

WAC 388-112A-1280 What are the minimum qualifications for facility training program instructors for mental health specialty training? (1) The minimum qualifications for facility instructors to teach mental health specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application attesting to those qualifications and submit copies of certificates of completion for the specialty training class he or she would like to teach and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this subsection may teach specialty training to long-term care workers employed at other homes licensed by the same licensee.

(2) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1285 What are the minimum qualifications for community instructors for dementia specialty training? (1) The minimum qualifications for instructors for dementia specialty, in addition to the general qualifications defined in WAC 388-112A-1240 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, or continuing education); and

(ii) Successful completion of the dementia specialty training, prior to beginning to train others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have dementia;

(d) Teaching experience:

(i) Two hundred hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Five years of full-time equivalent direct work experience with people who have dementia may substitute for either:

(a) The credential (bachelor's degree, registered nurse, or mental health specialist) described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(ii) of this section.

(3) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1290 What are the minimum qualifications for facility training program instructors for dementia specialty training? (1) The minimum qualifications for facility instructors to teach dementia specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application attesting to those qualifications and submit copies of certificates of completion for the specialty training class they would like to teach and a copy of a certificate of completion of an adult

education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this section may teach specialty training to long-term care workers employed at other home(s) licensed by the same licensee.

(2) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

NEW SECTION

WAC 388-112A-1295 What are the minimum qualifications for instructors for developmental disabilities specialty training? (1) Instructors for developmental disabilities specialty training must meet the minimum qualifications in WAC 388-112A-1240 (1) and (2) and the following minimum qualifications:

(a) The instructor must be experienced in developmental disabilities caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education and work experience:

(i) Bachelor's degree with at least two years of full-time work experience in the field of disabilities; or

(ii) High school diploma or equivalent, with four years full-time work experience in the field of developmental disabilities, including two years full-time direct work experience with people who have a developmental disability;

(c) Successful completion of the developmental disabilities specialty training under WAC 388-112A-0420;

(d) Teaching experience:

(i) Two hundred hours of teaching experience;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297; and

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Has been approved and contracted by the department as a community instructor.

(2) Instructors who will administer tests must have experience in assessment and competency testing.

(3) Developmental disabilities specialty training may be taught by an assisted living facility administrator or designee, enhanced services facility administrator or designee, adult family home provider or designee, or corporate trainer, who has successfully completed the following:

(i) Developmental disabilities specialty training under WAC 388-112A-0420;

(ii) DSHS instructor qualification/demonstration process; and

(iii) Adult education class that meets the requirements of WAC 388-112A-1297.

(4) A qualified instructor under this section may teach developmental disabilities specialty training to long-term care workers employed at other homes licensed by the same licensee.

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

NEW SECTION

WAC 388-112A-1297 What must be included in an adult education class and which instructors must complete it? (1) A class on adult education must include content, student practice, and evaluation of student skills by the instructor in:

- (a) Adult education theory and practice principles;
 - (b) Instructor facilitation techniques;
 - (c) Facilitating learning activities for adults;
 - (d) Administering competency testing and assessment;
- and
- (e) Working with adults with special training needs like limited English proficiency, learning disabilities, or both.

(2) Instructors who request approval to teach either core basic training, specialty training, or both must complete the DSHS adult education class or an adult education class that meets the criteria in subsection (1) of this section and provide a copy of the certificate of completion.

SECTION XIII—PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-112A-1300 What physical resources are required for classroom training and testing? (1) The training entity must provide accessible classroom facilities to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning such as white boards and flip charts. The training entity must maintain appropriate supplies and equipment for teaching and practice of caregiving skills in the class being taught.

(2) The training entity must provide testing sites with adequate space for testing, comfort, lighting, and lack of disturbance appropriate for the written or skills test being conducted. The training entity must maintain appropriate supplies and equipment necessary for the particular test.

NEW SECTION

WAC 388-112A-1310 The training entity must maintain standard training practices for classroom training and testing. The training entity must maintain the following training standards for classroom training and testing:

- (1) Training must not exceed eight hours within one day;
- (2) Training provided in short time segments must include an entire unit, skill, or concept;
- (3) Training must include regular breaks; and
- (4) Long-term care workers attending a classroom training must not be expected to leave the class to attend to job duties, except in an emergency.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-112-0001 What are the purposes of this chapter?
- WAC 388-112-0002 To whom do the training requirements apply?
- WAC 388-112-0003 What are the training and certification requirements for volunteers and long-term care workers in adult family homes and assisted living facilities, adult family home providers, assisted living facility administrators and adult family home applicants?
- WAC 388-112-0004 What action(s) may the department take for provider noncompliance with the requirements of this chapter?
- WAC 388-112-0005 What definitions apply to this chapter?
- WAC 388-112-0010 When do the training requirements go into effect?
- WAC 388-112-0015 What is orientation training, who should complete it, and when should it be completed?
- WAC 388-112-0016 What content must be included in long-term care worker orientation?
- WAC 388-112-0018 What is safety training, who must complete it and when should it be completed?
- WAC 388-112-0019 What content must be included in safety training?
- WAC 388-112-0035 What documentation is required for facility orientation training?
- WAC 388-112-0045 What is basic training?
- WAC 388-112-0053 What topics must be taught in the core competencies of basic training for long-term care workers?
- WAC 388-112-0055 What are the core competencies and learning objectives for long-term care worker basic training?
- WAC 388-112-0062 What is on-the-job training?
- WAC 388-112-0066 What is the population specific component of basic training?
- WAC 388-112-0070 What documentation is required to show completion of the seventy hour basic, and five hour orientation and safety training?

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| WAC 388-112-0075 | Who is required to complete basic training, and when, unless exempt as described in WAC 388-112-0076? | WAC 388-112-0125 | What knowledge and skills must manager dementia specialty training include? |
| WAC 388-112-0076 | Which long-term care workers are exempt from the basic training requirement? | WAC 388-112-0130 | What topics must long-term care worker dementia specialty training include? |
| WAC 388-112-0078 | What other required training may be used to satisfy the population specific component of the basic training? | WAC 388-112-0132 | What are the competencies and learning objectives for the long-term care worker dementia specialty training? |
| WAC 388-112-0079 | What are the requirements for using basic training to meet the specialty training requirements? | WAC 388-112-0135 | What knowledge and skills must manager mental health specialty training include? |
| WAC 388-112-0081 | What topics may the training on young adults with physical disabilities include? | WAC 388-112-0140 | What topics must the long-term care worker mental health specialty training include? |
| WAC 388-112-0083 | What are some examples of the competencies and learning objectives for the training on young adults with physical disabilities? | WAC 388-112-0142 | What are the competencies and learning objectives for the long-term care worker mental health specialty training? |
| WAC 388-112-0088 | What topics may the training on aging and older adults include? | WAC 388-112-0145 | Who is required to complete competency testing for specialty training? |
| WAC 388-112-0091 | What are some examples of competencies and learning objectives for training on aging and older adults? | WAC 388-112-0150 | Is there a challenge test for specialty training (including the manager and long-term care worker specialty trainings)? |
| WAC 388-112-0092 | What learning objectives may be included in the curriculum for young adults with physical disabilities and/or for aging and older adults? | WAC 388-112-0152 | Is competency testing required for population specific trainings on young adults with physical disabilities, or aging and older adults? |
| WAC 388-112-0106 | Who is required to obtain certification as a home care aide, and when? | WAC 388-112-0155 | What documentation is required for successful completion of specialty training? |
| WAC 388-112-0108 | What documentation is required for a long-term care worker to apply for the home care aide certification or recertification? | WAC 388-112-0160 | Who is required to complete manager specialty training, or eighteen hour developmental disability caregiver training, and when? |
| WAC 388-112-0110 | What is specialty training and who is required to take specialty training? | WAC 388-112-0165 | Who is required to complete specialty training, and when? |
| WAC 388-112-0115 | What specialty training is required if a resident has more than one special need? | WAC 388-112-0170 | What is nurse delegation core training? |
| WAC 388-112-0120 | What topics must developmental disabilities specialty trainings include? | WAC 388-112-0175 | What knowledge and skills must nurse delegation core training include? |
| WAC 388-112-0122 | What are the competencies and learning objectives for the long-term care worker developmental disability specialty training? | WAC 388-112-0180 | Is competency testing required for nurse delegation core training? |
| | | WAC 388-112-0185 | Is there a challenge test for nurse delegation core training? |
| | | WAC 388-112-0190 | What documentation is required for successful completion of nurse delegation core training? |

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| WAC 388-112-0195 | Who is required to complete nurse delegation core training and nurse delegation specialized diabetes training, and when? | WAC 388-112-0275 | What knowledge and skills must residential care administrator training include? |
| WAC 388-112-0196 | What is specialized diabetes nurse delegation training? | WAC 388-112-0280 | Is competency testing required for adult family home residential care administrator training? |
| WAC 388-112-01961 | What knowledge and skills must specialized diabetes nurse delegation training include? | WAC 388-112-0285 | What documentation is required for residential care administrator training? |
| WAC 388-112-01962 | Is competency testing required for the specialized diabetes nurse delegation training? | WAC 388-112-0290 | What is competency testing? |
| WAC 388-112-01963 | Is there a challenge test for specialized diabetes nurse delegation training? | WAC 388-112-0295 | What components must competency testing include? |
| WAC 388-112-01964 | What documentation is required for successful completion of specialized diabetes nurse delegation training? | WAC 388-112-0300 | What training must include the DSHS-developed competency test? |
| WAC 388-112-0197 | Can nurse delegation core and specialized diabetes training occur in the same year as basic training? | WAC 388-112-0305 | How must competency test administration be standardized? |
| WAC 388-112-0200 | What is continuing education? | WAC 388-112-0310 | What form of identification must students provide before taking a competency or challenge test? |
| WAC 388-112-0205 | Who is required to complete continuing education training, and how many hours of continuing education are required each year? | WAC 388-112-0315 | How many times may a competency test be taken? |
| WAC 388-112-0207 | When must a long-term care worker complete continuing education? | WAC 388-112-0320 | Which trainings require department approval of the curriculum and instructor? |
| WAC 388-112-0210 | What topics may be covered in continuing education? | WAC 388-112-0325 | What must be submitted to DSHS for curriculum approval? |
| WAC 388-112-0225 | May specialty training be used to meet continuing education requirements? | WAC 388-112-0330 | What is the curriculum approval process for orientation, safety, basic training (core and population specific training), and continuing education? |
| WAC 388-112-0235 | May residential care administrator training be used to meet continuing education requirements? | WAC 388-112-0335 | What are the requirements for an assisted living facility or adult family home to conduct orientation, safety, basic, on-the-job training, continuing education, or long-term care worker specialty training? |
| WAC 388-112-0240 | What are the documentation requirements for continuing education? | WAC 388-112-0345 | When can DSHS prohibit a home from conducting its own training? |
| WAC 388-112-0250 | What is CPR training? | WAC 388-112-0355 | What are the training entity's responsibilities? |
| WAC 388-112-0255 | What is CPR/first-aid training? | WAC 388-112-0360 | Must training entities and their instructors be approved by DSHS? |
| WAC 388-112-0260 | What are the CPR and first-aid training requirements? | WAC 388-112-0365 | Can DSHS deny or terminate a contract or rescind approval of an instructor or training entity? |
| WAC 388-112-0265 | What is residential care administrator training? | WAC 388-112-0370 | What is a guest speaker, and what are the minimum qualifications to be a guest speaker? |
| WAC 388-112-0270 | Who must take the adult family home residential care administrator training and when? | | |

- WAC 388-112-0380 What are the minimum qualifications for an instructor for basic, population specific, on-the-job training, residential care administrator, and nurse delegation core and specialized diabetes training?
- WAC 388-112-0383 What are the minimum qualifications for an instructor for orientation, safety, and continuing education?
- WAC 388-112-0385 What are the minimum qualifications for instructors for manager and long-term care worker mental health specialty training?
- WAC 388-112-0390 What are the minimum qualifications for instructors for manager and long-term care worker dementia specialty?
- WAC 388-112-0395 What are the minimum qualifications for instructors for manager and long-term care worker developmental disabilities specialty?
- WAC 388-112-0400 What must be included in a class on adult education?
- WAC 388-112-0405 What physical resources are required for classroom training and testing?
- WAC 388-112-0410 What standard training practices must be maintained for classroom training and testing?

WSR 17-11-073**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Behavioral Health Administration)

[Filed May 18, 2017, 8:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-24-079.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-877A-0100 Outpatient mental health services—General, 388-877A-0300 Recovery support services requiring program-specific certification—General, 388-877A-0330 Recovery support services requiring program-specific certification—Employment services. The department also is proposing to create new sections including WAC 388-877A-0335 Recovery support services that require program-specific certification—Supportive housing services, 388-877B-0700 Substance use disorder recovery support services that require program-specific certification—General, 388-877B-0710 Substance use disorder

recovery support services that require program-specific certification—Agency staff requirements, 388-877B-0720 Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation, 388-877B-0730 Substance use disorder recovery support services that require program-specific certification—Supported employment services, and 388-877B-0740 Substance use disorder recovery support services that require program-specific certification—Supportive housing services.

Hearing Location(s): 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>), on July 11, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 12, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 11, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 27, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 71.24.385 authorizes a supportive housing services program and a supported employment services program to be developed to serve individuals receiving behavioral health services. Programs for supportive housing services and supported employment services are included as part of Washington state's medicaid transformation waiver, which was approved on January 9, 2017. These proposed rules will allow the department to certify these services when a licensed behavioral health agency applies and qualifies for certification.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 43.20A.550, 70.02.290, 70.02.340, 71.05.560, 71.24.035, 71.24.037, 71.24.520, 71.34.380, 74.04.050, 74.08.090.

Statute Being Implemented: RCW 71.24.385.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Melodie Pazolt, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-0487.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The division of behavioral health and recovery (DBHR) of DSHS is proposing amendments and new rules in chapter 388-877A WAC, Outpatient mental health services and chapter 388-877B WAC, Substance use disorder services. These proposed rules will add supportive housing and supported employment as recov-

ery support services that behavioral health service providers (both mental health and substance use disorder providers) can become certified to provide.

Outpatient Mental Health Rules: DBHR currently describes certification requirements for employment services as a recovery support service in WAC 388-877A-0330. In this section we changed the term from "employment services" to "supported employment services." We created new WAC 388-877A-0335 to describe certification requirements for supportive housing services. Because of these changes, we needed to amend two other mental health WAC sections to now refer to the new services, WAC 388-877A-0100 and 388-877A-0300. The only other edits made to these sections were necessary housekeeping edits to change names and terms and clarify language without changing the rules effect. No other policy changes have been made to the rules.

Substance Use Disorder Rules: DBHR added the certification requirements for both supported employment and supportive housing substance use disorder recovery support services in new WAC 388-877B-0730 and 388-877B-0740. Because these were the first substance use disorder recovery support services that the department is describing in rule, we needed to also create WAC 388-877B-0700 as a general overview, WAC 388-877B-0710 to describe agency staff requirements, and WAC 388-877B-0720 to describe clinical record content and documentation. The requirements in these three WAC sections closely follow the requirements already described in rule for substance use disorder outpatient treatment services, specifically WAC 388-877B-0300, 388-877B-0310, and 388-877B-0320. The only other edits made to the language from the existing sections were necessary housekeeping edits to change names and terms and clarify language without changing the rules effect. No other policy changes have been made to the rules.

INVOLVEMENT OF STAKEHOLDERS:

Policy Academy on Homelessness: In 2012, the Substance Abuse Mental Health Services Administration (SAMHSA) invited Washington state to apply for a policy academy to reduce chronic homelessness. The Chronic Homeless Policy Academy was cosponsored by the United States Health and Human Services, Department of Housing and Urban Development (HUD), United States Department of Veterans Affairs and the United States Interagency Council on Homelessness. Technical assistance from these agencies include tools, resources, and expertise to help the state develop a strategic plan based on what works. Washington's team includes representatives of key government agencies including DBHR, people with lived experience of homelessness, providers, and others with essential expertise and skills.

Policy Academy on Employment: In 2013, SAMHSA sponsored a virtual policy academy to further the goals on the Olmstead United States Supreme Court decision of further integrating people into the community. DBHR participated with partners such as the state division of vocational rehabilitation (DVR), governor's committee on disability employment policy, the employment security department, home and community services, developmental disabilities administration, regional support networks, and provider organizations. The Washington State Olmstead Policy Academy on Employment has developed a strategic plan to improve the

employment rate of individuals with significant behavioral health issues. The plan includes action steps in the areas of financing supported employment services, workforce development, and community education, including educating people with disabilities.

DBHR Stakeholder Involvement with Both Policy Academies: Through these two policy academies (Chronic Homeless Policy Academy and the Olmstead Policy Academy) stakeholders across the state have been participating in providing feedback to DBHR as the division focuses on increasing employment and housing outcomes. Workgroups in each of these two policy academy teams participated in developing the language for the supportive housing and supported employment certification WAC and have provided feedback throughout the development and drafting process.

DBHR has conducted an electronic survey of the anticipated costs and benefits and distributed the survey to interested parties from across the state including advocacy groups, policy groups, and behavioral health providers. DBHR attempted to include all of the known stakeholders who have indicated interest in possibly becoming certified with DBHR to provide supportive housing or supported employment behavioral health services. This included providers that currently are licensed and certified by DBHR to provide mental health or substance use disorder services and providers who are not yet licensed or certified through DBHR. In total, DBHR sent the electronic survey to about two hundred forty-six stakeholder recipients, of which we estimate about two hundred are behavioral health providers of some kind. We had eleven responses, each of which informed [formed] our analysis below.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS)—DETERMINATION OF NEED: Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ fifty or fewer people and are independently owned and operated. These proposed rules impact behavioral health agencies that deliver mental health services, substance use disorder services, or both, that elect to become licensed and certified with DBHR to provide supportive housing or supported employment services or both.

Preparation of an SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

This proposed WAC change describes the certification requirements for a behavioral health agency to add supportive housing and supported employment to a DBHR license for either substance use disorder or mental health treatment programs. The costs to comply with these certification rules would include certification fees (if applicable) and any costs of developing policies and procedures to comply with certification for these services. The initial nonresidential services fees (if applicable) that DSHS requires for an agency to add certification for supportive housing or supported employment would be the same for small businesses and large. The costs to develop policies and procedures may vary from agency to agency as shown below.

DBHR estimates that, of all of the providers who have indicated intent to become licensed and certified to deliver these services, only a small percentage are considered small businesses employing fifty or fewer employees. Only one small business responded to our survey. Since it is difficult for DBHR to determine which agencies will elect to become certified to provide these services in the future (and what the size of those agencies are), and assuming that small businesses might often have somewhat disproportionate costs as compared to large businesses for many business activities, DBHR is providing the information required by chapter 19.85 RCW for an SBEIS in our cost-benefit analysis below.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: Since the proposed change to the rule "establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit," DBHR has determined the proposed rules to be "significant" as defined by the legislature in RCW 34.05.328. As required by RCW 34.05.328 (1)(d), DBHR has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS: This proposed WAC change describes the certification requirements for a behavioral health agency to add supportive housing and supported employment to their DBHR license for either substance use disorder or mental health recovery support services.

WAC 388-877-0345 explains what behavioral health agencies must do to become certified with DBHR to provide a new service. A licensed behavioral health agency must request and submit an abbreviated application that is signed by the agency's designated official, include a description of the agency's policies and procedures relating to the new service, and include payment of appropriate fees. Strictly speaking, the costs to comply with this rule change would be:

- The administrative time to fill out the abbreviated application,
- The costs to develop an adequate set of policies and procedures relating to the new service, and
- The cost of fees associated with certification.

During our survey process, DBHR also collected information about other costs that are associated with adding these programs to an agency's current business in addition to the costs to [of] complying with this rule change. We have reflected this extra cost information below.

Certification Fees (WAC 388-877-0365): For agencies who are already licensed with DBHR and certified to provide one or more services, there is an application fee of \$200 to add on a substance use disorder treatment service. There is no fee to add on a mental health disorder treatment service.

Administrative Costs and Costs to Develop Policies and Procedures: Reported costs varied, depending on whether the agency planned to hire a consultant to provide assistance with developing policies and procedures. One agency (that is not yet licensed or certified with DBHR) estimated it would be a one-time cost of about \$5,000 for supportive housing and \$5,000 for supported employment to hire a consultant to develop policies and procedures. Another agency (also not yet licensed with DBHR) estimated that it would incur a one-

time administrative staffing cost of \$2,000 to develop policies and procedures (this cost also includes other administrative staff start-up activities). **Note:** DBHR provides resources and technical assistance at no cost to behavioral health agencies for the development of policies and procedures.

Costs in Addition to Costs of Compliance with These Rules:

| Subject | Costs Estimated by Survey Responders |
|--|---|
| Adding new DBHR licensure | <ul style="list-style-type: none"> • \$1,000 initial licensing fee for a new mental health or substance use disorder agency. • \$200 - \$750 initial and annual certification fee for substance use disorder nonresidential service. • \$500 to \$2,575 initial and annual licensing fees for mental health disorder service. |
| Additional DBHR licensure start-up costs | <ul style="list-style-type: none"> • \$50,000 per year for staffing, documentation, policies and procedures. • \$5,000 for consultant to help evaluate/build HIPAA and other compliance, \$5,000 IPS training, \$2,000 finance and other admin staff time including policy and procedure development, \$2,000 contract development (possibly double to cover supportive housing and supportive employment). |
| Hiring staff cost | \$130,000/year. |
| Training | \$10,000-15,000 for new service, \$5,000 for existing service, \$3,000/year. |
| Cost of actual housing itself | \$1,000-1,200 per month per unit for supportive housing (rental assistance + housing case management). Multiple units (group housing) = \$132,000 per year per building. |
| Transportation/mileage/parking | \$5,000/year. |
| Support services to clients | \$5,000/year. |
| Costs associated with contracting with the third party administrator for 1115 waiver funding | No dollar amount, but a suggestion that there may be costs associated with contracting with the third party administrator, including costs for reporting through a separate reporting mechanism. |

Note: Many of these costs are anticipated to be offset by funding through contracts with the third party administrator for the supportive housing and supported employment services.

Methods DBHR has Undertaken to Mitigate These Costs, Where Possible: DBHR has helped create a series of trainings called "medicaid academies" that educated behavioral health organizations, mental health service providers, substance use disorder service providers, and other stakeholders and communities on becoming certified to provide behavioral health services. DBHR has conducted:

- Webinars,
- In-person trainings, and
- A preconference institute at the Washington State Conference on Ending Homelessness.

Some of these training materials and archived webinars are located on the Washington Low Income Housing Alli-

ance web site <http://www.wliha.org/medicaid-benefit-resources>.

DBHR has a number of online and in-person resources for agencies who are becoming licensed and certified, including a licensing and certification web page with many resources <https://www.dshs.wa.gov/bha/division-behavioral-health-and-recovery/licensing-and-certification-behavioral-health-agencies>. DBHR also provides in-depth assistance from DBHR staff in the creation of the required policies and procedures.

DBHR is electing to put in place emergency certification rules while the regular rule-making process is underway. This is a means of helping agencies to have time to complete the certification process so they may access the funds we anticipate will be available July 1 through a third party administrator.

For a provider of mental health services that is not yet licensed with DBHR as a behavioral health agency that would like to provide a mental health **recovery support service** like supportive housing or supported employment, there is a mitigation in place described in WAC 388-877A-0300. The agency may operate through an agreement with a behavioral health agency certified for an outpatient mental health service listed in WAC 388-877A-0100(2). The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

BENEFITS: Numerous benefits will result from the adoption of the proposed amendments and the delivery of these newly certified services.

The benefits mentioned by the agencies surveyed include:

Job Creation Benefits:

- Agencies anticipated they would create from one to ten FTEs if they became certified to deliver these services. One agency reported that it could add two FTEs for supportive housing and two FTEs for supported employment as well as losing one FTE for supportive housing and one FTE for supported employment. No other agencies reported jobs potentially lost.

Benefits Specific to Supportive Housing:

- There is an increase in job retention and outcomes when a client has stable and safe housing.
- Clients have improved health, improved stability which may enable financial self-sufficiency.
- Supportive housing allows agencies to serve clients based on criteria other than behavioral health medical necessity (criteria such as homelessness, etc.).
- This new funding will allow agencies to provide more supportive housing services with staff who are experts in supportive housing interventions, documentation, and who have the landlord/tenant skill development background.
- New funding for staff in this category will round out the set of stabilization supports needed to reduce recidivism and high utilization of emergency services.

- It is easier to get people jobs if they are housed.
- Supportive housing services are likely to result in fewer homeless individuals.
- Supportive housing services are essential for individuals experiencing homelessness and enrolled in behavioral health treatment. Without supportive housing, such individuals frequently disengage from treatment or have difficulty making appointments.
- One county program noted that adding supportive housing to their book of business substantially increases the number of proposals submitted in response to requests for proposals (RFP) for new behavioral health service programs.
- With supportive housing, some agencies can provide more wrap-around services to prevent inpatient hospitalizations.
- The additional staff to provide further supportive housing coverage would mean:
 - More feet on the ground to find new landlords and develop those relations,
 - More time to spend with clients in their housing search,
 - More time to assist with housing applications and provide housing advocacy,
 - Additional ability for staff to act as a liaison between the client and the landlord should issues arise,
 - The agency can continue to offer the service and possibly get more patrons who have resided in shelters housed,
 - A well rounded agency that can offer a variety of services under one roof,
 - Better connection and resource for agency staff, even those outside of the shelter.
- The people we serve receive the benefits they are entitled to.
- Supportive housing can help close the gap of not enough case management services. One agency's coordinated entry system is geared to identify and prioritize highly vulnerable chronic homeless individuals who need intensive case management support to ensure long-term tenancy. Supportive housing will also help this agency provide intensive evidence-based services to eligible individuals.

Benefits Specific to Supported Employment:

- Clients have improved contribution to society and it shifts clients from simply receiving members to receiving/contributing members of the community.
- Enhanced connection and increased employment leads to sustained stability and reduced burden on programs funded by taxpayers.
- People who are employed are generally less symptomatic and use less alcohol, fewer drugs, and studies show they access fewer services.
- Adding supported employment benefits helps individuals with behavioral health problems who are in (or completed) treatment to become self-sufficient.

- Recipients of supported employment services are significantly less likely to relapse and repeatedly come into contact with the criminal justice system.
- Supported employment could help some clients with meaningful employment opportunities that promote health and wellness.
- The benefits of providing supported employment coverage are:
 - Additional resources for clients who stay in shelters who desire to work.
 - Improve housing stability through increased income.
 - Improved chances for program clients to obtain housing.
 - Staff ability to create an employer network.
 - Improved success of stability on jobs due to having staff available to address issues.
 - Increased rapport and trust built with employers.
 - Increased job opportunities for shelter patrons and program clients.
- Supported employment increases employment for some of our most vulnerable community members.
- One agency reported that adding supported employment services to their already robust suite of employment services would allow them to deepen and extend their services to additional individuals and adopt the evidence-based practice individual placement and support model. The agency anticipates achieving even greater results in assisting more of their eligible clients and new clients to secure employment leading to self-sufficiency, which is one of the agency's primary goals as a community action agency.

Benefits Outweighing the Costs: The organizations that responded to the DBHR survey outlined a number of ways that the benefits outweigh the costs of becoming certified to deliver these services. We are quoting some of them below:

- "The preparation to deliver evidence-based practice models of service delivery."
- "Housing in this area is awful and all the help my clients can get is worth the cost."
- "We want to be a one-stop station, if we can, and being able to offer Supportive Housing and Supported Employment will put us on our way to becoming just that. The cost is minor compared to the benefit of being able to offer our patrons and program clients these additional services, as well as the opportunity to make a small dent in our homeless population."
- "[Our organization] constantly seeks new funding streams to expand existing and build new programs to help our work with our clients. We serve people; with disabilities, who are in poverty, who are in crisis, who are fleeing domestic violence, who have severe behavioral health disorders, who are medically compromised and fragile, and who are high utilizers of crisis and emergency systems. We think that becoming certified to provide functional com-

munity supports [Supportive Housing and Supported Employment] will allow us to extend services to serve additional households and to increase our efficacy with these vulnerable households with dedicated resources. We believe this is consistent with our mission to help the most vulnerable in our community. We recognize the importance of demonstrating cost-effectiveness during the demonstration period and we have documented the effectiveness of programs like this on a local level in the past and are confident functional community supports will bear the same fruit."

DBHR also recognizes that there may be additional costs over and above that of certification for these specific services that the draft rules describe. A few organizations that responded to our survey indicated uncertainty about these additional costs:

- Several survey responders were unsure if the benefits outweighed the costs, with two indicating that the outcome depends on the contract requirements and rates developed by the third party administrator. One of these survey responders did say that as far [as] the mission of the organization is concerned, the benefits would outweigh the costs because there are many clients who would benefit from this service.
- One large business that is not yet licensed with DBHR commented, "As the DBHR licensure is designed, the agency licensure requirements and employee education/licensure requirements are significant barriers, and we would need to change a number of our agency policies and practices, possibly our entire vision, in order to accommodate this new way of working. We would add three staff, at a minimum, and while it would be a net gain of staffing, we would have to lose some employees who do not currently meet licensure/education requirements."
- One organization reported that the benefits would outweigh the costs, but added: "One big concern, however, for Supportive Housing is the inconsistency with eligibility for 1115 Waiver Services for Supportive Housing compared to eligibility criteria for HUD subsidized units, which typically require proof of chronic homelessness. What is also not clear about supported employment is how this will work with other supported employment funded programs, such as DVR and locally funded programs. Will people need to go through eligibility for these other programs before they can be enrolled under 1115 waiver? The time it takes to determine eligibility for certain programs such as DVR could really delay our ability to start working with eligible individuals."

CONCLUSION: Homelessness is traumatic, cyclical, and puts people at risk for mental health and substance use disorders. Homelessness also interferes with one's ability to receive services, including services for behavioral health conditions, and jeopardizes the chances for successful recovery. A growing body of research shows that supportive hous-

ing can improve health and lower health care costs for people who face some of the most significant barriers to housing and health care. (from *Creating a Medicaid Supportive Housing Services Benefit: A Framework for Washington and Other States*, by the corporation for supportive housing (CSH). The full document of this white paper can be found on CSH.org).

According to SAMHSA's research, about seventy percent of adults with serious mental illnesses desire to work (Mueser et al., 2001; Roger et al., 2001). Supported employment has been proven effective in twenty-three randomized, controlled trials. It is three times more effective than other vocational approaches in helping people with mental illness to work competitively. (Fact Sheet: Employment to Support Mental Health Recovery, 2016: <https://www.dshs.wa.gov/sites/default/files/BHSIA/dbh/Fact%20Sheets/SupportedEmployment.pdf>).

DBHR, after consulting with the providers who intend to use these rules to become certified to deliver supportive housing or supported employment services, concludes that the probable benefits of the proposed rule amendments outweigh the probable cost.

DBHR has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Melodie Pazolt at (360) 725-0487 if you have any questions about DBHR's supportive housing or supported employment services, or Stephanie Vaughn at (360) 725-1342 if you have any questions about the DBHR rule-making process.

A copy of the statement may be obtained by contacting: Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, email Stephanie.vaughn@dshs.wa.gov. A combined cost-benefit analysis and small business economic impact statement is shown above.

May 16, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-093, filed 3/4/14, effective 4/4/14)

WAC 388-877A-0100 Outpatient mental health services—General. The rules in this section apply to behavioral health agencies that provide outpatient mental health services. The definitions in WAC 388-877-0200 also apply to outpatient mental health services. ~~((The department requires all agencies and providers affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Outpatient mental health services are intended to improve ~~((and/or))~~ or reduce symptoms~~((s))~~ and ~~((resolve))~~ help facilitate resolution of situational disturbances for individuals in the areas of ~~((relational, occupational and/or vocational concerns))~~ relationships, employment, and community integration.

(2) Outpatient mental health services include:

(a) Individual treatment services ~~((see))~~ as described in WAC 388-877A-0138~~((s))~~;

(b) Brief intervention treatment services ~~((see))~~ as described in WAC 388-877A-0140~~((s))~~;

(c) Group therapy services ~~((see))~~ as described in WAC 388-877A-0150~~((s))~~;

(d) Family therapy services ~~((see))~~ as described in WAC 388-877A-0155~~((s))~~;

(e) Case management services ~~((see))~~ as described in WAC 388-877A-0170~~((s))~~;

(f) The optional mental health services described in subsection (3) of this ~~((subsection))~~ section; and

(g) The recovery support services described in subsection (4) of this ~~((subsection))~~ section.

(3) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may choose to provide optional outpatient mental health services. Optional outpatient mental health services require additional program-specific certification by the department's division of behavioral health and recovery (DBHR) and include the following:

(a) Psychiatric medication services ~~((see))~~ as described in WAC 388-877A-0180~~((s))~~;

(b) Day support services ~~((see))~~ as described in WAC 388-877A-0190~~((s))~~;

(c) Less restrictive alternative (LRA) support services ~~((see))~~ as described in WAC 388-877A-0195~~((s))~~; and

(d) Services provided in a residential treatment facility ~~((see))~~ as described in WAC 388-877A-0197~~((s))~~.

(4) A behavioral health agency that provides certified ~~((for))~~ outpatient mental health services may also provide recovery support services. Recovery support services require program-specific certification and include the following:

(a) Supported employment services ~~((see))~~ as described in WAC 388-877A-0330~~((s))~~;

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services ~~((see))~~ as described in WAC 388-877A-0340~~((s))~~;

~~((e))~~ (d) Wraparound facilitation services ~~((see))~~ as described in WAC 388-877A-0350~~((s))~~;

~~((d))~~ (e) Medication support services ~~((see))~~ as described in WAC 388-877A-0360~~((s))~~; and

~~((e))~~ (f) Applied behavior analysis (ABA) services ~~((see))~~ as described in WAC 388-877A-0370~~((s))~~.

(5) An agency ~~((providing))~~ that provides outpatient mental health services to individuals must:

(a) Be licensed by the department as a behavioral health agency~~((s))~~;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC~~((s))~~; and

(c) Have policies and procedures ~~((to))~~ that support and implement the:

(i) General requirements in chapter 388-877 WAC;

(ii) Applicable program-specific requirements for each outpatient mental health service provided~~((s))~~ and each optional and recovery support service requiring program-specific certification that the agency elects to provide; and

(iii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(6) At the ~~((verbal))~~ oral or written request of the individual, the behavioral health agency must, if applicable:

(a) Include the individual's family members, significant others, and other relevant treatment providers in the clinical services provided to the individual by the agency; and

(b) Document the request in the individual's clinical record.

(7) If an individual has a crisis plan, the crisis plan must be:

(a) Placed in the individual's clinical record; and

(b) Subject to state and federal confidentiality rules and laws, made available to the following~~((, subject to state and federal confidentiality rules and laws))~~:

(i) Designated mental health professionals;

(ii) Crisis team members; and

(iii) Voluntary and involuntary inpatient evaluation and treatment facilities.

(8) ~~((An))~~ A behavioral health agency that provides services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided~~((:))~~; and

(b) Include, for each established off-site location:

(i) The name and address of the location the services are provided;

(ii) The primary purpose of the off-site location;

(iii) The service(s) provided; and

(iv) The date off-site services began at that location.

(9) ~~((An))~~ A behavioral health agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual ~~((and))~~, staff member, and community safety; and

(b) For the purpose of emergency communication~~((:))~~ and as required by RCW 71.05.710, provide a wireless telephone~~((:))~~ or comparable device~~((:))~~ to any mental health professional who makes home visits to individuals.

(10) ~~((An))~~ A behavioral health agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) ~~((Be certified to provide))~~ Ensure the type of mental health service offered at each off-site location is certified by DBHR in accordance with chapter 388-877A WAC; and

(d) Ensure the mental health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

AMENDATORY SECTION (Amending WSR 14-18-014, filed 8/22/14, effective 9/22/14)

WAC 388-877A-0300 Recovery support services ~~((requiring))~~ that require program-specific certification—General. The rules in this section apply to behavioral health agencies that provide one or more recovery support services that require program-specific certification by the department's division of behavioral health and recovery. The definitions in WAC 388-877-0200 also apply to these services. ~~((The department requires all agencies and providers~~

~~affected by this rule to fully comply with the applicable requirements in chapter 388-877 WAC, chapter 388-877A WAC, chapter 388-877B WAC, and chapter 388-877C WAC no later than September 1, 2013.))~~

(1) Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

(2) Recovery support services ~~((requiring))~~ that require program-specific certification include:

(a) Supported employment services ~~((see))~~ as described in WAC 388-877A-0330~~((:))~~;

(b) Supportive housing services as described in WAC 388-877A-0335;

(c) Peer support services ~~((see))~~ as described in WAC 388-877A-0340~~((:))~~;

~~((e))~~ (d) Wraparound facilitation services ~~((see))~~ as described in WAC 388-877A-0350~~((:))~~;

~~((d))~~ (e) Medication support services ~~((see))~~ as described in WAC 388-877A-0360~~((:))~~; and

~~((e))~~ (f) Applied behavior analysis (ABA) services ~~((see))~~ as described in WAC 388-877A-0370~~((:))~~.

(3) ~~((An))~~ A behavioral health agency ~~((providing))~~ that provides any recovery support service ~~((requiring))~~ that requires program-specific certification must:

(a) Be licensed by the department as a behavioral health agency~~((:))~~;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC~~((:))~~; and

(c) Have policies and procedures ~~((to))~~ that support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Applicable program-specific requirements.

(4) An agency that provides any recovery support service ~~((requiring))~~ that requires program-specific certification may operate through an agreement with a behavioral health agency that provides certified ~~((for an))~~ outpatient mental health ~~((service))~~ services listed in WAC 388-877A-0100(2). The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements.

(5) When providing any recovery support service requiring program-specific certification, ~~((an))~~ a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals~~((:))~~;

(b) Refer an individual to a more intensive level of care when appropriate~~((:))~~; and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers~~((:))~~ as necessary to provide support to the individual.

AMENDATORY SECTION (Amending WSR 13-12-053, filed 5/31/13, effective 7/1/13)

WAC 388-877A-0330 Recovery support services ~~((requiring)) that require program-specific certification—Supported employment services.~~ Supported employment services are ~~((a))~~ recovery support ~~((service))~~ services that ~~((requires))~~ require program-specific certification by the department's division of behavioral health and recovery. These services assist in ~~((training,))~~ job search, ~~((and))~~ placement services ~~((in order)), and training~~ to help individuals find competitive jobs in their local communities.

(1) ~~((An))~~ A behavioral health agency ~~((providing)) that provides supported employment services~~ must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR). DVR provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community services offices;

(c) Community, trade, and technical colleges;

~~((e))~~ (d) The business community;

~~((d))~~ (e) WorkSource, Washington state's official site for online employment services;

~~((e))~~ (f) Washington state department of employment security; and

~~((f))~~ (g) Organizations ~~((providing)) that provide job placement within the community.~~

(2) ~~((An))~~ A behavioral health agency ~~((providing)) that provides supported employment services~~ must:

(a) Ensure all staff members ~~((providing)) who provide direct services for employment~~ are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation~~((:));~~

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals~~((:));~~

(c) Assist the individual to create an individualized job ~~((and/or)) and career development plan that focuses on the individual's strengths and skills~~((:));~~~~

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests~~((:));~~

(e) Provide and document any outreach, job coaching, and support at the individual's worksite~~((:))~~ when requested by the individual ~~((and/or)) or the individual's employer~~((:));~~ and~~

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990~~((:))~~ and ~~((the))~~ Washington state anti-discrimination law.

NEW SECTION

WAC 388-877A-0335 Recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are recovery sup-

port services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

SECTION SEVEN—SUBSTANCE USE DISORDER RECOVERY SUPPORT SERVICES THAT REQUIRE PROGRAM-SPECIFIC CERTIFICATION

NEW SECTION

WAC 388-877B-0700 Substance use disorder recovery support services that require program-specific certification—General. The rules in WAC 388-877B-0700 through 388-877B-0740 apply to behavioral health agencies that provide substance use disorder recovery support services

that require program-specific certification. The definitions in WAC 388-877-0200 also apply to substance use disorder recovery support services.

(1) Recovery support services are considered nontreatment services provided to support an individual who has a need for interventions related to substance use disorders.

(2) Recovery support services require additional program-specific certification by the department's division of behavioral health and recovery and include:

(a) Supported employment services as described in WAC 388-877B-0730; and

(b) Supportive housing services as described in WAC 388-877B-0740.

(3) An agency that provides recovery support services to an individual must:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administrative, personnel, and clinical requirements in chapter 388-877 WAC, behavioral health services administrative requirements; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0700 through 388-877B-0740.

(4) A behavioral health agency that provides recovery support services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 388-877B-0710 Substance use disorder recovery support services that require program-specific certification—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, an agency providing substance use disorder recovery support services that require program-specific certification must ensure:

(1) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP) or department of health-credential CDP trainee (CDPT) under the supervision of an approved supervisor.

(2) There is a designated clinical supervisor who:

(a) Is a CDP;

(b) Has documented competency in clinical supervision;

(c) Is responsible for monitoring the continued competency of each CDP in assessment, treatment, continuing care, transfer, and discharge. The monitoring must include a semi-annual review of a sample of the clinical records kept by the CDP; and

(d) Has not committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(3) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must

decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(4) All staff members that provide individual care have a copy of an initial TB screen or test and any subsequent screenings or testing in their personnel files.

(5) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens and TB, and document the training in their personnel files.

NEW SECTION

WAC 388-877B-0720 Substance use disorder recovery support services that require program-specific certification—Clinical record content and documentation. In addition to the general clinical record content requirements in WAC 388-877-0640, an agency providing substance use disorder recovery support services that require program-specific certification must maintain an individual's clinical record.

(1) The clinical record must contain:

(a) Documentation that the individual was informed of federal confidentiality requirements and received a copy of the individual notice required under 42 C.F.R. Part 2.

(b) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanctions.

(c) Documentation that the initial individual service plan was completed before treatment services are received.

(d) Documentation of progress notes in a timely manner and before any subsequent scheduled appointments of the same type of service session or group type occur or documentation as to why this did not occur. Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it.

(e) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider to include:

(i) The individual's demographic information; and

(ii) The diagnostic assessment statement and other assessment information to include:

(A) Documentation of the HIV/AIDS intervention.

(B) Tuberculosis (TB) screen or test result.

(C) A record of the individual's detoxification and treatment history.

(D) The reason for the individual's transfer.

(E) Court mandated, department of correction supervision status or the agency's recommended follow-up treatment.

(F) A discharge summary and continuing care plan.

(f) Justification for the change in the level of care when transferring an individual from one certified treatment service to another within the same agency, at the same location.

(g) Documentation that staff members met with each individual at the time of discharge, unless the individual left without notice, to:

(i) Determine the appropriate recommendation for care and finalize a continuing care plan;

(ii) Assist the individual in making contact with necessary agencies or services; and

(iii) Provide and document the individual was provided with a copy of the plan.

(h) Documentation that a discharge summary was completed within seven days of the individual's discharge, including the date of discharge, a summary of the individual's progress towards each individual service plan goal, legal status, and if applicable, current prescribed medication.

(2) In addition to the requirements in subsection (1) of this section, an agency must ensure each individual service plan:

(a) Is personalized to the individual's unique treatment needs;

(b) Includes individual needs identified in the diagnostic and periodic reviews that address the following:

(i) All substance use needing treatment, including tobacco, if necessary;

(ii) The individual's bio-psychosocial problems;

(iii) Treatment goals;

(iv) Estimated dates or conditions for completion of each treatment goal; and

(v) Approaches to resolve the problem;

(c) Documents approval by a chemical dependency professional (CDP) if the staff member developing the plan is not a CDP;

(d) Documents that the plan was updated to reflect any changes in the individual's treatment needs, or as requested by the individual, at least once per month for the first three months, and at least quarterly thereafter; and

(e) Documents that the plan has been reviewed with the individual.

NEW SECTION

WAC 388-877B-0730 Substance use disorder recovery support services that require program-specific certification—Supportive employment services. Supported employment services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. These services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department's division of vocational rehabilitation (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department's community service offices;

(c) Community, trade, and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(2) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite, when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state anti-discrimination law.

NEW SECTION

WAC 388-877B-0740 Substance use disorder recovery support services that require program-specific certification—Supportive housing services. Supportive housing services are substance use disorder recovery support services that require program-specific certification by the department's division of behavioral health and recovery. Supportive housing services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(2) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state anti-discrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sub-lease.

WSR 17-12-008
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed May 25, 2017, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-20-106 on October 5, 2016.

Title of Rule and Other Identifying Information: WAC 220-330-110 Clams other than razor clams, mussels—Areas and seasons, 220-330-120 Clams, oysters, mussels—Unlawful acts, and 220-330-140, Oysters—Areas and seasons.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on August 4-5, 2017, at 8:00 a.m.

Date of Intended Adoption: August 18, 2017.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW) Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, email Rules.Coordinator@dfw.wa.gov, fax (360) 902-2403, by August 5, 2017.

Assistance for Persons with Disabilities: Contact Tami Lininger, by August 3, 2017, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Recent clam and oyster survey data, sport harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations and administrative tasks, call for recreational clam and oyster seasons to be extended or shortened on some public beaches. Due to changes in beach ecology at Quilcene Bay Tidelands, state and tribal comanagers agreed that the exception to the statewide minimum size for hardshell clams is no longer appropriate for this site and this

exception should be repealed. This proposal reflects these changes.

Reasons Supporting Proposal: These amendments will perpetuate shellfish resources while maximizing recreational fishing opportunity and protecting public health.

Statutory Authority for Adoption: RCW 77.04.012 and 77.12.047.

Statute Being Implemented: RCW 77.04.012 and 77.12.-047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Bob Sizemore, 375 Hudson Street, Port Townsend, WA 98368, (360) 302-3030; Implementation: Ron Warren, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2799; and Enforcement: Chief Chris Anderson, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule only affects recreational shellfishers and there is no small business economic impact.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

May 25, 2017

Scott Bird

Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-110 Clams other than razor clams, mussels—Areas and seasons. It is permissible to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

~~((5))~~ (6) Belfair State Park: Open year-round.

~~((6))~~ (7) Blaine Marine Park: Closed year-round.

(8) Blake Island State Park Marina: Closed year-round.

~~((7))~~ (9) Blowers Bluff North: Closed year-round.

~~((8))~~ (10) Brown's Point Lighthouse: Closed year-round.

~~((9))~~ (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn due west from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.

~~((10))~~ (12) Cama Beach State Park: Closed year-round.

~~((11))~~ (13) Camano Island State Park: Closed year-round.

~~((12))~~ (14) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.

~~((13))~~ (15) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

~~((14))~~ (16) Coupeville: Closed year-round.

~~((15))~~ (17) Cultus Bay: Closed year-round.

(18) Dave Mackie County Park: Closed year-round.

~~((16))~~ (19) Des Moines City Park: Closed year-round.

~~((17))~~ (20) Discovery Park: Closed year-round.

~~((18))~~ (21) DNR-142: Closed year-round.

~~((19))~~ (22) DNR-144 (Sleeper): Closed year-round.

~~((20))~~ (23) Dockton County Park: Closed year-round.

~~((21))~~ (24) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((22))~~ (25) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.

~~((23))~~ (26) Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as ~~(conditionally)~~ approved by the department of health and defined by boundary markers and signs posted on the beach are open ~~(February 1 through October 31)~~ year-round.

~~((24))~~ (27) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.

~~((25))~~ (28) Eagle Creek: Open July 1 through July 31 only.

~~((26))~~ (29) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((27))~~ (30) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.

(31) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.

(32) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

~~((28))~~ (33) Fay Bainbridge Park: Closed year-round.

~~((29))~~ (34) Fort Flagler State Park: Open ~~(May 15 through August 31)~~ January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((30))~~ (35) Freeland County Park: Open ~~(March)~~ January 1 through May 15 only.

~~((31))~~ (36) Frye Cove County Park: Open May 1 through May 31 only.

~~((32))~~ (37) Fudge Point State Park: Closed year-round.

~~((33))~~ Garrison Bay: The tidelands at Guss Island and those tidelands at British Camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed year-round.

~~((34))~~ (38) Gertrude Island: All tidelands ~~((at))~~ of Gertrude Island are closed year-round.

~~((35))~~ (39) Golden Gardens: Closed year-round.

~~((36))~~ (40) Graveyard Spit: Closed year-round.

~~((37))~~ (41) Guss Island: All tidelands of Guss Island are closed year-round.

(42) Hoodspout: Tidelands at Hoodspout Salmon Hatchery are closed year-round.

~~((38))~~ (43) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((39))~~ (44) Howarth Park/Darlington Beach: Closed year-round.

~~((40))~~ (45) Illahee State Park: Open April 1 through July 31 only.

~~((41))~~ (46) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September ~~((15))~~ 30 only.

~~((42))~~ (47) Kayak Point County Park: Closed year-round.

~~((43))~~ (48) Kitsap Memorial State Park: Closed year-round.

~~((44))~~ (49) Kopachuck State Park: Open June 1 through July 31 only.

~~((45))~~ (50) Lent Landing (Port Washington Narrows): Closed year-round.

~~((46))~~ (51) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.

~~((47))~~ (52) Lincoln Park: Closed year-round.

~~((48))~~ (53) Lions Park (Bremerton): Closed year-round.

~~((49))~~ (54) Lofall: Closed year-round.

~~((50))~~ (55) Long Island Oyster Reserve (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

(56) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

(57) Long Point West: Closed year-round.

~~((51))~~ (58) Lower Roto Vista Park: Closed year-round.

~~((52))~~ (59) Manchester State Park: Closed year-round.

~~((53))~~ (60) March Point Recreation Area: Closed year-round.

~~((54))~~ (61) McNeil Island: All tidelands ~~((on))~~ of McNeil Island are closed year-round.

~~((55))~~ (62) Meadowdale County Park: Closed year-round.

~~((56))~~ (63) Mee-Kwa-Mooks Park: Closed year-round.

~~((57))~~ (64) Monroe Landing: Closed year-round.

~~((58))~~ (65) Mukilteo ~~((State Park))~~: Closed year-round.

~~((59))~~ (66) Mystery Bay State Park: Open October 1 through April 30 only.

~~((60))~~ (67) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.

(68) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

(69) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((61))~~ (70) North Bay (Case Inlet): State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open September 1 through December 31 only.

(71) North Beach County Park: Closed year-round.

~~((62))~~ North Fort Lewis: Closed year-round.

~~(63))~~ (72) North Tabook Point: Closed year-round.

~~((64))~~ (73) Oak Bay County Park: Open May 1 through May 31 only.

~~((65))~~ (74) Oak Harbor: Closed year-round.

(75) Oak Harbor Beach Park: Closed year-round.

~~((66))~~ (76) Oak Harbor City Park: Closed year-round.

~~((67))~~ (77) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

(78) Old Mill County Park (Silverdale): Closed year-round.

~~((68))~~ (79) Olympia Shoal: Closed year-round.

~~((69))~~ Oyster Reserves: Puget Sound and Willapa Bay state oyster reserves are closed year-round except as follows:

(a) North Bay: State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open May 1 through May 31 and September 1 through September 30 only.

(b) Oakland Bay: State-owned oyster reserves open year-round except in areas defined by boundary markers and signs posted on the beach.

(c) Willapa Bay – Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.

~~(70))~~ (80) Pat Carey Vista Park: Closed year-round.

~~((71))~~ (81) Penrose Point State Park: Open March 1 through ~~((May 15))~~ April 30 only.

~~((72))~~ (82) Picnic Point County Park: Closed year-round.

~~((73))~~ (83) Pitship Point: Closed year-round.

~~((74))~~ (84) Pitt Island: All tidelands on Pitt Island are closed year-round.

~~((75))~~ (85) Pleasant Harbor State Park: Closed year-round.

~~((76))~~ (86) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((77))~~ (87) Point Defiance: Closed year-round.

~~((78))~~ (88) Point No Point South: Closed year-round.

~~((79))~~ (89) Point Whitney Lagoon: Open January 1 through April 30 only.

~~((80))~~ (90) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through March ~~((15))~~ 31 only.

~~((81))~~ (91) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((82))~~ (92) Port Gamble Heritage Park Tidelands: Open ~~((January 1 through June 30 only))~~ year-round.

~~((83))~~ (93) Port Gardner: Closed year-round.

~~((84))~~ (94) Port Townsend Ship Canal/Portage Beach: Open January 1 through ~~((July 31))~~ June 15 only.

~~((85))~~ (95) Post Point: Closed year-round.

~~((86))~~ (96) Potlatch DNR tidelands: Open April 1 through ~~((July 15))~~ August 31 only.

~~((87))~~ (97) Potlatch State Park: Open April 1 through ~~((July 15))~~ August 31 only.

~~((88))~~ (98) Priest Point County Park: Closed year-round.

~~((89))~~ (99) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((90))~~ (100) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open ~~((April 1 through December 31, daily from official sunrise to official sunset only.~~

~~(91) Reid Harbor – South Beach: Closed year-round.~~

~~(92))~~ year-round.

(101) Retsil: Closed year-round.

~~((93))~~ (102) Richmond Beach Saltwater Park: Closed year-round.

~~((94))~~ (103) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((95))~~ (104) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((96))~~ (105) Saltwater State Park: Closed year-round.

~~((97))~~ (106) Samish Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((98))~~ (107) Scenic Beach State Park: Closed year-round.

~~((99))~~ (108) Seahurst County Park: Closed year-round.

~~((100) Semiahmoo: Closed year-round.~~

~~(101))~~ (109) Semiahmoo County Park: Closed year-round.

~~((102))~~ (110) Semiahmoo Marina: Closed year-round.

~~((103))~~ (111) Sequim Bay State Park: Open ~~((April))~~ January 1 through June 30 only.

~~((104))~~ (112) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((105))~~ (113) Silverdale Waterfront Park: Closed year-round.

~~((106))~~ (114) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((107))~~ (115) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((108))~~ (116) South Carkeek Park: Closed year-round.

~~((109) South Gordon Point: Closed year-round.~~

~~(110))~~ (117) South Mukilteo ~~((Park))~~: Closed year-round.

~~((111))~~ (118) Southworth ~~((Ferry Dock))~~: Closed year-round.

~~((H12))~~ (119) Spencer Spit State Park: Open March 1 through July 31 only.

~~((H13))~~ (120) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

(121) Taylor Bay: Closed year-round.

~~((H14))~~ (122) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

(123) Triton Cove Tidelands: Open July 15 through August 31 only.

~~((H15))~~ (124) Twanoh State Park: Open ~~((August 1))~~ July 15 through September 30 only.

~~((H16))~~ (125) Walker County Park: Closed year-round.

~~((H17))~~ (126) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

~~((H18))~~ (127) West Pass Access: Closed year-round.

~~((H19))~~ Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and Naheotta Tidelands Interpretive Site are closed year-round.

~~(120))~~ (128) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road open June 1 through December 31 only.

(129) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

(130) Wolfe Property State Park: Open January 1 through May 15 only.

~~((H21))~~ (131) Woodard Bay Natural Resource Conservation Area: Closed year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use in Grays Harbor and Willapa Harbor year-round, except from state oyster reserves, which are closed to clam digging year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-120 Clams, oysters, mussels—Unlawful acts. (1) It is unlawful to take, dig for and possess clams (excluding razor clams), cockles, and mussels taken for personal use except by hand or with hand-operated forks, picks, mattocks, rakes and shovels. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(2) It is unlawful to take, dig for and possess razor clams taken for personal use except by hand, shovels or with cylindrical cans, tubes or hinged digging devices. The opening of tubes or cans must be either circular or elliptical with the circular can/tube having a minimum outside diameter of 4 inches and the elliptical can/tube having a minimum dimension of 4 inches long and 3 inches wide outside diameter. The hinged digging device when opened in a cylindrical position,

must have a minimum outside diameter of 4 inches at the bottom. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(3) Any newly designed or modified digging device intended for the recreational use of razor clams must receive the specific approval of the director of fish and wildlife.

(4) In the field each digger, including holders of razor clam disability permits, must have his or her daily limit in a separate container. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(5) It is unlawful to possess shellfish taken with gear that violates the provisions of this section. Possession of shellfish while using gear in violation of the provisions of this section is a rebuttable presumption that the shellfish were taken with such gear. Possession of such shellfish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the shellfish are taken in the amounts or manner to constitute a violation of RCW 77.15.-370 Unlawful recreational fishing in the first degree—Penalty.

(6) It shall be unlawful for any person digging clams other than razor clams for personal use to fail to fill in holes created during the digging operation. Beach terrain must be returned to approximately its original condition by clam diggers before leaving the scene.

(7) It shall be unlawful to maim, injure or attempt to capture a geoduck by thrusting any instrument through its siphon or to possess only the siphon or neck portion of a geoduck.

(8) Oysters taken for personal use must be shucked before removing oysters from the intertidal zone and the shells replaced on the tidelands at the approximate tide level from which originally taken and it shall be unlawful for any person to fail to do so.

(9) It is unlawful to possess Manila, native littleneck, cockle, or butter clams taken for personal use which measure less than 1-1/2 inches across the longest dimension of the shell ~~((except minimum size 1-1/4 inches if taken from public tidelands on the west side of Quileene Bay north of the county boat ramp))~~.

(10) It is unlawful to return any eastern softshells, horse clams, or geoducks to the beach or water regardless of size or condition. All such clams taken for personal use must be retained by the digger as part of the daily limit.

(11) Violation of the provisions of this section shall be an infraction, punishable under RCW 77.15.160.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-330-140 Oysters—Areas and seasons. It is permissible to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix

River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

~~((5))~~ (6) Blaine Marine Park: Closed year-round.

(7) Blake Island State Park Marina: Closed year-round.

~~((6))~~ (8) Blowers Bluff North: Closed year-round.

~~((7))~~ (9) Brown's Point Lighthouse: Closed year-round.

~~((8))~~ (10) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park to the opposite shore near 68th Avenue N.W. are closed year-round.

~~((9))~~ (11) Cama Beach State Park: Closed year-round.

~~((10))~~ (12) Camano Island State Park: Closed year-round.

~~((11))~~ Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

(12)) (13) Chimacum Creek Tidelands (Irondale Beach Park): Public tidelands south of the main Chimacum Creek channel are closed year-round.

~~((13))~~ (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

(15) Coupeville: Closed year-round.

~~((14))~~ (16) Cultus Bay: Closed year-round.

(17) Dave Mackie County Park: Closed year-round.

~~((15))~~ (18) Des Moines City Park: Closed year-round.

~~((16))~~ (19) Discovery Park: Closed year-round.

~~((17))~~ (20) DNR-142: Closed year-round.

~~((18))~~ (21) DNR-144 (Sleeper): Closed year-round.

~~((19))~~ (22) Dockton County Park: Closed year-round.

~~((20))~~ (23) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((21))~~ (24) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers on the beach.

~~((22))~~ (25) Drayton West: All public tidelands of Drayton Harbor are closed year-round, except tidelands identified as ~~((conditionally))~~ approved by the department of health and defined by boundary markers and signs posted on the beach are open ~~((February 1 through October 31 only))~~ year-round.

~~((23))~~ (26) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.

~~((24))~~ (27) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((25))~~ (28) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.

(29) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.

(30) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

~~((26))~~ (31) Fay Bainbridge Park: Closed year-round.

~~((27))~~ (32) Fort Flagler State Park: Open ~~((May 15 through August 31))~~ January 1 through April 15 and July 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((28))~~ (33) Freeland County Park: Open ~~((March))~~ January 1 through May 15 only.

~~((29))~~ (34) Frye Cove County Park: Open May 1 through May 31 only.

~~((30))~~ (35) Fudge Point State Park: Closed year-round.

~~((31))~~ Garrison Bay: The tidelands at Guss Island and those tidelands at British Camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed year-round.

~~((32))~~ (36) Gertrude Island: All tidelands of Gertrude Island are closed year-round.

(37) Golden Gardens: Closed year-round.

~~((33))~~ (38) Graveyard Spit: Closed year-round.

~~((34))~~ (39) Guss Island: All tidelands of Guss Island are closed year-round.

(40) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.

~~((35))~~ (41) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((36))~~ (42) Howarth Park/Darlington Beach: Closed year-round.

~~((37))~~ (43) Illahee State Park: Open April 1 through July 31 only.

~~((38))~~ (44) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open August 15 through September ~~((45))~~ 30 only.

~~((39))~~ (45) Kayak Point County Park: Closed year-round.

~~((40))~~ (46) Kitsap Memorial State Park: Closed year-round.

~~((41))~~ (47) Kopachuck State Park: Open March 1 through July 31 only.

~~((42))~~ (48) Lent Landing (Port Washington Narrows): Closed year-round.

~~((43))~~ (49) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.

~~((44))~~ (50) Lincoln Park: Closed year-round.

~~((45))~~ (51) Lions Park (Bremerton): Closed year-round.

~~((46))~~ (52) Lofall: Closed year-round.

~~((47))~~ (53) Long Island Oyster Reserve (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

(54) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

(55) Long Point West: Closed year-round.

~~((48))~~ (56) Lower Roto Vista Park: Closed year-round.

~~((49))~~ (57) Manchester State Park: Closed year-round.

~~((50))~~ (58) March Point Recreation Area: Closed year-round.

~~((51))~~ (59) McNeil Island: All tidelands of McNeil Island are closed year-round.

(60) Meadowdale County Park: Closed year-round.

~~((52))~~ (61) Mee-Kwa-Mooks Park: Closed year-round.

~~((53))~~ (62) Monroe Landing: Closed year-round.

~~((54))~~ (63) Mukilteo ~~((State Park))~~: Closed year-round.

~~((55))~~ (64) Mystery Bay State Park: Open October 1 through April 30 only.

~~((56))~~ (65) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.

(66) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are open year-round.

(67) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((57))~~ (68) North Bay (Case Inlet): State-owned oyster reserves and contiguous state-owned tidelands south and east of the powerline crossing are open July 15 through December 31 only.

(69) North Beach County Park: Closed year-round.

~~((58))~~ ~~North Fort Lewis: Closed year-round.~~

~~(59))~~ (70) North Tabook Point: Closed year-round.

~~((60))~~ (71) Oak Bay County Park: Open May 1 through May 31 only.

~~((61))~~ (72) Oak Harbor: Closed year-round.

(73) Oak Harbor Beach Park: Closed year-round.

~~((62))~~ (74) Oak Harbor City Park: Closed year-round.

~~((63))~~ (75) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

(76) Old Mill County Park (Silverdale): Closed year-round.

~~((64))~~ (77) Olympia Shoal: Closed year-round.

~~((65))~~ Oyster Reserves: Puget Sound and Willapa Bay oyster reserves are closed year-round except as follows:

(a) North Bay: State-owned reserves and contiguous state-owned tidelands south and east of the powerline crossing are open May 1 through May 31 and September 1 through September 30 only.

(b) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

(c) Willapa Bay – Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.

~~(66))~~ (78) Pat Carey Vista Park: Closed year-round.

~~((67))~~ (79) Penrose Point State Park: Open March 1 through ~~(May 15))~~ April 30 only.

~~((68))~~ (80) Pitship Point: Closed year-round.

~~((69))~~ (81) Picnic Point County Park: Closed year-round.

~~((70))~~ (82) Pitt Island: Closed year-round.

~~((71))~~ (83) Pleasant Harbor State Park: Closed year-round.

~~((72))~~ (84) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((73))~~ (85) Point Defiance: Closed year-round.

~~((74))~~ (86) Point No Point South: Closed year-round.

~~((75))~~ (87) Point Whitney Tidelands (excluding Point Whitney Lagoon): Open January 1 through June 30 only.

~~((76))~~ (88) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((77))~~ (89) Port Gamble Heritage Park Tidelands: Open ~~(January 1 through June 30 only))~~ year-round.

~~((78))~~ (90) Port Gardner: Closed year-round.

~~((79))~~ (91) Port Townsend Ship Canal/Portage Beach: Open January 1 through ~~(July 31))~~ June 15 only.

~~((80))~~ (92) Post Point: Closed year-round.

~~((81))~~ (93) Potlatch DNR Tidelands: Open April 1 through ~~(July 15))~~ August 31 only.

~~((82))~~ (94) Potlatch State Park: Open April 1 through ~~(July 15))~~ August 31 only.

~~((83))~~ (95) Priest Point County Park: Closed year-round.

~~((84))~~ (96) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

~~((85))~~ (97) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open ~~(April 1 through December 31, daily from official sunrise to official sunset, only.~~

~~(86)~~ Reid Harbor – South Beach: Closed year-round.

~~(87))~~ year-round.

(98) Retsil: Closed year-round.

~~((88))~~ (99) Richmond Beach Saltwater Park: Closed year-round.

~~((89))~~ (100) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((90))~~ (101) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((91))~~ (102) Saltwater State Park: Closed year-round.

~~((92))~~ (103) Samish Bay: Public tidelands of Samish Bay between Scotts Point and an unnamed point on the shore (latitude N48.5745°; longitude W122.4440°) are closed year-round.

~~((93))~~ (104) Scenic Beach State Park: Closed year-round.

~~((94))~~ (105) Seahurst County Park: Closed year-round.

~~((95))~~ Semiahmoo: Closed year-round.

~~(96))~~ (106) Semiahmoo County Park: Closed year-round.

~~((97))~~ (107) Semiahmoo Marina: Closed year-round.

~~((98))~~ (108) Sequim Bay State Park: Open ~~(April)~~ January 1 through June 30 only.

~~((99))~~ (109) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((100))~~ (110) Silverdale Waterfront Park: Closed year-round.

~~((101))~~ (111) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((102))~~ (112) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area,

Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((103))~~ (113) South Carkeek Park: Closed year-round.

~~((104))~~ ~~South Gordon Point: Closed year-round.~~

~~(105))~~ (114) South Mukilteo ~~(Park)~~: Closed year-round.

~~((106))~~ (115) Southworth ~~(Ferry Dock)~~: Closed year-round.

~~((107))~~ (116) Spencer Spit State Park: Open March 1 through July 31 only.

~~((108))~~ (117) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

(118) Taylor Bay: Closed year-round.

~~((109))~~ (119) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

(120) Walker County Park: Closed year-round.

~~((110))~~ (121) West Pass Access: Closed year-round.

~~((111))~~ ~~Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and the Nahcotta Tidelands Interpretive Site are open only between boundary markers and posted signs.~~

~~(112))~~ (122) West Pen Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road open June 1 through December 31 only.

(123) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

(124) Wolfe Property State Park: Open January 1 through May 15 only.

~~((113))~~ (125) Woodard Bay Natural Resource Conservation Area: Closed year-round.

WSR 17-12-009

PROPOSED RULES

DEPARTMENT OF

FINANCIAL INSTITUTIONS

(Securities Division)

[Filed May 25, 2017, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-048.

Title of Rule and Other Identifying Information: The securities division is proposing to amend chapter 460-99C WAC to reflect amendments made to related federal rules, and to reflect recent statutory changes made to the state crowdfunding exemption codified in the Securities Act of Washington (originally codified at RCW 21.20.880 through 21.20.886).

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on July 11, 2017, at 10:00 a.m.

Date of Intended Adoption: July 12, 2017.

Submit Written Comments to: Michelle Webster, 150 Israel Road S.W., Tumwater, WA 98501, email michelle.webster@dfi.wa.gov, fax (360) 704-6491, by July 11, 2017.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, by July 10, 2017, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On October 26, 2016, the Securities and Exchange Commission adopted final rules amending exemptions to facilitate intrastate and regional securities offerings. See SEC Rulemaking Release No. 33-10238, titled "Exemptions to Facilitate Intrastate and Regional Securities Offerings," available at <https://www.sec.gov/rules/final/2016/33-10238.pdf>. Included in these amendments are changes to the federal intrastate offering exemption, on which the state crowdfunding exemption was based.

In addition, on April 25, 2017, Governor Inslee signed into law HB 1593, which amends the state crowdfunding exemption in the Securities Act of Washington. The house bill includes amendments to the reference to federal exemptions from registration, and repeals certain statutes related to crowdfunding portals.

Accordingly, the division is proposing to amend the crowdfunding rules in chapter 460-99C WAC to align with the recent changes in federal and state law, which will allow the rules to better facilitate capital formation. The proposed amendments would: Allow offerings under either federal Rule 147 or newly adopted federal Rule 147A; remove the requirement to use a portal; relax ongoing reporting requirements; expand the types of securities an issuer can offer under the crowdfunding rules; and exclude accredited investors from individual investment limits.

Reasons Supporting Proposal: As the rules contained in chapter 460-99C WAC implement the state crowdfunding exemption, the division proposes to amend these rules to ensure coordination of our rules to related federal amendments and to state statutory amendments, and to promote capital formation.

Statutory Authority for Adoption: RCW 21.20.450, 21.20.880.

Statute Being Implemented: RCW 21.20.880.

Rule is necessary because of federal law, 17 C.F.R. 230.147; 17 C.F.R. 230.147A.

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Webster, Esq., 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8736; Implementation: Gloria Papiez, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 requires an agency to prepare a small business economic impact statement if the proposed rule will impose more than minor costs on businesses in an industry. The proposed updates merely seek to better coordinate the amended proposed rules with existing federal law and changes to the Securities Act of Washington. As HB 1593 and correspond-

ing changes to chapter 460-99C WAC were intended to remove some of the complexities and expense associated with the original exemption and its rules, the proposed rules will reduce costs for businesses seeking to make an offering in reliance on the state crowdfunding exemption.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not an agency identified in RCW 34.05.-328.

May 25, 2017
Gloria Papiez
Director

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-010 Application. The rules in this chapter apply to the exemption from registration set forth in RCW 21.20.880 (crowdfunding exemption) for intrastate offerings of securities exempt under section 3 (a)(11) of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147, 17 C.F.R. 230.147 (crowdfunding exemption), or offers and sales of securities made under the federal exemption under section 28 of the federal Securities Act of 1933 and Securities and Exchange Commission Rule 147A, 17 C.F.R. 230.147A. The rules are intended to assist Washington start-up companies in accessing capital in small securities offerings through ~~((equity))~~ crowdfunding (crowdfunding offering). ~~((Issuers may work in collaboration with organizations that qualify as portals to develop business plans, complete disclosure documents, to seek out other technical assistance, and to submit filings in connection with a public securities offering. The exemption is))~~ The rules are intended to reduce the costs and burdens of raising ((equity)) capital for small businesses without sacrificing investor protection, and to maximize the amount of offering proceeds available to the issuer for investment in the business. Issuers eligible ((for this exemption)) to make an offering under the rules of this chapter shall use the Washington Crowdfunding Form as the disclosure document for the offering.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-020 Definitions. (1) "Escrow agent" means a bank, trust company, savings bank, national banking association, building and loan association, mortgage banker, credit union, insurance company, an escrow agent that is registered under chapter 18.44 RCW, or any other independent escrow agent acceptable to the director. The entity acting as the escrow agent must be independently audited or examined, in a manner acceptable to the director, on a regular basis.

(2) ~~(("Local associate development organization" means a Washington associate development organization as defined in RCW 43.330.010.~~

(3) ~~"Port district" means a port district formed under chapter 53.04 RCW.~~

(4) "Portal" means:

(a) A port district;

(b) A local associate development organization; or

~~((e) A broker-dealer registered with the division, that files offering materials with the director on behalf of issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 or that offers services to issuers as contemplated in RCW 21.20.883.~~

~~((5)))~~ "Promoter" means:

(a) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly, takes initiative in founding and organizing the business or enterprise of an issuer; or

(b) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, ten percent or more of any class of securities of the issuer or ten percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this subsection if such person does not otherwise take part in founding and organizing the enterprise.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-030 Availability. (1) ~~((The crowdfunding exemption in RCW 21.20.880 is))~~ These rules are intended to allow start-up companies to raise capital in small securities offerings to Washington residents. The rules in this chapter provide for the use of a simplified offering document designed to provide adequate disclosure to investors concerning the issuer, the securities offered, and the offering itself. Certain issuers may not be able to make adequate disclosure using the simplified Washington Crowdfunding Form and will, therefore, be unable to utilize ((this)) the exemption in RCW 21.20.880. The director finds that the Washington Crowdfunding Form is generally unsuitable for the following issuers and programs and that, therefore, they will not be allowed to utilize the crowdfunding exemption in RCW 21.20.880 unless written permission is obtained from the director based upon a showing that adequate disclosure can be made to investors using the Washington Crowdfunding Form:

(a) Holding companies, companies whose principal purpose is owning stock in, or supervising the management of, other companies;

(b) Investment companies subject to the Investment Company Act of 1940, including private equity funds;

(c) Portfolio companies, such as real estate investment trusts;

(d) Development stage companies that either have no specific business plan or purpose or have indicated that their business plan is to engage in merger or acquisition with an unidentified company or companies or other entity or person;

(e) Companies with complex capital structures;

(f) Blind pools;

(g) Commodity pools;

(h) Companies engaging in petroleum exploration or production or mining or other extractive industries;

(i) Equipment leasing programs; and

(j) Real estate programs, except entities formed to invest in a single, income-producing real estate property.

(2) The crowdfunding exemption in RCW 21.20.880 is available only to a corporation or centrally managed limited liability company or limited partnership that is resident and doing business within Washington at the time of any offer or sale of securities.

(3) The aggregate purchase price of all securities offered by an issuer in an offering made pursuant to the crowdfunding exemption in RCW 21.20.880 may not exceed one million dollars during any twelve-month period.

(4) The crowdfunding exemption is available only to equity or convertible debt securities offerings by the issuer of the securities and is not available to any affiliate of that issuer or to any other person for resale of the issuer's securities. ((The exemption is not available to debt offerings.

(5) For the purposes of this section, "equity" includes convertible preferred stock that is authorized and issued pursuant to charter documents that provide holders of the convertible preferred stock with the following protections:

(a) A provision restricting the payment of dividends on common stock or other outstanding securities of the issuer unless comparable dividends are paid on all convertible preferred stock based on the number of common shares into which they are convertible;

(b) A liquidation preference that provides that the holders of the convertible preferred stock are entitled to receive in preference to the holders of any outstanding common stock an amount that is at least equal to the amount at which the convertible preferred stock was purchased from the company plus any accrued but unpaid dividends;

(c) A conversion feature that allows holders of the convertible preferred stock to convert their shares into common stock of the company at any time at the conversion rate of at least one common share per share of convertible preferred stock. The preferred stock may either be participating or non-participating preferred stock;

(d) An appropriate antidilution provision providing for an adjustment of the number of shares into which such stock is convertible upon any stock split, stock dividend, or similar event. Such charter documents must also provide for a similar adjustment upon the issuance of additional common stock, preferred stock, or convertible debt by the issuer for consideration less than either the consideration paid to the company for the convertible preferred stock or the current market price for the common stock;

(e) Voting rights that provide that holders of convertible preferred stock shall be entitled to that number of votes on all matters presented to stockholders equal to the number of shares of common stock then issuable upon conversion of such shares;

(f) Voting rights that provide that as long as at least fifty percent of the convertible preferred stock issued remains outstanding, the approval by at least fifty percent of the voting interests in the outstanding shares of convertible preferred stock is required in connection with:

(i) The creation of any senior or pari passu security to the convertible preferred stock;

(ii) Any increase or decrease in the number of authorized securities;

(iii) The adoption or amendment of any incentive compensation plan;

(iv) Any adverse change to the rights, preferences, and privileges of the convertible preferred stock;

(v) Any redemption, repurchase, or other acquisition for value of any of the company's equity securities, other than from present or former consultants, directors, or employees pursuant to the terms of a stock option plan of the company;

(vi) Any material change in the company's line of business;

(vii) The merger, consolidation, or reorganization of the company with and into another company or entity, or of any other company or entity with and into the company;

(viii) The acquisition of a substantial portion of the assets or business of another company or entity or any other acquisition of material assets;

(ix) A sale of all or substantially all of the company's assets;

(x) Dissolution or liquidation of the company; and

(xi) Any other action materially adversely affecting the interests of the holders of the convertible preferred stock.))

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-040 Filing requirements. In addition to filing a properly completed Washington Crowdfunding Form, issuers seeking to rely on the crowdfunding exemption in RCW 21.20.880 shall file the following with the division:

(1) The filing fee as prescribed in WAC 460-99C-260;

(2) The issuer's articles of incorporation or other charter documents pursuant to which the issuer is organized ((~~in this state~~)) and all amendments thereto;

(3) The issuer's ((~~by laws~~)) bylaws or operating agreement, and all amendments thereto;

(4) A copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued or by managing members setting forth terms and or capital ownership interest to be issued;

(5) The issuer's financial statements as of the end of the issuer's most recent fiscal year, prepared in accordance with generally accepted accounting principles in the United States. If the date of the most recent fiscal year end is more than ninety days prior to the date of filing, the issuer must also submit an unaudited balance sheet and unaudited statement of income or operations prepared in accordance with generally accepted accounting principles in the United States for the issuer's most recent fiscal quarter;

(6) A copy of any agreements between the issuer and any portal;

(7) A copy of the escrow agreement between the issuer and an escrow agent located in the state of Washington in which offering proceeds will be deposited;

(8) A copy of any subscription agreement for the purchase of securities in this offering;

(9) A specimen or copy of the security to be offered, or other document evidencing the security, including required legends, if the issuer will issue physical certificates;

(10) A copy of all advertising and other materials directed to or to be furnished to investors in this offering; and

(11) Any other document reasonably requested by the director.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-140 Issuer compliance with investor limitations. Prior to accepting investor funds or an irrevocable commitment to invest, the issuer must obtain ~~((the following))~~, from each investor~~(:~~

~~(1) Evidence of residency of the investor in the state of Washington;~~

~~(2))~~, a copy of the Investor Certifications and Acknowledgements Form prescribed by the director that has been either manually or electronically signed by the investor.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-150 Aggregate investment limitations. (1) In each sale of securities in reliance on the crowdfunding exemption under RCW 21.20.880, the issuer must reasonably believe that the aggregate amount of securities sold to any investor, other than an "accredited investor" as that term is defined under the Securities Act of 1933, by one or more issuers offering or selling securities under the crowdfunding exemption during the twelve-month period preceding the date of the sale, together with the securities to be sold by the issuer to the investor, does not exceed the lesser of:

(a) Two thousand dollars or five percent of the annual income or net worth of the investor, whichever is greater, if either the annual income or the net worth of the investor is less than one hundred thousand dollars; or

(b) Ten percent of the annual income or net worth of the investor, as applicable, up to one hundred thousand dollars, if either the annual income or net worth of the investor is one hundred thousand dollars or more.

(2) For the purpose of determining the annual income of an investor under this section, the annual income of an investor shall be the investor's lowest annual net income out of the two most recently completed calendar or fiscal years, provided that the investor has a reasonable expectation of having at least that amount of net income in the current calendar or fiscal year.

(3) For the purpose of calculating the net worth of an investor under this section:

(a) The investor's primary residence shall not be included as an asset;

(b) Indebtedness that is secured by the investor's primary residence, up to the estimated fair market value of that primary residence at the time of the sale of securities, shall not be included as a liability (except that if the amount of such indebtedness outstanding at the time of the sale of securities exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability); and

(c) Indebtedness that is secured by the investor's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-170 Restrictions on resale. (1) Securities issued in reliance on the crowdfunding exemption in RCW 21.20.880 may not be transferred by the purchaser during a one-year period beginning on the date of purchase, unless the securities are transferred:

(a) To the issuer of the securities;

(b) To an accredited investor;

(c) Pursuant to an effective registration statement under the Securities Act of Washington, chapter 21.20 RCW; or

(d) To a member of the family of the purchaser or the equivalent, or in connection with the death or divorce or other similar circumstances, in the discretion of the director.

(2) Securities issued under the crowdfunding exemption in RCW 21.20.880 are also restricted by the requirements for the federal exemption from registration for intrastate offerings under section 3 (a)(11) of the federal Securities Act of 1933, 15 U.S.C. 77c (a)(11), and securities and exchange commission Rule 147, 17 C.F.R. 230.147, ~~((including restrictions on transfer of securities by the purchaser))~~ or the requirements for the federal exemption from registration for offerings under section 28 of the federal Securities Act of 1933, 15 U.S.C. 77z-3, and securities and exchange commission Rule 147A, 17 C.F.R. 230.147A, as applicable.

Note: Rules 147 and 147A generally provide~~(s)~~ that ~~((during the period in which securities that are part of an issue are being offered and sold by the issuer, and for a period of nine months from the date of last sale by the issuer of such securities, all resales of any part of the issue, by any person, shall be made only to persons residing within the state of Washington))~~ for a period of six months from the date of the sale by the issuer of a security pursuant to that rule, any resale of such security shall be made only to persons resident within the state or territory in which the issuer was resident at the time of the sale of the security by the issuer. Issuers are cautioned to carefully review and implement safeguards to ensure their compliance with the restrictions contained in Rule 147 or 147A, whichever is applicable, as well as the restrictions contained in RCW 21.20.880.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-180 ((Quarterly)) Annual reporting requirements. For as long as securities issued under the crowdfunding exemption in RCW 21.20.880 remain outstanding, the issuer shall provide ~~((a quarterly))~~ an annual report to the issuer's shareholders ~~((by making such report publicly accessible, free of charge, at the issuer's internet web site address within forty-five days of the end of each fiscal quarter))~~ no later than one hundred twenty days after the end of the fiscal year covered by the report. An issuer may provide the report to its shareholders by posting a copy of the report on the issuer's web site. The report must contain the following information:

(1) Executive officer and director compensation, including specifically the cash compensation earned by the executive officers and directors since the previous report and on an annual basis, and any bonuses or other compensation, including stock options or other rights to receive equity securities of the issuer or any affiliate of the issuer, received by them;

(2) The names of the issuer's owners of twenty percent or more of a class of outstanding securities, directors, officers, managing members and/or other persons occupying similar status or performing similar functions on behalf of the issuer;

(3) A brief analysis by management of the issuer of the business operations and financial condition of the issuer.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-230 Disqualification based on reporting failures. An issuer that has sold securities in reliance on RCW 21.20.880 and has not complied with the ((quarterly)) annual reporting requirements set forth in WAC 460-99C-180 during the twelve months immediately preceding the filing of the Washington Crowdfunding Form is ineligible to offer securities in reliance on RCW 21.20.880.

AMENDATORY SECTION (Amending WSR 14-21-001, filed 10/1/14, effective 11/1/14)

WAC 460-99C-240 Books and records—Inspection rights. (1) An issuer that has filed or is required to file under the crowdfunding exemption must keep and maintain written or electronic records relating to offers and sales of securities made in reliance on the crowdfunding exemption for at least six years following the termination of the offering. These records shall include:

(a) The issuer's Washington Crowdfunding Form and all exhibits, together with all amendments thereto;

(b) Evidence of residency from each investor in the offering, including written representation from each purchaser as to his or her residence;

(c) A manually or electronically signed copy of the Investor Certifications and Acknowledgements Form for each investor in the offering;

(d) Final sales reports filed with the director; and

(e) ((Quarterly)) Annual reports and all other communications with shareholders.

(2) The director may access, inspect, review, copy, and remove for inspection any records described in subsection (1) of this section.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 460-99C-160 Evidence of residency.

WAC 460-99C-200 Integration.

WAC 460-99C-210 Activities of portals.

WSR 17-12-040

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 1, 2017, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-06-010.

Title of Rule and Other Identifying Information: Chapter 308-83 WAC, Limousine services.

Hearing Location(s): Tumwater Timberland Library, 7023 New Market Street, Tumwater, WA 98501-6563, on July 17, 2017, at 2:00 p.m.

Date of Intended Adoption: July 18, 2017.

Submit Written Comments to: Jody Sisk, P.O. Box 9039, Olympia, WA 98507, email josisk@dol.wa.gov, fax (360) 586-6703, by July 14, 2017.

Assistance for Persons with Disabilities: Contact transportation services by July 14, 2017, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend rules to simplify chauffer [chauffeur] training requirements and to provide updates for consistency within industry and regulatory environments.

Reasons Supporting Proposal: Existing rules are inconsistent with the current regulatory and industry environment. Proposed changes will simplify requirements for chauffeur training, update sections for consistency, and improve carrier compliance by removing unnecessary barriers to businesses.

Statutory Authority for Adoption: Chapters 46.72A, 43.24, 46.04 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Sirena Walters, Olympia, Washington, (360) 664-6466; Implementation and Enforcement: Jody Sisk, Olympia, Washington, (360) 664-6466.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt per RCW 19.85.030 (1)(a) since it will impose no costs to businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

June 1, 2017

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-08-093, filed 4/5/16, effective 5/6/16)

WAC 308-83-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and chapter 46.72A RCW.

(1) "Amenities" means equipment or features added to a vehicle for the comfort or convenience of the occupants:

(a) "Standard amenities" means standard factory amenities normally found in passenger cars;

(b) "Nonstandard amenities" means amenities not normally found in passenger cars. These amenities may include, but are not limited to, a television, musical sound system, telephone, ice storage, refrigerator, power-operated dividers, or additional interior lighting.

(2) "Business license" or "limousine carrier business license" means a license issued under chapter 19.02 RCW, which contains an endorsement indicating the business to which the license is issued is authorized to provide limousine carrier services.

(3) "Business licensing service" means the program within the Washington state department of revenue authorized by chapter 19.02 RCW to issue the business license.

(4) "Business office" refers to the physical location where a limousine carrier business maintains its business records, as defined in WAC 308-83-130. The business office is the physical address on file with the business licensing service. The business office is the place where the business license is posted.

(5) "Business owner" means an individual, partnership, corporation, association, or other person(s), or group that holds a substantial interest in a limousine carrier business.

(6) "Chauffeur" means a person who operates a limousine.

(7) "Decal" means a sticker issued by the department to indicate the vehicle displaying the decal has a valid limousine vehicle certificate.

(8) "Department" means the Washington state department of licensing.

(9) "Dispatch log" refers to a paper or electronic record of assignments made to chauffeurs, and includes all information from the passenger manifest(s) for a given period, as well as the time each ride was arranged, ~~((passenger and carrier phone numbers used to make the arrangement,))~~ the limousine, and the chauffeur assigned to the customer. The dispatch log also documents passengers referred by or to other drivers or businesses.

(10) "Disqualification" means a prohibition against driving a limousine.

(11) "Drugs" are those substances as defined by RCW 69.04.009 including, but not limited to, those substances defined by 49 C.F.R. 40.3.

(12) "Limousine" has the same meaning as in RCW 46.04.274 and includes vehicles that meet one of the following definitions:

(a) "Stretch limousine" means an automobile with a seating capacity behind the driver of not less than four passengers and not more than fourteen passengers, and a maximum wheelbase of two hundred eighty-five inches. The wheelbase has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch limousine must be equipped with nonstandard amenities in the rear seating area.

(b) "Executive sedan" means a four-door sedan or crossover automobile having a seating capacity behind the driver of not more than three passengers, and a minimum wheelbase of one hundred fourteen and one-half inches or is designated as a large car under 40 C.F.R. 600.315-08, and has a manufacturer's suggested retail price when new of no less than thirty-five thousand dollars. The department may provide guidelines for qualified vehicles on our web site. An executive sedan must at a minimum be equipped with standard amenities, and the wheelbase may not be altered.

(c) "Executive van" means a van or minivan, having a seating capacity behind the driver of not less than seven passengers and not more than fourteen passengers.

(d) "Classic car" means a fine or distinctive, American or foreign automobile that is thirty years old or older.

(e) "Executive sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than three passengers and not more than six passengers, and a minimum wheelbase of one hundred sixteen inches that has not been altered.

(f) "Stretch sport utility vehicle" means a sport utility vehicle with a seating capacity behind the driver of not less than four and not more than fourteen passengers, and a maximum wheelbase of three hundred twenty-five inches that has been factory or otherwise altered beyond the original manufacturer's specifications and meets standards of the United States Department of Transportation. A stretch sport utility vehicle must be equipped with nonstandard amenities in the rear seating area.

(13) "Limousine carrier" or "carrier" is a business licensed, or required to be licensed by the department to provide limousine services, in accordance with RCW 46.04.276 and department regulations.

(14) "Nonresident limousine carrier" refers to a limousine carrier or vehicle owner whose place of business is not in Washington state ~~((, and does not have a valid Washington state limousine carrier license))~~.

(15) "Operate" refers to a person engaging in the business of a limousine and includes driving, occupying, or otherwise using a limousine to wait for, pick up, transport, or drop off a passenger for compensation. Specific activities included in the definition of operating a limousine are contained in WAC 308-83-210.

(16) "Passenger capacity" means the maximum number of passengers that may be carried in a vehicle as determined by using the information found on the label that is required by the United States Department of Transportation to be affixed to the vehicle under 49 C.F.R., Parts 567 and 568. This label must be affixed to the vehicle in accordance to 49 C.F.R., Parts 567 and 568. In absence of the label, a member of the Washington state patrol or the department may determine the passenger capacity upon visual inspection of the vehicle.

(17) "Passenger manifest" refers to a daily record that verifies prearranged trips. Specific requirements for the passenger manifest are contained in WAC 308-83-200.

(18) "Person" or "persons" means an individual, a corporation, association, sole proprietorship, joint stock association, partnership, limited liability partnership, limited liability company, or other association of people organized to conduct business. It also includes their lessees, trustees, or receivers.

(19) "Prearranged" refers to a customer or customer's agent having secured and agreed to the services and fare. Prearranged means the agreement was made prior to the time of departure and at a place different than the place of departure.

(20) "Public highway" includes every public street, road, or highway in this state.

(21) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, train-

ing, and continuing education requirements of 49 C.F.R. 40.281.

(22) "Unified business identifier" or "UBI" is a nine digit number that registers a business with several state agencies and allows an entity to do business in Washington state. It is sometimes called a tax registration number, a business registration number, or a business license number.

(23) "Vehicle certificate" is a document issued by the department, indicating that the vehicle is registered as a limousine. The vehicle certificate must be carried in the limousine at all times. The vehicle certificate is not the vehicle registration document.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-020 Fees. (1) The limousine fees authorized in chapter 46.72A RCW are:

| | |
|--|----------|
| Limousine carrier business license application | \$350.00 |
| Limousine carrier business license renewal | 350.00 |
| Vehicle certificate | 75.00 |
| Vehicle certificate renewal | 75.00 |
| Change of vehicle certificate | 20.00 |
| Duplicate vehicle certificate | 20.00 |
| ((Training course application)) <u>Vehicle inspection</u> | 25.00 |

(2) Applications and renewals submitted to the business licensing service must also include the fees authorized in RCW 19.02.075 and 19.02.085.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-100 License. (1) Applicants for a limousine carrier business license must apply through business licensing service. The department will issue a limousine carrier license only to a person who meets the requirements established in chapter 46.72A RCW and this chapter.

(2) All applications for a limousine carrier business license must be on a form approved by the business license service, and include the appropriate addendum form, chauffeur certification addendum, vehicle registration, vehicle inspection report and insurance documents. The application must be accompanied by the appropriate filing fee, as listed in WAC 308-83-020 and RCW 19.02.075.

(3) A limousine carrier business license may not be leased, assigned, or otherwise transferred.

(4) A limousine carrier business license expires annually. The department will charge additional fees when a limousine carrier business license is renewed after the expiration date, as provided under RCW 19.02.085.

(5) A limousine carrier must have a valid limousine license before it can advertise, sell, or provide limousine services.

(6) ~~((A limousine carrier conducting business under a name other than the business owner's full legal name must register its business name as a trade name with business~~

~~licensing service and pay the fees as required under WAC 308-300-230 and 308-300-280.~~

~~(7))~~ The limousine carrier business license must be posted in a conspicuous place at the business office.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-105 Nonresident limousine carrier. Nonresident limousine carrier business owners are subject to the same requirements and restrictions that apply to resident limousine carriers. Nonresident owners may not pick up passengers in Washington state without a valid Washington state limousine carrier business license and Washington state vehicle certificate. The department will accept nonresident vehicle registrations and insurance certificates, provided the insurance company is approved by the Washington state office of the insurance commissioner. The coverage must be valid in the state of Washington and meet, at least, the levels established in WAC 308-83-115.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-125 Leased vehicles. (1) Prior to using a leased or rented vehicle as a limousine, the lessee must provide the department with a release-of-interest letter from the lessor.

(2) A leased or rented limousine must meet all of the requirements for a limousine vehicle certificate, as described in this chapter. ~~((The department will issue a short term, or special needs vehicle certificate that the business may use for a consecutive thirty-day period during the following consecutive four months or upon expiration of the business' limousine carrier license, whichever end date occurs sooner. The department may approve a rental or lease of less than thirty calendar days. The department may waive the required vehicle inspection for these short-term rentals or leases. However, these vehicles must be in such a condition, regarding safety, legality and appearance, as to be able to pass a WSP limousine vehicle inspection.))~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-130 Records. (1) Each limousine carrier business must maintain business records, which must include, at a minimum:

- (a) Vehicle inspection reports;
- (b) Vehicle ownership registration records, including copies of records required for rental or leased vehicles;
- (c) The certificate of vehicle insurance;
- (d) Chauffeur records, as identified in WAC 308-83-140;
- (e) ~~((Records of advertising activities including, but not limited to, any contracts entered into with companies that provide advertising services;~~
- ~~(f))~~ (f) Passenger manifests;
- ~~((g))~~ (g) Dispatch logs;
- ~~((h))~~ (h) Contracts for related services; and
- ~~((i))~~ (i) Customer payment records(;

~~(j) Vehicle maintenance records;~~
~~(k) Collision and injury reports; and~~
~~(l) Written customer comments or complaints received by the business, and responses to the complaints)).~~

(2) A limousine carrier (~~(business)~~) must maintain records required under this section for at least three years from the date they are created or from the date they become obsolete, whichever date is later, with the exception of records required by subsection (1)(~~(f)~~) ~~(e)~~ and ~~((g)) (f) of this section.~~ Records required under subsection (1)(~~(f)~~) ~~(e)~~ and ~~((g)) (f) of this section~~ must be maintained for at least one year from the date they are created.

(3) Upon the sale or transfer of a limousine carrier business, the business records must be transferred to the new owner and become the property and responsibility of the new owner. The new owner must retain these records for at least one year after sale or transfer.

(4) All business records must be available for inspection by department representatives or enforcement officers at the limousine (~~(carriers's)~~) carriers business office.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-135 Audit of carrier records. (1) The department may request a carrier to provide records required by chapter 46.72A RCW and this chapter for department inspection for the purpose of determining compliance with this chapter.

(a) The department may request the business owner send copies of records to the department within fourteen calendar days of the request; or

(b) A department representative may examine the records at the carrier's business office on record with the department, or at a mutually agreed upon location. The records will be examined at a mutually agreed upon place, date and time that is within three business days of the department's request.

(2) Failure to provide requested records to the department shall be subject to administrative action under chapter 18.235 RCW.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-140 Verifying chauffeur qualifications.

(1) A limousine carrier must obtain the information listed below and required under RCW 46.72A.090 for each of its chauffeurs. As provided under subsection (2)(e), (g), and (h) of this section, additional documentation will be required for all chauffeurs six months after the effective date of these rules.

(2) The documentation for each chauffeur must include:

(a) A clear photocopy of both front and back of the chauffeur's valid Washington state driver license;

(b) ~~((A certificate of completed chauffeur training signed by a training provider approved by the department;~~

~~(c) Test scores for both the written and driving portions of the chauffeur training certified by the training provider;~~

~~(d)) Documentation verifying that the chauffeur has passed a four (or more) hour National Safety Council Defensive Driving (NSCDD) course;~~

~~(c) The results of a criminal background check obtained through the Washington state patrol;~~

~~((e) A medical certificate, from a licensed physician, validating the chauffeur's fitness to drive a limousine, using department examination criteria on a two-year renewal cycle. Six months after the effective date of this rule, the medical certificate must be a) (d) A U.S. Department of Transportation Medical Examiner's Certificate completed within ((the previous)) ninety ((calendar)) days prior to hire by an examiner meeting the U.S. Department of Transportation standards under 49 C.F.R. 391.41-391.49. ((For chauffeurs with an approved medical examination on file, this requirement will be effective at the time of renewal)) Validating the chauffeur's fitness to operate a limousine, in accordance with a two-year renewal cycle;~~

~~((f)) (e) An employment record driving abstract issued by the department which is not more than sixty days old at the time of hire. If the chauffeur has resided in another state within the past five years, the chauffeur must also provide a complete driving record from the previous state(s) of residence;~~

~~((g) Six months after the effective date of this rule,) (f) Documentation must include a drug test report obtained within the previous ninety days from a facility meeting the U.S. Department of Transportation standards under 49 C.F.R. 40;~~

~~((h)) (g) Six months after the effective date of this rule, documentation must include a report or certificate from a drug testing facility meeting the U.S. Department of Transportation standards under 49 C.F.R. 382.305 stating that the chauffeur is participating in a random testing program. The carrier must obtain an updated report each year before recertifying the chauffeur with the annual license renewal application under WAC 308-83-145(2).~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-145 Certifying chauffeur qualifications. (1) Any person who is hired, assumes the duties of, or acts as a chauffeur either full-time, part-time, or in an intermittent hire capacity in Washington state, including a business owner, must meet the criteria listed in RCW 46.72A.-090.

(2) Before a chauffeur operates a limousine, the limousine carrier must submit to the business licensing service a signed statement on a form provided by the department certifying that the carrier possesses the required documentation under WAC 308-83-140. ~~((The carrier must also submit a copy of both the front and back of the chauffeur's valid Washington state driver license.))~~ With each annual ~~((carrier business))~~ renewal application, the limousine carrier must submit to the business licensing service an updated chauffeur certification statement listing each chauffeur employed by or driving for the carrier.

(3) Failure to submit a chauffeur's name and required identification on the certification statement form will result in

the removal of a chauffeur from the carrier's limousine license record.

(4) No limousine carrier may allow, permit, or authorize a driver to drive a limousine motor vehicle during any period:

(a) In which the carrier does not have the required proof of all items under WAC 308-83-140; or

(b) In which the chauffeur has a driver license suspended, revoked, or canceled by the state, has lost the privilege to drive a limousine in this state, or has been disqualified from driving a limousine(~~(~~or~~~~);

~~(c) In which the chauffeur has more than one driver license).~~

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-150 Disqualification of chauffeurs. As provided under RCW 46.72A.100, a person may be disqualified from driving as a chauffeur and the director may impose any of the sanctions specified in RCW 18.235.110 on the limousine carrier if the carrier employs someone whose documentation indicates that person is not qualified. Disqualification by the limousine carrier or the department is warranted if any of the following is true:

(1) A chauffeur fails to provide proof of meeting all of the criteria in RCW 46.72A.090 in the form and format described in WAC 308-83-140;

(2) A chauffeur is convicted of, or is found to have committed in the previous two years, two or more serious traffic violations, as defined under RCW 46.25.010(~~(+))~~) and WAC 308-100-130, while driving a motor vehicle of any kind;

(3) The chauffeur has had, within the previous five years, a conviction of a crime pertaining to:

(a) Prostitution;

(b) Gambling;

(c) Physical violence;

(d) Use of a machine gun in a felony (RCW 9.41.225);

(e) Felonies not defined by Title 9A RCW, if the maximum sentence of imprisonment authorized by law upon the first conviction of such felony is twenty years or more (RCW 9.94A.035);

(f) Criminal attempt when the crime attempted is murder in the first, murder in the second, or arson in the first (RCW 9A.28.020);

(g) Criminal conspiracy when the object of the conspiratorial agreement is murder in the first (RCW 9A.28.040);

(h) Murder in the first (RCW 9A.32.030);

(i) Murder in the second (RCW 9A.32.050);

(j) Homicide by abuse (RCW 9A.32.055);

(k) Manslaughter in the first (RCW 9A.32.060);

(l) Assault in the first (RCW 9A.36.011);

(m) Assault of a child in the first (RCW 9A.36.120);

(n) Kidnapping in the first (RCW 9A.40.020);

(o) Rape in the first (RCW 9A.44.040);

(p) Rape in the second (RCW 9A.44.050);

(q) Rape of a child in the first (RCW 9A.44.073);

(r) Rape of a child in the second (RCW 9A.44.076);

(s) Child molestation in the first (RCW 9A.44.083);

(t) Arson in the first (RCW 9A.48.020);

(u) Burglary in the first (RCW 9A.52.020);

(v) Robbery in the first (RCW 9A.56.200);

(w) Rendering criminal assistance in the first if to a person who has committed or is being sought for murder in the first or any class A felony or equivalent juvenile offense (RCW 9A.76.070);

(x) Bail jumping if the person was held for, charged with, or convicted of murder in the first (RCW 9A.76.170);

(y) Leading organized crime as defined under RCW 9A.82.060 (1)(a);

(z) Malicious placement of an explosive in the first (RCW 70.74.270);

(aa) Malicious explosion of a substance in the first (RCW 70.74.280);

(bb) Malicious explosion of a substance in the second (RCW 70.74.280);

(cc) Homicide by watercraft (RCW 79A.60.050); or

(dd) Any crime directly related to the occupation of chauffeur, including: Crimes concerning honesty and integrity including, but not limited to, fraud, larceny, burglary, and extortion;

(4) A chauffeur is a registered sex offender;

(5) A chauffeur has been found to have exhibited past conduct in driving or operating a (~~(limousine))~~ vehicle that would lead the director to reasonably conclude that the applicant will not comply with the provisions of the chapter related to driver and operator conduct and the safe operation of the vehicle;

(6) The medical examiner's certificate is expired or is incomplete or the chauffeur's physical fitness has been called into question; or

(7) A report has been received by the department under RCW 46.72A.090 that the chauffeur has received a verified positive drug test or positive alcohol confirmation test as part of the testing program conducted under 49 C.F.R. 40. A report that a chauffeur has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this section.

AMENDATORY SECTION (Amending WSR 12-02-035, filed 12/29/11, effective 2/1/12)

WAC 308-83-200 Prearrangement. (1) Chauffeurs must have a passenger manifest in their possession to operate a limousine:

(a) The passenger manifest must be available for immediate examination upon request from an enforcement officer. If the chauffeur is inside the limousine, the manifest must be inside the limousine. If the chauffeur is outside the limousine, the manifest must be carried by the chauffeur;

(b) The chauffeur must document with the limousine carrier business office, and note on the passenger manifest the times, to the hour and minute, when the chauffeur is on duty;

(c) Trips must be prearranged at least fifteen minutes before the passenger is scheduled to be picked up unless dispatched from a limousine carrier's business office.

(2) The passenger manifest may be a paper or electronic record and must contain information to verify prearrange-

ment of limousine services. The records must be in English. The manifest must contain:

- (a) The full name and daytime telephone number for the person who prearranged the limousine service;
- (b) The time, date, and location where the passenger requested to be picked up;
- (c) The destination point; and
- (d) If payment was due or was prepaid.
- (3) The manifest is to cover all rides that have been scheduled up to that point for that day.
- (4) A limousine carrier must ensure that chauffeurs operating limousines do not:
 - (a) Pick up persons who have not prearranged services;
 - (b) Load passengers or their luggage into their vehicle without having a passenger manifest that includes the customer information for that passenger;
 - (c) Ask persons on the street if they want to hire the limousine or try to attract customers for immediate services;
 - (d) Use a third-party to provide passengers for them as a substitute for prearranging the service. This section does not preclude hotels from contracting with limousine carriers to prearrange rides for guests;
 - (e) Stand near doors or walkways to businesses or transportation centers in a manner so that persons must walk around them to enter or exit;
 - (f) Touch members of the public or touch their luggage or packages without consent; or
 - (g) ~~((Park and leave the limousine in a designated passenger load zone or))~~ Overstay the time limit within a passenger load zone.

~~((PART 4~~

~~TRAINING PROVIDERS))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 308-83-300 Training course.
- WAC 308-83-310 Training course approval withdrawn.
- WAC 308-83-320 Training records.

WSR 17-12-053

PROPOSED RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Filed June 2, 2017, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-01-101.

Title of Rule and Other Identifying Information: The Washington utilities and transportation commission has been engaged in this rule making to consider amendments to chapter 480-30 WAC, governing passenger transportation compa-

nies. At this time, the commission proposes additional rules, modifications to existing rules and repeal of rules.

Hearing Location(s): Commission Hearing Room 206, 2nd Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on July 20, 2017, at 1 p.m.

Date of Intended Adoption: July 20, 2017.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, email records@utc.wa.gov (please include Docket # TC-161262 in your comments), fax (360) 586-1150, by July 5, 2017.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by July 18, 2017, TTY (360) 586-8230 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission proposes to amend chapter 480-30 WAC to remove barriers to passenger transportation companies being able to effectively compete in the current passenger transportation marketplace while maintaining safety and consumer protection standards.

Reasons Supporting Proposal: The commission adopted an extensive revision of chapter 480-30 WAC in 2006. In 2013, the commission adopted amendments to update regulations governing the criteria and process for granting applications for certificates, and to allow flexibility in rate setting. The 2013 amendments were intended to address changes in the transportation market. Since that time the transportation options available to individuals traveling to and from airports and other destinations have increased beyond even what was available in 2013. The commission believes the proposed rules will give certificated passenger transportation companies additional flexibility to compete in the marketplace without jeopardizing passenger safety or consumer protection.

Statutory Authority for Adoption: RCW 81.04.160, 81.68.030, 81.70.270.

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

Name of Proponent: [Utilities and transportation commission], governmental.

Name of Agency Personnel Responsible for Drafting: Chris Rose, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1303; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, (360) 664-1116.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

I. Introduction: The utilities and transportation commission (commission) initiated a rule making in December 2016, in Docket TC-161262, to consider amendments to chapter 480-30 WAC.

The commission requested and received two sets of comments on draft proposed rules from stakeholders and held two stakeholder workshops. The commission is ready to publish proposed rules. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with chap-

ter 19.85 RCW, or explain why an SBEIS was not prepared. The commission has prepared this SBEIS in compliance with the requirements.

II. SBEIS Requirements: The Regulatory Fairness Act, codified in chapter 19.85 RCW, provides that an agency must conduct an SBEIS "if the proposed rule will impose more than minor costs on businesses in an industry." RCW 19.85.030. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rule making on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs fifty or fewer employees. Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.-030(2), consider means to minimize the costs imposed on small businesses.

III. SBEIS Evaluation Procedure: On March 31, 2017, the commission mailed a notice to all stakeholders interested in the commission's rule making, providing a copy of the draft rules and an opportunity to respond to an SBEIS questionnaire. The notice requested that regulated companies provide information about possible cost impacts of the draft rules with specific information for each rule that the company identified as causing an impact. Only Shuttle Express responded to the questionnaire.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the commission must determine the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue. Shuttle Express quantified the cost per employee for one proposed requirement, but did not provide any other quantitative data. Although the survey produced only limited data, the commission has extensive experience with passenger transportation companies and the stakeholders have communicated their views on the impacts of the draft rules throughout this process.

IV. Results of the Analysis: Only one company responded to the SBEIS questionnaire. Shuttle Express expressed concerns regarding the cost of complying with proposed WAC 480-30-222(3) (records of inspections, repair and maintenance of vehicles), WAC 480-30-222(4) (driver qualifications), and amendments to WAC 480-30-231 (vehicle and driver identification). This analysis will discuss the issues raised by the company in the pertinent section analysis.

Proposed Rules Authorizing Use of Contractors: The repeal of WAC 480-30-213, the adoption of WAC 480-30-022, and several conforming amendments to other rules in the chapter will allow companies to contract for vehicles or drivers or both. Shuttle Express requested the opportunity to use vehicles and drivers through contracts to reduce the costs caused by owning or leasing vehicles or employing drivers. None of the companies provided data to demonstrate the cost reduction anticipated from using contractors, but the commission is willing to provide the companies additional flexibility to reduce costs. Regulations proposed to be amended that remove impediments to contracting for vehicles or drivers are: WAC 480-30-056, 480-30-141, 480-30-166, 480-30-171, 480-30-191, 480-30-216(7), 480-30-236, and 480-30-456.

Proposed Rule Establishing Requirements for Vehicles with a Capacity of Seven or Fewer Passengers (including the

driver) and their Drivers: The commission proposes WAC 480-30-222 to tailor safety regulations for vehicles and drivers when the vehicle is designed by the manufacturer to hold seven or fewer passengers. Under existing WAC 480-30-221, passenger transportation companies must comply with the vehicle and driver requirements set forth in federal regulations. The federal regulations, however, were aimed at regulating services provided by vehicles designed or used to transport more than eight passengers (including the driver).

Shuttle Express expressed concerns that proposed WAC 480-30-222 could increase company costs, specifically the potential cost of recordkeeping and the cost of qualifying drivers to be employees or contractors. The commission has revised the proposed rules in response to Shuttle Express' concerns. With respect to recordkeeping, the commission proposes that records may be kept by either the certificated company or its contractor. A certificated company is only required to make records available to inspectors within forty-eight hours of a request. As for driver qualifications, the commission revised the rule to clarify that a company must verify and document the qualifications of the drivers only before initially allowing the driver to provide service and annually thereafter, rather than prior to each trip, which gave Shuttle Express concern.

In the interest of a complete analysis, the commission compared the requirements proposed in WAC 480-30-222 to the requirements of the applicable federal regulations and the state and local regulations that currently apply to those vehicles and drivers that will most likely be used by companies under contract. Under federal regulations adopted by reference by the commission, every vehicle and every driver used by a company must meet all of the federal regulations referenced. Therefore, in terms of "impact," only new requirements that are more rigorous than federal rules are relevant.

- WAC 480-30-222(1) requires vehicles used by a company to be inspected, and certified as safe, annually by a mechanic who has passed the experience and testing requirements of the National Institute for Automotive Service Excellence (NIASE). This provision is comparable to 49 C.F.R. Part 396.17, which requires annual inspections by a qualified inspector. Under the federal regulations, an inspector must meet the requirements of 49 C.F.R. Part 396.19, including completion of a federal or state sponsored training program or holding an inspector certificate from a state or Canadian province. The ASE tests are online and cost \$39 each. The registration fee for any combination of tests is \$36. So, for example, to test in all eight areas of automobile/SUV/light truck service costs \$36 to register and \$312 for the examinations. The cost of qualifying a mechanic who conducts inspections is, however, necessarily a cost for the company. The rule does not require the inspectors to be employed by the company. The company can use any automotive repair shop or other business that employs mechanics who have met the certification requirements of the NIASE. In that case, the "cost" of the mechanic requirement would be spread among all customers of the mechanic. As an example of local regulatory requirements, the proposed standard for mechanics inspecting

vehicles is the same as for for-hire vehicles regulated by King County under K.C.C. 6.64.010(c).

- WAC 480-30-222(2) requires daily vehicle inspections by drivers and documentation of the results. 49 C.F.R. Part 396.11 and 13, which are the current requirement for vehicles covered by the new regulation, require the same.
- WAC 480-30-222(3) requires records of inspection, repair and maintenance to be kept for three years. The proposed rule responds to the Shuttle Express concern by allowing the records related to vehicles used through a contractor to be kept by the contractor. The requirement under the federal regulations, 49 C.F.R. 396.3, requires records to be maintained for a period of one year and for six months after the motor vehicle leaves the motor carrier's control; however the standard for recordkeeping for vehicles regulated under this proposed rule is the same as for for-hire vehicles regulated by King County under K.C.C.6.64.360(B).
- WAC 480-30-222(4) establishes requirements for drivers of vehicles with a capacity of seven or fewer passengers (including the driver). The drivers may be employed by the certificated company or may be provided through contract. The most likely type of drivers provided through contract will be limousine chauffeurs regulated by the department of licensing (DOL) or for-hire drivers regulated at the local level.
 - o Under WAC 480-30-222 (4)(a) all drivers must be licensed to drive in Washington. That is the current requirement in federal, state and local regulations.
 - o Under WAC 480-30-222 (4)(b) all drivers must be safe drivers, as demonstrated by a complete driving record from DOL and any other state in which the driver resided within the past five years. The current standard, 49 C.F.R. Part 391.23, requires a company to obtain driving records for its drivers within thirty days of employment from each state in which the driver held a license within the previous three years. The company must make the same inquiry every year thereafter under 49 C.F.R. Part 391.25. WAC 308-83-140 (2)(f) requires licensed limousine carriers to obtain a DOL driving record for its chauffeurs at the time of hire, and if the chauffeur has resided in another state within the past five years, a complete driving record from the previous state(s) of residence. As an example for for-hire drivers, King County, under K.C.C. 6.64.590, requires a copy of the current driver abstract from DOL. The cost of a DOL complete driving record is \$13. Companies can minimize costs by coordinating with contractors to conduct their "annual" review on a cycle that matches the contractor's compliance with other regulations, so that the contractor can provide copies of documents it has obtained in complying with its own licensing requirements.
 - o Under WAC 480-30-222 (4)(c) all drivers must submit to a state (Washington state patrol) criminal background check. The background check currently costs \$16. 49 C.F.R. Part 391.21, the current requirement, does not require a background check:
 - It relies on the driver to report all violations of motor vehicle laws or ordinances at the time of application that resulted in convictions and at all times subsequently. DOL requires a state background check for limousine chauffeurs at the time of initial certification by a limousine carrier under WAC 308-83-140 (2)(d). King County, as an example, requires a background check under K.C.C. 6.64.520 that can be a state and federal background check or a background check that include[s] local, state and national databases obtained from an approved third party. The proposed rules removed from the draft rules a requirement for a federal background check to be consistent with the limousine chauffeur requirement.
 - o Under WAC 480-30-222 (4)(d), a company cannot employ or contract with a driver if the driver has been required to register as a sex offender or been convicted of a sex offense or kidnapping a minor. The federal regulations do not have a similar provision, but DOL's regulation WAC 308-83-150 includes rape and child molestation and being registered as a sex offender among the grounds for disqualifying a chauffeur. K.C.C. 6.64.600 also lists being a registered sex offender or being convicted of a sex offense or kidnapping offense against a minor as grounds for denial of a permit.
 - o Under WAC 480-30-222 (4)(e), a driver must be medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners and be physically and mentally qualified to operate a passenger carrying vehicle for compensation. The current regulation, 49 C.F.R. Part 391.41, requires the same, so the proposed rule does not increase costs.
 - o Under WAC 480-30-222 (4)(f), the driver must have passed a defensive driving course certified by the National Safety Council (NSC) or passed an equivalent course approved by the commission. NSC offers courses in defensive driving both online and in person. The online course (which would meet the requirement) is a four hour course and costs \$41.25. The driver has the option of taking an in person course of either four or eight hours and the cost varies depending on the venue. The federal regulations do not specifically require a defensive driving course, but 49 C.F.R. Part 391.11 (a)(8) and 391.33 together require successful completion of a road test or its equivalent. Under 49 C.F.R. Part 391.11 (a)(3), the employer must determine from the application for employment whether the driver can safely operate the type of commercial motor vehicle they will be driving. DOL requires chauffeur training in WAC 308-83-300 (1)(a), including the NSC defensive driving course.
- WAC 480-30-222(5) requires the company to verify and document the driver's qualifications prior to initially allowing the driver to operate a vehicle, and every twelve months thereafter. Federal regulations in 49 C.F.R. Part 391.21 and 23 require an extensive driver application

process, but afterwards rely on self-reporting by drivers, except for an annual check of driving records under 49 C.F.R. Part 391.25. Under WAC 308-83-145 limousine carriers must certify to DOL that the chauffeurs named in its application or annual renewal meet the requirements of RCW 46.72A.090. King County requires an initial permit and annual renewals under K.C.C. 6.64.510.

- WAC 480-30-222(6) establishes maximum driving hours based on King County's ordinance K.C.C. 6.64.660(G). The standard is less rigorous than currently required under 49 C.F.R. 395.5.
- The requirements in WAC 480-30-222(7) related to recordkeeping regarding driver qualifications and accidents are the same as currently required under 49 C.F.R. Part 391.51 and 390.15.
- WAC 480-30-222(8), related to placing a vehicle or driver out-of-service replaces the current criteria under WAC 480-30-221 with one tailored to issues appropriate to the standards in WAC 480-30-222 and does not impose any additional costs.

Proposed Amendments to Rule Regarding Identification of Vehicles and Drivers: WAC 480-30-231 establishes the requirements for vehicle and driver identification. The draft rules initially included an amendment that would allow vehicles not owned by the certificated company to be marked with a temporary, rather than permanent, sign. Even though the use of a contractor would be voluntary, Shuttle Express expressed concern about the cost and legality of requiring vehicle markings by contractors. Shuttle Express pointed out that the laws governing limousines, which might be used under a contract, do not allow the vehicle to have "markings" on the vehicle. Shuttle Express asserted it would not be able to contract with limousine carriers if WAC 480-30-231 continued to require identification on the vehicle. It also stated that temporary signs would have a cost and if they were dislodged from the vehicle, a potential expense in the form of accident liability. The commission consulted with DOL and changed the language in the proposed rule to state that a vehicle does not have to be marked if other applicable law prohibits such markings. In those circumstances the driver of the vehicle must display a sign showing the name of the certificated company and the name of the passenger after the driver leaves the vehicle to greet the customer. A simple hand-held sign is inexpensive compared to a sign that attaches to a vehicle. Hand-held signs are also commonly used by limousine chauffeurs picking up passengers at the airport and other facilities.

Proposed Amendments Related to Tariffs: The commission also proposes a paperwork reduction for companies by eliminating the requirement that every vehicle carry a copy of the company's tariff (which documents the company's rates, schedule, and rules of service), which can be voluminous, and the requirement that every vehicle carry a copy of any notice of a change in the tariff. The companies have not quantified the cost-savings of these amendments.

V. Proposed Rules that May Create Costs: The commission's analysis shows that the proposed rules provide companies an opportunity to reduce the cost of doing business (use of contractors, for example), or at least set require-

ments that are equivalent to those currently in force for the companies or the businesses with which they would most likely contract. The additional costs per employee or contractor resulting from the proposed rules, such as the \$16 for a background check, \$13 for a driver record, or \$41.25 for a defensive driving course, are minor. Companies, moreover, can minimize or avoid those costs related to the use of contractors by effective coordination with the contractor.

VI. Summary of Findings: The commission finds that the proposed rule changes will not impose more than minor costs on passenger transportation companies. To the contrary, the proposed rules are more likely to reduce costs for all passenger transportation companies.

VII. Summary of Mitigation: The commission's analysis supports a finding of no disproportionate economic impacts to small businesses and the commission's proposed rules minimize the costs for all companies. The commission revised the requirements in the initial draft for verification and document[ation] of driver qualifications to clarify that the process is not required before each trip. The commission also revised the recordkeeping requirements to allow the contractor to maintain the required records, rather than mandating that the company maintain a duplicate set. In addition, the commission removed the requirement for a federal background check to eliminate the cost and delay involved and to be consistent with the requirements for chauffeurs.

VIII. Conclusion: Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry.

The commission has analyzed all information collected throughout the rule-making process and concludes the proposed rules will not impose more than minor costs on passenger transportation companies and will not have a disproportionate impact on small businesses.

A copy of the statement may be obtained by contacting Washington Utilities and Transportation Commission, Records Center Docket # TC-161262, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, email records@utc.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the Washington utilities and transportation commission as it is not one of the listed agencies in RCW 34.05.328 (5)(a)(i).

June 2, 2017
Steven V. King
Executive Director and Secretary

NEW SECTION

WAC 480-30-022 Contractors. A passenger transportation company may contract with a person or company to perform tasks that are subject to the rules under this chapter. If the passenger transportation company's contractor or any of its subcontractors engages in conduct that violates any federal, state, or local law or regulation, or any commission order, while performing tasks under the contract, the passenger transportation company is subject to commission enforce-

ment actions as if the passenger transportation company itself engaged in that conduct. The passenger transportation company is responsible for maintaining measures designed to prevent and detect a violation of statutes or rules within the commission's authority to enforce by a contractor or any of its subcontractors. The passenger transportation company must make available records regarding its use of the contractor on request by the commission that fully enable the commission to audit, investigate, and determine the company's compliance with applicable law while using the contractor.

AMENDATORY SECTION (Amending WSR 16-02-076, filed 1/4/16, effective 2/4/16)

WAC 480-30-036 Definitions, general. (1) See WAC 480-30-261 for definition of terms used primarily in tariffs and time schedules and WAC 480-30-216 for definitions used in driver and vehicle safety rules.

(2) Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"Agent" means a person authorized to transact business for, and in the name of, another.

"Airporter service" means an auto transportation service that starts or ends at a station served by another type of transportation such as, air or rail transportation. Airporter service is often a premium service that involves handling luggage. Although stops may be made along the way, they are usually limited to picking up or discharging passengers(;) and luggage(, and/or express freight) bound to or from the airport or depot served.

"Alternate arrangements for passengers" means the travel arrangements made by an auto transportation company that has accepted a trip booking or reservation from a passenger and that is unable to provide the agreed transportation. The alternate arrangements may require travel by another carrier or mode of transportation at no additional cost to the passenger beyond what the passenger would have paid for the original transportation arrangement.

"Application docket" means a commission publication providing notice of all applications requesting auto transportation operating authority, with a description of the authority requested. The commission sends this publication to all persons currently holding auto transportation authority, to all persons with pending applications for auto transportation authority, to affected local jurisdictions or agencies, and to all other persons who asked to receive copies of the application docket.

"Area" means a defined geographical location. Examples include, but are not limited to:

- (a) A specified city or town;
- (b) A specified county, group of counties, or subdivision of the state, e.g., western Washington;
- (c) A zone, e.g., company designated territory; or
- (d) A route, e.g., area within four road miles of Interstate 5.

"Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever owning, controlling, operating, or managing any motor-propelled vehicle (~~not usually operated on or over rails,~~) used in the business of

transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

"Between fixed termini or over a regular route" means the fixed points between which an auto transportation company provides service or the route over which an auto transportation company ordinarily operates any motor-propelled vehicle, even though there may be variance whether the variance is periodic or irregular.

"Bus" means a motor vehicle designed, constructed, and/or used for the transportation of passengers.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"By-reservation-only service" means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.

"Certificate" means:

(a) The certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.68 RCW to operate as an auto transportation company; or

(b) The certificate issued by the Washington utilities and transportation commission under chapter 81.70 RCW to operate as a charter and excursion carrier in the state of Washington.

"Certificated authority" means:

(a) The territory and services granted by the commission and described in an auto transportation company's certificate of public convenience and necessity; or

(b) Operations in the state of Washington for charter and excursion service carriers.

"Charter party carrier" or "charter carrier" means every person engaged in the transportation over any public highways in this state of a group of persons who, pursuant to a common purpose and under a single contract, (~~have acquired~~) acquire the use of a motor (~~bus~~) vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after (~~having left~~) leaving the place of origin(~~or~~). A person who is engaged in the transportation of persons by party bus over any public highway in this state is considered engaging in the business of a charter party carrier or excursion service carrier.

"Claim" means a demand made on a company for payment resulting from a loss sustained through the company's negligence or for inadequate service provided by the company.

"Closed-door service" means a portion of a route or territory in which an auto transportation company is not allowed to pick up or deliver passengers. Closed-door service restrictions must be clearly stated in an auto transportation company's certificate.

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers if the vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms (26,001 pounds) or more, inclusive of a towed unit(s) with a gross vehicle weight

rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms (26,001 pounds) or more; or

(c) Is designed to transport sixteen or more passengers, including the driver.

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. Sec. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 C.F.R. Part 172, Subpart F).

"Commission" means the Washington utilities and transportation commission.

"Common carrier" means any person who transports passengers by motor vehicle over the public highways for compensation.

"Common purpose" means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules it does not mean a group of persons who have no common goal other than transportation to, or from, the airport.

~~("Commission" means the Washington utilities and transportation commission.~~

~~"Common carrier" means any person who transports passengers by motor vehicle over the public highways for compensation.)~~

"Company" means an entity authorized by the commission to transport passengers, for compensation, using a motor vehicle, over the public highways of the state.

"Complaint" means one of two types of actions by a person against a passenger transportation company that the commission regulates:

(a) **"Informal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-910. Informal complaints are normally investigated and resolved by commission staff.

(b) **"Formal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-370. In a formal complaint, the burden of proof resides with the complaining party who must prove its assertions in a formal commission proceeding.

"Connecting service" means an auto transportation company service over a route, or routes, that require passengers to transfer from one vehicle to another vehicle operated by either the same company or a different company before reaching the ending point.

~~("Contract carrier" means a person holding a certificate issued by the commission authorizing transportation of passengers under special and individual contracts or agreements.)~~

"Contract" as used in this chapter means any agreement between a passenger transportation company and another person to obtain property or services the company uses to provide passenger transportation services including, but not limited to, sales agreements, service agreements, employment agreements, mortgages, loans, and leases for real or personal property.

"Customer" means a person who purchased transportation services from an auto transportation company or a person, corporation, or other entity that prearranges for transportation services with a charter party carrier or purchases a ticket for transportation services aboard an excursion service carrier.

"Direct route" means an auto transportation company service over a route that goes from the beginning point to the ending point with limited, if any, stops along the way, and traveling only to points located on the specific route without requiring a passenger to transfer from one vehicle to another.

"Discontinuance of service":

(a) **"Permanent discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to permanently discontinue all, or part of, its service and relinquish that certificate or portion of that certificate. See WAC 480-30-186.

(b) **"Temporary discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to discontinue all, or part of, its service for a specified, limited period of time.

"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.

"Double-decker bus" means a motor vehicle with more than one passenger deck.

"Excursion service carrier" or "excursion carrier" means every person engaged in the transportation of persons for compensation over any public highway in the state from points of origin within any city, town, or area, to any other location within the state of Washington and returning to that origin. The service ~~((will))~~ must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may ~~((or may not))~~ be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis.

~~("Express freight/package service" means transportation of freight and packages, other than packages or baggage carried or checked by passengers, offered by a passenger transportation company.)~~

"Express passenger service" means auto transportation company service provided between fixed points or stations with few, if any, stops along the route, and is designed to get passengers from origin to destination more quickly than normally scheduled passenger service.

"Federal Motor Carrier Safety Administration" means an agency of the United States Department of Transportation (USDOT) and successor agency to the former Interstate Commerce Commission.

"Filing" means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

"Fixed termini" means points of origin and destination that are set, static locations or defined geographic areas. Examples include a city or town, a building or an airport. In addition "fixed termini" can include service between an airport and unlimited points within a defined geographic area.

"Flag stops" means a point along an auto transportation company's normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point. An auto transportation company must list available flag stops in the company's tariffs and time schedules. Flag stops may only be named at points that provide waiting passengers safe access to the vehicle.

"Group" means:

- (a) Two or more passengers traveling together;
- (b) A class of passengers to whom special rates and/or rules apply. For example, active military personnel.

"Intermediate point" means a point located on a route between two other points that are specifically named in an auto transportation company's certificate or tariff.

"Intermediate service" means service to an intermediate point.

"Interruption in service" means a period of time during which an auto transportation company cannot provide service listed in its certificate, its filed tariff, or its filed time schedule. An interruption in service is normally short lived, lasting no more than a few hours or a few days.

~~(**"Leasing":**~~

~~(a) **"Leasing authority"** means one auto transportation company allowing another person to operate all, or a portion, of the authority granted to the first company by the commission. A joint application to, and approval from, the commission is required to lease authority. See WAC 480-30-141.~~

~~(b) **"Leasing equipment"** means the act of a passenger transportation company to supplement its fleet by acquiring a vehicle(s) from a third party for a specified period of time under contract. See WAC 480-30-236.)~~

"Liquor permit holder" means a holder of an appropriate special permit to provide liquor issued under chapter 66.20 RCW, who is twenty-one years of age or older and who is responsible for compliance with the requirements of WAC 480-30-244 and chapter 66.20 RCW during the provision of transportation services.

"Motor vehicle" or "vehicle" means:

(a) As related to auto transportation companies: Every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.

(b) As related to charter and excursion carriers: Every self-propelled vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, used on the public highways, for the transportation of persons for compensation.

"Named points" means cities, towns, or specific locations that are listed in an auto transportation company's certificate, tariff, or time schedule.

"Nonstop service" means transportation of passengers from point of origin to point of destination without stopping at any intermediate points.

"On-call service" means unscheduled auto transportation company service provided only to those passengers that

have by prior arrangement requested service prior to boarding.

"Party bus" means any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages, or entertainment may be provided. A motor vehicle configured in the traditional manner of forward-facing seating with a center aisle is not a party bus.

"Passenger facility" means a location at which an auto transportation company stations employees and at which passengers can purchase tickets or pay fares for transportation service.

"Passenger transportation company" means an auto transportation company or charter and excursion carrier.

"Person" means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

"Premium service" means a type of service provided by an auto transportation company that is outside normal service. Examples include express service, direct route service, and nonstop door-to-door service.

"Private carrier" means a person who transports passengers in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

"Private motor vehicle" means a vehicle owned or operated by a private carrier.

"Public highway" means every street, road, or highway in this state.

"Public transit agency" means a municipal corporation or agency of state or local government formed under the laws of the state of Washington for the purpose of providing transportation services including, but not limited to, public transportation benefit areas, regional transit authorities, municipal transit authorities, city and county transit agencies.

"Residence" means the regular dwelling place of an individual or individuals.

"Route" means a highway or combination of highways over which an auto transportation company provides passenger service. There are two types of routes:

(a) **"Irregular route"** means travel between points named in an auto transportation company's certificate via any highway or combination of highways the company wishes to operate over. The certificate issued to the company does not list highways to be used, but the company defines routes in its tariffs and time schedules.

(b) **"Regular route"** means an auto transportation company providing passenger transportation over a route named in the certificate issued to the company by the commission.

"Scheduled service" means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.

"Single contract" means an agreement between a charter carrier and a group of passengers to provide transportation services at a set price for the group or trip. Under a single contract, passengers are not charged individually.

"Small business" means any company that has fifty or fewer employees.

"Special or promotional fares" means temporary fares for specific services offered for no more than ninety days.

("State" means the state of Washington.

~~"Subcontracting — Auto transportation company" means that an auto transportation company holding authority from the commission contracts with a second auto transportation company to provide service that the original company has agreed to provide, but finds it is unable to provide. See WAC 480-30-166.~~

~~"Subcontracting — Charter and excursion carrier" means that a charter and excursion carrier holding authority from the commission contracts with a second charter and excursion carrier to provide service that the original carrier has agreed to provide, but finds it is unable to provide.~~

~~"Substitute vehicle" means a vehicle used to replace a disabled vehicle for less than thirty days.)~~

"Suspension" means an act by the commission to temporarily revoke a company's certificated authority; or an act by the commission to withhold approval of an auto transportation company's tariff filing.

"Tariff" or "tariff schedule" means a document issued by an auto transportation company containing the services provided, the rates the company must assess its customers for those services, and the rules describing how the rates apply.

"Tariff service territory" means a company-defined geographic area of its certificated authority in which a specific tariff applies.

"Temporary certificate" means the certificate issued by the Washington utilities and transportation commission under RCW 81.68.046 to operate as an auto transportation company for up to one hundred eighty days or pending a decision on a parallel filed auto transportation company certificate application.

"Temporary certificate authority" means the territory and services granted by the commission and described in an auto transportation company's temporary certificate.

"Ticket agent agreements" means a signed agreement between an auto transportation company and a second party in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391.

"Time schedule" means a document filed as part of an auto transportation company's tariff, or as a separate document, that lists the routes operated by the company including the times and locations at which passengers may receive service and any rules specific to operating those routes.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-056 Records retention, auto transportation company. (1) **General provisions.** An auto transportation company must keep all business records and reports for at least three years following the date those documents are created unless otherwise specified in subsection (2) of this section or unless a longer retention period is required by another governmental body.

(2) **Retention schedule table.** The following schedule shows periods that auto transportation companies must preserve various records.

| Type of Record: | Retention Period: |
|---|--|
| 1. Original certificate | Until cancellation. |
| 2. Contracts ((and agreements: (a) Service contracts (management, accounting, financial or legal services)) | Until expiration, or termination, as applicable, plus three years. |
| ((b) Contracts with employees and employee groups)) 3. All employment records | Until ((termination)) end of <u>employment</u> plus one year. |
| ((c) General contracts, leases and agreements | Until termination plus one year.) |
| ((3)) 4. Long-term debt records ((Bond indentures, underwritings, mortgages, and other long-term credit agreements)) | Until redemption plus three years. |
| ((4)) 5. General and subsidiary ledgers and indexes | Until discontinuance of use plus three years. |
| ((5)) 6. General journals | Until discontinuance of use plus three years. |
| ((6)) 7. General cash books | Until discontinuance of use plus three years. |

(3) **Customer service records.** An auto transportation company must maintain complete and accurate customer service records.

(a) Company service records include, but are not limited to:

(i) Daily trip records, by route or by unit of equipment, that show:

- (A) The schedules operated;
- (B) The number of passengers carried on each schedule;
- (C) The point each passenger boarded and disembarked from the vehicle;
- (D) The fare charged each customer (for example full-fare, children's fare, round-trip fare, free or reduced fare);
- (E) Any condition causing the vehicle to deviate from the company's filed time schedule by more than thirty minutes. For example, traffic backed up at an accident site, inclement weather, or equipment failure.

(ii) Records of revenues received.

(iii) Bills or invoices issued.

(iv) Records of all reservations.

(v) Records of all tickets issued.

(vi) Records of all passenger service provided at free and/or reduced rates.

(vii) Identification of vehicle by vehicle identification number (VIN) if the vehicle is not owned by the company.

(viii) Each driver's name and current driver's license number (with state of issue) if the company does not employ the driver.

(b) Customer service records must be kept on file in the general office of the company for at least three years and are subject to commission inspection.

(c) Customer service records must be kept in chronological, numerical, or service route order.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-141 (~~(Certificates, sale, lease, assignment, transfer or mortgage, auto transportation company.)~~) **Transferring or encumbering all or part of a passenger transportation company's certificate or authority.**

(1) The commission must approve any sale, assignment, lease, transfer, or mortgage of ~~(a)~~ an auto transportation, charter carrier, or excursion carrier company's certificate, or any portion of the operating authority described in a company's ~~(auto)~~ passenger transportation company certificate.

(2) To obtain commission approval for sale, assignment, lease, transfer, or mortgage, the parties to the transaction must jointly file an ~~(auto transportation company certificate)~~ application with the commission ~~(under the provisions of WAC 480-30-096)~~ seeking such approval.

(3) ~~(The provisions of)~~ This rule ~~(do)~~ does not apply to a change in ownership resulting from an acquisition of control of a corporation through stock sale or purchase. Refer to WAC 480-30-106.

(4) This rule does not apply to contracts between a passenger transportation company and another person or company for a driver or vehicle, or both, to provide service on behalf of the passenger transportation company.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-166 (~~(Certificates, service agreements, auto transportation company.)~~) **Agreements between auto transportation companies to provide service.**

(1) An auto transportation company may enter into an agreement to allow another certificated auto transportation company to operate in the first company's territory or over its route(s) when the first company ~~(~~

~~(a))~~ holds exclusive authority in the territory or over the route(s) to be served ~~(; and~~

~~(b) Lacks suitable equipment to adequately serve its route(s) or customers, or is unable to provide service on a temporary basis due to situations such as, but not limited to, road closures or other temporary restrictions imposed by local jurisdictions).~~

(2) The commission must approve the agreement before any service is provided. To apply for commission approval, the companies must jointly file a copy of the written agreement at least fifteen days before the proposed effective date of the agreement. Companies may request the fifteen-day approval period be waived in the case of an emergency.

(3) The agreement filed with the commission must clearly state:

(a) The first company will charge customers for service provided by the second company at rates contained in the first company's filed tariff.

(b) The first company will pay the second company for providing service in compliance with terms stated in the agreement.

(c) The beginning and ending dates of the agreement.

(d) A provision for early termination of the agreement that includes at least five days' notice to the commission and to each party.

(4) This rule does not apply to contracts between a passenger transportation company and another person or company for a driver or vehicle, or both, to provide service on behalf of the passenger transportation company.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-171 **Certificates, suspending and canceling.** (1) **Cause for suspension.** The commission may suspend a certificate for cause. Cause includes, but is not limited to:

(a) Failure to maintain evidence of required liability insurance coverage for all areas of a passenger transportation company's operations;

(b) Failure to file an annual report or pay required regulatory fees;

(c) Failure to comply with the rates and rules contained in an auto transportation company's filed tariff;

(d) Failure to comply with an auto transportation company's filed time schedule;

(e) Failure or refusal to comply with operating standards that protect the public health, safety, or welfare;

(f) Allowing others to operate under a provider's certificated authority without having first obtained commission approval, unless approval is not required under WAC 480-30-141 or 480-30-166;

(g) Operating in a manner that violates the rights of customers and/or constitutes an unfair or deceptive business practice; or

(h) Repeated failure or refusal to comply with laws and rules pertaining to operations of passenger transportation companies.

(2) **Cause for cancellation.** The commission may cancel a certificate for cause. Cause includes, but is not limited to:

(a) Operating without proper insurance;

(b) Failure to file an annual report or pay required fees;

(c) Failure to correct within the time specified in a suspension order all conditions listed in the suspension order that led to the certificate's suspension;

(d) Continued violations of laws and rules affecting the public health, safety, or welfare when the commission has reason to believe the passenger transportation company will not comply with those laws and rules following a specified period of suspension;

(e) Failure to supply requested information needed by the commission in the performance of its regulatory functions; or

(f) Submission of false, misleading or inaccurate information.

(3) **Notice of pending suspension and cancellation.** When the commission believes cause exists to suspend or cancel a certificate, it will issue a notice to the passenger transportation company of the commission's intention to suspend or cancel the authority.

(4) **Contest of suspension and cancellation.** A passenger transportation company may contest the pending suspen-

sion and/or cancellation of its certificate by requesting a hearing or brief adjudicative proceeding within ten days following the date of the notice.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-191 Bodily injury and property damage liability insurance. (1) **Insurance coverage.** A company must have bodily injury and property damage liability insurance covering each motor vehicle (~~(it operates in the state of)~~) used to provide passenger transportation services under the authority of the company's certificate in Washington.

(a) The insurance policy must be written by an insurance company authorized to write insurance in the state of Washington.

(b) The insurance policy must include the Uniform Motor Carrier Bodily Injury and Property Damage Liability Endorsement (Form F).

(c) If a company operates without the required insurance coverage, the commission may take immediate compliance action as described in WAC 480-30-171.

(2) **Insurance limits.** The minimum limits of required bodily injury and property damage liability insurance for motor vehicles operated by companies are:

| Motor vehicles that: | Must have bodily injury and property damage insurance or surety bond with the following minimum limits: |
|--|--|
| Have a passenger seating capacity of fifteen or less (including the driver). | \$1,500,000 combined single limit coverage. |
| Have a passenger seating capacity of sixteen or more (including the driver). | \$5,000,000 combined single limit coverage. |

(3) **Insurance filings.** A company must file and maintain a Uniform Motor Carrier Bodily Injury Property Damage Certificate of Insurance (Form E) as a condition of being issued and maintaining a certificate to operate as a passenger transportation company.

(a) The Form E is a standard motor carrier insurance form recognized by the insurance industry and is normally filed with the commission by an insurance company rather than an insurance agent.

(b) The Form E must be issued in the company name exactly as it appears on the company's certificate or application for certificate.

(c) The Form E filing must remain in effect until canceled by a Notice of Cancellation (Form K). The Form K must be filed with the commission by the insurance company not less than thirty days before the cancellation effective date.

(d) A company may file a Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond (Form G) instead of the Form E.

(4) **Insurance binders.** The commission will accept an insurance certificate or binder for up to sixty days.

(a) An insurance certificate or binder may be canceled by written notice filed with the commission at least ten days before the cancellation effective date.

(b) An insurance certificate or binder must be replaced by a Form E within sixty days of filing, or before the expiration date, whichever occurs first.

(c) Insurance certificates or binders must show:

(i) The commission as the named insurance certificate holder;

(ii) The company name, exactly as it appears on the company's certificate or application for a certificate, as the insured;

(iii) The insurance company name;

(iv) The insurance policy number;

(v) The insurance policy effective and expiration dates;

(vi) The insurance limits of coverage; and

(vii) The agent's or other insurance representative's signature.

AMENDATORY SECTION (Amending WSR 16-02-076, filed 1/4/16, effective 2/4/16)

WAC 480-30-216 Operation of motor vehicles, general. (1) **Discrimination prohibited.** (~~No company operating motor vehicles~~) All companies providing passenger transportation service under the provisions of this chapter (~~(will operate a vehicle in intrastate commerce on which the seating of passengers is based on race, color, creed, or national origin)~~) must provide that service consistent with federal and Washington state nondiscrimination laws and rules.

(2) **Inspection of baggage and other materials passengers wish to be carried in or on a motor vehicle.** Auto transportation companies are responsible for the safety and comfort of all passengers transported. To ensure the safety and comfort of passengers and employees it may be necessary for companies to inspect baggage and other materials to be transported in or on motor vehicles.

(a) Companies must include in their filed tariffs, in information provided to passengers, and on their tickets, information that advises passengers that all baggage and other materials to be carried in or on a motor vehicle is subject to inspection by the company.

(b) The information required by (a) of this subsection must include a list of examples of materials that will not be accepted for transportation. Examples may include, but are not limited to, the following items:

(i) Articles whose transportation as baggage are prohibited by law or regulation;

(ii) Fragile or perishable articles;

(iii) Articles whose dimensions exceed the size limitations in the company's filed tariff;

(iv) Packages, bags, or parcels that are leaking;

(v) Firearms;

(vi) Articles that have foul and obnoxious odors; or

(vii) Items that cause annoyance, discomfort, or harm to persons or property.

(3) Service requirement.

(a) An auto transportation company is a public service company with an obligation to provide service to the satisfaction of the commission to all customers within its certificated authority.

(b) Except to the extent allowed by WAC 480-30-451, no driver or operator of a motor vehicle used in the transportation of passengers by an auto transportation company shall refuse to carry any person presenting him or herself at a regular stopping place who tenders the appropriate fare. Exception: Companies limiting operations to passengers with prior reservations are not subject to this provision.

(4) Passenger loading capacity. No motor vehicle used in the transportation of passengers will carry more passengers than can be carried safely. In no case will a motor vehicle transport more than one hundred fifty percent of its rated seating capacity.

(5) Standing passengers. No passenger will be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.

(6) Double-decker bus. Any company that operates a double-decker bus must comply with the maximum height vehicle requirement of RCW 46.44.020.

(7) Reserve equipment. All auto transportation companies must ~~((maintain)) own, lease, or contract for~~ sufficient reserve equipment to ~~((insure the reasonable operation of established routes and fixed time schedules)) ensure the company is reasonably able to provide its certificated service.~~

(8) Smoking ~~((on)) in~~ motor vehicles.

(a) Smoking or carrying lit cigars, cigarettes, or other smoking materials is prohibited ~~((on)) in~~ vehicles.

(b) Each company must post signs in its vehicles informing passengers that smoking is not permitted.

AMENDATORY SECTION (Amending WSR 11-04-041, filed 1/25/11, effective 2/25/11)

WAC 480-30-221 Vehicle and driver safety requirements. (1) ~~((Companies))~~ A passenger transportation company must ensure that all vehicles and drivers used to provide passenger transportation services under the authority of the company's certificate comply with all federal, state, and local laws and rules, and commission orders, governing licensing, vehicle safety, and driver safety. Except for vehicles with a seating capacity of seven or fewer passengers (including the driver) and the drivers of those vehicles, in which case the company must comply with the requirements in WAC 480-30-222, companies must also comply with the parts of Title 49, Code of Federal Regulations (49 C.F.R.), adopted by reference, that are shown in the following chart. Information about 49 C.F.R., including the version adopted by the commission and where to obtain copies is set out in WAC 480-30-999.

| 49 C.F.R. Part: | | Notes: |
|-----------------|---|--|
| Part 40 - | Procedures For Transportation Workplace Drug and Alcohol Testing Programs | Entire Part 40 is adopted and applies to Washington intrastate operations. |
| Part 382 - | Controlled Substance and Alcohol Use and Testing | Entire Part 382, ((including definition of commercial motor vehicle,)) is adopted and applies to Washington intrastate operations. |
| Part 383 - | Commercial Driver's License Standards; Requirements and Penalties | Entire Part 383, ((including definition of commercial motor vehicle,)) is adopted and applies to Washington intrastate operations. |
| Part 379 - | Preservation of Records | Entire Part 379 is adopted and applies to Washington intrastate operations. |
| Part 380 - | Special Training Requirements | Entire Part 380 is adopted and applies to Washington intrastate operations. |
| Part 385 - | Safety Fitness Procedures | Entire Part 385 is adopted and applies to Washington intrastate operations. |
| Part 390 - | Safety Regulations, General | Entire Part 390 is adopted and applies to Washington intrastate operations, with the following exceptions: (1) The terms "motor vehicle," "commercial motor vehicle," and "private vehicle" are not adopted. Instead, where those terms are used in Title 49 C.F.R., they have the meanings assigned to them in WAC 480-30-036 ((Motor vehicle and private vehicle)) and WAC 480-30-211 ((Commercial motor vehicle)) . (2) Whenever the term "director" is used in Title 49 C.F.R., it means the commission. |
| Part 391 - | Qualification of Drivers | Entire Part 391 is adopted, with the following exceptions: |

| 49 C.F.R. Part: | | Notes: |
|-----------------|--|---|
| | | (1) Part 391.49 (alternative physical qualification standards for the loss or impairment of limbs) is not adopted for drivers who operate vehicles exclusively (within Washington state) <u>intrastate</u> . Instead refer to WAC 480-30-226 for intrastate medical waivers. |
| Part 392 - | Driving of Motor Vehicles | Entire Part 392 is adopted and applies to Washington intrastate operations. |
| Part 393 - | Parts and Accessories Necessary for Safe Operation | Entire Part 393 is adopted and applies to Washington intrastate operations. |
| Part 395 - | Hours of Service of Drivers | Entire Part 395 is adopted and applies to Washington intrastate operations. |
| Part 396 - | Inspection, Repair, and Maintenance | Entire Part 396 is adopted and applies to Washington intrastate operations. |
| Part 397 - | Transportation of Hazardous Materials, Driving and Parking Rules | Entire Part 397 is adopted and applies to Washington intrastate operations. |

(2) Companies must: ~~((a) Maintain))~~ Ensure that all motor vehicles used to provide certificated service are maintained in a safe and sanitary condition(~~(s))~~) and ~~((b) Ensure that vehicles))~~ are free of defects likely to result in an accident or breakdown.

(3) No company, its agents, contractors, officers, or employees, will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to provide certificated services to transport passengers that is dangerous to the lives and safety of passengers.

(4) No company, its agents, contractors, officers, or employees will allow any article, commodity, or substance to be loaded in or on any motor vehicle used by the company to provide certificated services to transport passengers that is prohibited by the hazardous materials rules in Title 49 C.F.R. from being transported on passenger-carrying vehicles.

(5) All motor vehicles (~~(operated))~~ and drivers operating under the provisions of this chapter and used to provide certificated services are at all times subject to inspection by the commission or its duly authorized representatives(~~(-~~

~~(6) The commission will place out-of-service any motor vehicle having safety defects identified in the North American Uniform Out-Of-Service Criteria. Information about the North American Uniform Out-Of-Service Criteria including the version adopted and where to obtain copies is set out in~~

~~WAC 480-30-999. A company must not operate any vehicle placed out-of-service until proper repairs have been completed.~~

~~(7) The commission will place out-of-service any driver meeting criteria identified in the North American Uniform Out-Of-Service Criteria. A company must not allow a driver who has been placed out-of-service to operate a motor vehicle until the conditions causing the driver to be placed out-of-service have been corrected). The commission will place out-of-service for the provision of passenger transportation service any motor vehicle with a seating capacity of eight or more passengers (including the driver) or the driver of that vehicle if the vehicle or driver meets any condition listed in the North American Uniform Out-of-Service Criteria. A company must not allow a vehicle or driver that has been placed out-of-service to operate until the condition(s) causing the out-of-service violation is corrected. Information about the North American Uniform Out-of-Service Criteria is set out in WAC 480-30-999.~~

NEW SECTION

WAC 480-30-222 Vehicles with capacity for seven or fewer passengers (including the driver). A company must ensure compliance with the requirements of this section for all vehicles with a capacity of seven or fewer passengers (including the driver) used to provide passenger transportation service under the authority of the company's certificate and for all drivers of those vehicles. Regardless of whether a record required under this section is maintained by the certificated company or its contractor, the certificated company must make the record available to the commission upon request within forty-eight hours of the request.

(1) All vehicles must be inspected annually by a mechanic who has successfully passed the applicable examinations of, and met the applicable experience requirements prescribed by, the National Institute for Automotive Service Excellence, and certified by the mechanic as safe to operate.

(2) At the beginning and end of each day's work, the driver must check each vehicle the driver operates to determine if the lights, brakes, tires, steering, seat belts, and other safety and operating equipment are working properly. The driver must document the inspection the driver performs at the end of each day.

(3) Records of inspection, repair, and maintenance indicating the date and nature of the inspection, repair or maintenance must be kept by the certificated company or contractor for a period of three years.

(4) Drivers used to operate vehicles with a capacity of seven or fewer passengers (including the driver) must have the following qualifications at all times when operating a vehicle on behalf of a certificated company:

(a) Be licensed to drive in the state of Washington;

(b) Be a safe driver as demonstrated by a complete driving record from the Washington department of licensing and a complete driving record from any other state in which the driver held a driver's license in the previous five years;

(c) Have not been convicted within the past five years of hit-and-run, reckless driving, attempting to elude an officer by using a vehicle, vehicular assault, vehicular homicide,

reckless endangerment, negligent driving in the first degree, or driving under the influence of alcohol or a controlled substance, and have not been convicted within the past five years of a crime pertaining to physical violence or crimes reasonably related to the driver's honesty including, but not limited to, robbery, fraud, theft, extortion, assault, or identity theft, as demonstrated by a state criminal background check;

(d) Have not been required to register as a sex offender or been convicted of a sex offense or been convicted of a kidnapping offense against a minor;

(e) Have been medically examined and certificated by a medical examiner who is listed on the National Registry of Certified Medical Examiners, and be physically and mentally qualified to operate a passenger carrying vehicle for compensation; and

(f) Have passed a defensive driving course certified by the National Safety Council or passed an equivalent course approved by the commission.

(5) The certificated company must verify and document the driver's qualifications under this section prior to initially allowing the driver to operate a vehicle under the company's authority and at least once every twelve months thereafter during the time of employment or the contract.

(6) A driver shall not be in control of a vehicle more than twelve consecutive hours. The twelve hours can be spread over a fifteen hour period within twenty-four hours. Thereafter, the driver shall not drive a vehicle until the driver takes eight consecutive hours off duty.

(7) The certificated company or contractor must keep or require its contractors to keep, and provide or make available to the commission on request, the following records for the specified time periods:

(a) All documents related to driver hours for a period of at least six months;

(b) Verification of each driver's qualifications for the duration of the driver's employment or contract with the certificated company and for three years thereafter; and

(c) All documents related to any vehicle collisions or other accidents that occur while driving for compensation for a period of at least three years from the date of the accident. Such records must include copies of all accident reports and any other documents that identify the date and geographic location of the accident, the driver name, the number of fatalities or persons injured and a description of those injuries. The certificated company must ensure that its contractors immediately notify the certificated company of any accident or motor vehicle violation that occurs while driving for compensation.

(8) The commission will place a motor vehicle or driver out-of-service for the purposes of use by a certificated company if the vehicle or driver fails to meet any of the requirements in this section.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-226 Intrastate medical waivers. (1) **Department of licensing intrastate medical waiver.** A passenger transportation company may ~~((employ))~~ use a driver

that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41, if the driver:

(a) Only operates motor vehicles intrastate, wholly within the state of Washington; and

(b) Has obtained from the Washington state department of licensing an intrastate medical waiver to drive a commercial motor vehicle.

For the purposes of a department of licensing medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating over 26,000 lbs.;

(ii) Transporting sixteen or more passengers, including the driver; or

(iii) With a manufacturer's seating capacity of sixteen or more passengers, including the driver.

(2) **Doctor's statement of intrastate medical waiver.** A passenger transportation company may ~~((employ))~~ use a driver that is not physically qualified to drive a commercial motor vehicle under Title 49 C.F.R. Part 391.41 or WAC 480-30-222, as applicable, if the driver:

(a) Holds a valid Washington state driver's license;

(b) Has received a doctor's statement that:

(i) The driver's medical condition is not likely to interfere with the driver's ability to safely operate a commercial motor vehicle; and

(ii) The doctor's opinion is that the driver's condition is likely to remain stable for the two years that the medical certificate is valid.

(c) Operates commercial motor vehicles intrastate wholly within the state of Washington. For the purposes of a doctor's statement of intrastate medical waiver, a commercial motor vehicle means a motor vehicle:

(i) With a gross vehicle weight rating under 26,001 lbs.~~((7))~~;

(ii) Transporting fifteen or fewer passengers, including the driver~~((7))~~; or

(iii) With a manufacturer's seating capacity of fifteen or fewer passengers, including the driver.

(3) **Driver qualification files.** A passenger transportation company that ~~((employs))~~ uses a driver under an intrastate medical waiver must maintain in the driver's qualification file a copy of the doctor's statement of intrastate medical waiver.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-231 Vehicle and driver identification.

(1) ~~((A))~~ Unless otherwise prohibited by law, a passenger transportation company must ensure that all motor vehicles ~~((operated in the))~~ used to provide passenger transportation ~~((of passengers))~~ services are ~~((properly identified))~~ clearly and easily identifiable as being operated under the authority of the company.

(a) Each motor vehicle must display the certificate holder's name (or registered trade name) and certificate number on each side of the vehicle. A company with both intrastate and interstate operations may display its U.S. Department of Transportation identification number in addition to, or in place of, its commission-issued certificate number.

(b) Each motor vehicle operated in regular route service with scheduled stops must display a suitable destination sign.

(c) Each motor vehicle operated in transportation of passengers must display on the vehicle a company identification or unit number.

(d) All identifications must be clearly legible, conspicuous, and of a size that is easily readable.

(e) ~~For all vehicles owned by the company, all identifications (except those displayed on leased or substitute vehicles,))~~ must be permanent.

(2) An auto transportation company must ensure that all drivers operating motor vehicles in the transportation of passengers are ~~((properly identified))~~ clearly and easily identifiable as driving under the authority of the company. Identification may include, but is not limited to, an identification badge or a uniform with a name tag identifying the driver by name or number. If applicable law prohibits the vehicle from being marked as required under subsection (1) of this section, the driver must have an identification badge or name tag clearly visible on the driver's person and must carry a sign at the point of pickup with the name of the certificated company and the name of the passenger(s) to be picked up clearly printed.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-236 Leasing vehicles. (1) A passenger transportation company operating a leased vehicle must have a written lease agreement with the owner of the vehicle.

(2) It is the company's responsibility to ensure that:

(a) A copy of the lease is carried in each leased vehicle, unless the vehicle's registration names the certificate holder as registered owner or lessee.

(b) A copy of the lease is kept in the company's files during the effective period of the lease and for at least one year after the lease expires((;

~~(c) A copy of the lease is provided to the owner of the leased vehicle;~~

~~(d) The company has complete possession, control, and use of the motor vehicle at all times during the period of the lease;~~

~~(e) The leased motor vehicle is properly insured as specified in WAC 480-30-191;~~

~~(f) The leased vehicle is properly identified as specified in WAC 480-30-231;~~

~~(g) The leased vehicle is operated in compliance with all safety laws and rules, including those regarding vehicle inspection, records, and maintenance; and~~

~~(h) The terms of the lease are followed.~~

~~(3) If a company leases a vehicle with a driver, the company must also ensure that:~~

~~(a) The driver of the leased motor vehicle is on the company's payroll during the lease period;~~

~~(b) The driver operates in compliance with all driver qualification, safety and hours of service laws and rules;~~

~~(c) The driver is subject to the company's alcohol and controlled substance policies; and~~

~~(d) The company maintains appropriate files and paperwork on the driver for a period of at least one year following the expiration of the lease.~~

~~(4) The company and the owner of the leased vehicle must specify in the lease who is responsible for all expenses relating to the leased motor vehicle. The lease must contain all information shown in the following sample lease form. If a company uses an alternate form, the company must ensure the alternate form contains all information requested on the sample. These requirements do not apply to substitute vehicles or vehicles leased without drivers from a person principally engaged in the business of leasing vehicles.~~

~~Sample lease form)).~~

((

| EQUIPMENT LEASE AGREEMENT | | | | | |
|--|--------|------------------------|------------------------|-----------------------------|--------|
| <p>A copy of this lease must be carried in the leased vehicle unless the vehicle's registration names the certificate holder as registered owner or lessee. Copies must also be maintained in the files of both parties for the length of the lease plus one year following the expiration of the lease.</p> | | | | | |
| Name and address of company leasing vehicle (lessee): | | | | Certificate number: | |
| Name and address of party from whom the vehicle is being leased (lessor): | | | | Certificate number, if any: | |
| Vehicle make and year: | | Vehicle Serial Number: | | Vehicle License Number: | |
| The lease will become effective at _____ (time) on _____ (date), and will continue until _____ (date) unless canceled in writing prior to that date. | | | | | |
| Compensation that will be paid to owner of vehicle (lessor): \$ _____ per _____ | | | | | |
| If lease also includes driver, compensation for driver: \$ _____ per _____ | | | | | |
| Lessee/Lessor Expense Agreement | | | | | |
| Place an "x" or a checkmark next to each item indication whether the lessee or lessor is responsible for the listed expenses. | | | | | |
| Item | Lessee | Lessor | Item | Lessee | Lessor |
| Vehicle Licensing Fees | | | Equipment Rental Taxes | | |
| Toll and Ferry Charges | | | Fuel and Oil | | |
| Vehicle Loan Payments | | | Vehicle Maintenance | | |
| Parts & Tires | | | Major Vehicle Repairs | | |
| Insurance, Comprehensive | | | Minor Vehicle Repairs | | |
| Insurance, Theft | | | Other (explain): | | |
| Insurance, Fire | | | Other (explain): | | |
| <p>Under the terms of this lease, the lessee must:</p> <ul style="list-style-type: none"> ▪ have complete possession, control and use of the vehicle at all times during the lease period ▪ be in complete control of all certificate operations ▪ provide bodily injury and property damage liability insurance ▪ ensure that the driver of the leased vehicle is an employee of the lessee ▪ ensure that the vehicle is properly identified ▪ comply with all safety regulations ▪ bill and collect proper tariff rates | | | | | |
| <p>The parties signing this lease certify that the information shown above is true and correct, that the provisions of the lease will be enforced by both parties, and that all operations conducted with the leased equipment will be conducted in compliance with applicable laws and rules.</p> | | | | | |
| Lessee Signature/Title _____ | | | date signed _____ | | |
| Lessor Signature/Title _____ | | | date signed _____ | | |

))

AMENDATORY SECTION (Amending WSR 16-02-076, filed 1/4/16, effective 2/4/16)

WAC 480-30-244 Liquor permit required. (1) A charter party carrier or excursion service carrier operating a party bus must be in compliance with the requirements of ~~((section 8, chapter 233, Laws of 2015))~~ RCW 81.70.380.

(2) A charter party carrier or excursion service carrier operating a party bus must be in compliance with Title 66 RCW.

(3) A copy of the liquor permit obtained by any party under Title 66 RCW must be maintained with the contract of carriage for at least six months from the ending date of the trip.

AMENDATORY SECTION (Amending WSR 13-18-003, filed 8/21/13, effective 9/21/13)

WAC 480-30-286 Tariffs and time schedules, posting. An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices ~~((and at))~~, each passenger facility ~~((Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must))~~, and the company's internet web site, if the company maintains an internet web site, and must make these documents available to customers for inspection on request ~~((during the company's regular business hours. Vehicles operated by an auto transportation company operating subject to flexible fares under WAC 480-30-420 must carry a copy of the flexible fare tariff and current time schedule, subject to the requirements of WAC 480-30-420(7)).~~

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-316 Tariffs and time schedules, customer notice requirements. (1) **Notice.** Each auto transportation company must provide notice to its customers at least thirty days prior to the stated effective date for any proposed tariff change that would increase recurring or prepaid rates or restrict access to services (e.g., rate increase, route reduction, time schedule change).

(2) **Thirty-day notice to public.** At least thirty days prior to the stated effective date, the company must post a notice in a conspicuous place for each affected route or routes. The published notice must remain posted until the commission takes action on the request. The notice must be posted:

- (a) ~~((In each vehicle;))~~ At the company's office;
- (b) At each passenger facility; and
- (c) On the company's internet web site, if the company maintains an internet web site accessible to the public through which it sells its transportation services and posts its rates or time schedules.

(3) **Content of postings.** The published notice required by this rule must include:

- (a) The date the notice is issued;
- (b) The company's name, address, and telephone number;

(c) A comparison of current and proposed rates by service, when applicable;

(d) The requested effective date;

(e) A description of how customers may contact the company if they have specific questions or need additional information about the proposal;

(f) A description of how customers may contact the commission to comment or oppose the company's proposal.

(4) **Other customer notice.** The commission may require additional notice to customers other than described in this rule when:

(a) The commission is holding a public hearing in a contested case ~~((or when));~~

(b) A company proposal may have a significant impact on customer rates or access to services; or ~~((when))~~

(c) The commission determines that additional customer education is needed.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-356 Tariffs and time schedules, tariff rules. (1) Tariff rules must be stated in clear language and explicit terms, setting forth all standards and policies that will govern how the auto transportation company assesses rates to its customers.

(2) All provisions contained in an auto transportation company's tariff must be clearly labeled as to the type of service to which they apply. Example: Scheduled, door-to-door, by reservation only.

(3) Auto transportation company tariffs must contain rules addressing at least the following subjects:

(a) Children's fares. Rules must clearly indicate the ages for which children's fares apply.

(b) Baggage. Rules must state the amount of baggage that may be transported free of additional charge, baggage liability (see WAC 480-30-476), and overweight or excess baggage charges. Baggage rules must also state company policies regarding carry-on items such as skis and bicycles.

(c) ~~((Transportation of animals. Rules must state that service animals, such as dogs traveling with sight or hearing impaired passengers, will be transported free of charge if they lie at the feet of their master and do not occupy passenger seats.~~

~~((d)))~~ Refunds for unused and partially used tickets.

(i) Rules must state, "Subject to the exceptions of (d)(ii) and (ii) of this subsection unused tickets will be redeemed at the purchase price and unused portions of round-trip or commutation tickets will be redeemed by charging the regular fare or fares for the portion or portions used, and refunding the balance of the purchase price."

(ii) A company offering "door-to-door" service or "by reservation only" service may assess an administrative fee in those instances where a cost is incurred because the customer requested a change. If a company assesses an administrative fee, the tariff must include rules that clearly identify the fee and under what circumstances the fee will be assessed. Example of an administrative fee rule: A ten-dollar administrative fee will be assessed for customer requested changes made less than twenty-four hours in advance of the scheduled

departure time. Administrative fees are deducted from ticket refunds.

((iii)) A customer who has made a reservation but fails to cancel, reschedule, or appear at the designated pick-up point by the scheduled departure time is not eligible for a refund unless the failure was caused by an airline delay or cancellation.

((e)) (d) Long haul/short haul provisions. Rules must state that no customer will be required to pay more for transportation to an intermediate point along a route than is charged for a longer trip over that same route.

((f)) (e) Areas or zones to which rates apply. When fares to or from a named point include stops beyond the regular terminal, or where no regular terminal is maintained, the tariff must define the zone within which fares to and from a named point apply. For example: "Rates apply within five road miles of points named."

((g)) (f) Commuter fares, if offered by the company.

((h)) (g) Whether alternate means of transport will be provided by the company when it is unable to provide transportation at the time and place specified in the reservation that the company has accepted for that passenger.

((i)) (h) Holidays observed by the company.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-396 Tariffs and time schedules, free and reduced rates. (1) No auto transportation company will charge, demand, collect, or receive a greater, lesser, or different compensation for transportation of persons, than the rates that are contained in that company's effective tariff filed with the commission. Further, no auto transportation may extend to any person any privilege that is not uniformly extended to all persons under the same circumstances.

(2) An auto transportation company wishing to provide service at free or reduced rates must first publish those free or reduced rates in its filed tariff in accordance with RCW 81.28.080.

(3) If an auto transportation company chooses to provide service at free or reduced rates, the company must publish in its tariff:

(a) A detailed description of the customer class and criteria to qualify;

(b) The service provided;

(c) The expiration date, if any; and

(d) The applicable rate(s), amount of reduction (such as, twenty percent), or if free, "\$0.00" or "no charge."

(4) The auto transportation company must record the number of passengers transported under each free or reduced rate published in its tariff in accordance with RCW 81.28.080.

NEW SECTION

WAC 480-30-450 Nondiscrimination. Passenger transportation companies must comply with the American with Disabilities Act (ADA), comparable Washington statutes, and federal and state rules promulgated pursuant to those statutes including, but not limited to, requirements for nondiscrimination, service animals, employee training, stan-

dards for accessible vehicles, and equivalent service standards as referenced in C.F.R. 49 Part 37, C.F.R. 28 Part 35.136, and chapter 49.60 RCW.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-456 Fair use of customer information.

(1) Customer information includes the customer's name, address, and telephone number.

(2) Companies must use customer information only for:

(a) Providing and billing for services the customer requests, either directly or through a contractor;

(b) Marketing new services or options to its customers; or

(c) Providing information to its customers.

(3) Any sale or release of customer information without the written permission of the customer is prohibited. The only exceptions to this rule are:

(a) Release of information to the commission to investigate or resolve complaints filed with the commission by a customer;

(b) Sharing nonpayment information with agencies the company engages to act as the company's agent in pursuing collection of past due accounts.

(4) Companies are allowed to collect and release customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-30-061 Express freight, property transportation.

WAC 480-30-206 Vehicle licensing.

WAC 480-30-211 Commercial vehicle defined.

WAC 480-30-213 Vehicles and drivers.

WSR 17-12-059

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 2, 2017, 12:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-081.

Title of Rule and Other Identifying Information: Chapter 392-107 WAC, Educational service districts election of board members.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Room, 600 South Washington Street, Olympia, WA 98501, on July 11, 2017, at 1:00 p.m.

Date of Intended Adoption: July 13, 2017.

Submit Written Comments to: Kristin Murphy, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email kristin.murphy@k12.wa.us, fax (360) 753-4201, by July 11, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, by July 5, 2017, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal [is] to amend chapter 392-107 WAC, which governs the administration of the election of board members to educational service districts, to update and correct a few outdated references, align some procedures with those used for other elections conducted in the state, and update the forms OSPI uses to conduct the elections. Most changes are of a technical nature and are intended to improve the efficiency of conducting ESD elections.

Statutory Authority for Adoption: RCW 28A.310.080.

Statute Being Implemented: RCW 28A.310.080.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Kristin Murphy, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6133; and Enforcement: Dierk Meierbachtol, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6004.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 2, 2017
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-17-182, filed 8/22/07, effective 9/22/07)

WAC 392-107-201 Election of educational service district board members. (1) The procedures governing the election of members to the boards of directors of educational service districts are set forth under RCW ((18A.310.080)) 28A.310.080 through 28A.310.110 and WAC 392-107-205 through 392-107-225.

(2) Elections for members of boards of educational service districts ((shall)) must be conducted ((biennially)) in odd-numbered years.

AMENDATORY SECTION (Amending WSR 07-17-182, filed 8/22/07, effective 9/22/07)

WAC 392-107-205 Electors ((provisions)). ((1) It shall be the responsibility of the educational service districts to assure that the superintendent of public instruction is provided current and correct information necessary to the conduct of the elections provided for in this chapter. Forms published by the superintendent of public instruction for the pur-

pose of providing the following essential information shall be obtained, completed and submitted on a current basis:

(a) ~~The name, legal residence, mailing address and board member district number of persons serving on the educational service district board of directors; and~~

(b) ~~The position numbers for which appointments have been made to fill unexpired terms.~~

(2) ~~On August 21st of the year of election or, if such date is a Saturday, Sunday, or holiday, the state working day immediately preceding such date, the superintendent of public instruction shall certify a tentative list of electors consisting of all persons eligible to vote if the election were held on that date.~~

(3) ~~The list of eligible voters shall remain open for changes and deletions until 5:00 p.m. September 26th or, in the event such date is a Saturday, Sunday, or holiday, until 5:00 p.m. the working day immediately following such date. The superintendent of public instruction as soon thereafter as is practical shall certify the list of electors.)~~ An elector is each individual member of a public school board of directors. The office of superintendent of public instruction will obtain the list of electors from the Washington state school directors association or the individual educational service districts. The list must include each public school director's: Name, mailing address, school district name, and board member position or director district number.

AMENDATORY SECTION (Amending WSR 07-17-182, filed 8/22/07, effective 9/22/07)

WAC 392-107-210 ((Publicity and)) Call of election. ((1) The superintendent of public instruction shall biennially provide reasonable public information concerning the election of educational service district board members through press and publication releases beginning in May of the year the elections are to be called.

(2) ~~Call of election. See RCW 28A.310.080.)~~ On or before August 25th of odd-numbered years, the superintendent of public instruction must publicize a call for election. The call of election must include an election timeline, candidate filing information and forms, and voting information. The timeline and other relevant election information will be posted to the superintendent of public instruction's public web site. The superintendent will issue a press release or similar form of public communication to provide election information to the public.

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-107-215 Candidate qualifications—Forms—Filing—Withdrawal of candidacy. (1) Eligibility. A person is eligible to be a candidate for membership on an educational service district board if he or she is a registered voter and a resident of the board-member district for which the candidate files. Restriction on other service pursuant to RCW 28A.310.070.

(2) Declaration ((and affidavit)) of candidacy. A person who desires to ((file for candidacy shall)) be a candidate must complete and file ((with the state board of education)) a declaration ((and affidavit)) of candidacy form with the office of

superintendent of public instruction as a condition to having his or her name placed on the official ballot. ((The form is available through the state board of education office in Olympia or through the local educational service district office.))

The office of superintendent of public instruction will provide the declaration of candidacy form, which must include the candidate's name, residential address, mailing address (if different from residence), phone number, email address, exact name to be printed on ballot, the position the candidate is running for, and the candidate's signature and date signed. The form must also include the following declaration:

I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that I am aware if elected, I cannot serve as an employee of a school district or as a member of a board of directors of a common school district or as a member of the state board of education and as a member of an educational service district board at the same time. I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the state of Washington.

(3) Optional ((biographical form. A person who desires to file for candidacy has the option of completing and filing with the state board of education, for inclusion with balloting information, a biographical form not to exceed two pages. The form is available through the state board of education office in Olympia or through the local educational service district office)) candidate statement. A candidate has the option of completing and filing a candidate statement and photo for inclusion with balloting information. The candidate statement, if submitted, shall not exceed three hundred words. The candidate may include one head-shot photo. The candidate statement and photo must be filed by the date and manner provided in the election timeline.

(4) Filing period. ((The filing period is set forth under RCW 28A.310.080. The filing period for candidates for any position on an educational service district board is from September 1st through September 16th. Any declaration and affidavit of candidacy that is postmarked on or before midnight September 16th and received by mail prior to the printing of ballots shall be accepted. Any declaration and affidavit of candidacy that is received by United States mail on or before 5:00 p.m. September 21st and is not postmarked or legibly postmarked shall be accepted.)) The declaration of candidacy may be filed by postal mail or in person. If filed by mail, the declaration must be postmarked on or by September 16th. If the declaration is filed in person, it must be delivered to the office of superintendent of public instruction on or by September 16th, or the business day otherwise specified in the election timeline. Any declaration postmarked or received after the close of the filing period will not be accepted.

(5) Any candidate may withdraw his or her declaration ((and affidavit)) of candidacy by ((delivering a written, signed and notarized statement of withdrawal to the secretary to the state board of education)) completing and signing a statement of withdrawal form and filing the form with the office of superintendent of public instruction on or before 5:00 p.m. September 21st (or business day set forth in election timeline). A candidate's failure to withdraw ((as pre-

scribed above shall)) will result in the inclusion of the candidate's name on the appropriate election ballot.

AMENDATORY SECTION (Amending WSR 07-17-182, filed 8/22/07, effective 9/22/07)

WAC 392-107-220 Balloting. (1) ((Ballots shall be prepared by the superintendent of public instruction.)) The office of superintendent of public instruction must prepare ballots, subject to the following conditions:

(a) The ballot for each position subject to election ((shall)) must contain the name of each candidate eligible for the particular position((-There shall be));

(b) The ballot must include a separate listing of the candidates for each board-member ((district)) position open in the ((particular)) educational service district((-); and

(c) A board-member ((district)) position shall be stricken from the ballot if no candidate files for the position within the timelines specified in RCW 28A.310.080 and WAC 180-22-215((-

(2)(a) The superintendent of public instruction shall develop voting instructions which shall accompany the ballots. Biographical forms submitted under WAC 180-22-215(3) shall also accompany the ballots.

(b) On or before October 1st, ballots shall be mailed to voters with two envelopes to be used for voting.

(i) The outer, larger envelope (i.e., official ballot envelope) shall be labeled "official ballot"; be preaddressed with the "superintendent of public instruction" as addressee; and have provision for the identification of the voter, mailing address, his or her school district, and his or her educational service district.

(ii) The inner, smaller envelope shall be unlabeled and unmarked.)) during the candidate filing period.

(2) The voting package must include the following:

(a) Official ballot;

(b) Ballot return envelope, marked "Official Ballot" and preaddressed to the office of superintendent of public instruction. The return address area of the envelope must be preaddressed with the elector's name, mailing address, and school district;

(c) Secrecy envelope, consisting of a plain envelope with no markings that is smaller than the ballot return envelope;

(d) Instructions to electors, which must identify how to mark the ballot, the date the ballot must be postmarked or returned, and directions on how to place the ballot in the secrecy envelope and place the secrecy envelope in the ballot return envelope;

(e) Candidate statements and photos, which may be compiled into a single document.

(3) Marking of ballots. Each ((member of a public school district board of directors)) elector may vote for one ((of the)) candidate((s)) in each board-member ((district)) position named on his or her ballot by placing an "X" or other mark as instructed in the space provided next to the name of a candidate.

(4) Return of ballots. Each ((member of a public school district board of directors shall)) elector must complete voting by:

(a) ~~Placing ((his or her)) the marked official ballot in the ((smaller, unmarked)) secrecy envelope ((and));~~

(b) ~~Sealing the ((same)) secrecy envelope;~~

(c) ~~Placing the ((smaller)) secrecy envelope containing the official ballot in the ((larger preaddressed envelope marked "official ballot" and sealing the same)) ballot return envelope;~~

(d) ~~Sealing the ballot return envelope; and~~

(e) ~~If not already designated, completing the following information on the face of the official ballot envelope: Name, mailing address, identification of school district and educational service district(, and placing the official ballot envelope in the United States mail to the secretary to the state board of education)).~~

(5) Voted ballots must be postmarked on or before October 16th. Ballots delivered in person must be received at the office of superintendent of public instruction on or before October 16th. Voted ballots must be mailed or delivered to the office of superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 07-17-182, filed 8/22/07, effective 9/22/07)

WAC 392-107-225 Counting—Ineligible votes—Recount—Certification of election—Special election.

(1)(a) As official ballot envelopes are received by the superintendent of public instruction, a preliminary determination ~~((shall))~~ must be made as to the eligibility of the ~~((voter))~~ elector and a record shall be made on the list of ~~((eligible voters))~~ electors that the ~~((voter))~~ elector has voted.

(b) Official ballot envelopes not submitted in compliance with this chapter and other envelopes containing ballots ~~((shall))~~ must be set aside for a final review and acceptance or rejection by the election board.

(2)(a) The election board ~~((shall))~~ must convene for the purpose of counting votes on or before October 25th ~~((or, if such date is a Saturday, Sunday, or holiday, the state working day immediately preceding or following such date at a date, time and place designated by the superintendent of public instruction)), but not earlier than October 21st.~~

(b) Official ballot envelopes that are accepted by the election board ~~((shall))~~ must be opened ~~((and the inner envelopes containing ballots shall)). The secrecy envelope must be removed and placed aside, ((still sealed)) unopened. The ((inner)) secrecy envelopes ((shall))~~ must then be opened and the votes counted by the election board.

(c) No record shall be made or maintained of the candidate for which any ~~((voter))~~ elector cast his or her vote.

(3) Ineligible votes. The following ballots and votes ~~((shall))~~ must be declared void and ~~((shall))~~ will not be accepted:

(a) Votes for write-in candidates.

(b) Votes cast on other than an official ballot.

(c) Ballots which contain a vote for more than one candidate in a board-member ~~((district))~~ position.

(d) Ballots contained in other than the official ballot envelope.

(e) Ballots contained in the official ballot envelope upon which the ~~((voter's name))~~ elector is not designated by name.

(f) ~~Ballots ((received after 5:00 p.m. October 16th. However, any ballot that is postmarked on or before midnight October 16th and received prior to the initial counting of votes by the election board shall be accepted. Any ballot received pursuant to the United States mail on or before 5:00 p.m. on October 21st that is not postmarked or legibly postmarked shall be accepted)) postmarked after October 16th; hand-delivered ballots received after October 16th; ballots postmarked on or before October 16th but received after October 21st; mailed ballots with illegible postmarks received after October 21st.~~

(g) Such other ballots or votes as the election board shall determine to be unidentifiable or unlawful.

(4)(a) Recounts. Automatic. A recount of votes cast ~~((shall))~~ will be automatic if the electoral vote difference between any two candidates for the same position is one vote or less than one percent of electoral votes on a single ballot cast for the position, whichever is greater.

(b) Recounts. Upon request. ~~((A recount of votes cast shall be afforded any candidate as a matter of right.))~~ The request ~~((shall))~~ must be made in writing and received by the superintendent of public instruction ~~((within seven calendar days after the date upon which the votes were counted by the election board)).~~

(5) Certification of election. Within ten calendar days after the date upon which the votes were counted, and no sooner than eight calendar days after the votes are counted by the election board, the superintendent of public instruction shall officially certify to the county auditor of the headquarters county of the educational service district the name or names of ~~((candidates))~~ persons elected to membership on the educational service district board of directors.

(6) ~~((Special election. See RCW 28A.310.100.))~~ Run-off election. If no candidate for any one position receives a minimum of fifty percent plus one of the total votes for such position, the superintendent of public instruction must call a run-off election between the two candidates receiving the two highest vote totals for such position. The call for run-off election by the superintendent of public instruction must occur no later than November 1st. Ballots will be mailed to the same list of electors as were issued ballots for the initial election. In the event of a tie, the winner will be determined by lot drawing. To conduct the lot draw, the superintendent of public instruction, or designee, will place both names in a container and randomly draw one of the names. The lot draw will be conducted at the office of the superintendent of public instruction and will be witnessed by the three member election board. The candidate whose name is drawn will be deemed elected.

WSR 17-12-060

PROPOSED RULES

**SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed June 2, 2017, 12:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-082.

Title of Rule and Other Identifying Information: Chapter 392-109 WAC, State board of education election of members.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Room, 600 South Washington Street, Olympia, WA 98501, on July 11, 2017, at 1:30 p.m.

Date of Intended Adoption: July 13, 2017.

Submit Written Comments to: Kristin Murphy, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email kristin.murphy@k12.wa.us, fax (360) 753-4201, by July 11, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, by July 5, 2017, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal [is] to amend chapter 392-109 WAC, which governs the administration of the election of board members to the state board of education (SBE), is to update and correct a few outdated references, align some procedures with those used for other elections conducted in the state, and update the forms OSPI uses to conduct the elections. Most changes are of a technical nature and are intended to improve the efficiency of conducting SBE elections.

Statutory Authority for Adoption: RCW 28A.305.021.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Kristin Murphy, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6133; and Enforcement: Dierk Meierbachtol, OSPI, 600 South Washington Street, Olympia, WA, (360) 725-6004.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 2, 2017
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-037 Purpose and authority. (1) The purpose of this chapter is to provide for the annual election of members to the state board of education by establishing policies and procedures which implement the statutory election process for such positions.

(2) Authority for this chapter is RCW ((~~28A.305.102~~)) 28A.305.021 which authorizes the superintendent of public instruction to adopt rules and procedures for the conduct of election of members to the state board of education.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-043 Election officer. In accordance with RCW ((~~28A.305.102~~)) 28A.305.021, the superintendent of public instruction or his or her designee ((~~shall~~)) serves as the election officer for the coordination and conduct of the election of members to the state board of education.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-045 Definitions. As used in this chapter the term:

(1) "Board of directors" ((~~shall~~)) means:

(a) The statutory, multimember board of directors of a public school district; or

(b) The person or multimember body recognized by an approved private school as having the final authority for policy decisions which govern the operation of the private school.

(2) "Elector" ((~~shall~~)) means:

(a) Each individual member of a public school board of directors; or

(b) An approved private school board of directors as a whole.

(3) "Approved private school" ((~~shall~~)) means a school which is approved by the state board of education pursuant to chapter 180-90 WAC, as now or hereafter amended, as being in compliance with statutory standards.

(4) "Eastern Washington region" ((~~shall~~)) means the region comprised of Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(5) "Western Washington region" ((~~shall~~)) means the region comprised of Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom counties.

(6) "Weighted vote" ((~~shall~~)) means the total number of electoral votes assigned to an elector ((~~for~~)).

(a) Public schools: Each elector shall be entitled to a number of electoral votes equal to:

| School District Enrollment | Student | Each Elector Receives |
|----------------------------|----------|-----------------------|
| 1 | - 1,000 | 1 vote |
| 1,001 | - 2,000 | 2 votes |
| 2,001 | - 3,000 | 3 votes |
| 3,001 | - 4,000 | 4 votes |
| 4,001 | - 5,000 | 5 votes |
| 5,001 | - 6,000 | 6 votes |
| 6,001 | - 7,000 | 7 votes |
| 7,001 | - 8,000 | 8 votes |
| 8,001 | - 9,000 | 9 votes |
| 9,001 | - 10,000 | 10 votes |

| School District Student Enrollment | Each Elector Receives |
|------------------------------------|-----------------------|
| 10,001 - 15,000 | 11 votes |
| 15,001 - 20,000 | 12 votes |
| 20,001 - 25,000 | 13 votes |
| 25,001 - 30,000 | 14 votes |
| 30,001 - 35,000 | 15 votes |
| 35,001 - 40,000 | 16 votes |
| 40,001 - or greater | 17 votes |

(b) Approved private schools: Each approved private school shall be entitled to a number of electoral votes equal to the actual number of students enrolled.

(7) "Student enrollment" (~~shall~~) means the number of students enrolled during October of the preceding school year as reported to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-047 Annual elections. The superintendent of public instruction must conduct an election of members to the state board of education (~~shall be conducted~~) each year preceding a year in which the term of one or more members expires, and as required by RCW ((28A.305.102)) 28A.305.021 following a vacancy on the board.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-048 Election timeline. The superintendent of public instruction must publish an official election timeline (~~shall be published by the superintendent of public instruction~~) at the call of each (~~yearly~~) election that shall include all necessary dates for the conduct of election.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-050 Elector information (~~necessary for the conduct of elections—Responsibility of school officials~~). (~~It shall be the responsibility of each member of a board of directors to assure that the superintendent of public instruction is provided current and correct information necessary for the conduct of the elections provided for in this chapter. Forms published by the superintendent of public instruction for the purpose of providing the following essential information shall be obtained, completed and submitted on a current basis.~~) (1) Public schools. The office of superintendent of public instruction will obtain the list of electors from the Washington state school directors association or the individual educational service districts. The list must include each public school director's: Name, mailing address, school district name, and board member position or director district number.

(2) Approved private schools(±). The state board of education must provide to the office of superintendent of

public instruction the mailing address (~~and previous October student enrollment; and~~

~~(2) Public school districts: The name, legal residence, mailing address and region, as defined in WAC 392-109-034, of residence for each member of a board of directors)) for the board of directors of each approved private school.~~

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-060 (~~Publicity and~~) Call of election. On or before August twenty-fifth of each year the superintendent of public instruction (~~shall publicize notice of an election to be held for each position on the state board of education subject to election by public and approved private school boards of directors. Notice shall be made by, but not limited to:~~

~~(1) An official press release containing the call of election materials citing the election rules, declaration and affidavit of candidacy, biographical data form, and election timeline.~~

~~(2) Making the call of election materials in subsection (1) of this section available by contacting: Administrative Resource Services, Office of the Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200.~~

~~(3) Making the call of election materials in subsection (1) of this section available on the superintendent of public instruction's official web site at www.k12.wa.us)) must publicize a call of election. The call of election must include an election timeline, candidate filing information and forms, and voting information. The timeline and other relevant election information will be posted to the superintendent of public instruction's public web site. The superintendent will issue a press release or similar form of public communication to provide election information to the public.~~

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-065 Candidates—Eligibility—Filing. (1) Eligibility(±). A person is eligible to be a candidate for only one position on the state board of education at a time.

(a) A candidate for a (~~vacancy among the five~~) position(s) on the state board of education elected by members of public school (~~boards of~~) district directors must be a resident of the region represented by the position and meet the other qualifications established by RCW ((28A.305.102)) 28A.305.021; (~~and~~)

(b) A candidate for (~~a vacancy in~~) the position on the state board of education elected by private schools must be a resident of the state of Washington and meet the other qualifications established by RCW ((28A.305.102)) 28A.305.021.

(2) Forms for filing(±). A person who desires to be a candidate (~~shall~~) must complete:

(a) The declaration (~~and affidavit~~) of candidacy form provided for in WAC 392-109-070; and

(b) The (~~biographical data form~~) optional candidate statement provided for in WAC 392-109-075(~~—Provided, That a declarant may elect not to submit biographical data~~).

(3) Filing period(±). The filing period for candidates for any position on the state board of education elected by either

public school district directors or approved private school boards of directors ((shall be no less than seven days in duration and occur a minimum of sixty days prior to election and shall be included on the election timeline. Declarations not received by 5:00 p.m. on the indicated date will not be included on the certified list of candidates)) is September 1st through September 16th, or the business day specified on the election timeline.

(4) Filing deadline(~~(The filing deadline for candidacy shall be 5:00 p.m. on the date included on)~~). The declaration of candidacy form must be postmarked by the date specified in the election timeline or, if filed in person, received at the office of superintendent of public instruction by close of business on the business day specified in the election timeline.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-070 Declaration ((and affidavit)) of candidacy form. ~~((The declaration and affidavit of candidacy form which each candidate is required to substantially complete and to file as a condition to having his or her name placed on an official ballot is available from the superintendent of public instruction and shall be as follows:~~

I,, solemnly swear (or affirm): That (if filing for a position elected by members of public school boards of directors) I reside in the Region of the state of Washington (OR if filing for the position elected by private schools) I reside within the state of Washington; That I am aware that if elected, I cannot concurrently serve as a member of the state board of education and as an employee of any school, college, university, or other educational institution, or any educational service district superintendent's office, or in the office of the superintendent of public instruction, or as a member of the board of directors of either a common school district or a private school; and, That I hereby declare myself a candidate for membership on the state board of education for Region, Position No., a term beginning on the second Monday in January, 20..., subject to the election to be held during the month of November, 20..., and I request that my name be listed on the ballot thereof.

Further, I solemnly swear (or affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the state of Washington.

(Print Name)
(Signature)
Address:
.....
Telephone number

State of Washington
County of

Signed and sworn to (or affirmed) before me on (date) by (name of person making statement).

(Seal or stamp) (Signature)
Notary Public
My appointment expires

A person who desires to be a candidate must complete and file a declaration of candidacy with the office of superintendent of public instruction as a condition to having his or her name placed on the official ballot.

The office of superintendent of public instruction will provide the declaration of candidacy form, which must include the candidate's name, residential address, mailing address (if different from residence), phone number, email address, exact name to be printed on ballot, the position the candidate is running for, and the candidate's signature and date signed. The form must also include the following declaration:

I declare that the above information is true, that I am a registered voter residing at the address listed above, that I reside in the region of Washington state as listed above, that I am a candidate for the office listed above, and that I am aware if elected, I cannot concurrently serve as a member of the state board of education and as an employee of any school, college, university, or other educational institution, or any educational service district superintendent's office, or in the office of the superintendent of public instruction, or as a member of the board of directors of either a common school district or a private school. I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the state of Washington.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-075 ((Biographical data form-)) Optional candidate statement. ~~((1) The superintendent of public instruction shall provide a biographical data form not exceeding one letter size double spaced minimum twelve point font typewritten page in length which each candidate may complete.~~

~~(2) Biographical data forms shall be reproduced as submitted and distributed by the superintendent of public instruction with the official ballots to each elector.~~

~~(3) Candidates may submit a two-inch by two-inch head-shot photograph with this form.~~

(4) Filing of this form is not required.) A candidate has the option of completing and filing a candidate statement and photo for inclusion with balloting information. The candidate statement, if submitted, shall not exceed three hundred words. The candidate may include one head-shot photo. The candidate statement and photo must be filed by the date and manner provided in the election timeline.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-077 Withdrawal of candidacy. Any candidate may withdraw his or her declaration of candidacy by ~~((delivering a written, signed and notarized statement of withdrawal to the superintendent of public instruction on or~~

~~before 5:00 p.m. on the date included on the election timeline)) completing and signing a statement of withdrawal form and filing the form with the office of the superintendent of public instruction on or before 5:00 p.m. on the date included on the election timeline. A candidate's failure to withdraw ((as prescribed above shall)) will result in the inclusion of the candidate's name on the appropriate election ballot.~~

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-080 Ballots—Contents. The ballot for each position subject to election pursuant to this chapter ~~((shall))~~ must:

- (1) Contain the names of each candidate eligible for the particular position.
- (2) Be prepared for each region.
- (3) Set forth the number of electoral votes to which each elector is entitled.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-085 Ballots and envelopes—Mailing to electors. (1) The office of superintendent of public instruction must prepare ballots. Ballots ~~((shall))~~ must be mailed to electors ~~((on))~~ by the date ~~((included on))~~ set forth in the election timeline ~~((, together with two envelopes to be used for voting-~~

~~(a) The outer and larger envelope (i.e., official ballot return envelope) shall:~~

- ~~(i) Be labeled "official ballot return envelope";~~
- ~~(ii) Be preaddressed with the "superintendent of public instruction" as addressee; and~~
- ~~(iii) Have provision for the identification of the elector, his or her school district or school and his or her home address.~~

~~(b) The inner and smaller envelope shall be unlabeled and unmarked.~~

~~(2) One official ballot and the two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each member of a public school district board of directors.~~

~~(3) One official ballot, two envelopes to be used for voting purposes, any candidates' biographical data and pertinent instructions for voting purposes shall be mailed to each approved private school addressed to the chief administrator of each approved).~~

(2) The voting package must include the following:

- (a) Official ballot;
- (b) Ballot return envelope, marked with "Official Ballot" and preaddressed to the office of superintendent of public instruction. The return address area of the envelope must be preaddressed with the elector's name, mailing address, and school district;

(c) Secrecy envelope, consisting of a plain envelope with no markings that is smaller than the ballot return envelope;

(d) Instructions to electors, which must identify how to mark the ballot, the date the ballot must be postmarked or returned, and directions on how to place the ballot in the

secrecy envelope and place the secrecy envelope in the ballot return envelope;

(e) Candidate statements and photos, which may be compiled into a single document.

(3) Voting packages for private schools must be mailed to the chief administrator of each approved private school and include the components listed in subsection (2) of this section. The return address area of the ballot return envelope must include the name and address of the private school.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-090 Voting—Marking and return of ballots. (1) Each member of a public school district board of directors may vote for one of the candidates for each position named on ~~((his or her))~~ the official ballot by placing an "x" or other mark as instructed in the space provided next to the name of a candidate.

(2) Each approved private school may vote for one candidate on the official ballot by placing an "x" or other mark as instructed in the space provided next to the name of a candidate.

(3) Each member of a public school district board of directors and each approved private school shall complete voting by:

(a) Placing the marked official ballot in the smaller, unmarked secrecy envelope and sealing the same;

(b) Placing the ~~((smaller))~~ unmarked secrecy envelope containing the official ballot in the larger preaddressed ballot return envelope marked "official ballot ~~((return envelope))~~" and sealing the same; and

~~((Affixing proper postage and placing the official ballot return envelope in the United States mail or otherwise delivering the envelope to the superintendent of public instruction-))~~ The voted ballot must be returned to the office of superintendent of public instruction by the date stated on the election timeline or must be postmarked on or before the date stated on the election timeline.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-095 Election ~~((committee))~~ counting boards—Appointment and composition. The superintendent of public instruction ~~((shall annually appoint a three member election committee and at least one alternate who shall serve thereon in the absence of a regular member of the election committee. Counting of votes cast at elections conducted pursuant to this chapter shall be supervised by the superintendent of public instruction or his or her designee and the election committee))~~ or designee must establish and supervise counting boards comprised of no less than two members for each board. More than one counting board may be established to conduct the counting of ballots. The office of superintendent of public instruction must compile a list of the members of the counting board.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-100 Receipt of ballots and count of votes. (1) As official ballot return envelopes are received by the superintendent of public instruction, a preliminary determination ~~((shall))~~ must be made as to the eligibility of the elector, and a record ~~((shall))~~ must be made on a list of eligible electors and approved private schools that the elector has voted.

(2) Official ballot return envelopes not submitted in compliance with this chapter and other envelopes containing ballots ~~((shall))~~ must be set aside for a final review and acceptance or rejection by the election ~~((committee))~~ counting boards.

(3) The ~~((election committee shall))~~ counting boards must convene for the purpose of counting votes on the date included on the election timeline.

(a) Official ballot return envelopes accepted by the election committee ~~((shall))~~ must be opened and the ~~((inner unmarked))~~ secrecy envelopes containing the official ballots shall be removed and placed aside still sealed.

(b) The inner unmarked envelopes shall then be opened and the votes counted by the election committee.

(4) ~~((No record shall be made or maintained))~~ The office of superintendent of public instruction must not make or maintain any record of the candidate for whom any elector cast his or her vote.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-105 Ineligible votes. The following ballots and votes ~~((shall))~~ must be declared void and ~~((shall))~~ will not be accepted:

(1) Votes for write-in candidates;

(2) Votes cast on other than an official ballot ~~((provided pursuant to this chapter))~~;

(3) Ballots which contain a vote for two or more of the named candidates for a particular position;

(4) Ballots contained in other than an official ballot return envelope ~~((provided pursuant to this chapter))~~;

(5) Ballots contained in an official ballot return envelope upon which the elector is not designated by name;

(6) Ballots ~~((received after 5:00 p.m. on the date included on the election timeline. Provided, that any official ballot return envelope that is postmarked on or before midnight of the above date and received pursuant to the United States mail prior to the initial counting of votes by the election committee shall be accepted))~~ postmarked after the date specified on the election timeline. Ballots received after 5:00 p.m. on the date specified in the election timeline if delivered in person; and

(7) Such other ballots or votes as the ~~((election committee shall))~~ counting boards determine to be unidentifiable or unlawful.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-111 Run-off election. If no candidate for any one position receives a minimum of fifty percent plus one of the total votes for such position, the superintendent of public instruction ~~((shall))~~ must call a run-off election between the two candidates receiving the two highest vote totals for such position. The call for run-off election will include an updated election timeline. Ballots will be mailed to the same list of electors as were issued ballots for the initial election. In the event of a tie, the winner will be determined by lot drawing. To conduct the lot draw, the superintendent of public instruction, or designee, will place both names in a container and randomly draw one of the names. The lot draw will be conducted at the office of the superintendent of public instruction and will be witnessed by the three member election board. The candidate whose name is drawn will be deemed elected.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-112 Dispute resolution. ~~((+))~~ Any public school district board member or any approved private school eligible to vote for a candidate for membership on the state board of education or any candidate for the position, within ten days after the superintendent of public instruction's reporting of election, may contest the election of a candidate ~~((for any of the following causes:~~

(a) ~~Because the person whose right is being contested gave a bribe or reward to an elector for the purpose of procuring the candidate's election, or offered to do so; or~~

(b) ~~On account of illegal votes.~~

(2) ~~An action contesting an election pursuant to this chapter shall be conducted in compliance with chapter 29A.68 RCW, as now or hereafter amended))~~ under chapter 29A.68 RCW. The request must be made in writing and received by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 05-22-007, filed 10/20/05, effective 11/20/05)

WAC 392-109-115 Report and certification of election. (1) On the date included on the election timeline, but no later than December 15, if a candidate receives a minimum of fifty percent plus one of the total votes for a position, the superintendent ~~((shall))~~ must publicly announce and certify the election results; or

(2) If a candidate does not receive a minimum of fifty percent plus one of the total votes for a position, the superintendent ~~((shall))~~ must publicly announce the need for a run-off election; the results of which ~~((shall))~~ must be announced and certified no more than ten days after election.

AMENDATORY SECTION (Amending WSR 11-01-057, filed 12/7/10, effective 1/7/11)

WAC 392-109-120 Vacancies and appointments. (1) Whenever a vacancy among members elected by public school boards of directors occurs on the state board of educa-

tion, from any cause whatsoever, ~~((it shall be the duty of))~~ the remaining members representing public school boards of directors ~~((to))~~ **must** fill such vacancy by appointment, subject to full board approval. The appointment ~~((shall))~~ **must** be consistent with the appropriate regional position being vacated. The person so appointed ~~((shall))~~ **must** continue in office until the regular term expires. ~~((The appointed person has the option to step down or run for reelection consistent with RCW 28A.305.021 at the time the term expires.))~~

(2) Whenever a vacancy of the approved private school elected member occurs on the state board of education, from any cause whatsoever, ~~((it shall be the duty of))~~ the private school advisory committee ~~((to))~~ **must** fill such vacancy by appointment consistent with RCW ~~((28A.305.011))~~ 28A.305.021. The person so appointed ~~((shall))~~ **must** continue in office until the regular term expires. ~~((The appointed person has the option to step down or run for election consistent with RCW 28A.305.021 at the time the term expires.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-109-078 Certificate of electors.

WAC 392-109-117 Publishing of names.

WSR 17-12-061
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 2, 2017, 12:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-083.

Title of Rule and Other Identifying Information: WAC 392-121-122 Definition—Full-time equivalent student, 392-121-133 Definition—Annual average full-time equivalent students, 392-121-136 Limitation on enrollment counts, 392-121-137 Full-time equivalent enrollment of students with a disability, 392-122-225 Definition—State institutional education program—Institutional education FTE students, 392-122-421 Full-day kindergarten program—Definitions, and 392-169-057 Enrollment—Extent of combined high school and running start enrollment.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on July 28, 2017, at 11:00 a.m.

Date of Intended Adoption: August 2, 2017.

Submit Written Comments to: Becky McLean, P.O. Box 47200, Olympia, WA 98504, email becky.mclean@k12.wa.us, fax (360) 664-3683, by July 28, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy by July 21, 2017, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section 502

(1)(e)(ii) of the 2015-17 biennial budget requires OSPI to align its agency rules defining a full-time equivalent student to current law defining the minimum instructional hours for public schools. The purpose of this proposed rules amendment is to change the annual average full-time employee (FTE) to one thousand hours and the monthly FTE for all grades to twenty-seven hours and forty-five minutes weekly beginning with the 2018-19 school year. Currently, the annual average FTE is seven hundred twenty hours for grades K-3 and nine hundred hours for grades four through twelve. The proposed amendments would also make minor technical revisions to the rules. WAC 392-169-005 requires joint agreement with OSPI, state board for community and technical colleges, and Washington student achievement council on any revision to chapter 392-169 WAC. All agencies, as well as the Council of Presidents representing the baccalaureate colleges, have reviewed and agreed upon the proposed change to WAC 392-169-057.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.150.290.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Lisa Dawn Fisher, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 2, 2017

Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as

annual average hours for the purposes of compliance with this chapter.

(1)(a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:

~~((a))~~ (i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

~~((b))~~ (ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

~~((c))~~ (iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

~~((d))~~ (iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(b) Beginning with the 2018-19 school year, the minimum hours for all grades are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student ~~((equal to the student's hours of enrollment)).~~

(a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.

(b) Beginning with the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

WAC 392-121-133 Definition—Annual average full-time equivalent students. As used in this chapter, "annual average full-time equivalent students" means the sum of the following:

(1) The annual total of full-time equivalent students enrolled on the ten enrollment count dates of the school year and reported to the superintendent of public instruction pursuant to WAC 392-121-122 divided by ten;

(2)(a) Prior to the 2018-19 school year, annual hours of ancillary service to part-time, private school, and home-based students reported pursuant to WAC 392-121-107 divided by

720 for grades kindergarten through third and 900 for grades fourth through twelfth ~~((and)).~~

(b) Beginning with the 2018-19 school year, annual hours of ancillary services to part-time, private school and home-based students reported pursuant to WAC 392-121-107 divided by 1,000 for all grades.

(3)(a) Prior to the 2018-19 school year, annual hours of eligible enrollment in nonstandard school year programs pursuant to WAC 392-121-123 divided by 720 for grades kindergarten through third and 900 for grades fourth through twelfth.

(b) Beginning with the 2018-19 school year, annual hours of eligible enrollment in nonstandard school year programs pursuant to WAC 392-121-123 divided by 1,000 for all grades.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session.

(i) Prior to the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(ii) Beginning with the 2018-19 school year, each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 1,000 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 1.8 FTE.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student. A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student. A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start and a maximum of a 1.0 full-time equivalent for the student's high

school enrollment subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time by a state institution educational program on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim ~~((up to))~~ for an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-137 Full-time equivalent enrollment of students with a disability. In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student ~~((is enrolled full-time (twenty hours or more per week), or))~~ is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

WAC 392-122-225 Definition—State institutional education program—Institutional education full-time equivalent (FTE) students. "Institutional education full-time equivalent (FTE) students" means the sum of FTE students on an enrollment count date determined as follows:

(1) Prior to the 2018-19 school year, FTE shall be calculated as follows:

(a) An enrolled institutional education program student who is three to eight years of age and scheduled to engage in a minimum of twenty hours of educational activity per week shall be counted as one FTE.

~~((2))~~ (b) An enrolled institutional education program student who is nine years of age or older and scheduled to engage in a minimum of twenty-five hours of educational activity per week shall be counted as one FTE.

(2) Beginning with the 2018-19 school year, an enrolled institutional education program student scheduled to engage in a minimum of twenty-seven hours and forty-five minutes of educational activity per week shall be counted as one FTE.

(3) An enrolled institutional education program student who is scheduled to engage in less than the minimum hours for one FTE shall be counted as a partial FTE, determined by dividing the scheduled hours of educational activity by the minimum hours for one FTE.

(4) In determining a student's FTE, educational activity may include up to ten minutes of class transition time between classes but shall not include ~~((noon intermission))~~ time for meals.

(5) No student shall be counted as more than one FTE.

AMENDATORY SECTION (Amending WSR 13-21-023, filed 10/7/13, effective 11/7/13)

WAC 392-122-421 Full-day kindergarten program—Definitions. As used in WAC 392-122-420 through 392-122-426, the following definitions shall apply:

(1) Full-day kindergarten (FDK) means an approved program that is eligible for state-funded full-day kindergarten program as provided for in the annual state operating budget;

(2) Full-time equivalent (FTE) has the same meaning as defined in WAC 392-121-122 (1)~~((a))~~;

~~(3) "Poverty percentage" means the percentage of a school building's kindergarten through grade 6 students who are eligible for the federal free and reduced price lunch (FRPL) as reported to OSPI for the prior school year October 1st CEDARS reporting).~~

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-057 Enrollment—Extent of combined high school and running start enrollment. Concurrent or combined regular high school program and running start program enrollment by a student may exceed the equivalent of full-time enrollment as follows:

(1) An eligible student's concurrent enrollment in both the regular high school program, and in running start or an institution of higher education under this chapter, may exceed the equivalent of full-time enrollment: Provided, That a designated school district representative and a designated college or university representative may jointly limit a student's concurrent high school and institution of higher education enrollment, but not to less than the equivalent of full-time enrollment, for bona fide academic reasons based upon a joint evaluation of the student's capabilities and the total course work the student seeks to enroll in.

(2) Prior to the 2018-19 school year and for purposes of limiting a student's combined regular high school and running start program enrollment for bona fide academic reasons under subsection (1) of this section ((thirty)) **twenty-five** hours per week shall constitute full-time high school ((or technical college)) enrollment, and fifteen quarter credits ((hours)) or fifteen semester ((hours)) **credits** shall constitute full-time ((college or university)) **running start** enrollment. ((Thus,)) For example, a student enrolled in the regular high school program for ten hours per week (one-third FTE) and in a college for ten quarter credit ((hours)) (two-thirds FTE) is enrolled the equivalent of full-time. Beginning with the 2018-19 school year, twenty seven hours and forty-five minutes per week shall constitute full-time high school enrollment. Therefore, a student enrolled in the regular high school program for nine hours and fifteen minutes per week will equal one-third FTE and in a college for ten quarter credits (two-thirds FTE) is enrolled the equivalent of full-time.

WSR 17-12-066
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed June 2, 2017, 3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-04-004.

Title of Rule and Other Identifying Information: Revision of WAC 352-32-130 Aircraft, to allow for the use of hang gliders in state parks subject to certain conditions and restrictions.

Hearing Location(s): Washington State Parks and Recreation Commission Meeting, Walla Walla City Hall, Council Chambers, 15 North 3rd Avenue, Walla Walla, WA 99362, on July 13, 2017, between 9:00 a.m. and 5:00 p.m.

Date of Intended Adoption: July 13, 2017.

Submit Written Comments to: Washington State Parks and Recreation Commission, Nadine Selene-Hait, Program Specialist, P.O. Box 42650, Olympia, WA 98504-2650, email Nadine.Selene-Hait@parks.wa.gov, by July 6, 2017.

Assistance for Persons with Disabilities: Contact Nadine Selene-Hait, by July 6, 2017, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to WAC 352-32-130 hang gliding is a prohibited use in state parks, however provisions are made for paragliding which is a similar use. This proposal would revise existing language to authorize (or could use permit) hang gliders to use state parks subject to certain conditions and restrictions which are the same as those used for paragliders. This revision to WAC 352-32-130 will permit, as is presently the case with paragliders, hang gliding in parks specifically designated by the director or designee. Existing language is present in WAC 352-32-130 outlining extensive requirements around site consideration, approvals, and safe and proper execution for these activities.

Reasons Supporting Proposal: hang glider and paraglider equipment has evolved over the years as have the capabilities and the sophistication of our equipment. The two activities are not distinguished by many differences in regards to resource needs, impact and protections. As a recreational use, the interests and needs of paragliders and hang gliders are aligned with only a few small exceptions.

Statutory Authority for Adoption: Chapter 79A.05 RCW.

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

Name of Proponent: [Parks and recreation commission], governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Griffith, 270 9th Street N.E., Suite 200, East Wenatchee, WA 98802-7674, (509) 665-4314; and Enforcement: Robert Ingram, 1111 Israel Road S.W., Olympia, WA 98504-2650, (360) 902-8615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.030, it is not anticipated that the proposed rule revision will impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable for the parks and recreation commission pursuant to RCW 34.05.328 (5)(a)(i).

June 2, 2017

Valeria Evans

Management Analyst

AMENDATORY SECTION (Amending WSR 16-10-002, filed 4/20/16, effective 5/21/16)

WAC 352-32-130 Aircraft. (1) No aircraft shall land on or take off from any body of water or land area in a state park area not specifically designated for landing aircraft. This provision does not apply to official aircraft used in the performance of search and rescue missions, medical emergencies, law enforcement activities, emergency evacuations or fire-fighting activities. It also does not apply in cases where the director or designee specifically authorizes such landings or take offs, in writing, associated with the operational, or administrative needs of the agency or state.

(2) Individuals who have complied with the registration process provided or who have obtained a special recreation event permit pursuant to WAC 352-32-047 may launch and land paragliders and hang gliders in state park areas specifically designated by the director or designee as available for paragliding and hang gliding. Prior to any such designation, the director or designee shall advertise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of paragliding and hang gliding in the proposed area((s)) including, but not limited to the following factors: The degree of conflict paragliding and hang gliding may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park designated for paragliding and hang gliding shall be conspicuously posted as such by the agency.

(3) Individuals paragliding and hang gliding in state parks must:

(a) Comply with the registration process provided for such purposes;

(b) Observe all applicable laws and regulations;

(c) Never destroy or disturb park facilities, natural features, or historical or archaeological resources;

(d) Conduct themselves with thoughtfulness, courtesy and consideration for others, and not interfere with other recreational activities;

(e) Conduct themselves in compliance with the following basic safety regulations:

(i) Comply with specific site operational restrictions that are posted;

(ii) Fly in a manner consistent with the pilot rating held;

(iii) Preplanned landings should be made in areas no smaller than forty feet wide by one hundred feet long;

(iv) Make preflight checks of weather, equipment and site conditions;

(v) Observe all published traffic and right of way flight guidelines, including yielding right of way to all aircraft;

(vi) Wear protective clothing, headgear, Coast Guard approved flotation gear, reserve parachute, supplemental oxygen and communication equipment as appropriate for conditions;

(vii) Fly in a manner that does not create a hazard for other persons or property;

(viii) Fly only during daylight hours, or hours otherwise specified by posting at the site;

(ix) Do not fly over congested areas of parks or open air assembly of persons;

(x) Fly only in designated areas of parks;

(xi) Fly with visual reference to the ground surface at all times;

(xii) Do not tether paragliders or hang gliders to the ground or other stable nonmovable object.

(f) Not fly while under the influence of alcohol or drugs.

(4) Except as provided in subsection (5) of this section, individuals flying remote controlled aircraft may do so only within flying areas designated by the director or designee and only when following the remote controlled aircraft management plan approved by the director or designee and posted for that designated area.

(a) Prior to designating any remote controlled aircraft flying area, the director or designee shall advise and conduct a public meeting in the region where the park is located. The director or designee shall consider the potential impacts of remote controlled aircraft flying in the proposed area(;) including, but not limited to, the following factors: The degree of conflict remote controlled aircraft flying may have with other park uses, public safety issues, and any potential damage to park resources/facilities. Any park area designated for remote controlled aircraft flying shall be conspicuously posted as such by the director or designee.

(b) The director or designee shall establish a committee to advise park staff on park management issues related to remote controlled aircraft flying for each state park area designated as a remote controlled aircraft flying area.

(c) Each state park area with an established advisory committee, which includes remote controlled aircraft flyers will have an approved management plan which will specify remote controlled aircraft flying restrictions concerning types of aircraft, flying hours, identified approved flying zones, identified runways for take-offs and landings, engine muffler requirements, use of and posting of radio frequency, fuel spills and cleanup. The director or designee shall ensure that any remote controlled aircraft flying restrictions contained in the remote controlled aircraft flying management plan are conspicuously posted at the entrance of the affected park area.

(d) The director or designee may permanently, or for a specified period or periods of time, close any designated flying area to remote controlled aircraft flying if the director or designee concludes that a remote controlled aircraft flying closure is necessary for the protection of the health, safety, and welfare of the public, park visitors or staff, or park resources. Prior to closing any designated flying area to remote controlled aircraft flying, the director or designee shall hold a public meeting near the state park area to be closed to remote controlled aircraft flying. Prior notice of the meeting shall be published in a newspaper of general circulation in the area and at the park at least thirty days prior to the meeting. In the event that the director or designee or park manager determines that it is necessary to close a designated flying area immediately to protect against an imminent and substantial threat to the health, safety, and welfare of the public, park visitors or staff, or park resources, the director or designee or park manager may take emergency action to close a state park area to remote controlled aircraft flying without first complying with the publication and meeting requirements of this subsection. Such emergency closure may be effective for only so long as is necessary for the director or designee to comply with the publication and meeting requirements of this subsection. The director or designee shall ensure that any designated flying area closed to remote controlled aircraft flying is conspicuously posted as such at the entrance of the affected park area.

(5) Remote controlled aircraft may be flown in any state park area pursuant to written permission from the director or designee. In granting such permission, the director or designee may specify time, geographic, and elevation restrictions, and any other restrictions necessary to protect the public, park visitors or staff, or park resources. While operating a remote controlled aircraft pursuant to written permission under this subsection, the operator shall be in possession of a copy of the written permission and shall produce it upon request by parks staff. Permission granted by the director or designee to fly a remote controlled aircraft is subject to rescission as necessary to protect the public, park visitors or staff, or park resources.

(6) Any violation of this section, including any failure to abide by a conspicuously posted remote controlled aircraft flying restriction or failure to abide by the terms of written permission to fly remote controlled aircraft, is an infraction under chapter 7.84 RCW.

WSR 17-12-083
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed June 5, 2017, 3:47 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: WAC 246-320-199, 246-322-990 and 246-324-990, the department proposes to increase licensing fees for acute care, psychiatric, and alcohol and chemical dependency hospitals to provide alternative funding for hospital fire code inspections performed by the Washington state patrol, state fire marshal's office under RCW 70.41.080 and 71.12.485.

Hearing Location(s): Department of Health, Point Plaza East, Room 153, 310 Israel Road, Tumwater, WA 98501, on July 27, 2017, at 11:00.

Date of Intended Adoption: August 10, 2017.

Submit Written Comments to: Sherry Thomas, Policy Coordinator, Department of Health, Health Systems Quality Assurance, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by July 27, 2017.

Assistance for Persons with Disabilities: Contact Sherry Thomas by July 13, 2017, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules raise hospital initial and annual renewal licensing fees by \$15 per bed. Revenue from this increase will pay the projected cost of regular periodic fire code inspections required by law. The current funding source, the fire protection contractor license account, was not intended to cover the current and projected volume of hospital fire code inspections and is being depleted.

Reasons Supporting Proposal: The proposed fees would provide consistent revenue that assures resources will be available for the state fire marshal's office to provide timely hospital fire code inspections integral to protecting the safety and health of hospital patients, staff and the public.

Statutory Authority for Adoption: RCW 70.41.030, 71.12.670, 43.70.110, and 43.70.250.

Statute Being Implemented: RCW 70.41.080, 70.41.100, 71.12.470, 71.12.485, 43.20B.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Sherry Thomas, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4612; Implementation and Enforcement: Nancy Tyson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4796.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi)

exempts rules that set or adjust fees or rates pursuant to legislative standards.

June 5, 2017
 John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 12-11-058, filed 5/15/12, effective 6/15/12)

WAC 246-320-199 Fees. This section establishes the ~~((license))~~ initial licensure and annual ~~((use))~~ fees for hospitals licensed under chapter 70.41 RCW. The license must be renewed every three years.

(1) Applicants ~~((must))~~ and licensees shall submit to the department:

(a) ~~((Send the department))~~ An initial license fee of one hundred ~~((twenty-three))~~ thirty-eight dollars for each bed space within the authorized bed capacity for the hospital;

(b) An annual fee of one hundred thirty-eight dollars for each bed space within the authorized bed capacity of the hospital by November 30th of the year.

(2) As used in this section, a bed space:

(a) Includes all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient care;

~~((e))~~ (b) Includes level 2 and 3 bassinet spaces;

~~((f))~~ (c) Includes bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department(~~(;~~

~~(e))~~);

~~(d) Excludes all normal infant bassinets(~~(-~~~~

~~(2) Licensees shall:~~

~~(a) Send the department by November 30 of each year an annual use fee of one hundred twenty-three dollars for each bed space within the authorized bed capacity of the hospital;~~

~~(b) Include all bed spaces in rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;~~

~~(c) Include level 2 and 3 bassinet spaces;~~

~~(d) Include bed spaces assigned for less than twenty-four hour patient use as part of the licensed bed capacity when:~~

~~(i) Physical plant requirements of this chapter are met without movable equipment; and~~

~~(ii) The hospital currently possesses the required movable equipment and certifies this fact to the department;~~

~~(e) Exclude all normal infant bassinets; and~~

~~(f))~~);

~~(c) Excludes beds banked as authorized by certificate of need under chapter 70.38 RCW.~~

(3) A licensee shall ~~((send))~~ submit to the department a late fee in the amount of one hundred dollars per day whenever the annual use fee is not paid by November 30. The total late fee will not exceed twelve hundred dollars.

(4) An applicant may request a refund for initial licensure as follows:

(a) Two-thirds of the initial fee paid after the department has received an application and not conducted an on-site survey or provided technical assistance; or

(b) One-third of the initial fee paid after the department has received an application and conducted either an on-site survey or provided technical assistance but not issued a license.

AMENDATORY SECTION (Amending WSR 07-17-174, filed 8/22/07, effective 9/22/07)

WAC 246-322-990 Private psychiatric hospital fees.

This section establishes the initial licensure and annual fees for private psychiatric hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall:

(a) Submit ~~((an annual))~~ to the department an initial licensure fee of ~~((seventy))~~ eighty-five dollars ~~((and zero cents))~~ for each bed space within the licensed bed capacity of the hospital to the department;

(b) Submit to the department an annual fee of eighty-five dollars for each bed space within the licensed bed capacity of the hospital to the department;

(c) Include all bed spaces and rooms complying with physical plant and movable equipment requirements of this chapter for twenty-four-hour assigned patient rooms;

~~((e))~~ (d) Include bed spaces assigned for less than twenty-four-hour patient use as part of the licensed bed capacity when:

(i) Physical plant requirements of this chapter are met without movable equipment; and

(ii) The private psychiatric hospital currently possesses the required movable equipment and certifies this fact to the department;

~~((d))~~ (e) Limit licensed bed spaces as required under chapter 70.38 RCW;

~~((e))~~ (f) Submit applications for bed additions to the department for review and approval under chapter 70.38 RCW subsequent to department establishment of the private psychiatric hospital's licensed bed capacity;

~~((f))~~ (g) Set up twenty-four-hour assigned patient beds only within the licensed bed capacity approved by the department.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received the application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received the application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has performed more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because the applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

AMENDATORY SECTION (Amending WSR 07-17-174, filed 8/22/07, effective 9/22/07)

WAC 246-324-990 Fees. This section establishes the initial licensure and annual fees for private alcohol and chemical dependency hospitals licensed under chapter 71.12 RCW.

(1) Applicants and licensees shall submit to the department:

(a) An initial licensure fee of ~~((seventy))~~ eighty-five dollars ~~((and zero cents))~~ for each bed space within the proposed licensed bed capacity; and

(b) An annual ~~((renewal))~~ fee of ~~((seventy))~~ eighty-five dollars ~~((and zero cents))~~ for each licensed bed space.

(2) Refunds. The department shall refund fees paid by the applicant for initial licensure if:

(a) The department has received an application but has not conducted an on-site survey or provided technical assistance, the department will refund two-thirds of the fees paid, less a fifty dollar processing fee.

(b) The department has received an application and has conducted an on-site survey or provided technical assistance, the department will refund one-third of the fees paid, less a fifty dollar processing fee.

(c) The department will not refund fees if:

(i) The department has conducted more than one on-site visit for any purpose;

(ii) One year has elapsed since an initial licensure application is received by the department, and the department has not issued the license because applicant has failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

WSR 17-12-087

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 6, 2017, 6:56 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 16-555 WAC, Washington strawberry commission.

Hearing Location(s): Natural Resources Building, Room 205, 1111 Washington Street S.E., Olympia, WA 98504, on July 11, 2017, at 10:00 a.m.

Date of Intended Adoption: August 16, 2017.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., July 11, 2017.

Assistance for Persons with Disabilities: Contact agency receptionist by June 30, 2017, (360) 902-1976, TTY 711 or (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will repeal chapter 16-555 WAC and terminate the Washington strawberry commission. A hearing will be held under the provisions of chapter 34.05 RCW and a referendum of affected producers will be conducted under the provisions of chapter 15.65 RCW to determine whether the marketing order and commission are terminated.

Reasons Supporting Proposal: The Washington strawberry commission board voted to terminate the commission because of lack of participation by affected growers and because the commission no longer meets the requirements of chapter 15.65 RCW, Washington state agricultural commodity boards, particularly RCW 15.65.220(1), which requires the commission board to be composed of not less than five members.

Statutory Authority for Adoption: RCW 15.65.183 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal will not be adopted unless the proposed rules are also approved in a referendum of affected strawberry producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington state strawberry commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Teresa Norman, Olympia, Washington, (360) 902-2043.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal would eliminate the marketing order for the Washington strawberry commission. Under the provisions of chapter 15.65 RCW, a referendum of affected parties is required to terminate the commission. There are no negative fiscal impacts to affected producers of strawberries. In addition, rule-making proceedings conducted under chapter 15.65 RCW are exempt from compliance with RCW 34.05.310, chapter 19.85 RCW, and RCW 43.135.055 when the adoption of the rules is determined by a referendum vote of the affected parties.

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington strawberry commission are not named agencies under RCW 34.05.328 (5)(a)(i).

June 6, 2017
Derek I. Sandison
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 16-555-010 Definition of terms.
- WAC 16-555-020 Strawberry commodity board.
- WAC 16-555-030 Marketing order purposes.
- WAC 16-555-040 Assessments and collections.

WAC 16-555-041 Time—Place—Method for payment and collection of assessments.

WAC 16-555-050 Obligations of the board.

WAC 16-555-060 Termination of the marketing order.

WAC 16-555-070 Effective time.

WAC 16-555-080 Separability.

WSR 17-12-104

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 6, 2017, 3:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-21-081.

Title of Rule and Other Identifying Information: The department is proposing to amend existing sections and create new sections in chapter 388-71 WAC, Home and community services and programs, specifically related to adult day health and adult day care.

Hearing Location(s): 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>), on July 25, 2017, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 26, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., July 25, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by July 11, 2017, phone (360) 664-6092, TTY (360) 664-6178, or email KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending and adding new sections to chapter 388-71 WAC to define definitions used throughout the chapter, update existing language as it pertains to the center's responsibility in developing a negotiated care plan, and define client rights in regards to restraints including physical restraints, chemical restraints, involuntary seclusion, and the use of medical devices.

Reasons Supporting Proposal: Refer to the purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.39A.400.

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: Erika Parada, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2450.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

June 5, 2017
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-13 issue of the Register.

WSR 17-12-107
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed June 7, 2017, 7:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-009.

Title of Rule and Other Identifying Information: WAC 182-543-2000 DME, CRT, P&O, medical supplies—Eligible providers and provider requirements and 182-543-5000 DME, CRT, P&O, medical supplies—Covered—Prosthetics/orthotics.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf, or directions can be obtained by calling (360) 725-1000), on July 11, 2017, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 12, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, email arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on July 11, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed by July 7, 2017, email amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to add occupational therapists to the list of eligible prosthetic and orthotic providers. The agency previously filed these amendments, along with amendments to WAC 182-543-0500 and 182-545-200, to comply with federal rules under 42 C.F.R. Part 440 that establish who can prescribe medical supplies and equipment. The agency filed the previous amendments under WSR 16-19-032 and held a

hearing on October 25, 2016. However, the amendments based on the federal rules have been delayed. A second public hearing is required to move forward with the sections of these rules that add occupational therapists as eligible prosthetic and orthotics providers. The agency will hold another public hearing on amendments to comply with the federal rules at a later date.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160, 42 C.F.R. Part 440.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Erin Mayo/Jean Gowen, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed change does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

June 7, 2017
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

WAC 182-543-2000 DME and related supplies, complex rehabilitation technology, prosthetics, orthotics, medical supplies and related services—Eligible providers and provider requirements. (1) The medicaid agency pays qualified providers for durable medical equipment (DME) and related supplies, complex rehabilitation technology (CRT), prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service basis as follows:

(a) DME providers who are enrolled with medicare for DME and related repair services;

(b) Qualified CRT suppliers who are enrolled with medicare for DME and related repair services;

(c) Medical equipment dealers who are enrolled with medicare, pharmacies who are enrolled with medicare, and home health agencies under their national provider (~~identifier~~) identifier (NPI) for medical supplies;

(d) Prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. Medical equipment dealers and pharmacies that do not require state licensure to provide selected prosthetics and orthotics may be paid for those selected prosthetics and orthotics only as long as the medical equipment dealers and pharmacies meet the medicare enrollment requirement;

(e) Occupational therapists providing orthotics who are licensed by the Washington state department of health in occupational therapy;

(f) Physicians who provide medical equipment and supplies in the office. The agency may pay separately for medical supplies, subject to the provisions in the agency's resource-based relative value scale fee schedule; and

~~((f))~~ (g) Out-of-state (~~orthotics and~~) prosthetics and orthotics providers who meet their state regulations.

(2) Providers and suppliers of DME and related supplies, CRT, prosthetics, orthotics, medical supplies and related items must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Have the proper business license and be certified, licensed (~~and/or~~) and bonded if required, to perform the services billed to the agency;

(c) Have a valid prescription~~(s)~~ for the DME.

(i) To be valid, a prescription must:

(A) Be written on the agency's Prescription Form (HCA 13-794). The agency's electronic forms are available online at:

<http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx>;

(B) Be written by a physician, advanced registered nurse practitioner (ARNP), naturopathic physician, or physician's assistant certified (PAC);

(C) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(D) Be no older than one year from the date the prescriber signs the prescription; and

(E) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(ii) For dual-eligible (~~medicare/medicaid~~) clients when medicare is the primary payer and the agency is being billed for (~~the co-pay and/or deductible only~~) only the copay, only the deductible, or both, subsection (2)(a) of this section does not apply.

(d) Provide instructions for use of equipment;

(e) (~~Furnish~~) Provide only new equipment to clients (~~that~~), which include(s) full manufacturer and dealer warranties. See WAC 182-543-2250(3);

(f) (~~Furnish~~) Provide documentation of proof of delivery, upon agency request (see WAC 182-543-2200); and

(g) Bill the agency using only the allowed procedure codes listed in the agency's published DME and related supplies, prosthetics and orthotics, medical supplies and related items billing instructions.

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

WAC 182-543-5000 Covered—Prosthetics/orthotics.

(1) The agency covers, without prior authorization (PA), the following prosthetics and orthotics, with stated limitations:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - One every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - One per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - One per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - One per twelve-month period, per limb.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - One per twelve-month period, per limb.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(2) The agency pays only licensed prosthetic and orthotic providers to supply prosthetics and orthotics. This licensure requirement does not apply to the following:

(a) (~~Selected prosthetics and orthotics that do not require specialized skills to provide; and~~) Providers who are not required to have specialized skills to provide select orthotics, but meet DME and pharmacy provider licensure requirements;

(b) Occupational therapists providing orthotics who are licensed by the Washington state department of health in occupational therapy; and

(c) Out-of-state providers, who must meet the licensure requirements of that state.

(3) The agency pays only for prosthetics or orthotics that are listed as such by the Centers for Medicare and Medicaid Services (CMS), that meet the definition of prosthetic or orthotic (~~as defined~~) in WAC 182-543-1000 and are prescribed (~~per~~) under WAC 182-543-1100 and 182-543-1200.

(4) The agency pays for repair or modification of a client's current prosthesis. To receive payment, all of the following must be met:

(a) All warranties are expired;

(b) The cost of the repair or modification is less than fifty percent of the cost of a new prosthesis and the provider has submitted supporting documentation; and

(c) The repair (~~is warranted~~) must have a warranty for a minimum of ninety days.

(5) (~~The agency requires the client to take responsibility~~) Clients are responsible for routine maintenance of (~~the~~) their prosthetic or orthotic. If (~~the~~) a client does not have the physical or mental ability to perform (~~the~~) this task, (~~the agency requires~~) the client's caregiver (to be responsible) is responsible for routine maintenance of the prosthetic or orthotic. The agency requires (~~prior authorization~~) PA for extensive maintenance to a prosthetic or orthotic.

(6) For prosthetics dispensed for (~~purely~~) cosmetic reasons only, see WAC 182-543-6000(~~, Noncovered DME~~) DME and related supplies, medical supplies and related services—Noncovered.

WSR 17-12-109
PROPOSED RULES
SEATTLE COLLEGES
 [Filed June 7, 2017, 9:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-015.

Title of Rule and Other Identifying Information: Sexual harassment.

Hearing Location(s): Seattle Colleges, Siegal Center, 1st Floor Boardroom, 1500 Harvard Avenue, Seattle, WA 98122, on August 30, 2017, at 1:00 - 3:00.

Date of Intended Adoption: September 14, 2017.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122-3803, email wacinput@seattlecolleges.edu, fax (206) 934-3894.

Assistance for Persons with Disabilities: Contact wacinput@seattlecolleges.edu, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal outdated WAC, leaving internal sexual harassment policy and procedure.

Reasons Supporting Proposal: The sexual harassment policy does not need to be codified under RCW 34.05.010 (16)(i) and (iv) and is inconsistent with the district's internal sexual harassment policy.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Seattle College district, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dave Blake, Siegal Center, (206) 934-4136.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This internal policy will have no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The district is not one of the enumerated agencies in RCW 34.05.328(5), and the proposed rule change is internal to the district.

May 10, 2017

Shouan Pan

Chancellor

REPEALER

The following chapter of the Washington Administrative Code is repealed:

| | |
|------------------|----------------------------------|
| WAC 132F-419-010 | Sexual harassment policy. |
| WAC 132F-419-020 | Procedural guidelines. |
| WAC 132F-419-030 | Informal complaint procedures. |
| WAC 132F-419-040 | Formal complaint procedures. |
| WAC 132F-419-050 | Nondistrict options. |
| WAC 132F-419-060 | Appropriate disciplinary action. |
| WAC 132F-419-070 | Repeated offenses. |

WSR 17-12-110
PROPOSED RULES
SEATTLE COLLEGES
[Filed June 7, 2017, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-09-014.

Title of Rule and Other Identifying Information: Refund of tuition and other fees.

Hearing Location(s): Seattle Colleges, Siegal Center, 1st Floor Boardroom, 1500 Harvard Avenue, Seattle, WA 98122, on August 30, 2017, at 1:00 - 3:00.

Date of Intended Adoption: September 14, 2017.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122-3803, email wacinput@seattlecolleges.edu, fax (206) 934-3894.

Assistance for Persons with Disabilities: Contact wacinput@seattlecolleges.edu, (206) 934-3873.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adopt new WAC setting forth protocol and guidelines on refund policies.

Reasons Supporting Proposal: The district's tuition refund policy should be codification [codified] as part of the district's fiscal process.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Seattle College district, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kurt Buttleman, Siegal Center, (206) 934-4111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules governing student refunds are expected to have no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not subject to RCW 34.05.-328. The agency is not an enumerated agency under RCW 34.05.328 and the proposed rule is not regulatory in nature.

May 10, 2017

Shouan Pan

Chancellor

Chapter 132F-605 WAC

REFUND OF TUITION AND OTHER FEES

NEW SECTION

WAC 132F-605-005 Refunds. Tuition and fees (except those which are nonrefundable) will be refunded if complete or partial withdrawal from classes is accomplished within the first twenty calendar days of the regular college quarter following the beginning day of the quarter.

Refunds, except for self-support programs, e.g., continuing education, intensive English courses, will be made in accordance with the schedule below, subject to a fee. In those instances where the fee subject to refund is less than the fee,

the minimum forfeiture will be reduced to that amount. No charge is made for dropping classes when no refund is involved. At least two weeks must elapse between payment and refund of fees.

International students who attend a college within the Seattle College District on an International Student Visa and make advance payments must be enrolled at the college in the quarter for which they are requesting a refund and must provide documentation establishing extenuating circumstances, such as visa denial or medical reasons.

Refunds of financial aid recipients will be refunded to the appropriate financial aid account as required by federal and state regulations, including those students who are dismissed for disciplinary reasons.

NEW SECTION

WAC 132F-605-010 Refund schedule—General. Withdrawal resulting from classes being canceled by the district, one hundred percent.

Before the first day of the college quarter, one hundred percent.

During the first five instructional days of the college quarter (less administrative fee), one hundred percent.

From the sixth instructional day through the twentieth calendar day of the college quarter, fifty percent.

After the first twenty calendar days of the college quarter, zero percent.

NEW SECTION

WAC 132F-605-020 Refund schedule—Intensive English institute. Withdrawal prior to first class, one hundred percent.

During the first five calendar days, eighty percent.

From the sixth through the fourteenth calendar day, fifty percent.

After the fourteenth calendar day, zero percent.

NEW SECTION

WAC 132F-605-030 Refund schedule—Continuing education. Before forty-eight hours prior to first day class, one hundred percent, less administrative fee.

Within forty-eight hours of start of class/after class begins, zero percent.

NEW SECTION

WAC 132F-605-040 Dismissal for disciplinary reasons. No refund will be given beyond the stated refund deadlines for a student who is dismissed or suspended from the district for disciplinary reasons.

NEW SECTION

WAC 132F-605-050 Classes not following regular college quarter calendar. Refunds for summer quarter, or other short courses/programs that do not follow the regular college calendar, will be applied on a prorated basis to the specific class' shortened schedule.

NEW SECTION

WAC 132F-605-070 Parking fees. Parking fees will be refunded only in the case of one hundred percent withdrawal from the college and surrender of the parking permit, in which case the fees will be refunded on the same basis as tuition.

WSR 17-12-112

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 7, 2017, 9:35 a.m.]

Continuance of WSR 16-24-092.

Preproposal statement of inquiry was filed as WSR 16-20-108.

Title of Rule and Other Identifying Information: Chapter 16-233 WAC, Worker protection standards, the department is proposing to adopt the revised federal worker protection standard specified in 40 C.F.R. §170 (Worker Protection Standard). The department continues to consider amending the worker protection standard rule as stated in the CR-102 filed December 7, 2016. However, the department is revising the proposed "date of intended adoption" for the reasons stated below.

Date of Intended Adoption: December 13, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments adopt the new federal agricultural worker protection standard (40 C.F.R. §170) that was revised in November 2015 by the United States Environmental Protection Agency (EPA). The department was proposing to adopt the revised federal standard in rule in order to remain uniform with current federal regulations. EPA has indicated they plan to formally extend the compliance date for all revised provisions of the worker protection standard. Based on this information, the department is continuing the proposed date of intended adoption until an implementation date of the revised federal regulation is determined by EPA.

Reasons Supporting Proposal: RCW 17.21.440 (2)(b) requires the department to adopt rules for safety and health standards that are at-least-as-effective-as the federal standard. Revising chapter 16-233 WAC to adopt the new federal worker protection standard is necessary to remain uniform with current federal regulations.

Statutory Authority for Adoption: RCW 15.58.040, 17.21.030, and chapter 34.05 RCW.

Statute Being Implemented: Chapters 15.58 and 17.21 RCW.

Rule is necessary because of federal law, 40 C.F.R. §170.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Joel Kangiser, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2013.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment is

adopting the updated federal worker protection standard specified in 40 C.F.R. §170. Per RCW 19.85.061 an agency is not required to complete a small business economic impact statement when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

June 7, 2017

R. Schoen-Nessa

Acting Assistant Director

AMENDATORY SECTION (Amending WSR 09-15-139, filed 7/21/09, effective 8/21/09)

WAC 16-233-001 Federal worker protection standards—Washington state department of labor and industries. This chapter contains the federal Environmental Protection Agency (EPA) worker protection standards as listed in 40 C.F.R., Part 170. Revisions to the federal language have been incorporated into this chapter in order to be consistent with other requirements of Washington state law. These rules are adopted in conjunction with rules adopted by the Washington state department of labor and industries in chapter 296-307 WAC, Part I.

NEW SECTION

WAC 16-233-006 Scope and purpose—40 C.F.R., § 170.301. This regulation is primarily intended to reduce the risks of illness or injury to workers and handlers resulting from occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments. It requires agricultural employers and commercial pesticide handler employers to provide specific information and protections to workers, handlers and other persons when pesticides are used on agricultural establishments in the production of agricultural plants. It also requires handlers to wear the labeling-specified clothing and personal protective equipment when performing handler activities, and to take measures to protect workers and other persons during pesticide applications.

NEW SECTION

WAC 16-233-011 Applicability—40 C.F.R., § 170.303. (1) This regulation applies whenever a pesticide product bearing a label requiring compliance with this chapter is used in the production of agricultural plants on an agricultural establishment, except as provided in subsections (2) and (3) of this section.

(2) This regulation does not apply when a pesticide product bearing a label requiring compliance with this chapter is used on an agricultural establishment in any of the following circumstances:

(a) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(b) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(c) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(d) As attractants or repellents in traps.

(e) On the harvested portions of agricultural plants or on harvested timber.

(f) For research uses of unregistered pesticides.

(g) On pasture and rangeland where the forage will not be harvested for hay.

(h) In a manner not directly related to the production of agricultural plants including, but not limited to, structural pest control and control of vegetation in noncrop areas.

(3) Where a pesticide product's labeling-specific directions for use or other labeling requirements are inconsistent with requirements of this chapter, users must comply with the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

NEW SECTION

WAC 16-233-016 Definitions—40 C.F.R., § 170.305.

Terms used in this chapter have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this chapter, shall have the following meanings:

(1) "Agricultural employer" means any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

(2) "Agricultural establishment" means any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

(3) "Agricultural plant" means any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains; fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

(4) "Application exclusion zone" means the area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

(5) "Chemigation" means the application of pesticides through irrigation systems.

(6) "Closed system" means an engineering control used to protect handlers from pesticide exposure hazards when mixing and loading pesticides.

(7) "Commercial pesticide handler employer" means any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

(8) "Commercial pesticide handling establishment" means any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

(9) "Crop advisor" means any person who is assessing pest numbers, damage, pesticide distribution, or the status or requirements of agricultural plants and who holds a current Washington state department of agriculture commercial consultant license in the agricultural areas in which they are advising.

(10) "Designated representative" means any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by WAC 16-233-021(8) in accordance with WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(11) "Early entry" means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

(12) "Employ" means to obtain, directly or through a labor contractor, the services of a person in exchange for a salary or wages, including piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

(13) "Enclosed cab" means a cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents dermal contact with pesticides that are being applied outside of the cab.

(14) "Enclosed space production" means production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering and that is large enough to permit a person to enter.

(15) "Fumigant" means any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

(16) "Hand labor" means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with plants, plant parts, or soil and other surfaces that may contain pesticide residues, except that hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing crop advisor tasks.

(17) "Handler" means any person, including a self-employed person, who is employed by an agricultural

employer or commercial pesticide handler employer and performs any of the following activities:

(a) Mixing, loading, or applying pesticides.

(b) Disposing of pesticides.

(c) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide containers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

(d) Acting as a flagger.

(e) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(f) Assisting with the application of pesticides.

(g) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

(h) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

(i) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established in WAC 16-233-111 (2)(c) or the pesticide product labeling has been met.

(18) "Handler employer" means any person who is self-employed as a handler or who employs any handler.

(19) "Immediate family" is limited to the spouse, parents, stepparents, foster parents, father-in-law, mother-in-law, children, stepchildren, foster children, sons-in-law, daughters-in-law, grandparents, grandchildren, brothers, sisters, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and first cousins. "First cousin" means the child of a parent's sibling, *i.e.*, the child of an aunt or uncle.

(20) "Labor contractor" means a person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

(21) "Outdoor production" means production of an agricultural plant in an outside area that is not enclosed or covered in any way that would obstruct the natural air flow.

(22) "Owner" means any person who has a present possessory interest (*e.g.*, fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this chapter.

(23) "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves,

chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(24) "Restricted-entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

(25) "Safety data sheet" has the same meaning as the definition in 29 C.F.R. Sec. 1910.1200(c).

(26) "Treated area" means any area to which a pesticide is being directed or has been directed.

(27) "Use," *as in "to use a pesticide"* means any of the following:

(a) Pre-application activities including, but not limited to:

(i) Arranging for the application of the pesticide.

(ii) Mixing and loading the pesticide.

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(b) Application of the pesticide.

(c) Post-application activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early-entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

(d) Other pesticide-related activities including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(28) "Worker" means any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

(29) "Worker housing area" means any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

NEW SECTION

WAC 16-233-021 Agricultural employer duties—40 C.F.R., § 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler and any early entry worker is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers information and directions sufficient to ensure that each worker and handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any workers or handlers to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this chapter.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(7) Ensure that workers or other persons employed by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information in accordance with WAC 16-233-026 (effective prior to January 1, 2018) or WAC 16-233-027 (effective after Jan-

uary 1, 2018) if workers or handlers are on the establishment and within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) Ensure that whenever handlers employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler employer is provided information about, or is aware of, the specific location and description of any treated areas on the agricultural establishment where a restricted-entry interval is in effect that the handler may be in (or may walk within 1/4 mile of), and any restrictions on entering those areas.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018), and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

WAC 16-233-026 Display requirements for pesticide safety information and pesticide application and hazard information effective prior to January 1, 2018—40 C.F.R., § 170.311. (1) *Display of pesticide safety information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 16-233-021(8), pesticide safety information must be displayed in accordance with this subsection.

(a) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The safety information must include all of the following points:

(i) Help keep pesticides from entering your body. Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(viii) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(ix) There are federal rules to protect workers and handlers, including a requirement for safety training.

(c) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(viii) of this subsection.

(d) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to (b) of this subsection for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 16-233-126, 16-233-221 or 16-233-311, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for eleven or more workers or handlers.

(e) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(f) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(2) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 16-233-021(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this subsection.

(a) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(e) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(f) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with of this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(g) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(h) *Access to pesticide application and hazard information by treating medical personnel.* Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years by (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(i) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in subsection (2)(i)(ii) of this section.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.*, planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (*e.g.*, mailing address or e-mail address).

(iii) If the written request from a designated representative contains all of the necessary information specified in subsection (2)(i)(ii) of this section, the employer must provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

WAC 16-233-027 Display requirements for pesticide safety information and pesticide application and hazard information effective after January 1, 2018—40 C.F.R., § 170.311. (1) *Display of pesticide safety information.* Whenever pesticide safety information and pesticide application and hazard information are required to be provided under WAC 16-233-021(8), pesticide safety information must be displayed in accordance with this subsection.

(a) *General.* The pesticide safety information must be conveyed in a manner that workers and handlers can understand.

(b) The pesticide safety information must include all of the following points:

(i) Avoid getting on the skin or into the body any pesticides that may be on or in plants, soil, irrigation water, tractors, and other equipment, on used personal protective equipment, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash or shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) If pesticides are spilled or sprayed on the body use decontamination supplies to wash immediately, or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(vii) Follow directions about keeping out of treated areas and application exclusion zones.

(viii) Instructions to employees to seek medical attention as soon as possible if they believe they have been poisoned, injured or made ill by pesticides.

(ix) The name, address, and telephone number of a nearby operating medical care facility capable of providing emergency medical treatment. This information must be clearly identified as emergency medical contact information on the display.

(x) The name, address, and telephone number of the Washington state department of agriculture.

(c) *Changes to pesticide safety information.* The agricultural employer must update the pesticide safety information display within twenty-four hours of notice of any changes to the information required in (b)(ix) of this subsection.

(d) *Location.* The pesticide safety information must be displayed at each of the following sites on the agricultural establishment:

(i) The site selected pursuant to subsection (2)(b) of this section for display of pesticide application and hazard information.

(ii) Anywhere that decontamination supplies must be provided on the agricultural establishment pursuant to WAC 16-233-126, 16-233-221 or 16-233-311, but only when the decontamination supplies are located at permanent sites or being provided at locations and in quantities to meet the requirements for eleven or more workers or handlers.

(e) *Accessibility.* When pesticide safety information is required to be displayed, workers and handlers must be allowed access to the pesticide safety information at all times during normal work hours.

(f) *Legibility.* The pesticide safety information must remain legible at all times when the information is required to be displayed.

(2) *Keeping and displaying pesticide application and hazard information.* Whenever pesticide safety information and pesticide application and hazard information is required to be provided under WAC 16-233-021(8), pesticide application and hazard information for any pesticides that are used on the agricultural establishment must be displayed, retained, and made accessible in accordance with this subsection.

(a) *Content.* The pesticide application and hazard information must include all of the following information for each pesticide product applied:

(i) A copy of the safety data sheet.

(ii) The name, EPA registration number, and active ingredient(s) of the pesticide product.

(iii) The crop or site treated and the location and description of the treated area.

(iv) The date(s) and times the application started and ended.

(v) The duration of the applicable labeling-specified restricted-entry interval for that application.

(b) *Location.* The pesticide application and hazard information must be displayed at a place on the agricultural establishment where workers and handlers are likely to pass by or congregate and where it can be readily seen and read.

(c) *Accessibility.* When the pesticide application and hazard information is required to be displayed, workers and handlers must be allowed access to the location of the information at all times during normal work hours.

(d) *Legibility.* The pesticide application and hazard information must remain legible at all times when the information is required to be displayed.

(e) *Timing.* The pesticide application and hazard information for each pesticide product applied must be displayed no later than twenty-four hours after the end of the application of the pesticide. The pesticide application and hazard information must be displayed continuously from the beginning of the display period until at least thirty days after the end of the last applicable restricted-entry interval, or until workers or handlers are no longer on the establishment, whichever is earlier.

(f) *Record retention.* Whenever pesticide safety information and pesticide application and hazard information is required to be displayed in accordance with this subsection, the agricultural employer must retain the pesticide application and hazard information described in (a) of this subsection on the agricultural establishment for two years after the date of expiration of the restricted-entry interval applicable to the pesticide application conducted.

(g) *Access to pesticide application and hazard information by a worker or handler.*

(i) If a person is or was employed as a worker or handler by an establishment during the period that particular pesticide application and hazard information was required to be displayed and retained for two years in accordance with (e) and (f) of this subsection, and the person requests a copy of such application and/or hazard information, or requests access to such application and/or hazard information after it is no longer required to be displayed, the agricultural employer must provide the worker or handler with a copy of or access to all of the requested information within fifteen days of the receipt

of any such request. The worker or handler may make the request orally or in writing.

(ii) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the worker or handler for additional copies of the record.

(h) *Access to pesticide application and hazard information by treating medical personnel.* Any treating medical personnel, or any person acting under the supervision of treating medical personnel, may request, orally or in writing, access to or a copy of any information required to be retained for two years in (f) of this subsection in order to inform diagnosis or treatment of a worker or handler who was employed on the establishment during the period that the information was required to be displayed. The agricultural employer must promptly provide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment after receipt of the request.

(i) *Access to pesticide application and hazard information by a designated representative.*

(i) Any worker's or handler's designated representative may request access to or a copy of any information required to be retained for two years in (f) of this subsection on behalf of a worker or handler employed on the establishment during the period that the information was required to be displayed. The agricultural employer must provide access to or a copy of the requested information applicable to the worker's or handler's time of employment on the establishment within fifteen days after receiving any such request, provided the request meets the requirements specified in subsection (2)(i)(ii) of this section.

(ii) A request by a designated representative for access to or a copy of any pesticide application and/or hazard information must be in writing and must contain all of the following:

(A) The name of the worker or handler being represented.

(B) A description of the specific information being requested. The description should include the dates of employment of the worker or handler, the date or dates for which the records are requested, type of work conducted by the worker or handler (*e.g.*, planting, harvesting, applying pesticides, mixing or loading pesticides) during the period for which the records are requested, and the specific application and/or hazard information requested.

(C) A written statement clearly designating the representative to request pesticide application and hazard information on the worker's or handler's behalf, bearing the worker's or handler's printed name and signature, the date of the designation, and the printed name and contact information for the designated representative.

(D) If the worker or handler requests that the pesticide application and/or the hazard information be sent, direction for where to send the information (*e.g.*, mailing address or e-mail address).

(iii) If the written request from a designated representative contains all of the necessary information specified in subsection (2)(i)(ii) of this section, the employer must pro-

vide a copy of or access to all of the requested information applicable to the worker's or handler's time of employment on the establishment to the designated representative within fifteen days of receiving the request.

(iv) Whenever a record has been previously provided without cost to a worker or handler or their designated representative, the agricultural employer may charge reasonable, nondiscriminatory administrative costs (*i.e.*, search and copying expenses but not including overhead expenses) for a request by the designated representative for additional copies of the record.

NEW SECTION

WAC 16-233-031 Commercial pesticide handler employer duties—40 C.F.R., § 170.313. Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this chapter, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this chapter receives the protections required by this chapter.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this chapter. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this chapter.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this chapter.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 16-233-121.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9)(a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 16-233-201. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the com-

mercial pesticide handler employer must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this chapter for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture.

NEW SECTION

WAC 16-233-036 Prohibited actions—40 C.F.R., § 170.315. No agricultural employer, commercial pesticide handler employer, or other person involved in the use of a pesticide to which this chapter applies, shall intimidate, threaten, coerce, or discriminate against any worker or handler for complying with or attempting to comply with this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer or the EPA or any duly authorized representative of the Washington state department of agriculture regarding conduct that the worker or handler reasonably believes violates this chapter, has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter, or has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker or handler reasonably believed to be in violation of this chapter. Any such intimidation, threat, coercion, or discrimination violates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 12 (a)(2)(G), 7 U.S.C. 136j (a)(2)(G).

NEW SECTION

WAC 16-233-041 Violations of this chapter—40 C.F.R., § 170.317. (1) RCW 15.58.150 (2)(c) provides that it is unlawful for any person "...to use or cause to be used any pesticide contrary to label directions" When 40 C.F.R., Part 170 is referenced on a label, users must comply with all of its requirements, except those that are inconsistent with product-specific instructions on the pesticide product labeling, except as provided for in WAC 16-233-301, 16-233-306, and 16-233-316.

(2) A person who has a duty under this chapter, as referenced on the pesticide product labeling, and who fails to perform that duty, violates RCW 15.58.330 and 17.21.315, FIFRA Section 12 (a)(2)(G), and is subject to civil penalties under RCW 15.58.335, 15.58.260, and 17.21.315.

(3) FIFRA Section 14 (b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships including, but not limited to, labor contractors.

(4) The requirements of this chapter, including the decontamination requirements, must not, for the purposes of Title 29 U.S.C. Sec. 653 (b)(1), be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the WISHA Field Sanitation Standard, WAC 296-307-095, OSHA Field Sanitation Standard, 29 C.F.R. Sec. 1928.110, or other agricultural nonpesticide hazards.

REQUIREMENTS FOR PROTECTION OF AGRICULTURAL WORKERS

NEW SECTION

WAC 16-233-101 Training requirements for workers—40 C.F.R., § 170.401. (1) *General requirement.* Before any worker performs any task in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 16-233-201.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230: Provided, That a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty-one days after a notice of availability of such training materials appears in the FEDERAL REGISTER, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other

sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work to your home.

(xvi) Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be eighteen years old to perform early-entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 16-233-106 Establishment-specific information for workers—40 C.F.R., § 170.403. Before any worker performs any activity in a treated area on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that the worker has been informed of, in a manner the worker can understand, all of the following establishment-specific information:

(1) The location of pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018).

(2) The location of pesticide application and hazard information required in WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(3) The location of decontamination supplies required in WAC 16-233-126.

NEW SECTION

WAC 16-233-111 Entry restrictions associated with pesticide applications—40 C.F.R., § 170.405. (1) *Outdoor production pesticide applications.*

(a) The application exclusion zone is defined as follows:

(i) The application exclusion zone is the area that extends one hundred feet horizontally from the application

equipment in all directions during application when the pesticide is applied by any of the following methods:

- (A) Aerially.
- (B) Air blast application.
- (C) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns).
- (D) As a fumigant, smoke, mist, or fog.

(ii) The application exclusion zone is the area that extends twenty-five feet horizontally from the application equipment in all directions during application when the pesticide is applied not as in (a)(i)(A) through (D) of this subsection and is sprayed from a height of greater than twelve inches from the planting medium using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater).

(iii) There is no application exclusion zone when the pesticide is applied in a manner other than those covered in (a)(i) and (ii) of this subsection.

(b) During any outdoor production pesticide application, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the treated area or an application exclusion zone that is within the boundaries of the establishment until the application is complete.

(c) After the application is complete, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the treated area.

(2) Enclosed space production pesticide applications.

(a) During any enclosed space production pesticide application described in column 1 of the table under (d) of this subsection, the agricultural employer must not allow or direct any worker or other person, other than an appropriately trained and equipped handler involved in the application, to enter or to remain in the area specified in column 2 of the table under (d) of this subsection during the application and until the time specified in column 3 of the table under (d) of this subsection has expired.

(b) After the time specified in column 3 of the table under (d) of this subsection has expired, the area subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-233-116 is the area specified in column 4 of the table under (d) of this subsection.

(c) When column 3 of the table under (d) of this subsection specifies that ventilation criteria must be met, ventilation must continue until the air concentration is measured to be equal to or less than the inhalation exposure level required by the labeling. If no inhalation exposure level is listed on the labeling, ventilation must continue until after one of the following conditions is met:

- (i) Ten air exchanges are completed.
- (ii) Two hours of ventilation using fans or other mechanical ventilating systems.
- (iii) Four hours of ventilation using vents, windows, or other passive ventilation.

(iv) Eleven hours with no ventilation followed by one hour of mechanical ventilation.

(v) Eleven hours with no ventilation followed by two hours of passive ventilation.

(vi) Twenty-four hours with no ventilation.

(d) The following table applies to (a), (b), and (c) of this subsection.

Table - Entry Restrictions During Enclosed Space Production Pesticide Applications

| 1. When a pesticide is applied: | 2. Workers and other persons, other than appropriately trained and equipped handlers, are prohibited in: | 3. Until: | 4. After the expiration of time specified in column 3, the area subject to the restricted-entry interval is: |
|--|---|---|--|
| (a) As a fumigant | Entire enclosed space plus any adjacent structure or area that cannot be sealed off from the treated area | The ventilation criteria of subsection (2)(c) of this section are met | No post-application entry restrictions required by WAC 16-233-116 after criteria in column 3 are met |
| (b) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) As a spray using a spray quality (droplet spectrum) of smaller than medium (volume median diameter of less than 294 microns) | Entire enclosed space | The ventilation criteria of subsection (2)(c) of this section are met | Entire enclosed space |
| (c) Not as in (a) or (b), and for which a respiratory protection device is required for application by the pesticide product labeling | Entire enclosed space | The ventilation criteria of subsection (2)(c) of this section are met | Treated area |
| (d) Not as in (a), (b) or (c), and: (i) From a height of greater than 12 inches from the planting medium, or (ii) As a spray using a spray quality (droplet spectrum) of medium or larger (volume median diameter of 294 microns or greater) | Treated area plus 25 feet in all directions of the treated area, but not outside the enclosed space | Application is complete | Treated area |
| (e) Otherwise | Treated area | Application is complete | Treated area |

NEW SECTION

WAC 16-233-116 Worker entry restrictions after pesticide applications—40 C.F.R., § 170.407. (1) After the application of any pesticide to an area of outdoor production, the agricultural employer must not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(2) After the application of any pesticide to an area of enclosed space production, the agricultural employer must not allow or direct any worker to enter or to remain in the areas specified in column 4 of the table in WAC 16-233-111 (2)(d), before the restricted-entry interval specified on the pesticide product labeling has expired and all treated area warning signs have been removed or covered, except for early-entry activities permitted in WAC 16-233-306.

(3) When two or more pesticides are applied to a treated area at the same time, the applicable restricted-entry interval is the longest of all applicable restricted-entry intervals.

NEW SECTION

WAC 16-233-121 Oral and posted notification of worker entry restrictions—40 C.F.R., § 170.409. (1) *General requirement.* The agricultural employer must notify workers of all entry restrictions required in WAC 16-233-111 and 16-233-116 in accordance with this section.

(a) *Type of notification required:*

(i) *Double notification.* If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer must post signs in accordance with subsection (2) of this section and must also provide oral notification of the application to workers in accordance with subsection (3) of this section.

(ii) *Outdoor production areas subject to restricted-entry intervals greater than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(iii) *Outdoor production areas subject to restricted-entry intervals equal to or less than forty-eight hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than forty-eight hours is applied to an outdoor production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(iv) *Enclosed space production areas subject to restricted-entry intervals greater than four hours.* If a pesticide with product labeling that requires a restricted-entry interval greater than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application by posting warning signs in accordance with subsection (2) of this section.

(v) *Enclosed space production areas subject to restricted-entry intervals equal to or less than four hours.* If a pesticide with product labeling that requires a restricted-entry interval equal to or less than four hours is applied to an enclosed space production area, the agricultural employer must notify workers of the application either by posting warning signs in accordance with subsection (2) of this section or by providing workers with an oral warning in accordance with subsection (3) of this section.

(b) *Exceptions.* Notification does not need to be given to a worker if the agricultural employer can ensure that one of the following is met:

(i) From the start of the application in an enclosed space production area until the end of any restricted-entry interval, the worker will not enter any part of the entire enclosed structure or space.

(ii) From the start of the application to an outdoor production area until the end of any restricted-entry interval, the worker will not enter, work in, remain in, or pass on foot through the treated area or any area within 1/4 mile of the treated area on the agricultural establishment.

(iii) The worker was involved in the application of the pesticide as a handler, and is aware of all information required in subsection (3)(a) of this section.

(2) *Requirements for posted warning signs.* If notification by posted warning signs is required pursuant to subsection (1) of this section, the agricultural employer must, unless otherwise prescribed by the label, ensure that all warning signs meet the requirements of this subsection. When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry is prohibited for the entire area while the signs are posted, except for entry permitted in WAC 16-233-306.

(a) *General.* The warning signs must meet all of the following requirements:

(i) Be one of the three sizes specified in (c) of this subsection and comply with the posting placement and spacing requirements applicable to that sign size.

(ii) Be posted prior to but no earlier than twenty-four hours before the scheduled application of the pesticide.

(iii) Remain posted throughout the application and any restricted-entry interval.

(iv) Be removed or covered within three days after the end of the application or any restricted-entry interval, whichever is later, except that signs may remain posted after the restricted-entry interval has expired as long as all of the following conditions are met:

(A) The agricultural employer instructs any workers on the establishment that may come within 1/4 mile of the treated area not to enter that treated area while the signs are posted.

(B) The agricultural employer ensures that workers do not enter the treated area while the signs remain posted, other than entry permitted in WAC 16-233-306.

(v) Remain visible and legible during the time they are required to be posted.

(b) *Content.*

(i) The warning sign must have a white background. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," must be at the top of the sign, and the words "KEEP

OUT" and "NO ENTRE" must be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in white. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the size and appearance of the sign or change the meaning of the required information. An example of a warning sign meeting these requirements, other than the size and color requirements, follows:



(ii) The agricultural employer may replace the Spanish language portion of the warning sign with equivalent terms in an alternative non-English language if that alternative language is the language read by the largest group of workers at that agricultural establishment who do not read English. The alternative language sign must be in the same format as the original sign and conform to all other requirements of (b)(i) of this subsection.

(c) *Size and posting.*

(i) The standard sign must be at least fourteen inches by sixteen inches with letters at least one inch in height.

(ii) When posting an outdoor production area using the standard sign, the signs must be visible from all reasonably expected points of worker entry to the treated area, including at least each access road, each border with any worker housing area within one hundred feet of the treated area and each footpath and other walking route that enters the treated area. Where there are no reasonably expected points of worker entry, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iii) When posting an enclosed space production area using the standard sign and the entire structure or space is subject to the labeling-specified restricted-entry interval and the post-application entry restrictions specified in WAC 16-

233-116, the signs must be posted so they are visible from all reasonably expected points of worker entry to the structure or space. When posting treated areas in enclosed space production using the standard sign and the treated area only comprises a subsection of the structure or space, the signs must be posted so they are visible from all reasonably expected points of worker entry to the treated area including each aisle or other walking route that enters the treated area. Where there are no reasonably expected points of worker entry to the treated area, signs must be posted in the corners of the treated area or in any other location affording maximum visibility.

(iv) If a smaller warning sign is used with "DANGER" and "PELIGRO" in letters at least 7/8 inch in height and the remaining letters at least 1/2 inch in height and a red circle at least three inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than fifty feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(v) If a smaller sign is used with "DANGER" and "PELIGRO" in letters at least 7/16 inch in height and the remaining letters at least 1/4 inch in height and a red circle at least one and a half inches in diameter containing an upraised hand and a stern face, the signs must be posted no farther than twenty-five feet apart around the perimeter of the treated area in addition to the locations specified in (c)(ii) or (iii) of this subsection.

(vi) A sign with "DANGER" and "PELIGRO" in letters less than 7/16 inch in height or with any words in letters less than 1/4 inch in height or a red circle smaller than one and a half inches in diameter containing an upraised hand and a stern face will not satisfy the requirements of this chapter.

(3) *Oral warnings - Requirement.* If oral notification is required pursuant to subsection (1) of this section, the agricultural employer must provide oral warnings to workers in a manner that the workers can understand. If a worker will be on the establishment when an application begins, the warning must be given before the application begins. If a worker arrives on the establishment while an application is taking place or a restricted-entry interval for a pesticide application is in effect, the warning must be given at the beginning of the worker's work period. The warning must include all of the following:

(a) The location(s) and description of any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(b) The dates and times during which entry is restricted in any treated area(s) subject to the entry restrictions during and after application specified in WAC 16-233-111 and 16-233-116.

(c) Instructions not to enter the treated area or an application exclusion zone during application, and that entry to the treated area is not allowed until the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 16-233-306.

NEW SECTION

WAC 16-233-126 Decontamination supplies for workers—40 C.F.R., § 170.411. (1) *Requirement.* The agri-

cultural employer must provide decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide including, but not limited to, soil, water, and plants.

(2) *Materials and quantities.* The decontamination supplies required in subsection (1) of this section must include at least one gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(a) *Water.* At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) *Timing.*

(a) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least thirty days after the restricted-entry interval expires.

(b) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(4) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decontamination supplies must not be more than 1/4 mile from where workers are working, except that where workers are working more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

REQUIREMENTS FOR PROTECTION OF AGRICULTURAL PESTICIDE HANDLERS

NEW SECTION

WAC 16-233-201 Training requirements for handlers—40 C.F.R., § 170.501. (1) *General requirement.* Before any handler performs any handler activity involving a

pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

(2) *Exceptions.* The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) *Training programs.*

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first-aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty days after a notice of availability of such training materials appears in the FEDERAL REGISTER, but no earlier than January 1, 2018, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xiv) of this subsection instead of the points listed in (b)(i) through (xiii) of this subsection.

(i) All the topics required in WAC 16-233-101 (3)(c).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least eighteen years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this chapter.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) *Recordkeeping.*

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained

on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

NEW SECTION

WAC 16-233-206 Knowledge of labeling, application-specific, and establishment-specific information for handlers—40 C.F.R., § 170.503. (1) *Knowledge of labeling and application-specific information.*

(a) The handler employer must ensure that before any handler performs any handler activity involving a pesticide product, the handler either has read the portions of the labeling applicable to the safe use of the pesticide or has been informed in a manner the handler can understand of all labeling requirements and use directions applicable to the safe use of the pesticide.

(b) The handler employer must ensure that the handler has access to the applicable product labeling at all times during handler activities.

(c) The handler employer must ensure that the handler is aware of requirements for any entry restrictions, application exclusion zones and restricted-entry intervals as described in WAC 16-233-111 and 16-233-116 that may apply based on the handler's activity.

(2) *Knowledge of establishment-specific information.* Before any handler performs any handler activity on an agricultural establishment where within the last thirty days a pesticide product has been used, or a restricted-entry interval for such pesticide has been in effect, the handler employer must ensure that the handler has been informed, in a manner the handler can understand, all of the following establishment-specific information:

(a) The location of pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018).

(b) The location of pesticide application and hazard information required in WAC 16-233-026(2) (effective prior to January 1, 2018) or WAC 16-233-027(2) (effective after January 1, 2018).

(c) The location of decontamination supplies required in WAC 16-233-221.

NEW SECTION

WAC 16-233-211 Requirements during applications to protect handlers, workers, and other persons effective prior to January 1, 2018—40 C.F.R., § 170.505. (1) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the han-

handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(3) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

WAC 16-233-212 Requirements during applications to protect handlers, workers, and other persons effective after January 1, 2018—40 C.F.R., § 170.505. (1) *Prohibition from contacting workers and other persons with pesticides during application.* The handler employer and the handler must ensure that no pesticide is applied so as to contact, directly or through drift, any worker or other person, other than an appropriately trained and equipped handler involved in the application.

(2) *Suspending applications.* The handler performing the application must immediately suspend a pesticide application if any worker or other person, other than an appropriately trained and equipped handler involved in the application, is in the application exclusion zone described in WAC 16-233-111 (1)(a) or the area specified in column 2 of the table in WAC 16-233-111 (2)(d).

(3) *Handlers using highly toxic pesticides.* The handler employer must ensure that any handler who is performing any handler activity with a pesticide product that has the skull-and-crossbones symbol on the front panel of the pesticide product label is monitored visually or by voice communication at least every two hours.

(4) *Fumigant applications in enclosed space production.* The handler employer must ensure all of the following:

(a) Any handler in an enclosed space production area during a fumigant application maintains continuous visual or voice contact with another handler stationed immediately outside of the enclosed space.

(b) The handler stationed outside the enclosed space has immediate access to and uses the personal protective equipment required by the fumigant labeling for applicators in the event that entry becomes necessary for rescue.

NEW SECTION

WAC 16-233-216 Personal protective equipment—40 C.F.R., § 170.507. (1) *Handler responsibilities.* Any person who performs handler activities involving a pesticide

product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 16-233-316.

(2) *Employer responsibilities for providing personal protective equipment.* The handler employer must provide to the handler the personal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment is clean and in proper operating condition. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it shall meet the requirements of chapter 296-307 WAC, Part Y-5. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of chapter 296-307 WAC, Part Y-5, shall apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer shall assure that the respirator fits correctly by using the procedures consistent with chapter 296-307 WAC, Part Y-5.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of 29 C.F.R. Sec. 1910.134 (k)(1)(i) through (vi).

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of 29 C.F.R. Sec. 1910.134 to ensure the handler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) *Use of personal protective equipment.*

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(4) *Cleaning and maintenance.*

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure

the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of 29 C.F.R. Sec. 1910.134 (d)(3)(iii)(B)(2).

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of eight hours of cumulative use.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) *Heat-related illness.* Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must take appropriate measures to prevent heat-related illness.

NEW SECTION

WAC 16-233-221 Decontamination and eye flushing supplies for handlers—40 C.F.R., § 170.509. (1) *Requirement.* The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 16-233-216 (4)(i).

(2) *General conditions.* The decontamination supplies required in subsection (1) of this section must include: At least ten gallons of water for one employee and twenty gallons of water for two or more employees at the beginning of each handler's work period for routine washing and potential emergency decontamination; soap, single-use towels, and clean clothing for use in an emergency. The decontamination and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) *Water.* At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) *Soap and single-use towels.* The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) *Clean change of clothing.* The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) *Location.* The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than 1/4 mile from the handler, except that where the handler activity is more than 1/4 mile from the nearest place of vehicular access or more than 1/4 mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) *Mixing sites.* Decontamination supplies must be provided at any mixing site.

(b) *Exception for pilots.* Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(c) *Exception for treated areas.* The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) *Emergency eye-flushing.*

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing/loading site immediately available to the handler, at least one system that is capable of delivering gently running water at a rate of at least 0.4 gallons per minute for at least 15 minutes, or at least six gallons of water in containers suitable for providing a gentle eye-flush for about fifteen minutes.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

EXEMPTIONS, EXCEPTIONS AND EQUIVALENCY

NEW SECTION

WAC 16-233-301 Exemptions—40 C.F.R., § 170.601.

(1) *Exemption for owners of agricultural establishments and their immediate families.*

(a) On any agricultural establishment where a majority of the establishment is owned by one or more members of the same immediate family, the owner(s) of the establishment are not required to provide the protections of the following sections to themselves or members of their immediate family when they are performing handling activities or tasks related to the production of agricultural plants that would otherwise be covered by this chapter on their own agricultural establishment.

(i) WAC 16-233-021(3).

(ii) WAC 16-233-021 (6) through (10).

(iii) WAC 16-233-026 (effective prior to January 1, 2018) or WAC 16-233-027 (effective after January 1, 2018).

- (iv) WAC 16-233-101.
- (v) WAC 16-233-106.
- (vi) WAC 16-233-121.
- (vii) WAC 16-233-126 and 16-233-221.
- (viii) WAC 16-233-201.
- (ix) WAC 16-233-206.
- (x) WAC 16-233-211 (2) and (3) (effective prior to January 1, 2018) or WAC 16-233-212 (3) and (4) (effective after January 1, 2018).
- (xi) WAC 16-233-216 (3) through (5).
- (xii) WAC 16-233-311 (1) through (3) and (5) through (10).

(b) The owners of agricultural establishments must provide all of the applicable protections required by this chapter for any employees or other persons on the establishment that are not members of their immediate family.

(2) *Exemption for certified crop advisors.* Certified crop advisors may make their own determination for the appropriate personal protective equipment for entry into a treated area during a restricted-entry interval and substitute their self-determined set of personal protective equipment for the labeling-required personal protective equipment, and the requirements of WAC 16-233-021 (5) and (6), 16-233-031(11), 16-233-206(1), 16-233-216, and 16-233-221 do not apply to certified crop advisors provided the application is complete and all of the following conditions are met:

(a) The crop advisor is certified or licensed as a crop advisor by the Washington state department of agriculture.

(b) The certification or licensing program requires pesticide safety training that includes all the information in WAC 16-233-201 (3)(b) or (c) as applicable depending on the date of training.

(c) The crop advisor who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

NEW SECTION

WAC 16-233-306 Exceptions for entry by workers during restricted-entry intervals—40 C.F.R., § 170.603.

An agricultural employer may direct workers to enter treated areas where a restricted-entry interval is in effect to perform certain activities as provided in this section, provided that the agricultural employer ensures all of the applicable conditions of this section and WAC 16-233-311 are met.

(1) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer ensures that all of the following conditions are met:

(a) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants. This exception does not allow workers to perform any activities that involve contact with treated surfaces even if workers are wearing personal protective equipment.

(b) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(2) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities, if the agricultural employer ensures that all of the following requirements are met:

(a) No hand labor activity is performed.

(b) The time in treated areas where a restricted-entry interval is in effect does not exceed one hour in any twenty-four-hour period for any worker.

(c) No such entry is allowed during the first four hours after the application ends.

(d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(3) *Exception for an agricultural emergency.*

(a) An agricultural emergency means a sudden occurrence or set of circumstances that the agricultural employer could not have anticipated and over which the agricultural employer has no control, that requires entry into a treated area during a restricted-entry interval, and when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. Losses resulting from mismanagement cannot be included when determining whether a loss is substantial.

(b) A worker may enter a treated area where a restricted-entry interval is in effect in an agricultural emergency to perform tasks necessary to mitigate the effects of the agricultural emergency, including hand labor tasks, if the agricultural employer ensures that all the following criteria are met:

(i) The Washington state department of agriculture declares an agricultural emergency that applies to the treated area, or agricultural employer has determined that the circumstances within the treated area are the same as circumstances the Washington state department of agriculture has previously determined would constitute an agricultural emergency.

(ii) The agricultural employer determines that the agricultural establishment is subject to the circumstances that result in an agricultural emergency meeting the criteria of (a) of this subsection.

(iii) If the labeling of any pesticide product applied to the treated area requires workers to be notified of the location of treated areas by both posting and oral notification, then the agricultural employer must ensure that no individual worker spends more than four hours out of any twenty-four-hour period in treated areas where such a restricted-entry interval is in effect.

(iv) No such entry is allowed during the first four hours after the application ends.

(v) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(vi) A decontamination site has been provided in accordance with WISHA regulations.

(4) *Exceptions for limited contact and irrigation activities.* A worker may enter a treated area during a restricted-entry interval for limited contact or irrigation activities, if the agricultural employer ensures that all of the following requirements are met:

- (a) No hand labor activity is performed.
- (b) No worker is allowed in the treated area for more than eight hours in a twenty-four-hour period.
- (c) No such entry is allowed during the first four hours after the application ends.
- (d) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.
- (e) The task is one that, if not performed before the restricted-entry interval expires, would cause substantial economic loss, and there are no alternative tasks that would prevent substantial loss.
- (f) With the exception of irrigation tasks, the need for the task could not have been foreseen.
- (g) The worker has no contact with pesticide-treated surfaces other than minimal contact with feet, lower legs, hands, and forearms.
- (h) The labeling of the pesticide product that was applied does not require that workers be notified of the location of treated areas by both posting and oral notification.

NEW SECTION

WAC 16-233-311 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval—40 C.F.R., § 170.605. If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

- (1) The agricultural employer must ensure that the worker is at least eighteen years old.
- (2) Prior to early entry, the agricultural employer must provide to each early-entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.
 - (a) Location of early-entry area where work activities are to be performed.
 - (b) Pesticide(s) applied.
 - (c) Dates and times that the restricted-entry interval begins and ends.
 - (d) Which exception in WAC 16-233-306 is the basis for the early entry, and a description of tasks that may be performed under the exception.
 - (e) Whether contact with treated surfaces is permitted under the exception.
 - (f) Amount of time the worker is allowed to remain in the treated area.
 - (g) Personal protective equipment required by the pesticide product labeling for early entry.
 - (h) Location of the pesticide safety information required in WAC 16-233-026(1) (effective prior to January 1, 2018) or WAC 16-233-027(1) (effective after January 1, 2018) and the location of the decontamination supplies required in subsection (8) of this section.

(3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective equipment must conform to the standards in WAC 16-233-216 (2)(a) through (i).

(5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 16-233-216 (3) and (4).

(6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(7) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(8) During any early-entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 16-233-221, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early-entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for eyeflushing that is immediately available to each worker who is performing early-entry activities.

(10) At the end of any early-entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees shall be provided at early entry sites that do not have running water.

NEW SECTION

WAC 16-233-316 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., § 170.607. (1) *Body protection.*

(a) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(b) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(2) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(4) *Closed systems.*

(a) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in (b) of this subsection, and the handler employer meets the requirements in (c) of this subsection, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of "DANGER" or "WARNING" may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in (a)(i) of this subsection may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(b) The exceptions in (a) of this subsection apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(c) The exceptions in (a) of this subsection apply only where the handler employer has satisfied the requirements in WAC 16-233-031 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a

pesticide; and special procedures or limitations regarding partially filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(5) *Enclosed cabs.*

(a) If a handler applies a pesticide from inside a vehicle's enclosed cab, and if the conditions listed in (b) of this subsection are met, exceptions to the personal protective equipment requirements specified on the product labeling for applicators are permitted as provided in (c) of this subsection.

(b) All of the personal protective equipment required by the pesticide product labeling for applicators must be immediately available and stored in a sealed container to prevent contamination. Handlers must wear the applicator personal protective equipment required by the pesticide product labeling if they exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in a treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(c) Handlers may substitute a long-sleeved shirt, long pants, shoes and socks for the labeling-specified personal protective equipment for skin and eye protection. If a filtering facepiece respirator (NIOSH approval number prefix TC-84A) or dust/mist filtering respirator is required by the pesticide product labeling for applicators, then that respirator need not be worn inside the enclosed cab if the enclosed cab has a properly functioning air ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions. If any other type of respirator is required by the pesticide labeling for applicators, then that respirator must be worn.

(6) *Aerial applications.*

(a) *Use of gloves.* The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(b) *Open cockpit.* Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(c) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) *Crop advisors.*

(a) Provided the conditions in (b) through (d) of this subsection are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eye-wear for handlers.

(b) The application has been complete for at least four hours.

(c) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 16-233-111 (2)(c) or the pesticide product labeling have been met.

(d) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | | | |
|----------------|---|----------------|--|
| WAC 16-233-005 | Scope and purpose—Worker protection standards—40 C.F.R., § 170.1. | WAC 16-233-130 | Providing specific information about applications—Standards for workers—40 C.F.R., § 170.122. |
| WAC 16-233-010 | Definitions—Worker protection standards—40 C.F.R., § 170.3. | WAC 16-233-135 | Notice of applications to handler employers—Standards for workers—40 C.F.R., § 170.124. |
| WAC 16-233-020 | General duties and prohibited actions—Worker protection standards—40 C.F.R., § 170.7. | WAC 16-233-140 | Pesticide safety training—Standards for workers—40 C.F.R., § 170.130. |
| WAC 16-233-025 | Violations of this chapter—Worker protection standards—40 C.F.R., § 170.9. | WAC 16-233-145 | Posted pesticide safety information—Standards for workers—40 C.F.R., § 170.135. |
| WAC 16-233-100 | Applicability of this chapter—Standards for workers—40 C.F.R., § 170.102. | WAC 16-233-150 | Decontamination—Standards for workers—40 C.F.R., § 170.150. |
| WAC 16-233-105 | Exceptions—Standards for workers—40 C.F.R., § 170.103. | WAC 16-233-155 | Emergency assistance—Standards for workers—40 C.F.R., § 170.160. |
| WAC 16-233-110 | Exemptions—Standards for workers—40 C.F.R., § 170.104. | WAC 16-233-200 | Applicability of this subpart—Standards for pesticide handlers—40 C.F.R., § 170.202. |
| WAC 16-233-115 | Restrictions associated with pesticide applications—Standards for workers—40 C.F.R., § 170.110. | WAC 16-233-205 | Exemptions—Standards for handlers—40 C.F.R., § 170.204. |
| WAC 16-233-120 | Entry restrictions—Standards for workers—40 C.F.R., § 170.112. | WAC 16-233-210 | Restrictions during applications—Standards for pesticide handlers—40 C.F.R., § 170.210. |
| WAC 16-233-125 | Notice of applications—Standards for workers—40 C.F.R., § 170.120. | WAC 16-233-215 | Providing specific information about applications—Standards for pesticide handlers—40 C.F.R., § 170.222. |
| | | WAC 16-233-220 | Notice of applications to agricultural employers—Standards for pesticide handlers—40 C.F.R., § 170.224. |
| | | WAC 16-233-225 | Pesticide safety training—Standards for pesticide handlers—40 C.F.R., § 170.230. |
| | | WAC 16-233-230 | Knowledge of labeling and site-specific information—Standards for pesticide handlers—40 C.F.R., § 170.232. |
| | | WAC 16-233-235 | Safe operation of equipment—Standards for pesticide handlers—40 C.F.R., § 170.234. |
| | | WAC 16-233-240 | Posted pesticide safety information—Standards for pesticide handlers—40 C.F.R., § 170.235. |
| | | WAC 16-233-245 | Personal protective equipment—Standards for pesticide handlers—40 C.F.R., § 170.240. |
| | | WAC 16-233-250 | Decontamination—Standards for pesticide handlers—40 C.F.R., § 170.250. |
| | | WAC 16-233-255 | Emergency assistance—Standards for pesticide handlers—40 C.F.R., § 170.260. |

WSR 17-12-116
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed June 7, 2017, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-036 on March 8, 2017.

Title of Rule and Other Identifying Information: WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? and 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?

Hearing Location(s): Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on July 12, 2017, at 10:00 a.m.

Date of Intended Adoption: On or after July 26, 2017.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax (360) 664-9689, by July 12, 2017.

Assistance for Persons with Disabilities: Contact Joanna Eide by July 5, 2017, (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making proposes to allow persons or entities to hold interests [in] up to three producer licenses, and to adjust the maximum square feet for Tier 1 producers from two thousand to four thousand. Other rule adjustments are made to ensure proper consideration of an applicant or renewing licensee's law, rule, and fine payment history, as well as other technical changes for clarity and to ensure rules accommodate upcoming changes in law.

Reasons Supporting Proposal: WSLCB has heard concerns from smaller producers that they are unable to grow their business due to being limited to no more than two thousand square feet of marijuana, and an interest for licensees to hold an interest in more than one producer license. Initially, WSLCB rules stated that a person or business entity may hold interest in up to three producer licenses, which was later limited to interest in only one license due to the high volume of producer license applications received. Rule making is required to accomplish these items, as well as ensure that rules accommodate changes as a result of the passage of ESSB 5131 during the 2017 legislative session that will become effective on July 23, 2017. Additional rule making needed for legislative changes will occur in a separate rule making. Technical and clarifying changes are needed to ensure rules function properly, are clearly understood by licensees, and improve enforceability.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Statute Being Implemented: RCW 69.50.342 and 69.50.345.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Imple-

mentation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1600; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as the proposed changes involved do not impose new reporting or record-keeping requirements and should not impose more than minor costs on licensees. There are no anticipated equipment, supplies, labor, professional services, and increased administrative costs that will be needed by licensees to comply with the proposed changes. No loss of sales or revenue should occur based on the proposed new requirements.

Additionally, any increases in growing operations of a Tier 1 producer under the proposed changes in this rule making will be voluntary and initiated by the licensee. Any assumption of an existing license by a licensee or other person or entity will also be voluntary and subject to existing qualification requirements. Similarly, technical changes allowing producers to sell immature plants or clones and seeds to members of a registered cooperative, qualified patients, designated providers, and marijuana research licensees are voluntary in nature. A separate rule making will provide additional guidance for the new allowances for sales of immature plants or clones and seeds similar to the requirements for sales of plants to members of a registered cooperative in WAC 314-55-410.

New requirements are included in the proposed changes regarding the ability for WSLCB to take administrative violation history and fine payments, or lack thereof, into account for license renewals and new license applications (through assumptions only). Because a licensee may only receive an administrative violation is dependent on individual licensee conduct associated with complying with existing regulatory requirements, which cannot be anticipated.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.328 because the proposed new rule does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

June 7, 2017

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving or renewing a marijuana license? The WSLCB will conduct an investigation of all applicants' marijuana law or rule administrative violation history.

(1) The WSLCB will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history(~~(; or to any person who has demonstrated a pattern of disregard for laws or rules.);~~):

| Violation Type (see WAC 314-55-515) | Period of Consideration |
|--|--|
| <ul style="list-style-type: none"> • Three or more public safety violations; | <ul style="list-style-type: none"> • Violations issued within three years of the date the application is received by the board's licensing and regulation division. |
| <ul style="list-style-type: none"> • Four or more regulatory violations; or | |
| <ul style="list-style-type: none"> • One to four, or more license violations. | <ul style="list-style-type: none"> • Violations issued within the last three years the true party(ies) of interest were licensed. |

(2) The WSLCB will not normally issue or renew a marijuana license to an applicant or licensee who has accumulated eight or more points as indicated below:

| Violation Type (See WAC 314-55-515 through 314-55-537) | Time Period During Which Points Will Be Assigned | Points Assigned |
|--|---|------------------------|
| Violations involving: <ul style="list-style-type: none"> • <u>Diversion</u> • <u>Criminal conduct</u> • <u>True party of interest/undisclosed financiers</u> • <u>Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties</u> RCW 69.50.401 WAC 314-55-110 WAC 314-55-185 RCW 9A.76.020 | <u>Five years</u> | <u>10 points</u> |
| <ul style="list-style-type: none"> • <u>Violations against public safety as prescribed in WAC 314-55-520</u> | <u>Three years</u> | <u>4 points</u> |
| <ul style="list-style-type: none"> • <u>Traceability</u> • <u>Security</u> • <u>Pesticides</u> | <u>Three years</u> | <u>3 points</u> |
| <u>WAC 314-55-083</u> <u>WAC 314-55-084</u> | | |

| Violation Type (See WAC 314-55-515 through 314-55-537) | Time Period During Which Points Will Be Assigned | Points Assigned |
|---|---|------------------------|
| <ul style="list-style-type: none"> • <u>Other regulatory violations of chapter 69.50 RCW and/or 314-55 WAC</u> | <u>Three years</u> | <u>2 points</u> |

(3) The WSLCB will not normally issue or renew a marijuana license to a person or entity who has demonstrated a pattern of disregard for laws or rules including, but not limited to, written or verbal warnings.

(4) The WSLCB will not normally issue or renew a marijuana license if the applicant or licensee has unpaid fines related to violations of rules under this chapter.

AMENDATORY SECTION (Amending WSR 16-19-102, filed 9/21/16, effective 10/22/16)

WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license? (1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees; (~~and~~)

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualified patients, or designated providers under the conditions provided in (~~WAC 314-55-410~~) this chapter; and

(iii) Immature marijuana plants or clones and marijuana seeds to a licensed marijuana researcher under the conditions provided in this chapter.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure commercial-grade security fence or wall (~~(or fence)~~) at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. Outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) ~~((The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB.))~~ The application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window ~~((after the initial evaluation of the applications received and))~~ at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035(1), in no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production ~~((will be imposed at a later date))~~ cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - ~~((Less than two))~~ Up to four thousand square feet;
- (b) Tier 2 - ~~((Two))~~ Four thousand square feet up to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet up to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

- (a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB ~~((will))~~ may reduce the allowed square footage by the same percentage.
- (b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.
- (8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or
- (b) Indoor grows - Six months of their annual harvest.

2017. The department will clarify festival revenue in a future proposal.

Elizabeth McNagny, Manager
Administrative Regulations Program

WSR 17-12-117
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed June 7, 2017, 11:29 a.m.]

The department is formally withdrawing its proposed amendment to WAC 16-501-005 that amended the definition of assessment level by including beer commission festival revenue to the commission's financial contribution. This amendment was proposed in WSR 17-11-131 on May 24,