

**WSR 17-11-078**  
**PERMANENT RULES**  
**SOUTHWEST CLEAN**  
**AIR AGENCY**

[Filed May 18, 2017, 3:26 p.m., effective June 18, 2017]

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

Purpose: SWCAA 400-036 Portable Sources From Other Washington Jurisdictions; SWCAA 400-045 Permit Application for Nonroad Engines; SWCAA 400-046 Application Review Process for Nonroad Engines; SWCAA 400-072 Small Unit Notification for Selected Source Categories; SWCAA 400-074 Gasoline Transport Tankers; SWCAA 400-099 Per Capita Fees; SWCAA 400-100 Registration Requirements; SWCAA 400-103 Operating Permit Fees; and SWCAA 400-109 Air Discharge Permit Applications: The proposed rule changes remove reference to specific fees and redirect the reader to consult the current Consolidated Fee Schedule.

SWCAA 400-098 Procedure for Adoption and Revision of the Consolidated Fee Schedule (new section), the proposed rule provides for establishment of a Consolidated Fee Schedule outside of the rule-making process. It establishes a process and procedure for adoption and revision to the fee schedule and associated public notice and comment provisions.

These proposed changes will consolidate all fees into a single location to make it easier for affected parties to locate applicable fees. It will also remove the fees from the rules and establish a process for public notice and board consideration of changes without going through the complicated and lengthy rule-making process.

Citation of Existing Rules Affected by this Order: Amending SWCAA 400-036, 400-045, 400-046, 400-072, 400-074, 400-098, 400-099, 400-100, 400-103, and 400-109.

Statutory Authority for Adoption: RCW 70.94.141.

Adopted under notice filed as WSR 17-04-106 on February 1, 2017.

Changes Other than Editing from Proposed to Adopted Version: One commenter noted that a reference to a fee was not identified to be removed from SWCAA 400-109 (2)(e) consistent with the other references. This reference has been removed in the final text consistent with the other fee references.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 9, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 9, Repealed 0.

Date Adopted: May 4, 2017.

Uri Papish  
Executive Director

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-036 Portable Sources From Other Washington Jurisdictions**

(1) **Applicability.** Portable sources that do not have a valid air discharge permit issued by SWCAA may operate within SWCAA jurisdiction without filing an air discharge permit application pursuant to SWCAA 400-109 or obtaining an air discharge permit pursuant to SWCAA 400-110 provided the requirements of this section are met. If the owner or operator of such a portable source does not wish to utilize the provisions of this section, an air discharge permit application must be filed for the portable source pursuant to SWCAA 400-109. Portable sources that have a valid air discharge permit issued by SWCAA must operate in accordance with the SWCAA permit, and may not use the provisions of this section. This section does not apply to nonroad engines of any type.

(2) **Nonattainment areas.** If a portable source is locating in a nonattainment area and emits the pollutant(s) or pollutant precursors for which the area is classified as nonattainment, the source must acquire a site-specific air discharge permit from SWCAA.

(3) **Major Stationary Source.** If a portable source is a major stationary source then the source must also comply with applicable requirements from WAC 173-400-700 through 173-400-750.

(4) **General Requirements.** Portable sources must comply with the requirements listed below in order to gain coverage under this section.

(a) The portable source must possess a valid approval issued by a Washington air pollution control authority after July 1, 2010. The approval must identify the affected emission units as a portable source.

(b) Approval for the portable source must contain emission limitations and operational requirements that are consistent with BACT as determined by SWCAA for similar sources.

(c) The owner/operator of the portable source must pay a review fee (~~of \$500~~) as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(d) The owner/operator must obtain written confirmation from SWCAA that the portable source complies with the provisions of this section prior to commencing operation within SWCAA jurisdiction.

(e) The owner/operator of the portable source must submit a relocation notice and a copy of the applicable order of approval or air discharge permit to SWCAA at least 15 calendar days prior to commencing operation within SWCAA jurisdiction. An additional relocation notice shall be submitted for each subsequent location at which the source operates.

(f) The owner/operator shall register the portable source with SWCAA, and pay a registration fee (~~of \$90 per emis-~~

tion unit)) as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 prior to commencement of operation. For the purposes of this registration, the term emission unit means each rock crusher and aggregate screen and associated haul roads. Registration expires at the end of the Agency's fiscal year. If a permitted unit is still operating after its registration expires, it shall be reregistered including payment of the annual registration fee.

(g) The owner/operator must submit an emission inventory report to SWCAA as described in SWCCA 400-105(1). The inventory report must contain information sufficient to enable calculation of air emissions from operation of the portable source within SWCAA jurisdiction. If the portable source operated at multiple locations, the inventory report must identify emissions specific to each location.

(5) **Enforcement of approval conditions.** SWCAA will enforce all terms and conditions contained in the portable source's order of approval or air discharge permit, regardless of which permitting authority approved the portable source.

(6) **Modification of approval conditions.** Terms and conditions contained in the portable source's order of approval or air discharge permit may only be modified by obtaining a new air discharge permit from SWCAA.

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-045 Permit Application for Nonroad Engines**

(1) **Purpose.** A nonroad engine permit application is the document used by the Agency to record and track requests to approve the installation, replacement, or other alteration of a nonroad engine.

(2) **Applicability.** The requirements of this section apply to all nonroad engines as defined in SWCAA 400-030 except for the following:

- (a) Engines put into service prior to November 9, 2003;
- (b) Nonroad engine installations with an aggregate power rating less than 500 horsepower;
- (c) Individual nonroad engines with a power rating less than 50 horsepower;
- (d) Small/residential water well drilling rigs;
- (e) Portable firefighting equipment;
- (f) Mobile cranes and pile drivers;
- (g) Engines used for emergency flood control;
- (h) Engines used to power carnival or amusement rides;
- (i) Engines used to power portable equipment (sign boards, lights, compressors, etc.) operating in support of short term construction or maintenance projects (< 1 year in duration);

(j) Engines used to replace utility power or utility powered equipment on a temporary basis (< 30 days in duration) provided that such engines are EPA Tier certified and use fuel with a maximum sulfur content of 0.0015% by weight;

(k) Engines used in, or on, a piece of equipment that is self-propelled or serves a dual purpose by both propelling

itself and performing another function (e.g., mobile cranes, bulldozers, forklifts, etc.); or

(l) Engines integral to a stationary source (e.g., portable power units dedicated to supporting sources such as rock crushers, asphalt plants, rock screens, etc.). These engines are subject to permitting under SWCAA 400-109.

(3) **Application Submittal.** The owner or operator shall submit a complete nonroad engine permit application for each new installation, replacement, or other alteration of a nonroad engine.

(4) **Application Fees.** A filing fee (~~of \$500~~) plus a review fee, as (~~shown in Table A~~) provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, shall be submitted with the application prior to Agency review. (~~If additional types of review, as identified in Table B, are required by the Agency as a result of the proposed installation, replacement or alteration, an additional review fee shall be paid as described in Table B. (Total Application Fee = Filing Fee + Application Review Fee [Table A] + Additional Review Fee [Table B])~~).

**Expedited Application Review**

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited review, the applicant must pay **double the normal application and review fee**. An expedited permit application will be processed as soon as possible and will receive priority over non-expedited applications.

~~(TABLE A~~  
**Nonroad Engine Permit Application Review Fees**

<del>Equipment/Activity</del>	<del>Associated-Work Hours*</del>	<del>Review Fee</del>
i. Nonroad Engine (Aggregate horsepower rating):		
500 or more but less than 2,000	14	1,000.00
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
ii. Minor Change to Existing Permit Conditions:		
	8	\$600.00
iii. Other (Not classified above):		
		\$200.00 per ton of emission
iv. Emergency Applications		
	Double the normal application and review fee	

**TABLE B**  
**Additional Review Fees**

<del>Equipment/Activity</del>	<del>Associated-Work Hours*</del>	<del>Review Fee</del>
v. State Environmental Policy Act (SEPA) - Lead Agency		
Minor	14	\$1,000.00
Major	35	2,500.00
vi. Environmental Impact Statement (EIS) Review		
Minor	11	\$800.00
Major	28	2,000.00
vii. Variance request		
	11	\$800.00
viii. Review of ambient impact analysis		
		\$70.00/hr

<sup>2</sup> If the staff time required to review a permit application exceeds the number of work hours associated with the applicable fee specified in Tables A and B, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.)

(5) **Agency actions.** Each acceptable and complete nonroad engine permit application shall result in the issuance of a nonroad engine permit or other regulatory order by the Agency in accordance with SWCAA 400-046. The requirements of SEPA (State Environmental Policy Act) shall be complied with for each application.

(6) **Withdrawn or exempt applications.**

(a) An applicant may withdraw an application at any time prior to issuance of a final nonroad engine permit. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application and certification that the proposed equipment or alteration will not be installed or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, an application may be determined to be exempt from the requirements of SWCAA 400-046 and 400-100. The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exemption status shall not take effect until confirmed in writing.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-046 Application Review Process for Nonroad Engines**

(1) **Applicability.**

(a) All nonroad engine permit applications submitted to the Agency pursuant to SWCAA 400-045 shall be reviewed and processed as described in this section.

(b) Review of a permit application shall be limited to the nonroad engine proposed to be installed, replaced or altered and the air contaminants whose emissions would increase as a result.

(c) The requirements of this section do not apply to "stationary sources" as defined in SWCAA 400-030(115). Permit applications for "stationary sources" are reviewed and processed in accordance with SWCAA 400-110.

(2) **Requirements.**

(a) Provided that all review requirements are met, a nonroad engine permit shall be issued by the Agency prior to the installation, replacement or alteration of any nonroad engine subject to the requirements of SWCAA 400-045 and this section.

(b) A completed environmental checklist or a completed determination, as provided in Chapter 197-11 WAC, shall be submitted with each application.

(c) Each nonroad engine permit application shall demonstrate that the proposed nonroad engine complies with applicable ambient air quality standards. Regulation of nonroad engines pursuant to this section shall be consistent with Appendix A of 40 CFR 89 Subpart A. If the ambient impact of a proposed project could potentially exceed an applicable ambient air standard, the Agency may require that the applicant demonstrate compliance with available ambient air increments and applicable Ambient Air Quality Standards (AAQS) using a modeling technique consistent with 40 CFR Part 51, Appendix W (as in effect on July 1, 2015). Monitoring of existing ambient air quality may be required if data sufficient to characterize background air quality are not available.

(3) **Application processing/completeness determination.** Within 30 calendar days of receipt of a nonroad engine permit application, the Agency shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(4) **Final determination.**

(a) Within 60 calendar days of receipt of a complete nonroad engine permit application, the Agency shall either issue a final decision on the application or initiate public notice on a proposed decision, followed as promptly as possible by a final decision. All actions taken under this subsection must meet the public involvement requirements of SWCAA 400-171. An owner or operator seeking approval of a project involving applications pursuant to both SWCAA 400-045 and 400-109 may elect to combine the applications into a single permit.

(b) Nonroad engine permits issued under this section shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the Agency.

(c) Nonroad engine permits issued under this section become effective on the date of issuance unless otherwise specified.

(5) **Appeals.** A nonroad engine permit, any conditions contained in a nonroad engine permit, the denial of a nonroad engine permit application, or any other regulatory order issued pursuant to this section, may be appealed to the Pollution Control Hearings Board within 30 calendar days of receipt as provided in Chapter 43.21B RCW and Chapter 371-08 WAC. The Agency shall promptly mail copies of each nonroad engine permit or order to the applicant and any other party who submitted timely comments on the application, along with a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) **Compliance.** Noncompliance with any term or condition identified in a nonroad engine permit issued pursuant to this section shall be considered a violation of this section.

(7) **Expiration.** Nonroad engine permits issued pursuant to this section shall become invalid if installation or alteration does not occur within eighteen months after the date of issuance of a permit or if installation or alteration is discontinued for a period of eighteen months or more. The Agency may extend the eighteen-month period upon a satisfactory demonstration that an extension is justified. The Agency may spec-

ify an earlier date for installation or alteration in a nonroad engine permit.

If a nonroad engine remains in use at the same location for more than 12 months, approval under this section expires and the nonroad engine becomes a stationary source subject to the provisions of SWCAA 400-109 and 400-110. The owner or operator shall maintain records of the length of use at each location for the purpose of documenting compliance with this requirement.

**(8) Change of conditions.**

(a) The owner or operator may request, at any time, a change in conditions of an existing nonroad engine permit. The request may be approved provided the Agency finds that:

(i) No ambient air quality standard will be exceeded as a result of the change;

(ii) The change will not adversely impact the ability of the Agency to determine compliance with an applicable permit term or condition; and

(iii) The revised permit meets the requirements of SWCAA 400-046.

(b) A request to change existing approval conditions shall be filed as a nonroad engine permit application. The application shall demonstrate compliance with the requirements of subsection (2) of this section, and be acted upon according to the timelines in subsections (3) and (4) of this section. The ~~((fee schedule found in SWCAA 400-045(3)))~~ current Consolidated Fee Schedule established in accordance with SWCAA 400-098 shall apply to these requests.

(c) Actions taken under this subsection may be subject to the public involvement provisions of SWCAA 400-171.

**(9) Engine registration.** The owner or operator of non-road engines approved pursuant to this section shall notify the Agency within 10 calendar days of engine installation. Subsequent to notification, each permitted unit shall be registered with the Agency and the owner or operator shall pay a registration fee according to the schedule below. Registration expires after a period of 12 consecutive months. If a permitted unit is still operating after its registration expires, it shall be reregistered and ~~((pay))~~ a second registration fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098, must be paid.

<del>((Engine Rating (per unit)))</del>	<u>Registration Fee</u>
500 horsepower or less	\$250
More than 500 horsepower	<del>\$350</del>

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**AMENDATORY SECTION** (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-072 Small Unit Notification for Selected Source Categories**

**Purpose.** The standards and requirements contained in this section are intended to be representative of BACT for the affected source categories. Submission of a small unit notification (SUN) pursuant to section 400-072(2) is intended to take the place of an air discharge permit application in

regards to approval of new emission units. An air discharge permit application as described in SWCAA 400-109 is not required for an affected emission unit if the owner or operator submits proper notification to the Agency and maintains compliance with the emission standards and other requirements specified for the applicable source category. Emission units subject to the provisions of this section may be incorporated into a facility's Air Discharge Permit during subsequent permitting actions.

The provisions of this section do not apply to emission units that are part of a major stationary source or major modification.

**Registration.** All emission units subject to the provisions of this section are also subject to registration pursuant to SWCAA 400-100 and periodic inspection by Agency representatives.

**(1) Exceptions.**

(a) The owner or operator of an emission unit meeting any of the applicability criteria listed below may voluntarily elect to file an air discharge permit application pursuant to SWCAA 400-109.

(b) If an emission unit subject to the provisions of this section is located at a "stationary source" that is otherwise required to be permitted pursuant to SWCAA 400-109, the Agency may require that the emission unit be included in the permit for the affected "stationary source".

(c) SWCAA may require any emission unit that fails to maintain ongoing compliance with the applicable requirements of this section to submit an air discharge permit application pursuant to SWCAA 400-109.

**(2) Agency notification.** An owner or operator who wishes to install and operate a new emission unit under the provisions of this section must file a formal notification with the Agency for each emission unit. Notification shall be performed using forms developed by the Agency for that purpose. The notification must include documentation sufficient to positively identify the affected emission unit, establish applicability under this section, and demonstrate compliance with applicable requirements.

A complete notification includes, but is not limited to, the following:

- (a) Location of installation and/or operation;
- (b) Identification of responsible party (owner or operator);

(c) Applicable processing fee;

(d) Purpose of installation and/or operation (e.g., replace an existing unit, expansion of facility, new facility, etc.). If intended as a replacement for an existing unit, the existing unit must be clearly identified in the notification to allow SWCAA to make necessary changes in the registration program;

(e) Equipment specifications (equipment type, make, model number, serial number, year of manufacture, rated capacity, exhaust stack configuration, fuel type, etc.);

(f) Control equipment specifications;

(g) Vendor performance guarantees; and

(h) Operational information (hours of operation, maximum product throughput, fuel type, fuel consumption, etc.).

**(3) Processing fee.** Each notification shall be accompanied by the payment of a processing fee ~~((of \$250.00))~~ as pro-

vided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 for each piece of equipment subject to notification.

(4) **Effective date.** Emission units subject to the provisions of this section shall not be installed or operated until the Agency provides written confirmation that the affected emission units are capable of complying with applicable requirements.

(5) **Source categories.**

(a) **Coffee roasters.**

(i) **Applicability.** The provisions of this section apply to batch configuration coffee roasters with a capacity of less than 100 pounds of green coffee beans per batch.

(ii) **Emission limits and standards.**

(A) Visible emissions from the coffee roaster exhaust stack shall not exceed five percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

(B) Operations that cause or contribute to odors that could unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce those odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

(iii) **General requirements.**

(A) Each coffee roaster shall be equipped with an afterburner designed for a minimum residence time of 0.5 seconds, and capable of maintaining an operating temperature of not less than 1,200°F.

(B) Each coffee roaster shall have an operable temperature gauge capable of monitoring afterburner operating temperature on a continual basis.

(C) Each coffee roaster shall be exhausted to the afterburner whenever smoke or odors are generated by roasting and cooling activities.

(D) Afterburners shall be operated whenever the associated coffee roaster is in operation. The afterburner shall be operated and maintained in accordance with the manufacturer's specifications. Furthermore, the afterburner shall be operated in a manner that minimizes emissions.

(E) The exhaust point for each coffee roaster shall be a minimum of 200 feet from the nearest residential structure.

(F) Each coffee roaster and afterburner shall only be fired on natural gas or propane.

(G) Afterburner exhaust shall be discharged vertically at least four feet above the roof peak of the building containing the afterburner, and at a point higher than surrounding buildings. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Afterburner operating temperature shall be recorded weekly;

(B) Quantity of coffee roasted shall be recorded weekly;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected coffee roaster shall report the following information to the Agency no later than March 15<sup>th</sup> for the preceding calendar year:

(I) Quantity of natural gas consumed by the roaster and afterburner;

(II) Quantity of coffee roasted; and

(III) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(b) **Small gas fired boilers/heaters.**

(i) **Applicability.** The provisions of this section apply to gas fired (natural gas/propane/LPG) boilers and heaters with individual rated heat inputs equal to or greater than 0.4 MMBtu/hr and equal to or less than 2.0 MMBtu/hr. For the purposes of this subsection, the term "boiler" means any combustion equipment designed to produce steam or to heat water that is not used exclusively to produce electricity for sale.

(ii) **Emission limits and standards.**

(A) Visible emissions from the boiler exhaust stack shall not exceed zero percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9. (SWCAA 400, Appendix A).

(B) Each boiler/heater shall be equipped with combustion technology capable of maintaining NO<sub>x</sub> and CO emissions at, or below, 30 ppmv and 50 ppmv, respectively (corrected to 3% O<sub>2</sub>, dry, 1-hr avg). EPA test methods from 40 CFR 60, as in effect on July 1, 2015, shall be used to determine compliance.

(iii) **General requirements.**

(A) Each boiler/heater shall only be fired on natural gas, propane, or LPG.

(iv) **Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Quantity of fuel consumed by the boiler/heater shall be recorded for each calendar month;

(B) Maintenance activities for the boiler/heater shall be logged for each occurrence;

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints received by the permittee and the results of any subsequent investigation or

corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.**

(A) Each boiler/heater shall undergo emission monitoring no later than 60 calendar days after commencing initial operation. Subsequent monitoring shall be conducted annually thereafter no later than the end of the month in which the original monitoring was conducted. All emission monitoring shall be conducted in accordance with the requirements of SWCAA 400-106(2).

(B) If emission monitoring results for a boiler/heater indicate that emission concentrations may exceed 30 ppmvd NO<sub>X</sub> or 50 ppmvd CO, corrected to 3% O<sub>2</sub>, the owner or operator shall either perform 60 minutes of additional monitoring to more accurately quantify CO and NO<sub>X</sub> emissions, or initiate corrective action. Corrective action shall be initiated as soon as practical but no later than 3 business days after the potential exceedance is identified. Corrective action includes burner tuning, maintenance by service personnel, limitation of unit load, or other action taken to lower emission concentrations. Corrective action shall be pursued until observed emission concentrations no longer exceed 30 ppmvd NO<sub>X</sub> or 50 ppmvd CO, corrected to 3% O<sub>2</sub>.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to the Agency within 3 business days of receipt.

(C) Emission monitoring results for each boiler/heater shall be reported to the Agency within 15 calendar days of completion on forms provided by the Agency.

(D) The owner or operator of an affected boiler/heater shall report the following information to the Agency no later than March 15<sup>th</sup> for the preceding calendar year:

(I) Quantity of fuel consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(c) **Emergency service internal combustion engines.**

(i) **Applicability.** The provisions of this section apply to emergency service internal combustion engines with a rating of 50 or more, but less than 1,000 horsepower (e.g., emergency generators, fire pumps, sewer lift stations, etc.).

(ii) **Emission limits and standards.**

(A) Visible emissions from diesel fired engine exhaust stacks shall not exceed ten percent opacity for more than 3 minutes in any one hour period as determined in accordance with SWCAA Method 9 (See SWCAA 400, Appendix A). This limitation shall not apply during periods of cold start-up.

(iii) **General requirements.**

(A) Liquid fueled engines shall only be fired on #2 diesel or biodiesel. Fuel sulfur content of liquid fuels shall not exceed 0.0015% by weight (15 ppmw). A fuel certification from the fuel supplier may be used to demonstrate compliance with this requirement.

(B) Gaseous fueled engines shall only be fired on natural gas or propane.

(C) Each compression ignition engine shall be EPA Tier certified and manufactured no earlier than January 1, 2008.

(D) Engine operation shall be limited to maintenance checks, readiness testing, and actual emergency use.

(E) Engine operation for maintenance checks and readiness testing shall not exceed 100 hours per year. Actual emergency use is unrestricted.

(F) Each engine shall be equipped with a nonresettable hourmeter for the purpose of documenting hours of operation.

(G) Engine exhaust shall be discharged vertically. Any device that obstructs or prevents vertical discharge is prohibited.

(iv) **Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. With the exception of data logged by a computerized data acquisition system, each required record shall include the date and the name of the person making the record entry.

(A) Total hours of operation for each engine shall be recorded annually;

(B) Hours of emergency use for each engine shall be recorded annually;

(C) Fuel sulfur certifications shall be recorded for each shipment of liquid fuel;

(D) Maintenance activities shall be recorded for each occurrence consistent with the provisions of 40 CFR 60.4214;

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the permittee and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within three calendar days of receipt.

(C) The owner or operator of an affected emergency engine shall report the following information to the Agency no later than March 15<sup>th</sup> for the preceding calendar year:

(I) Hours of engine operation; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

(d) **Petroleum dry cleaners.**

(i) **Applicability.** The provisions of this section apply to dry cleaning facilities that use petroleum solvent and have a total manufacturer's rated dryer capacity less than 38 kilograms (84 pounds). The total manufacturers' rated dryer capacity is the sum of the manufacturers' rated dryer capacity for each existing and proposed petroleum solvent dryer at the facility.

(ii) **Emission limits and standards.**

(A) VOC emissions from each dry cleaning facility shall not exceed 1.0 ton per year. Emissions shall be calculated

using a mass balance approach assuming that all cleaning fluid utilized at the facility is emitted to the ambient air. Documented quantities of cleaning fluid shipped offsite as waste may be deducted from the calculated emissions.

(B) Operations which cause or contribute to odors that unreasonably interfere with any other property owner's use and enjoyment of their property shall use recognized good practice and procedures to reduce these odors to a reasonable minimum, consistent with the requirements of SWCAA 400-040(4).

**(iii) General requirements.**

(A) Each dry cleaning facility shall be operated in a business space zoned for commercial activity, located a minimum of 200 feet from the nearest residential structure.

(B) Dry cleaning machines shall use DF-2000 cleaning fluid or an equivalent solvent.

(C) Solvent or waste containing solvent shall be stored in closed solvent tanks or containers with no perceptible leaks.

(D) All cartridge filters shall be drained in their sealed housing or other enclosed container for 24 hours prior to disposal.

(E) Perceptible leaks shall be repaired within twenty-four hours unless repair parts must be ordered. If parts must be ordered to repair a leak, the parts shall be ordered within 2 business days of detecting the leak and repair parts shall be installed within 5 business days after receipt.

(F) Pollution control devices associated with each piece of dry cleaning equipment shall be operated whenever the equipment served by that control device is in operation. Control devices shall be operated and maintained in accordance with the manufacturer's specifications.

**(iv) Monitoring and recordkeeping requirements.**

The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Each dry cleaning machine shall be visually inspected at least once per week for perceptible leaks. The results of each inspection shall be recorded in an inspection log and maintained on-site. The inspection shall include, but not be limited to the following:

- (I) Hose connections, unions, couplings and valves;
- (II) Machine door gaskets and seating;
- (III) Filter gaskets and seating;
- (IV) Pumps;
- (V) Solvent tanks and containers;
- (VI) Water separators;
- (VII) Distillation units;
- (VIII) Diverter valves; and
- (IX) Filter housings.

(B) The amount of cleaning fluid (e.g., DF-2000) purchased, used, and disposed of shall be recorded monthly.

(C) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(D) All air quality related complaints, including odor complaints, received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** None.

**(vi) Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints, including odor complaints, received by the permittee shall be reported to SWCAA within 3 calendar days of receipt.

(C) The owner or operator of an affected petroleum dry cleaner shall report the following information to the Agency no later than March 15<sup>th</sup> for the preceding calendar year:

(I) Quantity of cleaning fluid (e.g., DF-2000) consumed; and

(II) Air emissions of criteria air pollutants, VOCs, and toxic air pollutants (TAPs).

**(e) Rock crushers and aggregate screens.**

(i) **Applicability.** The provisions of this section apply to individual rock crushers and aggregate screens proposed for installation at existing rock crushing operations subject to facilitywide emission limits established by SWCAA. The affected rock crushing operation, including the new rock crusher and/or aggregate screen, must continue to comply with existing emission and/or process limits subsequent to installation.

The provisions of this section do not apply to internal combustion engines associated with proposed rock crushers or aggregate screens. Such engines are subject to the requirements of SWCAA 400-045 or 400-109, as applicable.

**(ii) Emission limits and standards.**

(A) Visible emissions from rock crushing operations shall not exceed 0% opacity for more than three (3) minutes in any one hour period as determined in accordance with SWCAA Method 9 (SWCAA 400, Appendix A).

**(iii) General requirements.**

(A) Each rock crusher and aggregate screen shall be equipped with a high pressure water spray system for the control of fugitive PM emissions. Operating pressure in each spray system shall be maintained at 80 psig or greater. A functional pressure gauge shall be maintained onsite with a connection point provided for the purpose of demonstrating compliance with the minimum pressure requirement.

(B) Spray/fog nozzles in the high pressure water spray system shall be visually inspected a minimum of once per week when in operation to ensure proper function. Clogged or defective nozzles shall be replaced or repaired prior to subsequent operation.

(C) Material handling points including, but not limited to, conveyor transfer points, aggregate storage piles, and haul roads shall be watered at reasonable intervals as necessary to control fugitive dust emissions.

(D) Additional wet suppression measures shall be employed, as necessary, to control fugitive dust from haul roads, rock crushing, and material handling equipment in the event that process changes or weather patterns result in insufficient water application to control fugitive dust from plant operations.

(E) Each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" shall comply with the applicable requirements of that regulation.

(F) For portable rock crushing operations, the owner or operator shall notify the Agency in advance of relocating approved equipment and shall submit operational information (such as production quantities, hours of operation, location of nearest neighbor, etc.) sufficient to demonstrate that proposed operation will comply with the emission standards for a new source, and will not cause a violation of applicable ambient air quality standards, and if in a nonattainment area, will not interfere with scheduled attainment of ambient standards.

(iv) **Monitoring and recordkeeping requirements.** The information listed below shall be recorded at the specified intervals, and maintained in a readily accessible form for a minimum of 3 years. Each required record shall include the date and the name of the person making the record entry.

(A) Visual inspection of spray/fog nozzles shall be recorded weekly;

(B) Maintenance, repair, or replacement of affected equipment shall be recorded for each occurrence;

(C) Quantity and size of crushed/screened material shall be recorded monthly;

(D) Relocation of rock crushing equipment shall be recorded for each occurrence.

(E) Upset conditions that cause excess emissions shall be recorded for each occurrence; and

(F) All air quality related complaints received by the owner or operator and the results of any subsequent investigation or corrective action shall be recorded promptly after each occurrence.

(v) **Testing requirements.** An initial emissions test shall be conducted for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO "Standards of Performance for Nonmetallic Mineral Processing Plants" that has not previously been tested. Testing shall be conducted within 90 calendar days of commencing operation. All emission testing shall be conducted in accordance with the requirements of that regulation.

(vi) **Reporting requirements.**

(A) The owner or operator of an affected emission unit shall provide written notification of initial operation to SWCAA within 10 days of occurrence.

(B) All air quality related complaints received by the owner or operator shall be reported to SWCAA within 3 business days of receipt.

(C) The owner or operator of an affected rock crusher or aggregate screen shall report the following information to the Agency no later than March 15<sup>th</sup> for the preceding calendar year:

(I) Quantity and size of crushed/screened material throughput;

(II) Air emissions of criteria air pollutants.

(D) Emission testing results for each rock crusher and/or aggregate screen subject to 40 CFR 60, Subpart OOO shall be reported to the Agency within 45 calendar days of test completion.

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

AMENDATORY SECTION (Amending WSR 09-21-056, filed 10/15/09, effective 11/15/09)

**SWCAA 400-074 Gasoline Transport Tanker Registration**

(1) Each owner(s) and/or operator(s) of a gasoline transport tank doing business within SWCAA jurisdiction shall register the transport tank with SWCAA prior to being placed into service. Such registration shall be made annually with SWCAA as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(2) Each registered gasoline transport tanker shall pay an annual registration fee as provided in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. Each transport tanker shall have its own registration sticker, certification test and shall be assessed a separate registration fee.

(3) Prior to registration, SWCAA shall review the leak test certification documentation from the testing company required under SWCAA 490-202(3). Upon demonstration of a successful leak test and payment of registration fees, SWCAA shall issue a registration sticker that shall be applied to the tanker.

(4) The owner(s) and/or operator(s) of a gasoline loading or unloading facility shall only allow the transfer of gasoline between the facility and a transport tank when a current leak test certification for the transport tank is on file with the facility or a valid SWCAA registration sticker is displayed on the tank(s) or remain with the tank.

(5) Each owner(s) and/or operator(s) of a petroleum product transport tank doing business within SWCAA jurisdiction shall notify SWCAA of a change in status of a tanker. Change in status shall include sale, operating only out of SWCAA jurisdiction, out of service, or other similar change. Such notification shall be made in writing to SWCAA within 10 days of the change of status.

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

NEW SECTION

**SWCAA 400-098 Procedure for Adoption and Revision of the Consolidated Fee Schedule**

The Consolidated Fee Schedule must be adopted or changed by resolution of SWCAA's Board of Directors. A proposed resolution that adopts or changes the Consolidated Fee Schedule and the Consolidated Fee Schedule described in this section shall be posted on the SWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, notice of proposed fee schedule changes shall be provided by e-mail to any person requesting notice, not less than 30 days prior to the Board meeting at which such changes are considered provided sufficient advanced request for notice is made. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to SWCAA; however, no



person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public review and comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-099 Per Capita Fees**

Each component city or town and county shall pay such proportion of the supplemental income to the Agency as determined by either one of two methods as provided under RCW 70.94.093. The first method is based on the assessed valuation of property within such city or town and county limits bears to the total assessed valuation of taxable property within the jurisdiction of SWCAA. The second method is based on the total population of such city or town and county bears to the total population of the jurisdiction of SWCAA. In addition, a combination of the two methods is allowable provided that such combination is shared at 50 percent each. The SWCAA Board of Directors has elected to use the second method based on population (per capita). The population shall be determined by the most recent State of Washington Office of Financial Management (OFM) population estimate. The "per capita" assessment (~~has been~~) is established (~~at the following rates:~~

<u>Assessment Rate</u>	<u>Effective Date</u>
\$0.33 per citizen	January 1, 2008))

in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-100 Registration Requirements**

The registration program is intended to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify "source" compliance with applicable air pollution requirements.

(1) **Applicability.** All "sources" or emission units shall be registered with the Agency in accordance with this section as set forth in RCW 70.94.151. A "source" or emission unit is subject to registration from the time it is approved by the Agency until the time at which it permanently ceases operation. Emission units that are part of a portable stationary source must register upon initiation of operation within the Agency's jurisdiction and every year thereafter.

Registration requirements are not applicable to the following:

(a) Emission units or activities exempted under SWCAA 400-101; and

(b) "Stationary sources" required to apply for, or to maintain, an operating permit under Chapter 173-401 WAC.

Regardless of the exemptions provided above, gasoline stations with an annual throughput of 200,000 gallons or more (highest annual throughput in last 3 calendar years) and all dry cleaners with VOC or TAP emissions shall be registered.

(2) **General requirements.**

(a) The owner or operator of a "source" for which registration is required shall initially register affected emission units with the Agency. A unique identification number shall be assigned to each "source" and a separate registration fee shall be provided for each emission unit; provided that, an owner may request to register a process with a detailed inventory of air contaminant sources and emissions related to the process as a single unit. A registration fee shall not be collected for exempt emission units identified in SWCAA 400-101.

(b) The owner or operator of a registered "source" shall submit annual reports to the Agency. Each report shall contain information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. Relevant information may include air pollution requirements established by rule, regulatory order, air discharge permit or ordinance pursuant to Chapter 70.94 RCW. The owner, operator, or their designated representative shall sign the annual report for each "source," and be responsible for the accuracy, completeness, and timely submittal of all required information.

(3) **Registration fees.** An annual registration fee shall be paid before the Agency may register any emission unit. Annual registration fees are based on the number of registered emission units and the quantity of "source" emissions during the previous calendar year. Collected registration fees are used by the Agency in the next fiscal year (July 1 through June 30). "Sources" or emission units that permanently shut-down prior to January 1 of the current registration period shall not be liable for registration fees. This provision does not apply to "temporary sources" or portable sources. Operation of equipment subject to registration without payment of applicable registration fees shall be considered a violation of this section. Annual registration fees shall be paid according to the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 (~~(following schedule:~~

<u>Emission Unit Fee</u>	<u>Pollution Emission Fee</u>	<u>Effective Date</u>
\$90 per emission unit	\$45/ton of criteria pollutant or VOC emission	January 1, 2008
	\$25/ton of toxic air pollutant emission))	

Exceptions:

(a) An annual registration fee (~~of \$50.00~~) shall be charged to each gasoline transport tank as provided in the

current Consolidated Fee Schedule established in accordance with SWCAA 400-098.

(b) The registration fee for a small operation may be waived or reduced provided sufficient demonstration of circumstances is presented, subject to the discretion of the Executive Director.

(c) "Stationary sources" subject to the Operating Permit Program, as defined in RCW 70.94.030(17), are not subject to Registration and shall pay an operating permit fee in accordance with SWCAA 400-103.

(4) **Delinquent registration fees.** Annual registration fees that are unpaid after June 30 for the effective year shall be considered delinquent. Pursuant to RCW 70.94.431(7), "sources" with delinquent registration fees may be subject to a penalty equal to three times the amount of the original fee owed. If registration fees for an emission unit are delinquent for two consecutive years or more, the Agency may revoke the affected emission unit's air discharge permit or Order of Approval.

(5) **Reporting requirements for transfer or permanent shutdown of registered emission units.**

(a) The registered owner or operator shall report the transfer of ownership or permanent shutdown of registered emission units to the Agency within 90 calendar days of shutdown or transfer. The report shall contain the following information:

- (i) Legal name of the registered owner or operator;
- (ii) Effective date of the shutdown or transfer;
- (iii) Comprehensive description of the affected emission units; and
- (iv) Name and telephone number of the registered owner's or operator's authorized representative.

(b) Any party that assumes ownership and/or operational control of registered emission units shall file a written report with the Agency within 90 calendar days of completing transfer of ownership and/or assuming operational control. The report shall contain the following information:

- (i) Legal name of the company or individual involved in the transfer;
- (ii) Effective date of the transfer;
- (iii) Description of the affected emission units; and
- (iv) Name and telephone number of the owner's or operator's authorized representative.

(c) In the case of a permanent shutdown, affected process and air pollution control equipment may remain in place and on site, but shall be configured such that the equipment or processes are incapable of generating emissions to the atmosphere (e.g.; disconnection of power to equipment, mechanical positioning that inhibits processing, placing of padlocks on equipment to prevent operation).

(6) **Inspections.**

(a) Periodic onsite inspections of emission units and "sources" shall be allowed to verify compliance with applicable requirements, regulations, orders or rules governing the processes, equipment, or emissions from a "source" as set forth in RCW 70.94.200.

(b) Agency personnel or representatives shall have the authority to enter at reasonable times upon any private or public property excepting non-multiple unit private dwellings housing two families or less for the purpose of investi-

gating conditions specific to the control, recovery, or release of air contaminants to the atmosphere.

(c) No person shall refuse entry or access to Agency personnel who present appropriate credentials and request entry for the purpose of inspection.

(d) No person shall obstruct, hamper or interfere with any such inspection.

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

### **SWCAA 400-103 Operating Permit Fees**

(1) **Applicability.** The owner or operator of all "stationary sources" required to obtain an Operating Permit under 40 CFR Part 70, Chapter 173-401 WAC or RCW 70.94.161, shall pay an annual fee as specified in this section, or the equivalent over some other time period as approved by the Executive Director, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the Operating Permit Program.

(2) **Fee applicable pollutants.** The following pollutants shall be considered fee applicable for the purposes of fee assessment.

- (a) A volatile organic compound.
- (b) Each pollutant regulated under Section 7411 or 7412 of the 1990 Federal Clean Air Act Amendments.

(c) Each pollutant for which a national primary ambient air quality standard (NAAQS) has been promulgated except that carbon monoxide shall be excluded from this reference. PM<sub>10</sub> emissions will be utilized for purposes of calculating particulate matter emissions when such data is provided by the "stationary source." Emission test data is required to demonstrate the PM<sub>10</sub> portion of total particulate matter emissions.

Fugitive pollutant emissions shall be included in determining the fee assessment for a "stationary source." Emissions of each fee applicable pollutant emitted in excess of 7,500 tons from a "stationary source" shall be excluded from fee assessment.

(3) **Program cost projections.** The Agency shall prepare an Operating Permit Program budget each year based on a projected workload evaluation. Only fee eligible activities as specified in SWCAA 400-103(6), Ecology's development and oversight costs, as provided in RCW 70.94.162, and the program reserve fund shall be considered in the workload analysis. The Executive Director shall submit the proposed budget to the Board of Directors for approval. The approved budget shall be used in the equations below to determine Operating Permit Program fees.

(4) **Three part fee assessment methodology.** Operating Permit Program fees shall be determined using a three-part fee assessment methodology as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098 below:

~~((a) Participation Fee. Fees sufficient to cover one third of the Board approved Operating Permit Program budget~~

shall be assessed such that each "stationary source" shall pay an equal share. The total Operating Permit Program budget shall be divided by three. This amount shall be further divided by the number of 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. Participation fees shall be equal in amount for each 40 CFR Part 70 source. The participation portion of the fee shall be assessed according to the following formula:

$$PF = B \div 3 \div n, \text{ where;}$$

PF = Participation fee portion of total fee

B = The total Agency budget for the Operating Permit Program

n = The number of 40 CFR Part 70 sources

(b) Emissions Fee. Fees sufficient to cover one third of the budget shall be assessed such that each "stationary source" shall pay an amount equal to that "stationary source's" portion of the total annual emissions of the fee applicable pollutants from all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" annual emissions (in tons) to the total annual emissions of fee applicable pollutants emitted by all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The emissions portion of the fee shall be assessed according to the following formula:

$$EF = B \div 3 * SE \div TE, \text{ where:}$$

EF = Emissions fee portion of total fee

B = The total Agency budget for the Operating Permit Program

SE = The sum of annual emissions of fee applicable pollutants in tons per year from the individual 40 CFR Part 70 "stationary source" (not to exceed 7,500 tons per pollutant)

TE = The sum of annual emissions of fee applicable pollutants in tons per year from all 40 CFR Part 70 "stationary sources"

(c) Complexity Fee. Fees sufficient to cover one third of the budget shall be assessed such that each 40 CFR Part 70 "stationary source" shall pay an amount equal to that "stationary source's" portion of the total emission units at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction. The total Operating Permit Program budget shall be divided by three. The ratio of each "stationary source's" emission units to the total number of emission units located at all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be paid by the owner or operator of each "stationary source." The complexity portion of the fee shall be assessed according to the following formula:

$$CF = B \div 3 * SU \div TU, \text{ where:}$$

CF = Complexity fee portion of total fee

B = The total Agency budget for the Operating Permit Program

SU = The number of emission units at a "stationary source"

TU = The number of emission units at all 40 CFR Part 70 "stationary sources"

(d) Total Fee. The amount of the annual assessed fees for each 40 CFR Part 70 "stationary source" shall be the sum of the participation, emissions and complexity fee portions (PF+EF+CF = Total Fee). The sum of the total fees for all 40 CFR Part 70 "stationary sources" within the Agency's jurisdiction shall be equal in amount to the Board adopted budget for the Operating Permit Program.)

#### (5) Accountability.

(a) The sum of the fees assessed by the Agency to all "stationary sources" required to obtain Operating Permits within the Agency's jurisdiction shall not exceed the cost of developing and administering the program and maintaining a program reserve fund. All fees collected from permit program "stationary sources" as provided in RCW 70.94.162, shall be deposited in a dedicated air operating permit account. Such fees shall be used exclusively to support and administer the operating permit program. The purpose of the program reserve fund is to ensure that permit program costs are not funded by fees from "stationary sources" not participating in the operating permit program. The value of monies held in the program reserve fund shall not exceed 15 percent of the average permit program budget over the most recent three-year period.

(b) The Agency shall keep a record of all reasonable (direct and indirect) costs to develop and administer the Operating Permit Program as specified in 40 CFR Part 70. This information shall be used by the Agency to develop the Operating Permit Program budget specified in section (3) above. The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual "stationary source's" fee.

(c) In the event that the assessed fees exceed the cost of developing and administering the Operating Permit Program, including the program reserve fund, such excess fees shall be used to develop and administer the Operating Permit Program in the next subsequent year. The amount of the excess fees shall be deducted from the projected budget of the next subsequent year prior to fee assessment for the subsequent year.

#### (6) Fee eligible activities.

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision or permit renewal;

(b) Inspections, testing and other data gathering activities necessary for development of a permit, permit revision or renewal;

(c) Acting on an application for a permit, permit revision or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision or renewal, preparing a draft permit and fact sheet and preparing a final permit, but excluding the costs of developing BACT, LAER, BART or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emission reports, conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations and other activities necessary to ensure that a "stationary source" is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the Pollution Control Hearings Board (PCHB) and all costs of judicial enforcement;

(i) The share attributable to permitted "stationary sources" for the development and maintenance of emissions inventories;

(j) The share attributable to permitted "stationary sources" of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment and collection, including the costs of necessary administrative dispute resolution and enforcement;

(m) Required fiscal audits, periodic performance audits and reporting activities;

(n) Tracking of time, revenues and expenditures and accounting activities;

(o) Administering the permit program including costs of clerical support, supervision and management;

(p) Provision of assistance to small business under jurisdiction of SWCAA as required under Section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by EPA under the Federal Clean Air Act.

**(7) Activities not eligible for fee.**

(a) New Source Review activity that does not include processing or preparing an operating permit;

(b) Development of BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants; and

(c) Acting on an application for a PSD permit.

(8) **Schedules of payment.** Fees shall be paid in accordance with the schedule of payment agreed upon in advance by the Control Officer and each operating permit "stationary source." An operating permit "stationary source" shall be allowed to pay its annual operating permit fees in one, two, or four installments. Each schedule of payment shall specify the terms and dates of payments.

(9) **Late fee payments.** Delinquent fees are subject to a late fee equal to three times the operating permit fee as provided under RCW 70.94.431(7). The penalties authorized by this subsection are additional to and in no way prejudice SWCAA's ability to exercise other civil and criminal remedies, including authority to revoke a "stationary source's" operating permit for failure to pay all or part of its permit fee.

(10) **Transfer of ownership.** Transfer of ownership of a source shall not affect that "stationary source's" obligation to pay operating permit fees. Any liability for fee payment, including payment of delinquent fees and other penalties shall survive any transfer of ownership of a "stationary source."

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

AMENDATORY SECTION (Amending WSR 16-19-009, filed 9/8/16, effective 10/9/16)

**SWCAA 400-109 Air Discharge Permit Applications**

(1) **Purpose.** An air discharge permit application is the document used by the Agency to record and track requests from individual "stationary sources," registered and non-registered, for the purpose of obtaining information regarding proposed changes or activities at a "stationary source." Confidential information shall be identified as set forth in SWCAA 400-270.

**(2) Applicability.**

(a) An air discharge permit application shall be submitted for all new installations, modifications, changes, and alterations to process and emission control equipment consistent with the definition of "new source." The application must be submitted and an air discharge permit must be issued or written confirmation of exempt status must be received before the proposed installations, modifications, changes, or alterations may begin actual construction. Activities that typically require the submission of a permit application include, but are not limited to, the following:

(i) New construction or installation;

(ii) Change of existing air discharge permit conditions or terms (including Title V opt-out requests - SWCAA 400-091);

(iii) Review of existing or installed equipment operating without prior approval;

(iv) Modification, alteration or replacement of existing process or control equipment;

(v) Relocation of existing equipment;

(vi) Review of existing equipment with an expired or lapsed approval or registration;

(vii) Review of case-by-case control technology determinations (e.g., RACT, BACT, MACT BART, LAER).

(b) Submittal of an air discharge permit application shall not automatically impose review requirements pursuant to SWCAA 400-110.

(c) Stationary sources subject to the PSD program (WAC 173-400-700 through -750) shall submit a PSD application to Ecology for air pollutants subject to PSD permitting, and submit an air discharge permit application to SWCAA for air pollutants that are not subject to PSD permitting. A copy of the PSD application shall also be submitted to SWCAA.

(d) Air discharge permit applications for new major stationary sources and major modifications located in a designated nonattainment area that emit the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and meet the applicability criteria in SWCAA 400-820, shall include all information necessary to meet the requirements of SWCAA 400-800 through -860.

(e) Applicability determination. If the owner or operator of a "new source" is unable to determine the applicability of this section, a formal determination may be requested from the Agency. A formal determination requires the submission of project related documentation sufficient for the Agency to identify affected emission units and quantify potential emissions, and the payment of a fee ~~equal to \$300 as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098.~~ This fee provides for up to 4

hours of staff time to review and/or consult with the owner or operator regarding the submitted documentation. If more than 4 hours of staff time are needed to make a determination, additional staff time will be invoiced to the owner or operator at the rate of \$70/hr as described in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. The Agency will provide written applicability determination to the owner or operator subsequent to reviewing the submitted documentation.

(3) **Exemptions.** The owner or operator of any "new source" that meets the exemption criteria specified below may provide written notification to SWCAA in lieu of a permit application. The Agency will review each notification, and provide written confirmation of exempt status to the owner or operator of the affected "new source" within 30 calendar days of receiving a complete notification. To be considered complete, written notification shall, at a minimum, contain the following information:

- Name and location of "stationary source";
- Description of primary processes at the "stationary source";
- Description of emission units at the "stationary source"; and
- Estimated air contaminant emissions from "stationary source" operations.

Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time. No further action is required from "stationary sources" deemed to be exempt. However, if the Agency determines that the "new source" does not meet the exemption criteria specified below, an air discharge permit application shall be submitted pursuant to this section.

(a) **Sources subject to SWCAA 400-072.** A "new source" is exempt from this section if it meets the category criteria contained in SWCAA 400-072 and SWCAA has confirmed compliance in writing prior to installation or operation.

(b) **Sources subject to SWCAA 400-036.** Portable stationary sources that meet the criteria provided in SWCAA 400-036(1) are exempt from the requirements of this section. Sources subject to SWCAA 400-036 must maintain compliance with all provisions of that section and applicable out of jurisdiction requirements in order to remain exempt.

(c) **Greenhouse gas emission sources.** Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720 for major stationary sources. However, the owner or operator of a source or emission unit may request that the permitting authority impose emission limits and/or operational limitations for greenhouse gas in any new air discharge permit.

(d) **Exempt emission thresholds.** A "new source" is exempt from this section if uncontrolled potential emissions from all emission units at the affected site or facility are less than all of the following exemption emission thresholds.

<u>Pollutant</u>	<u>Exemption Threshold</u>
NO <sub>x</sub> , CO, SO <sub>2</sub>	1.0 tpy (individual pollutant)

<u>Pollutant</u>	<u>Exemption Threshold</u>
PM <sub>10</sub>	0.75 tpy
PM <sub>2.5</sub>	0.5 tpy
VOC	1.0 tpy
Lead	0.005 tpy
Ozone depleting substances	1.0 tpy (combined)
Toxic air pollutants	The lesser of 1.0 tpy (combined) or the individual SQER per WAC 173-460 (effective 8/21/98)

(e) **Exempt equipment and activities.**

(i) The equipment and/or activities listed below are exempt from this section:

(A) Relocation of a portable source that has an active air discharge permit from SWCAA allowing portable operation,

(B) Wastewater treatment plants with a design annual average capacity of less than 1 million gallons per day,

(C) Natural gas or propane fired water heaters with individual rated heat inputs of less than 400,000 Btu per hour. Standards for these units are contained in SWCAA 400-070,

(D) Emergency service internal combustion engines located at a facility where the aggregate power rating of all internal combustion engines is less than 200 horsepower. In determining the aggregate power rating of a facility, individual units with a rating of less than 50 horsepower shall not be considered,

(E) Asphalt roofing and application equipment (not manufacturing or storage equipment),

(F) Fuel burning equipment unless waste-derived fuel is burned, which is used solely for a private dwelling serving less than five families,

(G) Application and handling of insecticide, pesticide or fertilizer for agricultural purposes,

(H) Laundering devices, dryers, extractors or tumblers for fabrics using water solutions of bleach and/or detergents at commercial laundromats,

(I) Portable, manually operated welding, brazing or soldering equipment when used at locations other than the owner's principal place of business,

(J) Welding stations involved solely in the repair and maintenance of a facility. This exemption does not extend to manufacturing operations where welding is an integral part of the manufacturing process (e.g., truck mounted equipment),

(K) Retail paint sales establishments (not including manufacturing),

(L) Sampling connections used exclusively to withdraw materials for laboratory analyses and testing,

(M) Sewing equipment,

(N) Spray painting or blasting equipment used at a temporary location to clean or paint bridges, water towers, buildings, or other permanent structures provided operations are in compliance with the provisions of SWCAA 400-070(8),

(O) Chemical and physical laboratory operations or equipment, including fume hoods and vacuum producing devices provided the emissions do not exceed those listed in SWCAA 400-109 (3)(c). This exemption applies to incidental fume hoods or laboratory equipment used by a "stationary

source" to perform in-house analyses. This exemption does not apply to "stationary sources" whose primary activity is chemical or physical laboratory operations,

(P) Residential wood heaters (e.g., fireplaces and woodstoves),

(Q) Office equipment, operations and supplies,

(R) Steam cleaning equipment used exclusively for that purpose,

(S) Refrigeration systems that are not in air pollution control service,

(T) Housekeeping activities and equipment,

(U) Natural draft hoods, natural draft stacks, or natural draft ventilators for sanitary and storm drains, safety valves and storage tanks,

(V) Natural and forced air vents and stacks for bathroom/toilet facilities,

(W) Personal care activities,

(X) Lawn and landscaping activities,

(Y) Flares used to indicate danger to the public,

(Z) Fire fighting and similar safety equipment and equipment used to train fire fighters. Burns conducted for fire fighting training purposes are regulated under SWCAA 425,

(AA) Materials and equipment used by, and activities related to, operation of an infirmary provided that operation of an infirmary is not the primary business activity at the "stationary source" in question, and

(AB) Emergency service internal combustion engines individually rated at less than 50 horsepower.

(ii) The equipment and/or activities listed below are exempt from this section for the purposes of reviewing toxic air pollutant emissions:

(A) Emergency service internal combustion engines,

(B) Non-emergency internal combustion engines manufactured after January 1, 2008 in use at facilities with total engine capacity less than 500,000 horsepower-hours,

(C) Gasoline dispensing facilities regulated under SWCAA 491, and

(D) Asbestos projects as defined in SWCAA 476-030.

(4) **Fees.** Before the Agency may review a permit application or issue a permit, the applicant shall submit all applicable fees as detailed in the current Consolidated Fee Schedule established in accordance with SWCAA 400-098. ((following paragraphs. [Total Application Fee = Filing Fee + Legal Notice Fee (if applicable) + Permit Application Review Fee/ Table A + Additional Review Fee / Table B (if applicable) + Major NSR Review Fee / Table C (if applicable)]

**Filing Fee**

A filing fee of \$500.00 shall be submitted for each permit application.

**Legal Notice Fee**

An applicant who submits an Air Discharge Permit application that requires newspaper publication of a Legal Notice pursuant to SWCAA 400-171 will be invoiced for an additional fee. The additional fee will be equal to the actual cost of publication plus \$70 to compensate for the staff time required to prepare, mail and invoice the public notice.

**Permit Application Review Fee**

A permit application review fee shall be paid for each permit application. The applicable permit application review fee for each permit application shall be determined from Table A based on the primary emission unit or activity of the proposed new, modified or altered "stationary source." Permit application review fees based on emissions are to utilize actual or proposed allowable emissions, after controls, as supported by test data or emission factors, not potential to emit. Permit application review fees based on equipment capacity or size are to utilize the design capacities of affected equipment. If the staff time required to review a permit application exceeds the number of work hours associated with the applicable review fee specified in Table A, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

**Expedited Application Review**

An applicant may request expedited processing of a permit application. The Agency shall, at its own discretion, determine if available permitting resources are sufficient to support expedited processing. If the application is accepted for expedited processing, the applicant must pay double the normal filing and review fees. An expedited permit application will be processed as soon as possible and receives priority over non-expedited applications. However, the Agency will not guarantee an issue date for expedited permits since the development and issuance of a permit is highly dependent on the accuracy/completeness of the application and the responsiveness of the applicant.

**Additional / Major NSR Review Fees**

If additional actions, as identified in Tables B and C, must be performed by the Agency as a result of the proposed installation, alteration or modification, the applicant shall pay additional fees as specified in those Tables. The fees identified in Tables B and C are cumulative. If the staff time required to complete the additional review exceeds the number of work hours associated with the applicable review fee specified in Tables B and C, the applicant will be invoiced for each additional work hour at the rate of \$70.00 per hour.

**TABLE A**

**Permit Application Review Fees**

Equipment/Activity	Associated Work Hours	Review Fee
i. Fuel burning equipment (Million Btu/hr heat input @ design capacity):		
0.4 or more but less than 5	8	\$600.00
5 or more but less than 10	10	700.00
10 or more but less than 30	12	850.00
30 or more but less than 50	14	1,000.00
50 or more but less than 100	17	1,200.00
100 or more but less than 250	35	2,500.00
250 or more but less than 500	57	4,000.00
500 or more	85	6,000.00
Change in fuel type	One half of the applicable fee listed above	

Equipment/Activity	Associated-Work-Hours	Review-Fee
ii. Discharge from control equipment or from uncontrolled process equipment (Actual Cubic Feet per Minute—ACFM):		
Less than 50	8	\$600.00
50 or more but less than 5,000	10	700.00
5,000 or more but less than 20,000	11	800.00
20,000 or more but less than 50,000	12	900.00
50,000 or more but less than 100,000	13	950.00
100,000 or more but less than 250,000	14	1,000.00
250,000 or more but less than 500,000	28	2,000.00
500,000 or more	57	4,000.00
iii. Refuse burning equipment (Incinerators) (Tons/day capacity):		
Less than 0.5	10	\$700.00
0.5 or more but less than 5	11	800.00
5 or more but less than 12	14	1,000.00
12 or more but less than 50	42	3,000.00
50 or more	85	6,000.00
iv. Storage tanks, reservoirs, or containers (Gallons total capacity): (Other than gasoline or diesel fuel dispensing facilities):		
250 or more but less than 10,000	8	\$600.00
10,000 or more but less than 40,000	14	1,000.00
40,000 or more but less than 100,000	21	1,500.00
100,000 or more	28	2,000.00
v. Gasoline dispensing facilities:		
Stage I	8	\$600.00
Stage II	10	700.00
Stages I & II, combined	11	800.00
Toxics review for gasoline facility	21	1,500.00
Stage II removal	8	600.00
vi. Other: (Not classified in Subsection i., ii., iii., iv. or v. above)	\$200.00 per ton of emission	
vii. Toxic air contaminants	\$200.00 per ton of emission	
viii. Complex stationary source or modification:	85	\$6,000.00
ix. Synthetic minor application: (Including, but not limited to: Title V, HAP)	35	\$2,500.00
x. Particulate matter and fugitive emissions from rock crushing, material transfer and ship loading (Emissions—tons per year):		
Less than or equal to 10	8	\$600.00
More than 10 but less than or equal to 50	14	1,000.00
More than 50 but less than or equal to 100	21	1,500.00
More than 100 but less than 250	35	2,500.00
250 or greater	85	6,000.00
xi. Minor modifications to existing permit conditions:	8	\$600.00
xii. Dry cleaner:	8	\$600.00
xiii. Internal combustion engines (Aggregate horsepower rating):		
Less than 500	10	700.00
500 or more but less than 2,000	14	1,000.00

Equipment/Activity	Associated-Work-Hours	Review-Fee
2,000 or more but less than 5,000	21	1,500.00
5,000 or more but less than 10,000	42	3,000.00
10,000 or more	85	6,000.00
xiv. Crematory/small incinerators/small flares:	10	\$700.00
xv. Gluing/flow coating operations without active ventilation:	11	\$800.00
xvi. Soil/groundwater remediation:	11	\$800.00
xvii. Composting facilities (Average material throughput—tons per day):		
Less than 50	8	\$600.00
50 or more but less than 100	14	1,000.00
100 or more but less than 200	21	1,500.00
200 or more but less than 500	42	3,000.00
500 or more	85	6,000.00
xviii. Coffee roasters:	10	\$700.00
xix. Municipal wastewater treatment plants: (Million gallons per day—annual average design capacity)		
More than 1 but less than 5	11	\$800.00
5 or more but less than 10	21	1,500.00
10 or more	35	2,500.00

**TABLE B  
Additional Fees**

Equipment/Activity	Associated-Work-Hours	Fee
xx. Emission offset analysis or bubble:	10	\$700.00
xxi. Emission reduction credit (ERC) application: (Deposit or withdrawal)	10	\$700.00
xxii. RACT/BACT/MACT/BART/LAER determination:		\$70.00/hr
(xxiii.) Variance request:	11	\$800.00
(xxiv.) Review of ambient impact analysis:		\$70.00/hr
(xxv.) Review of Ecology agreed orders and consent orders pursuant to RCW 70.105D.090(1):		\$70.00/hr

**TABLE C  
Major NSR Fees**

Equipment/Activity	Associated-Work-Hours	Fee
(xxvi.) Plantwide applicability limitations:	142	\$10,000.00 )

**(5) Final determination.**

(a) Each complete air discharge permit application shall result in the issuance of a final determination consistent with the requirements of SWCAA 400-110 or confirmation of exempt status by the Agency.

(b) The requirements of SEPA (State Environmental Policy Act) shall be complied with for each air discharge permit application. Air discharge permit applications for actions that are subject to SEPA review shall include a completed environmental checklist as provided in WAC 197-11 or a

copy of another agency's SEPA determination for the same action. A list of actions exempt from SEPA is found in WAC 197-11-800.

**(6) Withdrawn or exempt applications.**

(a) An air discharge permit application may be withdrawn by the applicant at any time prior to issuance of an air discharge permit or regulatory order. The applicant must provide a written and signed request to the Agency indicating their desire to withdraw the application, and certification that the proposed equipment or modification will not be installed, constructed, or operated without prior review and approval from the Agency. The Agency shall provide written response to acknowledge withdrawal of the application.

(b) After review by the Agency, a permit application may be determined to be exempt from the requirements of SWCAA 400-110 if it meets the exemption criteria provided in SWCAA 400-109(3). The Agency shall provide written notification to the applicant for all applications that are determined to be exempt. Exempt status is not effective until confirmed by the Agency, and actual construction of the "new source" shall not begin prior to that time.

(c) For withdrawn or exempt applications, filing fees will not be refunded to the applicant. Review fees, if provided with the application, may be refunded upon request, provided that substantial time has not been expended by the Agency for review of the application.

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

**WSR 17-12-048**  
**PERMANENT RULES**  
**SPOKANE REGIONAL**  
**CLEAN AIR AGENCY**

[Filed June 2, 2017, 8:44 a.m., effective July 3, 2017]

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

Purpose: Amendments to SRCAA Regulation I, Article X: Fees and Charges are to improve clarity and readability, include fee calculation methodology to allow hourly fee rates to reflect program hourly costs, and update formatting for consistency among articles. Amendments include: Formatting updates; text edits; remove registration information late fee subsection; update Calculating Annual Registration Fee without Required Registration Information text and move to different section; update Additional Fee for Failure to Pay text and renumber section; add new subsection Method of Calculating Fees; include fee calculation methodology to include formula used to calculate hourly fee for Acid Deposition Fee and Miscellaneous Fees; clarify the fee structure for Variance Fee that is outlined in Article III, revise fee structure and include fee calculation methodology to include formula used to calculate hourly fee for Fees for Changes to an Order of Approval or Permission to Operate, Permit Application Fee, and Paving Waiver Fee; add Payment of Fees subsection to clarify payment is required; and remove duplicative Periodic Fee Review text from multiple sections and insert updated Periodic Fee Review text to one section.

Citation of Existing Rules Affected by this Order:  
Amending SRCAA Regulation I, Article X: Fees and Charges.

Statutory Authority for Adoption: RCW 70.94.141.

Other Authority: Chapter 70.94 RCW.

Adopted under notice filed as WSR 17-08-034 on April 19 [March 29], 2017.

Changes Other than Editing from Proposed to Adopted Version: Renumbered subsection 10.07(D) to 10.07(C) to have subsections follow numerical order.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 12, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

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

Date Adopted: June 1, 2017.

Margee Chambers  
Rule Writer  
SIP Planner

**ARTICLE X**

**FEES AND CHARGES**

**ADOPTED: September 12, 1991**

**Revised: June 1, 2017**

**EFFECTIVE: July 3, 2017**

**SECTION 10.01 DEFINITIONS**

(A) Unless a different meaning is clearly required by context, words and phrases used in Regulation I, Article X, shall have the following meaning:

(1) Emission Fee means the component of a registration fee or operating permit fee, which is based on total actual annual emissions of criteria and toxic air pollutants, except as provided in Section 10.06 (B)(2). In the case of a new or modified source or a source being registered initially, the emission fee is based on projected emissions as presented in an approved NOC or registration form.

(2) Registration Period means the calendar year for which an annual fee has been assessed per Section 10.06 (B)(1).

**SECTION 10.02 FEES AND CHARGES REQUIRED**

(A) Additional Fee for Failure to Pay. Any fee assessed under Article X shall be paid within forty-five (45) days of assessment. Failure to pay an assessed fee in full within ninety (90) days of assessment will result in the imposition of an additional fee equal to three (3) times the amount of the original fee assessed.



(B) Revenues Collected per RCW 70.94.161. Revenues collected per RCW 70.94.161 shall be deposited in the operating permit program dedicated account and shall be used exclusively for the program.

(C) Method of Calculating Fees in Article X. Invoice totals will be rounded-up to the nearest one (1) dollar, except for photocopy and postage fees.

(D) Periodic Fee Review. The Board shall periodically review all agency fees in the Fee Schedule, and determine if the total projected fee revenue to be collected is sufficient to fully recover direct and indirect program costs. If the Board determines that the total projected fee revenue significantly exceeds or is insufficient for the program costs, then the Board shall amend the Fee Schedule to more accurately recover program costs. Any proposed fee revisions shall include opportunity for public review and comment.

**SECTION 10.03 FEES OTHERWISE PROVIDED**

All fees and charges provided for in Article X are in addition to fees otherwise provided for or required to be paid by Regulation I, PROVIDED the Control Officer shall waive payment of any fee or service charge hereby required if the Control Officer determines that such fee is duplicative of a fee charged or required to be paid by another Article of this Regulation.

**SECTION 10.04 RESERVED**

**SECTION 10.05 GENERAL ADMINISTRATIVE FEES**

(A) Photocopy. A fee of \$0.15 per page for photocopies shall be charged (RCW 42.56.120).

(B) Postage. The actual cost of postage shall be charged for all material requested to be mailed [RCW 42.56.070 (7)(a)].

(C) Other Services. For other administrative services requested and performed by Agency staff, which are not provided to the public generally, the Control Officer shall determine such charge as reasonably reimburses the Agency for time and materials expended in providing the service.

**Reviser's note:** The brackets and enclosed material in the text of 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.

**SECTION 10.06 ANNUAL REGISTRATION AND ANNUAL AIR OPERATING PERMIT (AOP) FEES FOR AIR CONTAMINANT SOURCES**

(A) Annual Fee. Each source required by Regulation I, Article IV, Section 4.01 to be registered, each AOP source, and each source required by Article V, Section 5.02 to obtain an approved Notice of Construction (NOC) and Application for Approval is required to pay an annual fee for each calendar year, or portion of each calendar year, during which it operates. The owner, operator, or both, shall be responsible for payment of the fee per the requirements in Article X, Section 10.06. Fees received as part of the registration program or the operating permit program shall not exceed the actual costs of program administration.

(B) Annual Registration Fee. The annual fee for each source required by Article IV, Section 4.01 to be registered

and that is not subject to Article X, Section 10.06(C) shall be determined by adding all of the applicable fees below:

Registration Fee Categories	Fee	Fee Applicability
Facility Fee <sup>A</sup>	Per the Fee Schedule	Per Source
Emissions Fee <sup>B</sup>	Per the Fee Schedule	Per Ton
Emission Point Fee <sup>C</sup>	Per the Fee Schedule	Per Stack/Point
Synthetic Minor Fee <sup>D</sup>	Per the Fee Schedule	Per Source

- A Each source is subject to the fee listed in the Fee Schedule.
- B The additional fee applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.
- C The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.
- D The additional fee applies to each Synthetic Minor.

(2) Calculating Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided, the annual registration fee will be based on the source's maximum potential production rate. This method will be used:

(a) When registration information is not received within ninety (90) days of request, or

(b) Prior to the registration fee invoice date, whichever is later.

(C) Annual AOP Fee. The annual fee for each AOP source shall be determined as follows:

(1) AOP Annual Fee. For sources that are subject to the AOP program during any portion of the calendar year, the annual fee shall be determined by adding all of the applicable fees described below:

- (a) Annual base fee per the Fee Schedule.
- (b) Emission fee per the Fee Schedule.
- (c) Agency time fee, as determined per the Fee Schedule.
- (d) AOP Program Cost Correction, as determined per the Fee Schedule.
- (e) A share of the assessment by Ecology per RCW 70.94.162(3), as determined per the Fee Schedule.

(2) Acid Deposition Fee. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq), the air operating permit fee shall be determined by adding all of the applicable fees described below:

(a) The AOP Acid Deposition Fee shall be calculated as follows:

1. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request (rounded-up to the nearest half-hour), by the hourly rate as listed in the Fee Schedule, for time expended in carrying out the fee eligible activities specified in Chapter 70.94 RCW; and

2. Ecology Assessment. A share of the assessment by Ecology per RCW 70.94.162(3), as determined per the Fee Schedule.

(b) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total AOP Program Costs}}{\text{Total AOP Program Hours}}$$

(c) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

**SECTION 10.07 APPLICATION AND PERMIT FEES FOR NOTICE OF CONSTRUCTION AND APPLICATION FOR APPROVAL (NOC) AND FOR NOTICE OF INTENT TO INSTALL AND OPERATE A TEMPORARY STATIONARY SOURCE**

(A) NOC and Notice of Intent Fees.

(1) Base Fee.

(a) For each project required by Regulation I, Article V, to file a NOC or a Notice of Intent, the applicant shall pay a base fee per the Fee Schedule. Base fee classes are listed below.

1. Class I - Notice of Intent. Notice of Intent to install and operate portable stationary sources and temporary stationary sources include the following:

Source/Source Category Description	Article IV, Exhibit R Category
Asphalt plant	15
Concrete batch plant/ready mix plant	22
Rock crusher	36

2. Class II - Simple NOC. Simple NOCs include the following:

Source/Source Category Description	Article IV, Exhibit R Category
Boiler and other fuel-burning equipment	27
Coffee roaster	20
Concrete batch plant/ready mix plant	22
Dry cleaner	23
Emergency generator	52
Gasoline dispensing facility	28
Lithographic printing/screen printing	9.e.5
Material handling that exhausts > 1,000 acfm	24
Rock crusher	36
Spray booth/surface coating operation	57
Stationary internal combustion engine	53

Source/Source Category Description	Article IV, Exhibit R Category
Sterilizer	9.e.8
Stump/wood waste grinder	54

3. Class III - Standard NOC. Standard NOCs include the following:

Source/Source Category Description	Article IV, Exhibit R Category
Soil and groundwater remediation operation	9.e.7
Burn out oven	43
Chrome plating	35
Incinerator/crematory	31

4. Class IV - Complex NOC. Complex NOCs include the following:

Source/Source Category Description	Article IV, Exhibit R Category
Asphalt plant	15
Composting	21
Refuse systems	48
Rendering	49
Sewerage systems	50

(b) For sources/source categories not listed in Section 10.07 (A)(1)(a), Notice of Intent and NOC application review will be assigned to Class I, II, III or IV by the Control Officer on a case-by-case basis.

(c) For sources with one or more emission points under one NOC application, as allowed in Article V, Section 5.02.G, a separate base fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

(2) Fees for Changes to an Order of Approval or Permission to Operate.

(a) An owner or operator requesting a modification, revision, and/or change in conditions of an approved Order of Approval or Permission to Operate, under Article V, Section 5.10.C., shall pay a revision fee as listed in the Fee Schedule. The revision fee will be assessed each time a request is submitted and will be invoiced to the owner or operator, or both with the final determination.

(b) The revision fee is calculated by adding all the applicable fees described below:

1. Minimum Fee. The minimum fee, as listed in the Fee Schedule, will be assessed for all revision request reviews. The minimum fee includes the first three (3) hours of staff time spent in reviewing and processing the request; and

2. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request beyond the first three (3) hours covered in 10.07

(A)(2)(b) 1. (rounded-up to the nearest half-hour), by the hourly rate as listed in the Fee Schedule.

(c) Fee Determinations.

1. Flat Fee. The revision flat fee is calculated by multiplying three (3) hours by the hourly rate listed in the Fee Schedule.

2. Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and NOI Program Costs}}{\text{Total NOC and NOI Program Hours}}$$

3. Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

(3) Additional Fees (for each application).

(a) SEPA Review Fee. Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an Addendum to, or adoption of, an existing environmental document per the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required, in association with a NOC or a Notice of Intent, the applicant shall pay a SEPA or EIS review fee per the Fee Schedule.

(b) Toxics Review Fee. For any new source of air pollution which requires review per Chapter 173-460 WAC, a toxic air pollutant review fee shall be paid. For sources with one or more emission points under one NOC application, as allowed in Article V, Section 5.02.G, a separate toxic air pollutant review fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units. The toxic air pollutant review fee shall be as follows:

1. Small Quantity Emission Rate (SQER). For a new source using WAC 173-460-080 (2)(b), SQER, to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070 & WAC 173-460, the applicant shall pay a SQER review fee per the Fee Schedule.

2. Dispersion Modeling. For a new source using dispersion screening models (e.g., EPA SCREEN or TSCREEN) under WAC 173-460-080 (2)(a) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay a dispersion modeling review fee per the Fee Schedule.

3. Advanced Modeling. For a new source using more refined dispersion models (e.g., EPA ISC3) under WAC 173-460-080 (2)(a) to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070; or for a new or modified source using a second tier analysis under WAC 173-460-090 or a risk management decision under WAC 173-460-100 to demonstrate that ambient impacts are sufficiently low to protect human health and safety, as required WAC 173-460-070, the applicant shall pay the advanced modeling review fee per the Fee Schedule.

(c) New Source Performance Standards (NSPS) Review Fee.

Applicants of any new air pollution source subject to WAC 173-400-115 (NSPS) and 40 CFR Parts 60 shall pay a NSPS review fee per the Fee Schedule.

(d) National Emission Standard for Hazardous Air Pollutants (NESHAP) Review Fee. Applicants of any new air pollution source subject to WAC 173-400-075 (NESHAP) and 40 CFR Parts 61 and 63 shall pay a NESHAP fee per the Fee Schedule.

(e) Best Available Control Technology (BACT) Review Fee:

1. Generic BACT. Where no BACT review is required (e.g., the applicant demonstrates there is an established and/or recognized BACT standard for the source category type), a BACT review fee is not applicable.

2. Non-Generic BACT Review. A non-generic BACT review is one where a generic BACT standard is not applicable and a top-down BACT review is not required. Applicants of any new air pollution source subject to a non-generic BACT review shall pay a non-generic BACT review fee per the Fee Schedule.

3. Top-Down BACT Review (as described in EPA's Draft New Source Review Workshop Manual from October 1990 and as summarized here). A top-down BACT review requires the ranking of available control technologies in descending order of control effectiveness. Applicants of any new air pollution source subject to a top-down BACT review shall pay a top-down BACT review fee per the Fee Schedule.

(B) Payment of Fees.

(1) Upon Submission of Application. The base fee shall be paid at the time the application is submitted. Review of the application will not commence until the applicable base fee is received.

(2) After Application.

(a) Complete Applications. The Agency will invoice the owner, operator, or both, for all other applicable fees. The fees shall be paid whether the application is approved or denied.

(b) Incomplete Applications.

1. If an owner, operator, or both, notifies the Agency in writing that an application will not be completed or cancels the application; or the application remains incomplete for more than three (3) months; the Agency will invoice the owner, operator, or both, for payment of applicable fees.

2. Applications not accompanied by the base fee will be considered incomplete. If information requested by the Agency is not provided, the application will be considered incomplete and review of the application will be suspended. Review of the application will commence, or recommence when all required fees and information requested by the Agency is received. An application will be cancelled if it remains incomplete for more than eighteen (18) months from initial receipt. For review of the cancelled application to resume, the applicant must pay all outstanding invoice fees, if applicable, and resubmit the applicable base fee.

(C) Compliance Investigation Fee. When a compliance investigation is conducted per Article V, Section 5.12, the compliance investigation fee shall be assessed per the Fee Schedule. The fee shall be assessed for each emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-

kind if the same set of calculations can be used to characterize emissions from each of the emissions units.

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

**SECTION 10.08 MISCELLANEOUS FEES**

(A) Miscellaneous Fees.

(1) Emission Reduction Credit Fee.

(a) Review of emission reduction credits per WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee per the Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, per the Fee Schedule.

(c) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and NOI Program Costs}}{\text{Total NOC and NOI Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

(2) Variance Request Fee.

(a) Processing a variance request per RCW 70.94.181 or Regulation I, Article III, shall require the applicant to pay a variance request fee per the Fee Schedule. The fee will be assessed each time a request is submitted and will be invoiced to the applicant with the final determination.

(b) The variance request fee is calculated by adding all of the applicable fees described below:

1. Filing fee per the Fee Schedule.

2. Agency legal fees.

3. Agency legal notice fees.

4. Hourly fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Fee Schedule.

(c) Fee Determination.

1. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total Program Costs}}{\text{Total Program Hours}}$$

2. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

(3) Alternate Opacity Fee.

(a) Review of an alternate opacity limit per RCW 70.94.331 (2)(c) shall require the applicant to pay an alternate opacity fee per the Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Fee Schedule.

(c) Hourly Rate. The hourly rate is determined by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and NOI Program Costs}}{\text{Total NOC and NOI Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

(4) Other Services Fee.

(a) Applicants of other services including:

1. Requests under the following sections of Regulation I, Article VI, Sections 6.13.E.3.j.; 6.13.F.4.; 6.13.F.6.; 6.13.F.9.; 6.13.F.10.; and 6.13.F.11.

2. Registration exemption requests.

3. Other.

(b) Applicants shall pay a fee per the Fee Schedule.

(c) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Fee Schedule.

(d) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and NOI Program Costs}}{\text{Total NOC and NOI Program Hours}}$$

(e) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees. The Agency will invoice the owner, operator, or both, for all applicable fees. The fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.08 (A)(1), (2), (3) and (4) are approved or denied; except Section 10.08 (A)(2) as provided in Article III, Section 3.02.B.

**SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES**

(A) Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the Fee Schedule. Refunds are allowable for overpayments which are identified within thirty days of the notification filing date.

Owner-occupied, single-family residence	Waiting Period
> 0 ln ft and/or > 0 sq ft asbestos performed by residing owner	Notification Not Required
< 10 ln ft and/or < 48 sq ft asbestos not performed by residing owner	Notification Not Required
≥ 10 ln ft and/or ≥ 48 sq ft asbestos not performed by residing owner	Prior Notice
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
< 10 ln ft and/or < 48 sq ft asbestos, but asbestos removal threshold of ≥ 10 ln ft and/or ≥ 48 sq ft has not been exceeded for structure in calendar year and project WILL NOT exceed threshold of ≥ 10 ln ft and/or ≥ 48 sq ft asbestos removal from structure in calendar year	Notification Not Required
Project consists of < 10 ln ft and/or < 48 sq ft of asbestos removal, but ≥ 10 ln ft and/or ≥ 48 sq ft asbestos has already been removed from structure in calendar year or project WILL exceed threshold of ≥ 10 ln ft and/or ≥ 48 sq ft asbestos removal from structure in calendar year	Prior Notice
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice*	Sect. 9.04.A.7.h.
Annual Notification (≤ 259 ln ft and/or ≤ 159 sq ft)	Prior Notice	Sect. 9.04.A.7.j
Amendment	Prior Notice	Section 9.04.B.
Alternate Asbestos Project Work Practices	10 days	Section 9.08.A.
Demolition with Nonfriable Asbestos Roofing	10 days	Section 9.08.B.
Exception for Hazardous Conditions	10 days	Section 9.08.C.

\*If prior notice isn't possible because of life endangerment or other serious consequences, the Agency may accept, at its discretion, a completed emergency notification if it is filed no later than the first regular Agency work day after the asbestos project and/or demolition commenced.

**SECTION 10.10 SOLID FUEL BURNING DEVICE EXEMPTIONS**

(A) An initial, nonrefundable fee of \$25 shall be paid for review of any exemption request to use a solid fuel combustion device during periods of impaired air quality. An annual, nonrefundable renewal fee of \$10 will be required each year thereafter. These fees may be waived for emergency situations.

(B) Fees shall be paid without regard to whether the request(s) associated with this Section are approved or denied.

**SECTION 10.11 RESERVED**

**SECTION 10.12 AGRICULTURAL BURNING FEES**

(A) For agricultural burning permits issued by the Agency per Regulation I, Article VI, Section 6.11, a fee equal to the maximum fee provided for in Chapter 173-430 WAC shall be submitted with a complete agricultural burning permit application.

(B) Refunds of fees collected by the Agency will be provided for acres or tons permitted but not burned, provided that the total nonrefundable fee is no less than the minimum fee specified in Chapter 173-430 WAC.

(C) Acreage equivalency, if applicable, shall be in accordance with the determination of the agricultural burning practices and research task force per Chapter 173-430 WAC.

(D) Fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.12 are approved or denied.

**SECTION 10.13 OUTDOOR BURNING WAITING PERIOD AND FEES**

(A) Permit Application. An outdoor burning permit application must be completed and submitted to the Agency per Regulation I, Article VI, Section 6.01. Incomplete applications and applications received without the applicable fee will be returned to the applicant.

(B) Advance Application Period. A complete and accurate application must be received by the Agency in advance of the first proposed burn date by the number of working days specified in the table below.

Type of Outdoor Burning	Working Days*
Social Event Fires (Sect. 6.01.D.9.)	10
Storm or Flood Debris Burning (Sect. 6.01.D.10.)	10
Types of Other Outdoor Burning Not Listed in Sections 6.01.D.1.-12. (Sect. 6.01.D.13.)	10

\* Unless otherwise approved by the Agency.

**(C) Permit Application Fees.**

(1) Review Fee. A nonrefundable review fee per the Fee Schedule shall accompany all outdoor burning permit applications. The fee shall be paid whether or not burning is conducted.

(2) Hourly Fee for Other Outdoor Burning Permits (Section 6.01.D.13.). The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the outdoor burning application beyond the first one (1) hour covered in Section 10.13 (C)(1) (rounded-up to the nearest half-hour) and multiplied by the hourly rate, as listed in the Fee Schedule. A billing invoice for the hourly fee will be sent to the applicant. The entire fee assessed on the invoice is nonrefundable, and shall be paid whether or not burning is conducted.

**(3) Fee Determination.**

(a) Hourly Rate. The hourly rate is determined by:

Hourly Rate =  $\frac{\text{Total Outdoor Burning Program Costs}}{\text{Total Outdoor Burning Program Hours}}$

(b) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

#### SECTION 10.14 PAVING WAIVER FEES

(A) Review Fee.

(1) A minimum nonrefundable review fee as specified in the Fee Schedule shall accompany all paving waiver requests submitted to the Agency. The fee shall be paid whether or not the paving waiver is approved or denied.

(2) Paving waiver review fee is calculated by multiplying the hourly rate by one (1) hour.

(3) Hourly Rate. The hourly rate is determined by:

Hourly Rate =  $\frac{\text{Average of compliance activities program costs}}{\text{Average of compliance activities program hours}}$

Average of compliance activities program hours

(4) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) recent fiscal years, rounded-up to the nearest one (1) dollar.

#### WSR 17-13-006

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 8, 2017, 10:39 a.m., effective July 9, 2017]

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

Purpose: The department is amending WAC 388-410-0030 and 388-410-0033 in order to comply with federal regulations regarding the department's cost effectiveness plan for pursuing overpayment claims as approved by the United States Department of Agriculture (USDA).

USDA Food and Nutrition Services (FNS) regulations allow Washington state to determine the amount at which pursuing an overpayment for Supplemental Nutrition Assistance Program (SNAP) benefits becomes cost effective. Once the state and FNS agree on an amount, it becomes part of the state plan for administering SNAP and the state must abide by the plan. Lack of compliance with FNS rules can result in loss of funding for or penalization to the SNAP in Washington. Additionally, the current rule applies unnecessary overpayments that can result in a hardship for clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-410-0030 and 388-410-0033.

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 7 C.F.R. 273.18.

Adopted under notice filed as WSR 17-09-036 on April 13, 2017.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2017.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 15-22-051, filed 10/29/15, effective 11/29/15)

**WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment?** (1) We calculate the amount of your basic food, ~~(or WASHCAP)~~ Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting the difference between:

(a) The benefits your assistance unit (AU) received; and  
(b) The benefits your AU should have received.

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and  
(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We ~~((must))~~ must set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) The overpayment is over eighty-five dollars and you currently receive basic food, FAP, or WASHCAP benefits; or

(c) The overpayment is over one hundred twenty-five dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We ~~((do not))~~ do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive basic food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was one hundred twenty-five dollars or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification

hearing, we will not set up ~~((and))~~ or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing ~~((chapter 388-02 WAC))~~ under chapter 388-02 WAC, unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to twelve months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than twenty-four months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the ~~((act of))~~ IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have ~~((not))~~ not already issued you benefits to replace what you were underpaid; and

(b) We have ~~((not))~~ not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within ninety days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing ~~((can))~~ may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution ~~((t))~~ in accordance with WAC 388-446-0001(4)(~~t~~), you may request that the administrative hearing related to the overpayment be postponed.

AMENDATORY SECTION (Amending WSR 15-22-051, filed 10/29/15, effective 11/29/15)

**WAC 388-410-0033 How and when does the department collect a basic food, FAP, or WASHCAP overpayment?** (1) After we set up a basic food, ~~((FAP, WASHCAP))~~

Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment under WAC 388-410-0030, we collect the amount you were overpaid even when the total is less than ~~(((\$125 as discussed))~~ those in WAC 388-410-0030 (4)(b) or (c). This includes when we:

(a) Modify an established overpayment to an amount we would not have to set up under WAC 388-410-0030(5); or

(b) ~~((Set-up))~~ Establish an overpayment that we do not have to ~~((set-up))~~ establish under WAC 388-410-0030(4).

(2) You ~~((can))~~ may repay your overpayment by:

(a) Paying the entire amount at once;

(b) Having us take the amount of your overpayment out of your ~~((EBT))~~ electronic benefit transfer (EBT) account;

(c) Making regular payments under a scheduled repayment agreement as described in subsection (4) of this section; or

(d) Having your current basic food, FAP, or WASHCAP benefits reduced.

(3) If you have an inactive EBT account and we cancelled basic food, FAP, or WASHCAP benefits in the account under WAC 388-412-0025, we use the cancelled benefits to reduce the amount of your overpayment.

(4) If you are responsible for repaying an administrative or inadvertent household error overpayment, we reduce your monthly benefits unless you:

(a) Pay the overpayment all at once;

(b) Set up a repayment agreement with us; ~~((or))~~

(c) Arrange with us to ~~((compromise-reduce))~~ reduce all or part of your overpayment under ~~((section))~~ subsection (13) ~~((below))~~ of this section; or

(d) Request a hearing and continued benefits under WAC 388-458-0040.

(5) If you are responsible for an intentional program violation (IPV) overpayment, you must tell us how you want to repay this overpayment within ten days of the date we sent your collection action notice. If you do not do this, we reduce your current monthly benefits.

(6) If your AU currently receives basic food, FAP, or WASHCAP benefits, you ~~((can))~~ may choose to repay your overpayment by making monthly payments. The payments must be more than we would recover by reducing your benefits. Your AU or the department ~~((can))~~ may request a change to the agreement if necessary.

(7) If you receive ongoing basic food, FAP, or WASHCAP benefits, we reduce your monthly benefits to repay the overpayment. We do not reduce your first basic food, FAP, or WASHCAP allotment when we first approve your application for benefits.

(a) If you have an administrative or inadvertent household error overpayment, we reduce your benefits by the greater of:

(i) Ten percent of your monthly benefits; or

(ii) Ten dollars per month.

(b) If you have an IPV overpayment, we reduce your benefits by the greater of:

(i) Twenty percent of your monthly benefits; or

(ii) Twenty dollars per month.

(8) We send you a change letter under WAC 388-458-0025 before we reduce your basic food, FAP, or WASHCAP benefits.

(a) You may request a hearing on the change letter ~~((, for instance,))~~ if you do not ~~((feel))~~ believe the amount of the overpayment was calculated correctly, making the reduction incorrect.

(b) The administrative law judge (ALJ) does not have authority to compromise, terminate, write-off, defer or otherwise waive the overpayment claim or recovery ~~((thereunder))~~.

(9) If you do not meet the terms of a repayment agreement, we reduce your current benefits unless you:

(a) Pay all overdue payments to bring your repayment agreement current; or

(b) Ask us to consider a change to the repayment schedule.

(10) We may also collect overpaid food benefits with an order to withhold and deliver property under RCW 43.20B-635.

(11) If your overpayment claim is past due for one hundred twenty or more days, we refer your overpayment for federal collection. A federal collection includes reducing your income tax refund, Social Security benefits, or federal wages. We do not count your overpayment as past due if you:

(a) Repay the entire overpayment by the due date;

(b) Have your monthly benefits reduced to repay the overpayment; ~~((or))~~

(c) Arrange with us to ~~((compromise (reduce)))~~ reduce all or part of your overpayment under ~~((section))~~ subsection (13) ~~((below))~~ of this section; or

(d) Meet the requirements of your scheduled repayment agreement.

(12) If you no longer receive basic food, FAP, or WASHCAP benefits, we ~~((can))~~ may garnish your wages, file a lien against your personal or real property, attach other benefits, or otherwise access your property to collect the overpayment amount.

(13) ~~((At anytime))~~ Based on your request or our own, we may ~~((compromise (reduce)))~~ reduce all or part of your overpayment at any time.

(a) We may ~~((, at our discretion, compromise))~~ reduce a claim or any portion of a claim if we determine that your household's economic circumstances dictate that you will not be able to pay the claim in three years.

(b) If you disagree with our decision not to ~~((compromise))~~ reduce all or part of a food benefits overpayment, you may ask for a review of that decision.

(i) The review will be heard by someone other than the person who made the decision you disagree with.

(ii) You do not have a right to an administrative hearing to contest our decision not to ~~((compromise))~~ reduce all or part of a food benefits overpayment.

(c) If your claim becomes delinquent ~~((f))~~ because you have failed to follow a written repayment agreement entered with the office of financial recovery (OFR) ~~((,))~~ we may reinstate the ~~((compromised))~~ reduced portion of your claim.

(14) We write off unpaid overpayments and release any related liens when:

(a) The claim is invalid;

(b) All adult household members die;

(c) The claim balance is less than twenty-five dollars and ~~((has been))~~ is delinquent for ninety days or more;

(d) We determine it is not cost effective to pursue the claim further;

(e) We agreed to accept a partial payment that left an unpaid balance after this payment; or

(f) ~~((You have paid ten percent of your monthly benefits, or ten dollars, whichever is greater, on an administrative or inadvertent household error overpayment for at least thirty-six months; or~~

~~((g)))~~ The claim ~~((has been))~~ is delinquent for three years or more unless we plan to pursue the claim through the treasury offset program.

(15) If your AU has an overpayment from another state, we ~~((can))~~ may collect this overpayment if the state where you were overpaid does not plan to collect it and ~~((they give))~~ gives us the following:

(a) A copy of the overpayment calculation and overpayment notice made for the client; and

(b) Proof that you received the overpayment notice.

#### WSR 17-13-019

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 12, 2017, 9:05 a.m., effective July 13, 2017]

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

Purpose: The department is amending WAC 388-492-0070 How are my WASHCAP food benefits calculated?, in order to increase the high shelter standard from \$400 to \$425.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 282.1.

Adopted under notice filed as WSR 17-09-029 on April 12, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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



Date Adopted: June 8, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-24-034, filed 11/30/16, effective 12/31/16)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your Washington state combined application project (WASHCAP) food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA) unless you report a change as described under WAC 388-492-0080.
  - (a) If you pay three hundred twenty dollars or more a month for shelter, we use four hundred twenty-five dollars as your shelter cost.
  - (b) If you pay less than three hundred twenty dollars a month for shelter, we use two hundred and thirty-five dollars as your shelter cost.
  - (c) We add the current standard utility allowance under WAC 388-450-0195 to the shelter cost we use under either ~~((subsection (3))~~(a) or (b) of this ~~((section))~~ subsection to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your total shelter cost under subsection (3)(c) of this section.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.
- (6) We figure your WASHCAP food benefits (allotment) by:
  - (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
  - (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
- (7) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for basic food under WAC 388-412-0015.

**WSR 17-13-020**  
**PERMANENT RULES**  
**OFFICE OF MINORITY AND**  
**WOMEN'S BUSINESS ENTERPRISES**

[Filed June 12, 2017, 9:06 a.m., effective August 1, 2017]

Effective Date of Rule: August 1, 2017.

Purpose: The purpose of these rule changes are to (1) eliminate unnecessary requirements in order to save small businesses time and money; (2) align the personal net worth limit for state certification with federal disadvantaged business enterprise certification; (3) clarifies existing rules; and (4) makes technical changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 326-20-120; and amending WAC 326-20-048, 326-20-160, 326-20-170, 326-20-185, 326-20-190, and 326-20-220.

Statutory Authority for Adoption: RCW 39.19.030.

Adopted under notice filed as WSR 17-07-102 on March 21, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 1.

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

Date Adopted: June 12, 2017.

Mark Kifowitz  
Assistant Director of Policy

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

**WAC 326-20-048 Presumption of disadvantage.** (1)

The office presumes that citizens of the United States or lawfully admitted permanent residents who are women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the program, are socially and economically disadvantaged individuals. Applicants are required to submit a signed ~~((notarized certification))~~ declaration that each disadvantaged owner is, in fact, socially and economically disadvantaged.

~~(2)(a) ((The office requires each individual nonpresumptive socially and economically disadvantaged owner of a firm applying to participate as a SEDBE whose ownership and control are relied upon for SEDBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.~~

~~(b) In determining net worth, the office excludes an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth.~~

~~(+)) Each owner of a firm applying for state certification must sign a declaration that he or she has a personal net worth that does not exceed 1.32 million dollars, per WAC 326-20-049.~~

~~(b) Rebuttal of economic disadvantage. If the statement of personal net worth that an individual submits under this section shows that the individual's personal net worth exceeds ((seven hundred fifty thousand)) 1.32 million dollars~~

or shows that a person has been able to accumulate substantial wealth, the individual's economic disadvantage is rebutted, and the individual is not deemed to be economically disadvantaged. Such an individual is no longer eligible to participate in the program and cannot regain eligibility by making an individual showing of disadvantage. The office is not required to have a proceeding under this section in order to rebut the presumption of economic disadvantage in this case.

~~((ii) When an individual's social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of SEDBE eligibility under this section unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting a determination that the individual's personal net worth exceeds seven hundred fifty thousand dollars, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.))~~

(3) Individual determinations of social and economic disadvantage. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for SEDBE certification. The office makes a case-by-case determination of whether each individual whose ownership and control are relied upon for SEDBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the office, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds ~~((seven hundred fifty thousand))~~ 1.32 million dollars shall not be deemed to be economically disadvantaged. In making these determinations, the office uses the guidance found in 49 C.F.R. Part 26, Appendix E. The office requires that applicants provide sufficient information to permit determinations under the guidance of 49 C.F.R. Part 26, Appendix E.

#### NEW SECTION

**WAC 326-20-049 Personal net worth.** (1) Each individual owner of a firm applying for state certification, whose ownership and control are relied on for certification, must fill out a personal net worth statement and sign a declaration that his or her personal net worth does not exceed 1.32 million dollars. If any individual's personal net worth exceeds 1.32 million dollars, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

(2) The office may require additional financial information where necessary to accurately determine an individual's personal net worth.

(3) In determining an individual's personal net worth, the office will use the following criteria:

(a) Exclude the individual's ownership interest in the applicant firm;

(b) Exclude the individual's equity in his or her primary residence. The equity is the market value of the residence less any mortgages and home equity loan balances;

(c) Not use a contingent liability to reduce the individual's net worth;

(d) With respect to assets held in vested pension plans, individual retirement accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time;

(e) Include any assets the individual has transferred within two years prior to the application or renewal to:

(i) An immediate family member;

(ii) A trust where the beneficiary is an immediate family member; or

(iii) The applicant firm for less than fair market value.

(f) The assets described in (e) of this subsection will not be counted toward an individual's personal net worth if:

(i) The applicant demonstrates that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(ii) The transfer is consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(g) For the purposes of this section, "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

(4) If an individual's personal net worth does not exceed 1.32 million dollars as described in this section, the office may rebut an individual's presumption of economic disadvantage if the statement of personal net worth and supporting documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, the office may consider factors that include, but are not limited to:

(a) Whether the average adjusted gross income of the owner over the most recent three year period exceeds three hundred fifty thousand dollars;

(b) Whether the income was unusual and not likely to occur in the future;

(c) Whether the earnings were offset by losses;

(d) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(e) Other evidence that income is not indicative of lack of economic disadvantage; and

(f) Whether the total fair market value of the owner's assets exceed six million dollars.

AMENDATORY SECTION (Amending WSR 04-08-093, filed 4/6/04, effective 5/7/04)

**WAC 326-20-160 Burden of proof.** The applicant ~~((shall have))~~ has the burden of proving ~~((to the satisfaction of the office))~~ by a preponderance of the evidence that ~~((it))~~ the applicant is eligible for certification or ~~((recertification))~~ renewal of certification.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

**WAC 326-20-170 Decision.** The office shall notify the applicant business (~~(by mail)~~) of its decision to grant or deny certification promptly after the decision has been made. The decision shall indicate whether the certification is for the state program, a federal program or both. Where the office has denied the application, the decision shall set forth the bases for denial. Where the office has denied certification because the business did not meet one or more of the eligibility criteria, this shall not preclude the office from later denying the application on additional bases after further review.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

**WAC 326-20-185 (~~(Recertification-)~~) Renewal.** (~~(The office may require any certified business to submit annual notarized statements regarding changes in the information provided during the initial certification process-)~~) (1) State certification is valid for three years, unless:

(a) The office decertifies the firm; or

(b) The firm goes out of business or has a material change in ownership, which is considered more than a ten percent change in ownership.

(2) If the applicant submits a declaration of continued eligibility as outlined in subsection (5) of this section, the certification will remain valid during the time the office processes the affidavit and until the office notifies the firm of its decision.

(3) The office will generally renew the certification as long as the business continues to meet the eligibility criteria; the business provides evidence of some level of activity e.g., gross receipts or evidence of continuing efforts to promote the business; and there have been no determinations that the business has violated chapter 39.19 RCW or its implementing rules in Title 326 WAC.

(4) Debarment of a business by the state or one or more federal agencies or local government jurisdictions may be grounds for nonrenewal of (~~(decertification)~~) certification.

(5) Each certified business must submit a (~~(statement of present status)~~) declaration of continued eligibility prior to (~~(expiration)~~) the date of its three-year certification. The (~~(statement)~~) declaration form will be provided to the certified business at least sixty days before (~~(expiration)~~) the date of its three-year certification. Failure to return the completed form within thirty days may lead to (~~(decertification by expiration)~~) nonrenewal of certification.

(a) The office may ask for additional information or documentation on a case-by-case basis.

(b) For the first renewal after the enactment of this subsection, each eligible owner must submit a personal financial statement as outlined in WAC 326-20-049.

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

**WAC 326-20-190 Directory of certified businesses.** (~~(The office will maintain a directory of certified businesses as follows:~~

~~(H)) The office will maintain a directory of businesses certified by the office for state projects and for federally funded projects.~~

~~((2) The office will update and compile the directory into a form suitable for distribution annually and may issue supplements on a more frequent basis.~~

~~(3) The directory will be available for purchase from the office at a reasonable cost. One copy will be made available to each state agency and educational institution at no charge. Copies will be provided to the state library.~~

~~(4) Information concerning the status of a business may be obtained by contacting the office during designated working hours-)~~

AMENDATORY SECTION (Amending WSR 92-11-007, filed 5/11/92, effective 6/11/92)

**WAC 326-20-220 Resubmission of applications.** (1) A business which withdraws its application (~~(is denied certification, or has been decertified-)~~) and subsequently reapplies for certification within a year may be required to submit a new application (~~(or to submit)~~) and additional documentation (~~(if there has been a substantial change in ownership, control, or organization of the business. However, no)~~) at the discretion of the office. A business may not file more than two applications in any calendar year.

(2) A business which is denied certification, or has been decertified, will be required to submit a new application and may be asked to submit additional documentation. The office may waive the reapplication requirement for good cause.

(3) An applicant must wait one calendar year to reapply if denied certification.

(4) A business which makes a change in ownership, control, or organization of the business after denial or decertification is not entitled to appeal the denial or decertification on the basis of that change.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 326-20-120 Submittal of forms.

#### **WSR 17-13-022**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed June 12, 2017, 10:01 a.m., effective July 13, 2017]

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

Purpose: In accordance with ESSB 6052, Section 205, 64th legislature (2015) and Social Security Administration (SSA)-authorized state plan amendments, the department is amending chapter 388-827 WAC to offer the state supplementary payment program (SSP) to clients who received prevocational services as of September 1, 2015. The SSA-authorized state plan amendment added prevocational legacy as an

SSP payment. In order to comply with the state plan, these rules are being updated. In addition, the federal government requires that the department meet the SSP maintenance of effort.

Prevocational services do not meet the Centers for Medicare and Medicaid Services (CMS) federal requirements as an integrated setting. SSP prevocational legacy will allow developmental disabilities administration clients to transition from prevocational services, which do not meet CMS requirements to access services, in an integrated setting. SSP prevocational legacy may be used to purchase needed services, such as respite, and other community services. Other updates are being made to this chapter to improve rule clarity and update policy.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-827-0110, 388-827-0115, 388-827-0121, 388-827-0130, 388-827-0131, 388-827-0133, 388-827-0135, 388-827-0140, 388-827-0146, 388-827-0150, 388-827-0160, 388-827-0170, 388-827-0175, 388-827-0180, 388-827-0185, 388-827-0200, 388-827-0210, 388-827-0215, 388-827-0300, 388-827-0410 and 388-827-0420; and amending WAC 388-827-0100, 388-827-0105, 388-827-0120, 388-827-0125, 388-827-0145, 388-827-0155, and 388-827-0400.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: ESSB 6052, Section 205, 64th legislature (2015).

Adopted under notice filed as WSR 17-08-043 on March 30, 2017.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 407-1581, fax (360) 407-0955, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 7, Repealed 21.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 21.

Date Adopted: June 6, 2017.

Bill Moss  
Acting Secretary

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

**WAC 388-827-0100** ~~What is ((the)) a state supplementary payment (((SSP) that is administered by the division of developmental disabilities (DDD)))?~~ (1) The state supplementary payment (((SSP))) is a state-paid cash assis-

stance program for ~~((certain))~~ eligible clients of the ~~((division of))~~ developmental disabilities administration.

(2) There are five types of state supplementary payment:

(a) Children's legacy care;

(b) Home and community based services waiver;

(c) Prevocational legacy;

(d) Residential habilitation; and

(e) State supplementary payment in lieu of individual and family services.

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

**WAC 388-827-0105** ~~((What are the eligibility requirements for the DDD/SSP program))~~ Who is eligible for a state supplementary payment? ~~((To be eligible to receive DDD/SSP, you must be determined DDD eligible under RCW 71A.10.020 and meet all of the financial and programmatic criteria for DDD/SSP))~~ (1) The developmental disabilities administration (DDA) must not enroll you in state supplementary payments after the effective date of this section, unless you are eligible for a state supplementary payment for prevocational legacy.

(2) To be eligible for a state supplementary payment, you must meet all general eligibility requirements under subsection (3) of this section and any applicable program-specific requirements under subsections (4) through (8) of this section.

(3) To be eligible for a state supplementary payment, you must:

(a) Be determined DDA eligible under chapter 388-823 WAC;

(b) Complete an in-person interview and reassessment with DDA once every twelve months—or more often if DDA deems it necessary—to determine whether you continue to meet eligibility requirements; and

(c) Be financially eligible because:

(i) You receive supplementary security income cash assistance for the month in which the state supplementary payment is issued; or

(ii) You receive social security Title II benefits as a disabled adult child, your SSI was terminated due to the receipt of these benefits, and you would be eligible for SSI if you did not receive these benefits.

(4) To be eligible for children's legacy care state supplementary payments, you must live with your family as defined in WAC 388-832-0001.

(5) To be eligible for a state supplementary payment for waiver services, you must be enrolled in a home and community based services waiver program as described in chapter 388-845 WAC.

(6) To be eligible for prevocational legacy state supplementary payments, you must:

(a) Have left prevocational services on or after September 1, 2015; and

(b) Not be enrolled in a DDA residential habilitative service.

(7) To be eligible for residential habilitation state supplementary payments, you must be receiving a residential habil-

itation service as described in chapter 388-845 WAC and as identified in your person-centered service plan.

(8) To be eligible for state supplementary payments in lieu of individual and family services you must be:

(a) At least three years old; and

(b) Living with your family as defined in WAC 388-832-0001.

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

WAC 388-827-0120 ((How often will my eligibility for DDD/SSP be redetermined)) May DDA deny, reduce, or terminate a state supplementary payment? ((Redetermination of eligibility for the DDD/SSP program will be conducted at least every twelve months, or more frequently if deemed necessary by DDD)) (1) The developmental disabilities administration (DDA) may deny, reduce, or terminate a state supplementary payment if one or more of the following is true:

(a) You do not meet the eligibility requirements under WAC 388-827-0105;

(b) You do not cooperate with DDA during:

(i) Service planning; or

(ii) Required quality assurance and program monitoring activities;

(c) You choose to unenroll from state supplementary payments.

(2) Except for state supplementary payments for pre-vocational legacy and state supplementary payments for waiver services, DDA will terminate your state supplementary payment if you enroll in a home and community based services waiver.

(3) State supplementary payments are limited to available funding.

(4) DDA will terminate your state supplementary payments for prevocational legacy if you enter into a DDA prevocational service or a DDA residential habilitation service.

AMENDATORY SECTION (Amending WSR 07-24-030, filed 11/28/07, effective 12/29/07)

WAC 388-827-0125 ((How will I know if I am eligible to receive a DDD/SSP payment)) If DDA denies, reduces, or terminates a state supplementary payment, what may I do? ((You will receive a written notification from DDD if you have been identified as eligible for a DDD/SSP payment)) (1) If the developmental disabilities administration (DDA) denies, reduces, or terminates a state supplementary payment, you may request an administrative hearing, an exception to rule under WAC 388-440-0001, or both.

(2) To request an administrative hearing, see WAC 388-825-120 through 388-825-165.

(3) To request an exception to rule, you must submit a written request for an exception to rule to the DDA regional administrator.

(4) DDA may grant an exception to any requirement in this chapter if the assistant secretary decides that the facts of your case justify an exception to rule.

(5) DDA must notify you in writing of the assistant secretary's decision no later than sixty days after the regional administrator received your request for an exception to rule.

(6) You do not have the right to challenge at an administrative hearing the assistant secretary's decision regarding your request for an exception to rule. You may have a hearing right under WAC 388-825-120.

AMENDATORY SECTION (Amending WSR 14-07-028, filed 3/10/14, effective 4/10/14)

WAC 388-827-0145 How much money will ((+ receive)) DDA authorize? ((The purpose of the SSP is to increase the amount of income to meet your needs. The department will determine your payment amount based on your living arrangement and your assessed needs.))

(1) ((For residential and voluntary placement program services, the amount of your SSP will be based on the amount of state-only dollars spent on certain services at the time the funding source was converted to SSP. If the type of your residential living arrangement changes, your need will be reassessed and your payment adjusted based on your new living arrangement and assessed need.

(2) If you receive SSP in lieu of individual and family services you will receive the following amounts based on your DDA assessment)) If you are authorized to receive a state supplementary payment for residential habilitation:

(a) DDA will base your payment on your residential need as identified in your current person-centered service plan.

(b) DDA will reassess your need and may adjust your payment amount if the type of your residential living arrangement changes.

(2) If you are authorized to receive a home and community based services (HCBS) waiver state supplementary payment, DDA authorizes seventy-five dollars per month.

(3) If you are authorized to receive children's legacy state supplementary payment, DDA authorizes one hundred dollars per month.

(4) If you are authorized to receive a prevocational legacy state supplementary payment, DDA authorizes three hundred dollars per month.

(5) If you are authorized to receive a state supplementary payment in lieu of individual and family services (IFS), your IFS score determines your monthly payment amount:

<u>((If your individual and family services score is:)) IFS score</u>	<u>((The award level will be)) Award level</u>	<u>((The amount of your award will be)) Monthly payment</u>
0-60	<u>((Not eligible)) No award</u>	<u>((Not eligible)) \$0</u>
61-240	<u>((Level 1)) Level 1</u>	<u>(((\$1,200)) \$100</u>
241-336	<u>((Level 2)) Level 2</u>	<u>(((\$1,800)) \$150</u>
337-527	<u>((Level 3)) Level 3</u>	<u>(((\$2,400)) \$200</u>

<del>((If your individual and family services score is:))</del> <b>IFS score</b>	<del>((The award level will be))</del> <b>Award level</b>	<del>((The amount of your award will be))</del> <b>Monthly payment</b>
528 or more	<del>((Level 4))</del> <u>Level 4</u>	<del>(((\$3,600))</del> <u>\$300</u>

~~((a) If you are on the home and community based services (HCBS) waiver administered by DDD:~~

~~(i) You will receive nine hundred dollars DDD/SSP money per year to use as you determine.~~

~~(ii) The remainder up to the maximum yearly award for traditional family support or family support opportunities may be authorized by DDD to purchase HCBS waiver services and will be paid directly to the provider.~~

~~(b) If you are not on the HCBS waiver administered by DDD, and you received state only funding for the traditional family support program between March 1, 2001 and June 30, 2003 the amount of your SSP will be based on the yearly maximum allowed at the time the funding source was converted to SSP unless your need changes.~~

~~(i) Need is based on your service need level and whether you receive medicaid personal care as specified in WAC 388-825-254.~~

~~(ii) If your need changes, the amount of your SSP will be adjusted accordingly.~~

~~(c) If you are not on the HCBS waiver administered by DDD, and you received state only funding for the family support opportunity program between March 1, 2001 and June 30, 2003 the amount of your SSP will be fifteen hundred dollars per year.~~

~~(d) The yearly amount of DDD/SSP money will be prorated into monthly amounts. You will receive one twelfth of the yearly amount each month.~~

~~(3) If you are eligible for SSP because you meet the criteria in WAC 388-827-0115(5), you will receive one hundred dollars per month.~~

~~(4) DDD may authorize additional payments to certain individuals if the SSP budget has sufficient funds to allow this payment)) (6) Opting out of home and community based services waiver will not increase your state supplementary payment.~~

~~(7) DDA may authorize additional payments to individuals authorized to receive a state supplementary payment if DDA's state supplementary payment budget allows.~~

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

**WAC 388-827-0155** ~~((Who will the warrant/check be sent to))~~ **How will DDA send my state supplementary payment?**

~~(1) ((If you are a child under the age of eighteen, the warrant/check will be sent to your legal representative or protective payee or representative payee)) You may choose to have DDA send your state supplementary payment through:~~

- ~~(a) Electronic funds transfer; or~~
- ~~(b) The U.S. Postal Service.~~

~~(2) If you are ((a person)) under age eighteen ((and older)), ((the warrant/check will be sent directly)) the developmental disabilities administration (DDA) sends your supplementary~~

~~payment to your ((protective payee or)) representative payee ((if you have one)).~~

~~(3) If you are age eighteen or older, DDA sends your state supplementary payment to your representative payee if you have one. If you do not have a ((protective payee or)) representative payee, ((the warrant/check will be sent)) DDA will send your state supplementary payment directly to you.~~

NEW SECTION

**WAC 388-827-0157** **What is a representative payee?**

(1) A representative payee is a person or entity that receives and manages your state supplementary payments on your behalf.

(2) If the Social Security Administration assigned a representative payee to you, the developmental disabilities administration (DDA) will send your state supplementary payments to that representative payee.

(3) If you do not have a representative payee and you wish to establish one:

- (a) You must nominate a person or entity to be your representative payee; and
- (b) DDA must confirm your nominee.

(4) When deciding whether to confirm your nominee, DDA may consider:

- (a) The nominee's:
  - (i) Relationship to you;
  - (ii) Interest in your well-being;
  - (iii) Understanding of your needs;
  - (iv) Existing legal authority, if any, to act on your behalf; and

(b) Any other information known to DDA.

(5) If DDA declines to confirm the person or entity you nominated, DDA must send you written notice within thirty days of its decision.

(6) A representative payee must:

- (a) Spend your state supplementary payment on your behalf;
- (b) Notify DDA of any changes in your circumstances that could affect your eligibility to receive a state supplementary payment;
- (c) Notify DDA of any change in the representative payee's ability to comply with this chapter;

(d) Submit to DDA upon request a written account of how each state supplementary payment received on your behalf was spent; and

(e) Accept liability for any overpayment under WAC 388-827-0400(3).

AMENDATORY SECTION (Amending WSR 04-02-015, filed 12/29/03, effective 1/29/04)

**WAC 388-827-0400** **What is ((an SSP)) a state supplementary payment overpayment?** (1) An overpayment ~~((means any SSP paid that is more than the amount you were eligible to receive))~~ occurs if you or your representative payee receive state supplementary payment funds and at the time the developmental disabilities administration (DDA) paid the funds:

- (a) You were not eligible to receive the funds under WAC 388-827-0105; or

(b) The sum DDA paid exceeds the sum you were eligible to receive under WAC 388-827-0145.

(2) ((If you request a hearing and the hearing decision determines that you received any DDD/SSP money that you were not eligible to receive, then some or all of the DDD/SSP you received before the hearing decision must be paid back to the department)) You are liable to DDA for the amount of the overpayment if:

(a) You received the overpayment directly; or

(b) Your representative payee received the overpayment in good faith and spent the money on your behalf.

(3) Your representative payee is liable to DDA for the amount of the overpayment if the representative payee:

(a) Has not spent the state supplementary payment funds on your behalf; or

(b) Received the state supplementary payment in bad faith.

(4) A representative payee received a state supplementary payment in bad faith if the representative payee knew you were not entitled to some or all of that payment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-827-0110 What are the financial eligibility requirements to receive DDD/SSP?
- WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP?
- WAC 388-827-0121 Will I need an assessment to remain eligible for SSP?
- WAC 388-827-0130 Can I choose not to accept DDD/SSP payments?
- WAC 388-827-0131 What happens if I no longer meet the financial or programmatic requirements after my funding has been converted to the DDD/SSP program?
- WAC 388-827-0133 What is the impact on medicaid eligibility on the receipt of state supplemental payments (SSP)?
- WAC 388-827-0135 Can I apply for the DDD/SSP program if I am not identified by DDD as eligible for the DDD/SSP program?
- WAC 388-827-0140 What are my appeal rights if DDD determines that I am not eligible for DDD/SSP?
- WAC 388-827-0146 May I voluntarily remove myself from the home and community based services (HCBS) waiver administered by DDD in order to increase the amount of my SSP?

- WAC 388-827-0150 How often will I receive my DDD/SSP warrant/check?
- WAC 388-827-0160 How will the warrant/check be sent?
- WAC 388-827-0170 Are there rules restricting how I use my DDD/SSP money?
- WAC 388-827-0175 What changes must I report to the department?
- WAC 388-827-0180 Do I have additional responsibilities when I purchase my own services?
- WAC 388-827-0185 When will the department stop sending my DDD/SSP money?
- WAC 388-827-0200 What is a representative payee?
- WAC 388-827-0210 Who can be a representative payee for my DDD/SSP?
- WAC 388-827-0215 What are the responsibilities of a representative payee?
- WAC 388-827-0300 Does DSHS make exceptions to the requirements in this chapter?
- WAC 388-827-0410 When can an overpayment occur?
- WAC 388-827-0420 Who is liable for repayment of an overpayment?

**WSR 17-13-037**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed June 13, 2017, 9:14 p.m., effective July 14, 2017]

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

Purpose: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions, this rule making updates the publication date from 2016 to the most recently adopted 2017 version previously adopted by reference. This amendment makes no changes to any requirements previously adopted and is required for the department of health to receive full delegation of the radionuclide air emissions program from the United States Environmental Protection Agency.

Citation of Existing Rules Affected by this Order: Amending WAC 246-247-035.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080(5).

Adopted under notice filed as WSR 17-09-030 on April 12, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 13, 2017.

Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 16-15-083, filed 7/19/16, effective 8/19/16)

**WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.** (1) The following federal standards, as in effect on July 1, ~~((2016))~~ 2017, are adopted by reference except as provided in subsections (2) and (3) of this section.

These standards apply in addition to other requirements of this chapter.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

(3) Any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements must be approved by EPA.

## WSR 17-13-049

### PERMANENT RULES

#### WASHINGTON STATE UNIVERSITY

[Filed June 15, 2017, 8:53 a.m., effective July 16, 2017]

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

Purpose: The proposed amendments to chapter 504-26 WAC, Standards of conduct for students, and chapter 504-04 WAC, Practice and procedure, are intended to update and clarify the standards of conduct for students including, but not limited to, student conduct hearings and appeals.

On December 1, 2016, the Washington Court of Appeals, Division III, issued a decision in the case of *Arishi vs. Washington State University*, 196 Wash. App. 878, 385 P.3d 251 (2016). The court held that universities are required to use full adjudications under the Washington Administrative Procedure Act for certain student disciplinary matters. These rules implement changes to WSU's student conduct process to comply with the court's decision. Additionally, the rule in WAC 504-04-110 sets forth areas where WSU's full adjudications will differ from the model rules of procedure in chapter 10-08 WAC. These are based on Title IX of the Civil Rights Act of 1964, its implementing regulations, and guidance from the federal Office for Civil Rights regarding Title IX.

Citation of Existing Rules Affected by this Order: Amending 16.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 17-08-091 on April 5, 2017.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 16, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 16, Repealed 0.

Date Adopted: June 9, 2017.

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

AMENDATORY SECTION (Amending WSR 13-16-089, filed 8/6/13, effective 9/6/13)

**WAC 504-04-010 Matters subject to brief adjudication.** The following proceedings are matters to be treated as brief adjudications pursuant to RCW 34.05.482 through 34.05.491:

(1) Student conduct proceedings. ~~((The procedural rules of chapter 504-26 WAC apply to these proceedings.))~~ Stu-



dent conduct proceedings under chapter 504-26 WAC are treated as brief adjudications, except for matters involving sanctions of suspension for greater than ten instructional days, expulsion, revocation of degree, or loss of recognition of a student organization, which shall be referred for a full (formal) adjudication in accordance with this chapter.

(2) Appeals of residency determinations. If a hearing is required by law or constitutional right, appeals of residency determinations under RCW 28B.15.013 are brief adjudicative proceedings conducted by the office of admissions.

(3) Appeals of parking violations. Appeals of parking violations are brief adjudicative proceedings conducted pursuant to applicable rules. See WAC 504-13-860, 504-14-860, 504-15-860, and 504-19-860.

(4) Hearings on student records. Hearings pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g are to be brief adjudicative proceedings conducted pursuant to the rules of chapter 504-21 WAC.

(5) Hearings on denial of financial aid. Any hearings required by state or federal law regarding granting, modification or denial of financial aid are brief adjudicative proceedings conducted by the office of scholarships and financial aid.

(6) Emergency withdrawal of students. Proceedings to disenroll students for medical or psychological reasons are brief adjudicative proceedings conducted by the office of student affairs.

(7) Discipline and termination of student employees. When required by law, hearings for the termination of or imposition of disciplinary measures on student employees shall be brief adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-020 Appointment of presiding officers for all adjudicative proceedings.** The president of Washington State University or his or her designee shall have the power to appoint (~~(committees or)~~) members of the faculty, staff and student body; administrative law judges; members in good standing of the Washington state bar association; the president or his or her designee; a person or entity with whom the university contracts; or any combination of the above to be presiding officers for formal and brief adjudicative proceedings. When more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters. The term "presiding officer" as used in this chapter shall be read in the plural when the context demands.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-110 Adoption of model rules of procedure for formal (full) proceedings—Exceptions.** In formal proceedings (also referred to as full adjudications) pursuant to RCW 34.05.413 through 34.05.476, Washington State University follows the Administrative Procedure Act (chapter 34.05 RCW) and hereby adopts the model rules of procedure adopted by the office of administrative hearings, chapter

10-08 WAC, with the following exceptions and modifications:

(1) WAC 10-08-190 Adjudicative proceedings(~~(—cameras recording)~~)—Cameras—Recording devices.

See WAC 504-04-120 which determines the use of cameras and recording devices at adjudicative proceedings.

(~~Other procedural rules adopted in this title and this chapter are supplementary to the model rules.~~) (2) WAC 10-08-040 Adjudicative proceedings—Notice of hearing. In addition to this model rule regarding notice, the provisions in WAC 504-26-401(5) and 504-26-403 (1) and (2) apply.

(3) The parties in a student conduct matter implicating Title IX of the Civil Rights Act of 1964 (Title IX) shall include the complainant(s) if the complainant(s) notifies the university that she/he wishes to participate as a party.

(4) WAC 10-08-120 Adjudicative proceedings—Subpoenas. In determining whether to issue, quash, or modify a subpoena to a complainant/witness in a student conduct matter implicating Title IX, the presiding officer shall give due consideration to state and federal legal requirements including, but not limited to, Title IX, its implementing regulations, and guidance issued by the federal office for civil rights. In such cases, the party requesting the subpoena has the burden of showing that a subpoena is necessary for full disclosure of all the relevant facts and issues.

(5) Cross examination. As required by RCW 34.05.449, cross examination of witnesses shall be permitted to the extent necessary for full disclosure of all relevant facts and issues. However, in a student conduct matter implicating Title IX, the complainant and respondent shall not be permitted to cross examine each other directly. The preferred method of cross examination in all student conduct matters is through written questions submitted to, and asked by, the presiding officer. The presiding officer may decline to ask cross examination questions that are irrelevant, immaterial, or unduly repetitious. In accordance with evidence rule 412, a complainant's sexual history generally will not be admissible. All questions submitted by the parties will be retained as part of the agency record. At the request of either participating party in a student conduct matter implicating Title IX, the requesting party shall be permitted to participate remotely, or in a different room, in accordance with chapter 504-26 WAC.

(6) Discovery. Depositions, interrogatories, and medical examinations of parties as part of discovery are not permitted in adjudications of student conduct matters. Other forms of discovery may be permitted at the discretion of the presiding officer; however, discovery should be limited to help ensure the prompt completion of the adjudication process, in accordance with RCW 34.05.446.

(7) Standard of proof. The standard of proof in student conduct proceedings is preponderance of the evidence.

(8) Administrative review in full adjudications. Within twenty days of service of an initial order resulting from a full adjudication in a student conduct proceeding, or a different time period as specified in the initial order, a student or student organization may appeal the decision to the university president or designee, who reviews the matter in accordance with RCW 34.05.464. Complainants in student conduct matters shall be afforded the same right to appeal as respondents. The university president or designee, of his or her own initia-

itive, may review any initial order resulting from a full adjudication. The decision of the president shall be the final order of the university. If no appeal is initiated, the initial order following a full adjudication becomes the final order of the university after twenty-one days, or the day after the appeal period specified in the initial order, whichever is sooner.

In the case of a conflict between the model rules and procedural rules adopted by Washington State University, the procedural rules adopted by the university shall govern.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-120 Confidentiality of student, faculty and staff formal adjudicative proceedings.** In formal adjudicative proceedings, the presiding officer shall have the power to close all or part of the hearing to public observation. The presiding officer shall have the power to impose reasonable conditions upon observation of the proceeding. The presiding officer also shall have the power to regulate the use of photographic and recording equipment. In the case of hearings involving discipline, termination, or medical withdrawal, hearings will normally be closed to public observation. In student conduct matters implicating Title IX, hearings will be closed to public observation.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-130 Advising and representation of parties.** Any person whose rights are in issue in a formal adjudicative proceeding shall have the right to have an adviser present during any stage of the proceedings. However, only persons admitted to the practice of law in the state of Washington, including licensed legal interns pursuant to admission to practice rule 9, shall be permitted to act as a representative at the proceedings. The presiding officer shall have the power to impose reasonable conditions upon participation of advisors and representatives.

AMENDATORY SECTION (Amending WSR 89-23-117, filed 11/22/89, effective 12/23/89)

**WAC 504-04-140 Discovery.** Discovery in formal hearings may be permitted at the discretion of the presiding officer, except as provided in WAC 504-04-110(6). In permitting discovery, reference shall be made to the civil rules applicable in court proceedings for guidance.

The presiding officer shall have the power to control the frequency and nature of discovery permitted, and to order discovery conferences to discuss discovery issues.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-001 Preamble.** Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's

authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial to the extent possible, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited, except in full adjudications. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-010 Definitions.** (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "appeals board" means any person or persons authorized by the vice president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination, or a determination after a full adjudication, as to whether a student has violated the standards of conduct for students and any sanctions imposed.

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involv-

ing cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student conduct. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the office of research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, any person employed by the university, or any person with a relationship with the university. A person's status in a particular situation is determined by the vice president for student affairs or designee.

(9) The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered

"students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means teaching faculty and student representatives who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

**AMENDATORY SECTION** (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-100 Composition of conduct and appeals boards.** (1) The university conduct board shall be composed of five individuals appointed by the vice president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairperson of the conduct board shall be named by the vice president for student affairs and shall be a university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students ~~(provided that the student members have had at least one academic year of service on the university conduct board)~~. Three persons constitute a quorum of the appeals board.

**AMENDATORY SECTION** (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

**WAC 504-26-221 Sexual misconduct.** (1) Sexual misconduct is an egregious form of sex discrimination/sexual

harassment. A number of acts may be regarded as sexual misconduct including, but not limited to, nonconsensual sexual contact (including sexual intercourse) and sexual exploitation. Sexual misconduct includes sexual assault and other sexual violence.

(2) Consent. Consent to any sexual activity must be clear, knowing, and voluntary. Anything less is equivalent to a "no." Clear, knowing, and voluntary consent to sexual activity requires that, at the time of the act, ~~((actual))~~ and throughout the sexual contact, all parties actively express words or conduct that a reasonable person would conclude demonstrates clear permission regarding willingness to engage in sexual activity and the conditions of such activity. Consent is active; silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(a) Force or coercion is threatened or used to procure compliance with the sexual activity.

(i) Force is the use of physical violence, physical force, threat, or intimidation to overcome resistance or gain consent to sexual activity.

(ii) Coercion is unreasonable pressure for sexual activity. ~~((Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain consent from another.))~~ When an individual makes it clear through words or actions that ~~((he or she))~~ the individual does not want to engage in sexual contact, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive. Other examples of coercion may include using blackmail or extortion to overcome resistance or gain consent to sexual activity.

(b) The person is asleep, unconscious, or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(c) ~~((The))~~ A reasonable person would or should know that the other person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause. When alcohol or drugs are involved, a person is considered incapacitated or unable to give valid consent if ~~((she or he))~~ the individual cannot fully understand the details of the sexual interaction (i.e., who, what, when, where, why, and how), and/or ~~((he or she))~~ the individual lacks the capacity to reasonably understand the situation and to make rational, reasonable decisions.

(3) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object or body part, by one person against another person's intimate parts (or clothing covering any of those areas), or by causing another person to touch his or her own or another person's intimate body parts without consent and/or by force. Sexual contact also can include any intentional bodily contact in a sexual manner with another person's nonintimate body parts. It also includes nonconsensual sexual intercourse.

(4) Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct

offenses explained above. Examples of sexual exploitation may include, but are not limited to:

(a) Causing or attempting to cause the incapacitation of another person to gain sexual advantage over such other person;

(b) Invading another person's sexual privacy;

(c) Prostituting another person;

(d) Engaging in voyeurism. A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, records, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, recorded, or filmed is in a place where he or she has a reasonable expectation of privacy;

(e) Knowingly or recklessly exposing another person to a significant risk of sexually transmitted disease or infection;

(f) Exposing one's intimate parts in nonconsensual circumstances;

(g) Sexually based stalking and/or bullying.

(5) Use of alcohol or other drugs is not a valid defense to a violation of this policy.

AMENDATORY SECTION (Amending WSR 15-11-041, filed 5/14/15, effective 6/14/15)

**WAC 504-26-401 Complaints and student conduct process.** (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or ~~((as a university conduct board hearing))~~ referred for a full adjudication in accordance with chapter 504-04 WAC.

~~((When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.~~

~~((b))~~ If the possible or recommended sanction is suspension for greater than ten instructional days, expulsion ~~((or suspension))~~, revocation of degree, or loss of recognition of a student organization, the matter is referred ~~((to the university~~

~~conduct board~~) for a full adjudication in accordance with chapter 504-04 WAC.

~~((e)) (b)~~ Matters other than those listed in (a) ~~((and (b)))~~ of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter ~~((to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal))~~ for a full adjudication.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Except in full adjudications pursuant to chapter 504-04 WAC, the complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) ~~((The conduct officer or university conduct board's))~~ Determinations in student conduct matters are made on the basis of a "preponderance of the evidence," that is, whether it

is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct board or conduct officer proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-402 Conduct officer actions.** (1) Any student ~~((charged))~~ alleged by a conduct officer ~~((with a violation of))~~ to have violated any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the procedures in WAC 504-26-401(5).

Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer or presiding officer, as applicable.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding and enter a finding that the accused student or recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter ~~((to the university conduct board pursuant to WAC 504-26-401(3)))~~ for a full adjudication in accordance with chapter 504-04 WAC.

(4) The conduct officer may consider the student's past contacts with the office of student conduct in determining an appropriate sanction and/or deciding whether to refer the case for a ~~((university conduct board hearing))~~ full adjudication.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

#### NEW SECTION

**WAC 504-26-4031 Procedure for formal (full) adjudicative proceedings.** The procedures for formal adjudicative proceedings are contained in chapter 504-04 WAC. The terms "formal" and "full" in reference to adjudications have the same meaning and are used interchangeably.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-404 Procedure for academic integrity violations.** (1) Initial hearing.

(a) When a responsible instructor finds that a violation of academic integrity has occurred, the instructor shall assemble the evidence and, upon reasonable notice to the student of the date, time, and nature of the allegations, meet with the student suspected of violating academic integrity policies. If the student admits violating academic integrity policies, the instructor assigns an outcome in keeping with published course policies and notifies the office of student conduct in writing, including the allegations, the student's admission, and the sanctions imposed.

(b) If the instructor is unable to meet with the student or if the accused student disputes the allegation(s) and/or the outcome proposed by the instructor, the instructor shall make a determination as to whether the student did or did not violate the academic integrity policy. If the instructor finds that the student was in violation, the instructor shall provide the student and the office of student conduct with a written determination, the evidence relied upon, and the sanctions imposed.

(c) The student has twenty-one days from the date of the decision letter to request review of the instructor's determination and/or sanction(s) imposed to the academic integrity hearing board.

(2) Review.

(a) Upon timely request for review by a student who has been found by his or her instructor to have violated the academic integrity policy, the academic integrity hearing board shall make a separate and independent determination of whether or not the student is responsible for violating the academic integrity policy and/or whether the outcome proposed by the instructor is in keeping with the instructor's published course policies.

(b) The academic integrity hearing board is empowered to provide an appropriate remedy for a student including arranging a withdrawal from the course, having the student's work evaluated, or changing a grade where it finds that:

(i) The student is not responsible for violating academic integrity policies; or

(ii) The outcome imposed by the instructor violates the instructor's published policies.

(c) Students who appear before the academic integrity hearing board shall have the same rights to notice and to conduct a defense as enumerated in WAC 504-26-403 except:

(i) Notice of hearing and written orders shall be sent to the address provided by the student in the student's request for review (unless an address is not provided therein); and

(ii) The written decision of the academic integrity hearing board is the university's final order. There is no appeal from findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

(3) If the reported violation is the student's first offense, the office of student conduct ordinarily requires the student to attend a workshop separate from, and in addition to, any academic outcomes imposed by the instructor. A hold is placed on the student's record preventing registration or graduation until completion of the workshop.

(4) If the reported violation is the student's second offense, the student is ordinarily (~~required to appear before a university conduct board~~) referred for a full adjudicative hearing in accordance with chapter 504-04 WAC, with a recommendation that the student be dismissed from the university.

(5) If the instructor or academic integrity hearing board determines that the act of academic dishonesty for which the student is found responsible is particularly egregious in light of all attendant circumstances, the instructor or academic integrity hearing board may direct that the student's case be (~~heard by the university conduct board~~) referred for a full adjudicative hearing, with a recommendation for dismissal from the university even if it is the student's first offense.

(6) Because instructors and departments have a legitimate educational interest in the outcomes, reports of academic integrity hearing board and/or conduct board hearings shall be reported to the responsible instructor and the chair or dean.

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-406 Interim suspension.** In certain circumstances, the vice president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice president for student affairs or designee may determine to be appropriate.

(4) The vice president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice president of student affairs or designee sends copies of the decision by personal delivery, by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student conduct).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to a conduct officer hearing or a full adjudicative hearing in accordance with chapter 504-04 WAC, as appropriate, as quickly as feasible(;

ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame)).

AMENDATORY SECTION (Amending WSR 16-08-014, filed 3/28/16, effective 4/28/16)

**WAC 504-26-407 Review of decision in brief adjudications.** (1) The findings and sanctions rendered by the university conduct board or a conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student conduct provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed (~~except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.~~

~~(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.~~

~~(a) This review is limited to the record and purposes stated in subsection (2) of this section.~~

~~(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).~~

~~(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.~~

~~(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available).~~

~~((7)) (6) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.~~

~~((8))~~ (7) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

**WAC 504-26-601 Interpretations.** Except in full adjudications, any question of interpretation or application of the standards of conduct for students is referred to the vice president for student affairs or designee for final determination.

**WSR 17-13-060**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed June 15, 2017, 11:20 a.m., effective July 16, 2017]

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

Purpose: Technical amendment to WAC 181-77-068 to clarify all eligible valid certificates for coordinator of worksite learning.

Citation of Existing Rules Affected by this Order: WAC 181-77-068.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 17-06-030 on February 23, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, email david.brenna@k12.wa.us.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 15, 2017.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

**WAC 181-77-068 Requirements for coordinator of worksite learning initial or continuing certificates.** To obtain a coordinator of worksite learning certificate, a candidate must:

- (1) Possess a valid probationary, initial or continuing career and technical education teaching certificate; and
- (2) Successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

**WSR 17-13-061**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed June 15, 2017, 11:32 a.m., effective July 16, 2017]

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

Purpose: Amends WAC 181-79A-270 permitting foreign teachers in the exchange and visiting teachers program to be renewed as long as they remain in the program.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-270.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 17-05-091 on February 14, 2017.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, email david.brenna@k12.wa.us.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 15, 2017.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-02-051, filed 12/29/05, effective 1/1/06)

**WAC 181-79A-270 Teacher, principal, and educational staff associate exchange permits.** Teacher, principal, and educational staff associate exchange permits may be issued by the superintendent of public instruction to an individual admitted to the United States for the purpose of serving as an exchange teacher, principal, or educational staff associate. Such teacher, principal, or educational staff associate exchange permits shall be valid for one year and may be renewed ~~((onee))~~ while being sponsored by a school district in the exchange and visiting teacher program.



**WSR 17-13-068**  
**PERMANENT RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed June 16, 2017, 7:56 a.m., effective July 17, 2017]

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

Purpose: The department is amending chapter 16-54 WAC to:

1. Modify the requirement that rams must test negative on an ELISA test for *Brucella ovis* within thirty days before entering Washington state to sixty days;

2. Repeal the requirement that black face sheep imported for breeding purposes must be genetically tested before entry to be QR or RR at the 171 codon;

3. Repeal the equine infectious anemia test exemption for equine moving to Washington from Idaho and Oregon; and

4. Repeal the *M. bovis* test requirement for old world primates, gibbons, and great apes.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-071, 16-54-101, and 16-54-180.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-09-077 on April 19, 2017.

Changes Other than Editing from Proposed to Adopted Version: In WAC 16-54-180 the language "or if prohibited under WAC 246-100-197" was added to subsection (8) at the request of Washington state department of health.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 16, 2017.

Derek I. Sandison  
 Director

**AMENDATORY SECTION** (Amending WSR 16-23-108, filed 11/18/16, effective 12/19/16)

**WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.**

(1)(a) In addition to the other requirements of this chapter, all domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture  
 Animal Services Division  
 1111 Washington Street S.E.  
 P.O. Box 42577  
 Olympia, Washington 98504-2577  
 Email: ahealth@agr.wa.gov  
 Fax: 360-902-2087.

**Import test requirements.**

**Equine infectious anemia (EIA).**

(3) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within twelve months before entering Washington state.

~~(Exemptions to EIA test requirements.~~

~~(4) Domestic equine moving to Washington from Idaho or Oregon are excluded from EIA test requirements.))~~

**Equine viral arteritis (EVA).**

~~((5))~~ (4) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and

(c) Consents to the shipment.

~~((6))~~ (5) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine or a hold order.

~~((7))~~ (6) Equine semen and embryos require an entry permit and must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

~~((8))~~ (7) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

~~((9))~~ (8) Additional testing for EVA may be required during emergency disease conditions declared by the director.

**Piroplasmosis.**

~~((10))~~ (9) Any equine that has ever tested positive for piroplasmosis may not enter Washington state.

~~((11))~~ (10) Any equine that has originated from a country or state where piroplasmosis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and are subject to a quarantine order upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 15-02-025, filed 12/30/14, effective 1/30/15)

**WAC 16-54-101 Sheep—Importation and testing requirements. Import health requirements.**

(1) A certificate of veterinary inspection must accompany all sheep entering Washington state. The certificate of veterinary inspection must state that the sheep:

(a) Are clinically free from the signs of infectious diseases, including footrot, sore mouth, and caseous lymphadenitis; and

(b) Originated from a flock in which scrapie has not been diagnosed in the past five years or are from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program described in Title 9 C.F.R. Part 54 (January 1, 2014);

(c) Are officially identified with official individual identification. Sheep required to be officially individually identified include:

- (i) All breeding sheep;
- (ii) All sexually intact sheep imported for exhibition;
- (iii) All sheep over eighteen months of age.

**Import test requirements.**

(2) All breeding rams over six months of age require an entry permit.

(3) The certificate of veterinary inspection must state that the rams:

(a) Tested negative on an ELISA test for *Brucella ovis* within ~~((thirty))~~ sixty days before entering Washington state; and

(b) Are palpated and certified free of any evidence of epididymitis; and

(c) Are individually identified with an official individual identification. Each ram's official individual identification number, test results, and the date of the test must be entered on the certificate of veterinary inspection accompanying the animal.

~~((4) Any purebred rams of Suffolk, Hampshire, Shropshire, Southdown or Montadale descent, or cross thereof; any nonpurebred rams known to have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors; and any nonpurebred rams of unknown ancestry with a black face, except for hair sheep, may enter Washington state for breeding purposes if they are determined by genetic testing before entry to be QR or RR at the 171 codon. Hair sheep known to have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors are considered blackface sheep.)~~

**Exemptions to import health and test requirements.**

~~((5))~~ (4) Sheep entering Washington for show or exhibition purposes and returning to their home state are exempt from testing requirements. A certificate of veterinary inspection is required.

~~((6))~~ (5) Sheep entering Washington state for immediate slaughter at a federally inspected slaughter facility are exempt from the certificate of veterinary inspection and testing requirements.

~~((7))~~ (6) Official individual identification is not required on slaughter sheep less than eighteen months of age.

AMENDATORY SECTION (Amending WSR 16-23-108, filed 11/18/16, effective 12/19/16)

**WAC 16-54-180 Wild and exotic animals—Importation and testing requirements. Import health requirements.**

(1) Wild and exotic animals entering Washington state must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian licensed in the state of origin, or accompanied by an international certificate of health unless the animals are prohibited under chapter 16.30 RCW or 232-12 WAC.

(2) All wild and exotic animals must be accompanied by an entry permit.

**Import test requirements.**

(3) **Brucellosis:** Within thirty days before entering Washington state, negative serologic testing must be conducted on the following categories of captive wild or exotic animals that are more than six months of age:

**Table 1.**

**Wild and exotic animals that must be tested for brucellosis**

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella abortus</i>	<i>Camelidae</i>	<ul style="list-style-type: none"> <li>• Vicuna</li> <li>• Guanaco</li> <li>• Camel</li> </ul>
	<i>Cervidae</i>	<ul style="list-style-type: none"> <li>• Elk</li> <li>• Caribou</li> <li>• Moose</li> <li>• Reindeer</li> <li>• Deer</li> </ul>
	<i>Giraffidae</i>	<ul style="list-style-type: none"> <li>• Giraffe</li> <li>• Okapi</li> </ul>
	<i>Bovidae</i>	<ul style="list-style-type: none"> <li>• Wild cattle (gaur, banteng, kaupre, yak)</li> <li>• Bison (American bison, European bison)</li> </ul>

Tested For	Species Scientific Name	Common Name Examples
		<ul style="list-style-type: none"> <li>• Buffalo (Asian water buffalo, tamaraw, lowland anoa, mountain anoa, African buffalo)</li> </ul>
	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> <li>• Wild sheep (bighorn sheep, Dall's sheep, mouflon, argoli, uriol, blue sheep, barbary sheep, red sheep)</li> <li>• Wild goats (Rocky Mountain goat, ibex, walia ibex, west Caucasian tur, east Caucasian tur, Spanish ibex, markhor)</li> </ul>
<i>Brucella suis</i>	<i>Suidae</i>	<ul style="list-style-type: none"> <li>• Wild swine (European wild boar, bearded pig, Jovan pig, pygmy hog, wart hog, giant forest pig, East Indian swine or Babirusa, African bush pig, peccaries)</li> </ul>
<i>Brucella suis biovar 4</i>	Cervidae	<ul style="list-style-type: none"> <li>• Caribou</li> <li>• Reindeer</li> </ul>
<i>Brucella ovis</i>	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> <li>• All wild sheep and goats must be tested and found negative to <i>Brucella ovis</i> within thirty days before entering Washington state</li> </ul>

(4) **Tuberculosis** (*Mycobacterium bovis* and *Mycobacterium tuberculosis*):

(a) Animals less than six months of age that are nursing negative tested dams may be excluded from tuberculosis test requirements.

(b) Within thirty days before entering Washington state, the animals listed in the following table must test negative for *M. bovis* and *M. tuberculosis* by a skin test or other approved test that follows federal tuberculosis protocols:

**Table 2.**

**Wild and exotic animals that must be tested for tuberculosis**

Species Scientific Name	Common Name Examples
<i>Ceropithecidae</i>	• Old world primates <sup>2</sup>
<i>Hylobotidae</i>	• Gibbons <sup>2</sup>
	• Lessor apes <sup>2</sup>
<i>Pongidae</i>	• Great apes <sup>2</sup>
<i>Elephantidae</i>	• Elephants <sup>1</sup>
<i>Bovidae</i>	• Wild cattle

Species Scientific Name	Common Name Examples
<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> <li>• Wild sheep</li> <li>• Wild goats</li> </ul>
<i>Cervidae</i> ( <del>(-Giraffidae)</del> )	<ul style="list-style-type: none"> <li>• Elk</li> <li>• Caribou</li> <li>• Moose</li> <li>• Reindeer</li> <li>• Deer</li> </ul>
<u>Giraffidae</u>	<ul style="list-style-type: none"> <li>• Giraffe</li> <li>• Okapi</li> </ul>

<sup>1</sup>Negative trunk wash or other USDA-validated tuberculosis test every twelve months.

<sup>2</sup>All nonhuman primates are exempt from the *M. bovis* testing requirement.

(c) *Cervidae*, such as elk, deer, caribou, moose, and reindeer (~~(and Giraffidae, such as giraffe and okapi,)~~) must be from herds not known to be infected with, exposed to, or affected by tuberculosis. They must also test negative for *M. bovis* using the testing requirements defined in Title 9 C.F.R. Part 77.33 (January 1, 2014).

(d) For all captive wild or exotic animals not listed in Table 2 of this section, the following statement signed by the animal's owner or agent must be placed on the official certificate of veterinary inspection:

"To my knowledge, the animals listed on this certificate are not infected with tuberculosis and have not been exposed to animals infected with tuberculosis during the past twelve months."

(5) **Pseudorabies:** All wild swine imported for zoos, exhibitions or to a research facility must test negative for pseudorabies no more than thirty days before entry into Washington state and must be held in quarantine for thirty to sixty days pending a postentry retest.

(6) **Equine infectious anemia:** All wild horses, donkeys, and hybrids of the family *Equidae* must test negative on an approved test for equine infectious anemia no more than six months before entry into Washington state.

(7) **Elaphostrongylinae** (*Parelaphostrongylus tenvis* (meningeal worm) and *Elaphostrongylus cervis* (muscle worm)): Before entering Washington state, all *Cervidae* must be examined for *Elaphostrongylinae* infection in the absence of anthelmintic treatment that could mask detection of the parasite.

(a) All *Cervidae* residing for at least six months west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian must have a negative fecal exam for dorsal-spined larvae made by an approved laboratory using the Baermann technique. Animals must be certified that they have not been treated with or exposed to anthelmintics for at least thirty days before testing.

(b) All *Cervidae* residing for less than six months west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or

geographical boundaries as otherwise designated by the state veterinarian or from east of that line must be held in a preentry quarantine for thirty to sixty days and have two fecal tests for dorsal-spined larvae made by an approved laboratory using the Baermann technique.

(i) The first test must be conducted at least thirty days and not more than forty days before the second test.

(ii) Fecal samples of at least thirty grams per sample are to be collected by an accredited veterinarian from the animal's rectum and identified by the animal's official identification number.

(iii) During the thirty-day testing period, test animals must be held in quarantine and isolated from all other *Cervidae* not included in the shipment.

(iv) If any animal tests positive to either of the two fecal tests, neither that animal nor any other animal held in quarantine with the infected animal may be imported into Washington state.

(c) All imported *Cervidae* must be held for one hundred eighty days in an on-site quarantine and be available for inspection by the director during this time.

(d) Every thirty, sixty, ninety, one hundred twenty, one hundred fifty, and one hundred eighty days after arrival, fecal samples from the animals must be tested by the Baermann technique in an approved laboratory and be found negative for dorsal-spined larvae. Animals that test positive for dorsal-spined larvae must either be removed from Washington state or destroyed.

(e) To prevent the presence of the gastropod intermediate hosts of *Elaphostrongylinae* larvae, the quarantine site must be prepared and inspected before the imported animals enter. Preparation includes:

(i) Providing a hard surface, such as asphalt or concrete, on which to keep the animals;

(ii) Spraying the quarantine area with an EPA-registered molluscicide; and

(iii) Spraying a four-meter wide tract around the perimeter of the holding compound with an EPA-registered molluscicide. This perimeter tract must be treated once every five days and within twenty-four hours of precipitation (10 mm or more) to ensure that the gastropod population is kept to zero within the compound.

(8) **Rabies:** Any carnivorous mammal taken from the wild is prohibited from entering Washington state if rabies has been diagnosed in the state of origin during the past twelve months, or if prohibited under WAC 246-100-197.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 17-07-130 on March 22, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 16, 2017.

Roselyn Marcus  
Assistant Director for  
Legal and Legislative Affairs  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-057, filed 5/26/16, effective 6/26/16)

**WAC 82-50-021 Official lagged, semimonthly pay dates established.** Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semimonthly pay dates for calendar years (~~2016 and~~) 2017 and 2018:

<del>(CALENDAR YEAR 2016</del>	CALENDAR YEAR 2017
<del>Monday, January 11, 2016</del>	Tuesday, January 10, 2017
<del>Monday, January 25, 2016</del>	Wednesday, January 25, 2017
<del>Wednesday, February 10, 2016</del>	Friday, February 10, 2017
<del>Thursday, February 25, 2016</del>	Friday, February 24, 2017
<del>Thursday, March 10, 2016</del>	Friday, March 10, 2017
<del>Friday, March 25, 2016</del>	Friday, March 24, 2017
<del>Monday, April 11, 2016</del>	Monday, April 10, 2017
<del>Monday, April 25, 2016</del>	Tuesday, April 25, 2017
<del>Tuesday, May 10, 2016</del>	Wednesday, May 10, 2017
<del>Wednesday, May 25, 2016</del>	Thursday, May 25, 2017
<del>Friday, June 10, 2016</del>	Friday, June 9, 2017
<del>Friday, June 24, 2016</del>	Monday, June 26, 2017
<del>Monday, July 11, 2016</del>	Monday, July 10, 2017
<del>Monday, July 25, 2016</del>	Tuesday, July 25, 2017
<del>Wednesday, August 10, 2016</del>	Thursday, August 10, 2017
<del>Thursday, August 25, 2016</del>	Friday, August 25, 2017
<del>Friday, September 9, 2016</del>	Monday, September 11, 2017
<del>Monday, September 26, 2016</del>	Monday, September 25, 2017

**WSR 17-13-073  
PERMANENT RULES**

**OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed June 16, 2017, 12:50 p.m., effective July 17, 2017]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2018.

Citation of Existing Rules Affected by this Order: Amending WAC 82-50-021.

<del>((CALENDAR YEAR 2016</del>	CALENDAR YEAR 2017
<del>Friday, October 7, 2016</del>	Tuesday, October 10, 2017
<del>Tuesday, October 25, 2016</del>	<del>Wednesday, October 25, 2017</del>
<del>Thursday, November 10, 2016</del>	Thursday, November 9, 2017
<del>Wednesday, November 23, 2016</del>	<del>Wednesday, November 22, 2017</del>
<del>Friday, December 9, 2016</del>	Monday, December 11, 2017
<del>Friday, December 23, 2016</del>	Friday, December 22, 2017)
<u>CALENDAR YEAR 2017</u>	<u>CALENDAR YEAR 2018</u>
<u>Tuesday, January 10, 2017</u>	<u>Wednesday, January 10, 2018</u>
<u>Wednesday, January 25, 2017</u>	<u>Thursday, January 25, 2018</u>
<u>Friday, February 10, 2017</u>	<u>Friday, February 9, 2018</u>
<u>Friday, February 24, 2017</u>	<u>Monday, February 26, 2018</u>
<u>Friday, March 10, 2017</u>	<u>Friday, March 9, 2018</u>
<u>Friday, March 24, 2017</u>	<u>Monday, March 26, 2018</u>
<u>Monday, April 10, 2017</u>	<u>Tuesday, April 10, 2018</u>
<u>Tuesday, April 25, 2017</u>	<u>Wednesday, April 25, 2018</u>
<u>Wednesday, May 10, 2017</u>	<u>Thursday, May 10, 2018</u>
<u>Thursday, May 25, 2017</u>	<u>Friday, May 25, 2018</u>
<u>Friday, June 9, 2017</u>	<u>Monday, June 11, 2018</u>
<u>Monday, June 26, 2017</u>	<u>Monday, June 25, 2018</u>
<u>Monday, July 10, 2017</u>	<u>Tuesday, July 10, 2018</u>
<u>Tuesday, July 25, 2017</u>	<u>Wednesday, July 25, 2018</u>
<u>Thursday, August 10, 2017</u>	<u>Friday, August 10, 2018</u>
<u>Friday, August 25, 2017</u>	<u>Friday, August 24, 2018</u>
<u>Monday, September 11, 2017</u>	<u>Monday, September 10, 2018</u>
<u>Monday, September 25, 2017</u>	<u>Tuesday, September 25, 2018</u>
<u>Tuesday, October 10, 2017</u>	<u>Wednesday, October 10, 2018</u>
<u>Wednesday, October 25, 2017</u>	<u>Thursday, October 25, 2018</u>
<u>Thursday, November 9, 2017</u>	<u>Friday, November 9, 2018</u>
<u>Wednesday, November 22, 2017</u>	<u>Monday, November 26, 2018</u>
<u>Monday, December 11, 2017</u>	<u>Monday, December 10, 2018</u>
<u>Friday, December 22, 2017</u>	<u>Monday, December 24, 2018</u>

**WSR 17-13-082****PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed June 16, 2017, 4:29 p.m., effective July 17, 2017]

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

Purpose: Chapter 246-809 WAC, Licensure for mental health counselors, marriage and family therapists, and social workers. To implement changes in RCW 43.70.442 and chapter 18.225 RCW, the rule amends sections regarding suicide prevention trainings. It also addresses the retired-active license continuing education requirements, clarifies terms and conditions, and makes general housekeeping changes.

Citation of Existing Rules Affected by this Order: Amending WAC 246-809-010, 246-809-035, 246-809-040, 246-809-049, 246-809-060, 246-809-080, 246-809-110, 246-809-121, 246-809-130, 246-809-134, 246-809-140, 246-809-210, 246-809-220, 246-809-221, 246-809-230, 246-809-234, 246-809-240, 246-809-310, 246-809-320, 246-809-334, 246-

809-340, 246-809-600, 246-809-610, 246-809-615, 246-809-630, 246-809-710, and 246-809-730.

Statutory Authority for Adoption: RCW 18.225.040.

Adopted under notice filed as WSR 17-07-110 on March 21, 2017.

A final cost-benefit analysis is available by contacting Brad Burnham, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4912, fax (360) 236-2901, email brad.burnham@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 25, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 27, Repealed 0.

Date Adopted: June 16, 2017.

John Wiesman DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Associate" means a prelicensure candidate who is working towards full licensure in their profession, has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist. Associates may not independently provide social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(2) "Independent social work, mental health counseling, or marriage and family therapy" means the practice of these disciplines without being under the supervision of an approved supervisor.

(3) "Licensed counselor" means a licensed marriage and family therapist, licensed mental health counselor, licensed advanced social worker, or licensed independent clinical social worker regulated under chapter 18.225 RCW.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-035 Recordkeeping and retention.** (1) The licensed counselor or associate providing professional

services to a client or providing services billed to a third-party payor, must document services, except as provided in subsection (2) of this section. The documentation includes:

(a) The following business information:

(i) Client name;

~~((b))~~ (ii) The fee arrangement and record of payments;

~~((c))~~ (iii) Dates counseling was received; and

~~((d))~~ (iv) Disclosure ~~((form))~~ statement, signed and dated by licensed counselor and client or associate and client

~~((e))~~ on or before the initial session.

(b) The following treatment information:

(i) The presenting problem(s), purpose or diagnosis;

~~((f))~~ (ii) Notation and results of formal consults, including information obtained from other persons or agencies through a release of information;

~~((g))~~ (iii) Progress notes sufficient to support responsible clinical practice for the type of theoretical orientation/therapy the licensed counselor or associate uses ~~((:))~~; and

(iv) The associate must also provide ~~((adequate))~~ all relevant information about their clinical work to the approved supervisor. This ~~((can be in the form of progress))~~ includes session notes, case discussions/analysis, or reports from collaborating professionals. The approved supervisor must have ~~((a))~~ a thorough understanding of the clinical work that the associate is doing.

(2) If a client being treated by the licensed counselor requests in writing that no treatment records be kept, and the licensed counselor ~~((or associate))~~ agrees to the request, ~~((the request must be in writing and))~~ then the licensed counselor ~~((or associate))~~ must retain only the following documentation:

(a) The following business information:

(i) Client name;

~~((b))~~ (ii) The fee arrangement and record of payments;

~~((c))~~ (iii) Dates counseling was received; and

~~((d))~~ (iv) Disclosure ~~((form))~~ statement, signed and dated by licensed counselor or associate and client ~~((:))~~

~~((e))~~ Written request that no records be kept.

(b) The client's written request that no treatment records be kept.

(3) The licensed counselor ~~((or associate may))~~ shall not agree to the request if maintaining client records is required by other state or federal law.

(4) The licensed counselor or associate or the associate's supervisor must keep all client records for a period of five years following the last visit. Within this five-year period, all records must be maintained safely, with properly limited access.

(5) The licensed counselor or associate or the associate's supervisor ~~((must))~~ shall make provisions for retaining or transferring records in the event of going out of business, death or incapacitation. These provisions may be made in the practitioner's will, an office policy, or by ensuring another licensed counselor is available to review records with a client and recommend a course of action; or other appropriate means as determined by the licensed counselor or associate.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-040 Reporting of suspected abuse or neglect of a child or vulnerable adult.** As required by chapter 26.44 RCW, all licensed counselors and associates ~~((must))~~ shall immediately report abuse or neglect of a child if the counselor has reasonable cause to believe that an incident has occurred.

As required by chapter 74.34 RCW, all licensed counselors and associates must report suspected abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, when there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect has occurred.

~~((The counselor or associate shall report to the local law enforcement agency or to the department of social and health services at the first opportunity, but no longer than twenty-four hours after deciding there is reasonable cause to believe that the child or vulnerable adult has suffered abandonment, abuse, neglect, or financial exploitation.))~~

The associate will inform their approved supervisor of their filing any report made ~~((by the associate))~~ pursuant to this section.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-049 Sexual misconduct.** ~~((1))~~ The definitions and prohibitions on sexual misconduct described in ~~((chapter 246-16))~~ WAC 246-16-100 apply to licensed counselors and associates, except ~~((WAC 246-16-100 (3) and (4).))~~

~~((2))~~ a licensed counselor or associate shall never engage, or attempt to engage, in the activities listed in WAC 246-16-100 (1) ~~((with a former patient, former client or former key party))~~ and (2).

AMENDATORY SECTION (Amending WSR 06-09-032, filed 4/12/06, effective 5/13/06)

**WAC 246-809-060 Mandatory reporting.** ~~((1))~~ All reports required by this chapter shall be submitted to the department as ~~((soon as possible))~~ required by chapter 246-16 WAC, but no later than twenty days after a determination is made.

~~((2))~~ Reports made in accordance with WAC 246-809-061, 246-809-062, 246-809-063, and 246-809-064 should contain the following information if known:

(a) The name, address, and telephone number of the person making the report.

(b) The name, address, and telephone number of the licensed counselor being reported.

(c) The case number of any client or patient whose treatment is a subject of the report.

~~((d))~~ A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

~~((e))~~ If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

~~(f) Any further information which would aid in the evaluation of the report.~~

~~(3) Mandatory reports are exempt from public inspection and copying to the extent permitted under chapter 42.17 RCW.~~

~~(4) A person is immune from civil liability, whether direct or derivative, for providing information to the department under RCW 18.130.070.)~~

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

**WAC 246-809-080 AIDS prevention and information education requirements.** Applicants must complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. Training courses may be taken any time prior to initial licensure as an associate or a licensed counselor.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-110 Definitions.** The following terms apply to the licensure of marriage and family therapists and marriage and family therapist associates.

(1) "Approved educational program" means:

(a) Any college or university accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation or its successor; or

(b) A program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAM-FTE), at the time the applicant completed the required education.

(2) "Approved supervisor" means a licensed marriage and family therapist, or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner, who has completed:

(a) Three hundred clock hours in graduate or postgraduate marriage and family education, or continuing education in marriage and family therapy or supervision by an approved marriage and family therapist supervisor in marriage and family therapy or any combination of these; and

(b) Five years of clinical practice that includes the equivalent of one year of clinical practice working with couples and families.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(8) "Supervised experience requirement" means experience that is obtained under an approved supervisor who meets the requirements described in WAC 246-809-134.

~~((8))~~ (9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a license holder to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-134.

~~((9) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.)~~

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-121 Program equivalency.** (1) To meet the program equivalency requirement, an applicant must have course work equivalent to a master's or doctoral degree in ((marriage and family therapy must include graduate level courses in marital and family systems, marital and family therapy, individual development psychopathology, human sexuality, research, professional ethics and law, and supervised clinical practice and electives)) each area of study described in subsection (2) of this section.

(2) A total of forty-five semester credits ~~((and))~~ or sixty quarter credits are required in ~~((and))~~ the nine areas of study as described in this subsection. A minimum of twenty-seven semester credits or thirty-six quarter credits are required in the first five areas of study: Marital and family systems, marital and family therapy, individual development psychopathology, human sexuality, and research. Distribution of the course work is as follows:

~~((A))~~ (a) Marital and family systems. ~~((A))~~ An applicant must have taken ~~((at least two courses))~~ a minimum of six semester or eight quarter credits in marital and family systems. ~~((Course work required is a minimum of six semester credits or eight quarter credits.~~

~~((B))~~ Marital and family systems is a fundamental introduction to the systems approach to intervention. The student should learn to think in systems terms on a number of levels across a wide variety of family structures, and regarding a diverse range of presenting problems. While the most intense focus may be on the nuclear family (in both its traditional and alternative forms), models should be taught which integrate information regarding the marital, sibling, and individual subsystems, as well as the family of origin and external societal influences. Developmental aspects of family functioning should also be considered of the family system; it also provides a theoretical basis for treatment strategy. Some material may be drawn from familiar sources such as family sociology, but it should be integrated with recent clinically oriented systems concepts. Supplemental studies may include family simulation, the observation of well families, and study of the student's family of origin.

~~((2))~~ (b) Marital and family therapy. ~~((A))~~ An applicant must have taken ~~((at least two courses))~~ a minimum of six semester or eight quarter credits in marital and family therapy. ~~((Course work required is a minimum of six semester credits or eight quarter credits.~~

~~((B))~~ Marital and family therapy is intended to provide a substantive understanding of the major theories of systems

change and the applied practices evolving from each orientation. Major theoretical approaches to be surveyed might include strategic, structural, experiential, neoanalytical (e.g., object relations), communications, and behavioral. Applied studies should consider the range of technique associated with each orientation, as well as a variety of treatment structures, including individual, concurrent, collaborative, conjoint marital, marital group, transgenerational, and network therapies.

~~((3))~~ (c) Individual development. ~~((a))~~ An applicant must have taken ~~((at least one course))~~ a minimum of two semester credits or three quarter credits in individual development. ~~((Course work required is a minimum of two semester credits or three quarter credits.~~

~~(b))~~ A course in this area is intended to provide a knowledge of individual personality development and its normal and abnormal manifestations. The student should have relevant course work in human development across the life span, and in personality theory. An attempt should be made to integrate this material with systems concepts. Several of the courses in this category may be required as prerequisites for some degree programs.

~~((4))~~ (d) Psychopathology. ~~((a))~~ An applicant must have taken at least one course in psychopathology. Course work required is a minimum of two semester credits or three quarter credits.

~~((b))~~ Psychopathology is the assessment and diagnosis including familiarity with current diagnostic nomenclature, diagnostic categories and the development of treatment strategies.

~~((5))~~ (e) Human sexuality. ~~((a))~~ An applicant must have taken at least one course in human sexuality. Course work required is a minimum of two semester credits or three quarter credits.

~~((b))~~ Human sexuality includes normal psycho-sexual development, sexual functioning ~~((and its))~~, physiological aspects ~~((and))~~, sexual dysfunction and its treatment.

~~((6))~~ (f) Research. ~~((a))~~ An applicant must have taken at least one course in research methods. Course work required is a minimum of three semester credits or four quarter credits.

~~((b))~~ The research area is intended to provide assistance to students in becoming informed consumers of research in the marital and family therapy field. Familiarity with substantive findings, together with the ability to make critical judgments as to the adequacy of research reports, is expected.

~~((7))~~ (g) Professional ethics and law. ~~((a))~~ An applicant must have taken at least one course in professional ethics and law. Course work required is a minimum of three semester credits or four quarter credits.

~~((b))~~ This area is intended to contribute to the development of a professional attitude and identity. Areas of study will include professional socialization ~~((and))~~, the role of the professional organization, licensure or certification legislation, legal responsibilities ~~((and))~~, legal liabilities, ethics and family law, confidentiality, independent practice and inter-professional cooperation.

~~((8))~~ (h) Electives. ~~((a))~~ An individual must take one course in an elective area. Course work required is a minimum of three semester credits ~~((and))~~ or four quarter credits.

~~((b))~~ This area will vary with different institutions but is intended to provide supplemental and/or specialized supporting areas.

~~((9))~~ (i) Supervised clinical practice. ~~((a))~~ An applicant may acquire up to nine semester credits or twelve quarter credits through supervised clinical practice in marriage and family therapy under the supervision of a qualified marriage and family therapist as determined by the school.

~~((b) If an))~~ Applicants who completed a master's or doctoral degree program in marriage and family therapy, or a behavioral science master's or doctoral degree with equivalent course work, ~~((prior to))~~ before January 1, 1997~~((; and if that degree did not include a supervised clinical practice component, the applicant may substitute the clinical practice component with proof of a minimum of three years postgraduate experience in marriage and family therapy))~~, may substitute the supervised clinical practice educational component by documenting a minimum of three years of postgraduate experience in marriage and family therapy. These hours are in addition to the two years supervised postgraduate experience required under ((section 9(1), chapter 251, Laws of 2001)) RCW 18.225.090.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-130 Supervised postgraduate experience.** The experience requirements for the marriage and family therapist applicant's practice area include successful completion of a supervised experience requirement. The experience requirement consists of a minimum of two calendar years of full-time marriage and family therapy. ~~((Of the total supervision, one hundred hours must be with a licensed marriage and family therapist with at least five years' clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner.))~~ Total experience requirements include:

(1) A minimum of three thousand hours of experience~~((;))~~ that includes one thousand hours of ~~((which must be))~~ direct client contact~~((;))~~ with at least five hundred hours ~~((must be))~~ gained in diagnosing and treating couples and families; ~~((plus))~~

(2) At least two hundred hours of qualified supervision with an approved supervisor.

(a) Of the two hundred hours, one hundred hours must be with a licensed marriage and family therapist with at least five years of clinical experience; the other one hundred hours may be with an equally qualified licensed mental health practitioner;

(b) At least one hundred of the two hundred hours must be one-on-one supervision((;)); and

(c) The remaining hours may be in one-on-one or group supervision.

(3) Applicants who have completed a master's program accredited by the Commission on Accreditation for Marriage and Family Therapy Education of the American Association for Marriage and Family Therapy ~~((may))~~ boards will be



credited with five hundred hours of direct client contact and one hundred hours of ~~((formal meetings))~~ qualified supervision with an approved supervisor~~((:))~~;

(4) Licensed marriage and family therapist associate applicants are not required to have supervised postgraduate experience prior to becoming an associate~~((:))~~;

(5) Licensed marriage and family therapist associate applicants must declare they are working towards full licensure.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-134 Approved supervisor.** (1) The approved supervisor must hold a license as defined per WAC 246-809-110. ~~The license must be~~ without restrictions ~~((that has))~~ and have been in good standing for ~~((at least))~~ the previous two years.

(2) The approved supervisor must not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has ~~((acted as))~~ provided psychological services to the licensure ~~((candidate's therapist))~~ candidate within the past two years.

(3) ~~Before beginning supervision, the approved supervisor~~ ~~((prior to the commencement of any supervision,))~~ must provide the licensure candidate with a declaration ~~((:))~~ stating that the supervisor has met the requirements of this section and qualifies as an approved supervisor. The declaration will be on a form provided by the department ~~((that the supervisor has met the requirements of WAC 246-809-134 and qualify as an approved supervisor))~~.

(4) The approved supervisor must have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

- (i) A supervision course; or
- (ii) Continuing education credits on supervision; or
- (iii) Supervision of supervision; or
- (iv) Any combination of these; and

(b) Twenty-five hours of experience in supervision of clinical practice; or

(c) An American Association for Marriage and Family Therapy (AAMFT) approved supervisor meets the qualifications ~~((above))~~ of this subsection.

(5) The approved supervisor must attest to having thorough knowledge of the ~~((supervisee's))~~ licensure candidate's practice activities including:

- (a) Practice setting;
- (b) Recordkeeping, as outlined in WAC 246-809-035;
- (c) Financial management;
- (d) Ethics of clinical practice; and
- (e) ~~((A))~~ The licensure candidate's backup plan for coverage in times when the licensure candidate is not available to their clients.

(6) Applicants whose supervised postgraduate experience began before September 30, 2006, are exempt from the requirements of subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-140 Examination.** ~~((Examination required.))~~ Applicants for full licensure must take and pass the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) examination. The passing score on the examination is established by the testing company in conjunction with the AMFTRB.

AMENDATORY SECTION (Amending WSR 17-02-005, filed 12/22/16, effective 1/22/17)

**WAC 246-809-210 Definitions.** The following definitions apply to the licensure of mental health counselors and mental health counselor associates.

(1) "Approved educational program" means any college or university accredited by an accreditation body recognized by the Council for Higher Education Accreditation (CHEA) or United States Department of Education.

(2) "Approved setting" includes facilities, agencies or private practice where an applicant works with individuals, families, couples or groups under the supervision of an approved supervisor.

(3) "Approved supervisor" means a qualified licensed mental health counselor or equally qualified licensed mental health practitioner who has been licensed without restrictions for at least two years.

(4) "Equally qualified licensed mental health practitioner" means a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(5) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(6) "Immediate supervision" means a meeting with an approved supervisor, involving one supervisor and no more than two licensure candidates.

(7) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to act as an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-234.

~~((9))~~ "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-220 Education requirements.** (1) To meet the education requirement for licensure as a mental health counselor or mental health counselor associate, an applicant must have a master's or doctoral degree in mental health counseling or a master's or doctoral degree in a behavioral science ~~((master's or doctoral degree in a))~~ field relating to mental health counseling from an approved school. Fields

recognized as relating to mental health counseling include counseling, psychology, social work, nursing, education, pastoral counseling, rehabilitation counseling, or social sciences. Any field of study qualifying as related to mental health counseling must satisfy course work equivalency requirements included in WAC 246-809-221. An official transcript must be provided as evidence of fulfillment of the course work required.

(2) Any supplemental course work (~~(required)~~) must be from an approved school.

(3) Applicants who (~~(held)~~) hold a behavioral science master's or doctoral degree (~~(and are completing)~~) in a related field may complete supplemental course work through an approved (~~(school)~~) educational program to satisfy any missing program equivalencies (~~(may count any)~~). Postgraduate experience hours acquired concurrently with the additional course work counts toward the supervised postgraduate experience under WAC 246-809-230.

(4) A person who is a Nationally Certified Counselor (NCC) or a Certified Clinical Mental Health Counselor (CCMHC) through the National Board of Certified Counselors (NBCC) is considered to have met the education requirements of this chapter. Verification must be (~~(sent directly to)~~) received by the department directly from NBCC.

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

**WAC 246-809-221 Behavioral sciences—Program equivalency.** (1) Behavioral science in a field relating to mental health counseling includes a core of study relating to counseling theory and counseling philosophy.

(2) Either a counseling practicum, or a counseling internship, or both, must be included in the core of study. Exclusive use of an internship or practicum used for qualification must have incorporated supervised direct client contact.

(3) This core of study must include seven of the content areas (~~(from the entire list in subsections (1) through (17) of this section, five of which)~~) listed in (a) through (q) of this subsection. Five of the content areas must be from (~~(content areas in subsections (1) through (8))~~) (a) through (h) of this subsection:

- ~~((1))~~ (a) Assessment/diagnosis.
- ~~((2))~~ (b) Ethics/law.
- ~~((3))~~ (c) Counseling individuals.
- ~~((4))~~ (d) Counseling groups.
- ~~((5))~~ (e) Counseling couples and families.
- ~~((6))~~ (f) Developmental psychology (may be child, adolescent, adult or life span).
- ~~((7))~~ (g) Psychopathology/abnormal psychology.
- ~~((8))~~ (h) Research and evaluation.
- ~~((9))~~ (i) Career development counseling.
- ~~((10))~~ (j) Multicultural concerns.
- ~~((11))~~ (k) Substance/chemical abuse.
- ~~((12))~~ (l) Physiological psychology.
- ~~((13))~~ (m) Organizational psychology.
- ~~((14))~~ (n) Mental health consultation.
- ~~((15))~~ (o) Developmentally disabled persons.
- ~~((16))~~ (p) Abusive relationships.
- ~~((17))~~ (q) Chronically mentally ill.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-230 Supervised postgraduate experience.** (1) The experience requirements for the mental health counselor applicant's practice area include successful completion of a supervised experience requirement. The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner in an approved setting. Of the three thousand hours (~~(of required experience includes a minimum of)~~);

(a) One hundred hours spent in immediate supervision with the qualified licensed mental health counselor or equally qualified licensed mental health practitioner (~~(and includes a minimum of)~~); and

(b) At least one thousand two hundred hours (~~(of)~~) must be direct counseling with individuals, couples, families, or groups.

(2) Applicants who have completed a master's or doctoral program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) will be credited with fifty hours of postgraduate supervision and five hundred hours of postgraduate experience.

(3) Applicants for licensed mental health counselor associate are not required to have supervised postgraduate experience prior to becoming an associate.

(4) Licensed mental health counselor associate applicants must declare they are working toward full licensure.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-234 Approved supervisor.** (1) The approved supervisor must hold a license as defined in WAC 246-809-210. The supervisor must be licensed without restrictions (~~(that has)~~) and have been in good standing for (~~(at least)~~) the previous two years.

(2) The approved supervisor must not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has (~~(acted as)~~) provided psychological services to the licensure (~~(candidate's therapist)~~) candidate within the past two years.

(3) Before beginning supervision, the approved supervisor (~~(prior to the commencement of any supervision)~~) must provide the licensure candidate a declaration (~~(on a form provided by the department)~~) stating that the supervisor has met the requirements of WAC 246-809-234 and (~~(qualify)~~) qualifies as an approved supervisor. The declaration must be on a form provided by the department.

(4) The approved supervisor must have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

- (i) A supervision course; or
- (ii) Continuing education credits on supervision; or
- (iii) Supervision of supervision; and

(b) Twenty-five hours of experience in supervision of clinical practice.

(5) The approved supervisor shall ~~((have full))~~ attest to having thorough knowledge of the licensure candidate's practice activities including:

- (a) Recordkeeping, as outlined in WAC 246-809-035;
- (b) Financial management;
- (c) Ethics of clinical practice;
- (d) Practice setting; and

~~((e))~~ (e) The licensure candidate's backup plan for coverage in times when the licensure candidate is not available to their clients.

(6) Applicants whose supervised postgraduate experience began before September 30, 2006, are exempt from the requirements of subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-240 Examination for licensed mental health counselors.** (1) Applicants for licensure as a mental health counselor must pass an examination administered by the National Board of Certified Counselors (NBCC). Applicants who pass the National Certification Examination (NCE) or the National Clinical Mental Health Counselor Examination (NCMHCE), as administered by the NBCC, meet the examination requirements to be licensed as mental health counselors. ~~((Each applicant must cause the NBCC to send verification of the applicant's examination passage directly to))~~ The department of health must receive passing exam results directly from NBCC before licensure can be granted.

(2) The department of health shall accept the passing score established by the NBCC for licensed mental health counselor examinations.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-310 Definitions.** The following definitions apply to the licensure of independent clinical and advanced social workers and independent clinical and advanced social work associates.

(1) "Approved educational program" means a master's or doctoral educational program in social work accredited by the Council on Social Work Education.

(2) "Approved supervisor" means a licensed independent clinical social worker (LICSW), licensed advanced social worker (LASW) (for LASWs only), or an equally qualified licensed mental health practitioner.

(3) "Equally qualified licensed mental health practitioner" means a licensed mental health counselor, licensed marriage and family therapist, licensed psychologist, licensed physician practicing as a psychiatrist, or licensed psychiatric nurse practitioner.

(4) "Group supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and no more than six licensure candidates.

(5) "Licensure candidate" means an individual that is accruing supervised clinical experience required for licensure.

(6) "Nationally recognized standards" means the *Educational Policy and Accreditation Standards*, revised October

2004 published by the Council on Social Work Education revised October 2004 or any future revisions.

(7) "One-on-one supervision" means face-to-face supervision with an approved supervisor, involving one supervisor and one licensure candidate.

(8) "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.

(9) "Supervision of supervision" means supervision by an approved supervisor for the purpose of training and qualifying a licensee to become an approved supervisor for purposes of chapter 18.225 RCW and WAC 246-809-334.

~~((9))~~ "Peer" means a co-worker who is not the licensure candidate's employer or supervisor.)

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-320 Education requirements ~~((and supervised postgraduate experience))~~.** ~~((H))~~ The following are the education requirements for the social worker applicant's practice area:

~~((a))~~ (1) Licensed advanced social worker or licensed social worker associate-advanced ~~((Graduation))~~ must have graduated from a master's or doctoral social work educational program accredited by the Council on Social Work Education ~~((and approved by the secretary based upon nationally recognized standards))~~.

~~((b))~~ (2) Licensed independent clinical social worker or licensed social worker associate-independent clinical ~~((Graduation))~~ must have graduated from a master's or doctorate level social work educational program accredited by the Council on Social Work Education ~~((and approved by the secretary based upon nationally recognized standards))~~.

~~((2))~~ The following are the supervised postgraduate experience requirements for the social worker applicant's practice area:

~~((a))~~ Licensed advanced social worker. Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours, fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; the other forty hours may be with an equally qualified licensed mental health practitioner. Forty hours must be in one to one supervision and fifty hours may be in one to one supervision or group supervision. Distance supervision is limited to forty supervision hours. Eight hundred hours must be in direct client contact.

~~((b))~~ Licensed independent clinical social worker. Successful completion of a supervised experience requirement. The experience requirement consists of a minimum of four thousand hours of experience, of which one thousand hours must be direct client contact, over a three year period supervised by a licensed independent clinical social worker, with supervision of at least one hundred thirty hours by a licensed mental health practitioner. Of the total supervision, seventy hours must be with an independent clinical social worker; the

~~other sixty hours may be with an equally qualified licensed mental health practitioner. Sixty hours must be in one-to-one supervision and seventy hours may be in one-to-one supervision or group supervision. Distance supervision is limited to sixty supervision hours.~~

~~(3) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants are not required to have supervised postgraduate experience prior to becoming an associate.~~

~~(4) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants must declare they are working toward full licensure).~~

#### NEW SECTION

**WAC 246-809-330 Supervised postgraduate experience requirements.** (1) Licensed advanced social worker. The supervised experience requirement consists of a minimum of three thousand two hundred hours with ninety hours of supervision by a licensed independent clinical social worker or a licensed advanced social worker who has been licensed or certified for at least two years. Of those hours:

(a) Eight hundred hours must be in direct client contact;  
(b) Ninety hours must be in direct supervision as follows:

(i) Fifty hours must include direct supervision by a licensed advanced social worker or licensed independent clinical social worker; these hours may be in one-to-one supervision or group supervision;

(ii) Forty hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3). These hours must be in one-to-one supervision.

(c) Distance supervision is limited to forty supervision hours.

(2) Licensed independent clinical social worker: The experience requirement consists of a minimum of four thousand hours of experience, over a period of not less than three years. Of those four thousand hours:

(a) One thousand hours must be direct client contact supervised by a licensed independent clinical social worker;

(b) One hundred thirty hours of direct supervision as follows:

(i) Seventy hours must be with an independent clinical social worker;

(ii) Sixty hours may be with an equally qualified licensed mental health practitioner as defined in WAC 246-809-310(3);

(iii) Sixty hours of the one hundred thirty hours of direct supervision must be in one-to-one supervision. The remaining seventy hours may be in one-to-one supervision or group supervision; and

(iv) Distance supervision is limited to sixty supervision hours.

(3) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants are not required to have supervised postgraduate experience prior to becoming an associate.

(4) Licensed social worker associate-advanced and licensed social worker associate-independent clinical applicants must declare they are working toward full licensure.

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-334 Approved supervisor standards and responsibilities.** (1) The approved supervisor must hold a license as defined in WAC 246-809-310. The license is without restrictions ((that)) and has been active and in good standing for ((at least)) the previous two years.

(2) The approved supervisor must not be a blood or legal relative or cohabitant of the licensure candidate, licensure candidate's peer, or someone who has acted as the licensure candidate's therapist within the past two years.

(3) Before beginning supervision, the approved supervisor ((, prior to the commencement of any supervision,)) must provide the licensure candidate with a declaration ((, on a form provided by the department,)) that the supervisor has met the requirements of WAC 246-809-334 and ((qualify)) qualifies as an approved supervisor. The declaration must be on a form provided by the department.

(4) The approved supervisor must have completed the following:

(a) A minimum of fifteen clock hours of training in clinical supervision obtained through:

(i) A supervision course; or  
(ii) Continuing education credits on supervision; ~~((or))~~

(b) Twenty-five hours of experience in supervision of clinical practice; and

(c) Has had two years of clinical experience postlicensure.

(5) The approved supervisor must attest to having thorough knowledge of the licensure candidate's practice activities including:

(a) Specific practice setting;  
(b) Recordkeeping, as outlined in WAC 246-809-035;

(c) Financial management;  
(d) Ethics of clinical practice; and

(e) The licensure candidate's backup plan for coverage in times when ~~((he/she))~~ the licensure candidate is not available to their clients.

(6) Licensure candidates whose supervised postgraduate experience began before September 30, 2006, are exempt from the requirements of subsection (4) of this section.

AMENDATORY SECTION (Amending WSR 01-17-113, filed 8/22/01, effective 9/22/01)

**WAC 246-809-340 Examination required.** (1) Either the American Association of State Social Work Board's advanced or clinical examination is approved for use as the state examination for licensure of social workers.

(2) ~~The ((passing score established by the testing company is the passing score accepted by the department of health))~~ department accepts the passing scores established by the testing company.

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-809-600 Professions required to ~~((have))~~ complete continuing education.** Licensed ~~((marriage and~~

family therapists, licensed mental health counselors, and licensed social workers are required to have)) counselors must complete continuing education as required in WAC 246-809-630 and 246-809-632.

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-809-610 Eligible continuing education activities.** (1) The continuing education (CE) program or course for licensed counselors and associates must:

(a) Be relevant to ~~((licensed marriage and family therapists, licensed mental health counselors and licensed social workers and must))~~ the profession; and

(b) Contribute to the advancement, extension and enhancement of ((the)) their professional competence ((of the licensed marriage and family therapist, licensed mental health counselor, and licensed social worker)).

(2) Courses or workshops primarily designed to increase practice income or office efficiency are not eligible for CE credit.

~~((4))~~ (3) Acceptable CE courses (including distance learning), seminars, workshops and postgraduate institutes are those which are:

(a) Programs having a featured instructor, speaker(s) or panel approved by an industry-recognized local, state, national, international organization or institution of higher learning; or

(b) Distance learning programs, approved by an industry-recognized local, state, national or international organization or institution of higher learning. These programs must require tests of comprehension upon completion. Distance learning programs are limited to twenty-six hours per reporting period.

~~((2))~~ (4) Training programs sponsored by the agency where a licensed counselor or associate is employed are acceptable ~~((if:~~

~~(a) The experience can be shown to contribute to the advancement, extension and enhancement of the professional competence of the licensed marriage and family therapist, licensed mental health counselor and/or the licensed social worker; and~~

~~(b) The training programs))~~ but are limited to twenty-six hours per reporting period.

~~((3))~~ (5) Other learning experience, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable ~~((if:~~

~~(a) The experience can be shown to contribute to the advancement, extension and enhancement of the professional competence of the licensed marriage and family therapist, licensed mental health counselor and/or the licensed social worker; and~~

~~(b) The experience is))~~ but are limited to six hours per reporting period.

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-809-615 ((Suicide)) Training standards for suicide assessment, treatment, and management.** (1) ~~((An~~

~~approved))~~ A licensed counselor must complete training in suicide assessment, treatment, and management ((must)). The training must be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions.

(a) Until July 1, 2017, the training must be approved by an industry-recognized local, state, national, international organizations or institutions of higher learning listed in WAC 246-809-620 or an equivalent organization, educational institution or association which approves training based on observation and experience or best available practices;

(b) ~~((Cover training in suicide assessment, treatment, and management; and~~

~~(e) Be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions.))~~ Beginning July 1, 2017, the training must be on the department's model list of training programs in suicide assessment, treatment and management. The model list is developed in accordance with rules adopted by the department that establish minimum standards for training programs. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017; and

(c) An associate applying for initial licensure may delay completion of the first training required by this section for six years after initial licensure if he or she can demonstrate successful completion of the training required in (a) or (b) of this subsection no more than six years prior to the application for initial licensure.

(2) A licensed marriage and family therapist, licensed mental health counselor, ~~((or))~~ licensed social worker, or licensed social worker associate who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(3) A licensed marriage and family therapist, licensed mental health counselor, ~~((or))~~ licensed social worker, or licensed social worker associate who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

AMENDATORY SECTION (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-809-630 Continuing education requirements.** (1) An associate must complete eighteen hours of continuing education as required in WAC 246-809-632.

(2) Licensed social worker associate advanced and licensed social worker associate independent clinical must

complete six hours of suicide assessment, treatment, and management CE as required in WAC 246-809-632.

~~((3))~~ A licensed ~~((marriage and family therapist, licensed mental health counselor and licensed social worker))~~ counselor must complete thirty-six hours of continuing education (CE) every two years.

~~((2))~~ (a) At least six of the thirty-six hours must be in professional ethics and law, which may include topics under RCW 18.130.180.

~~((3))~~ (b) Beginning January 1, 2014, at least once every six years a licensed marriage and family therapist, licensed mental health counselor, and licensed social worker must complete at least six hours of training in suicide assessment, treatment, and management.

~~((a))~~ (i) The first training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial licensure, whichever occurs later.

~~((b))~~ (ii) Beginning July 1, 2017, the training must be selected from the department's model list, as required in WAC 246-809-615.

(iii) The hours spent completing training in suicide assessment, treatment, and management count toward the total thirty-six hours of CE.

~~((c))~~ (iv) An individual applying for initial licensure as a licensed marriage and family therapist, licensed mental health counselor, or licensed social worker on or after January 1, 2014, may delay completion of the first training required for six years after initial licensure if he or she can demonstrate completion of six hours of training in suicide assessment, treatment, and management that:

~~((i))~~ (A) Was completed no more than six years prior to the application for initial licensure; and

~~((ii))~~ (B) Meets the qualifications listed in WAC 246-809-615.

NEW SECTION

**WAC 246-809-632 Licensed associate continuing education.** (1) All licensed associates must complete a total of eighteen hours of continuing education (CE) every year in order to renew their license. The CEs must be completed in accordance with this chapter. An associate must attest to completing the CE every year during the renewal.

(2) Professional ethics and law CE for all licensed associates. All licensed associates must include six hours of CE in professional ethics and law every two years. The associates must attest to completing the CE during the second renewal, fourth renewal, and sixth renewal. These six CE hours maybe completed anytime within the two-year period before each of these renewals. The six hours may contribute to the total eighteen hours of CE for the year in which the CE was completed.

(3) Suicide assessment, treatment, and management CE only for licensed social worker associate advanced and licensed social worker associate independent clinical. Licensed social worker associate advanced and licensed social worker associate independent clinical must complete six hours of suicide assessment, treatment, and management CE after initial licensure and before the first renewal in accordance with WAC 246-809-615 and 246-809-630.

(a) The licensed social worker associate advanced and licensed social worker associate independent clinical may delay completing the first training if he or she can demonstrate completion of the training no more than six years before gaining their initial license.

(b) The hours spent completing training in suicide assessment, treatment, and management count toward the total eighteen hours of CE.

**Table 1**  
**Continuing Education Requirements by Licensure Renewal Dates**

<b>License Type</b>	<ul style="list-style-type: none"> <li>• Marriage and Family Therapist Associate</li> <li>• Mental Health Counselor Associate</li> </ul>	<ul style="list-style-type: none"> <li>• Social Worker Associate Advanced</li> <li>• Social Worker Associate Independent Clinical</li> </ul>
<b>At Initial Licensure</b>	Not applicable for initial licensure	Not applicable for initial licensure
<b>Between Initial Licensure and First Renewal</b>	18 Hours Total	18 Hours Total <ul style="list-style-type: none"> <li>• 6 hours in suicide assessment, treatment, and management unless obtained 6 years prior to initial licensure</li> </ul>
<b>Between First and Second Renewal</b>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>	18 Hours Total <ul style="list-style-type: none"> <li>• 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date</li> </ul>
<b>Between Second and Third Renewal</b>	18 Hours Total	18 Hours Total

<b>Between Third and Fourth Renewal</b>	18 Hours Total • 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date	18 Hours Total • 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date
<b>Between Fourth and Fifth Renewal</b>	18 Hours Total	18 Hours Total
<b>Between Fifth and Sixth Renewal</b>	18 Hours Total • 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date	18 Hours Total • 6 of which must be in professional ethics and law which may be obtained anytime within 2 years before the CE due date

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

**WAC 246-809-710 Required disclosure information.**

(1) The following information shall be provided to each client or patient at the commencement of any program of treatment:

- (a) Name of firm, agency, business, or licensee's practice;
- (b) Licensee's business address and telephone number;
- (c) Washington state license number;
- (d) The licensee's name;
- (e) The methods or treatment modality and therapeutic orientation the licensee uses;
- (f) The licensee's education, and training;
- (g) The course of treatment, when known;
- (h) Billing information, including:
- (i) Client's cost per each treatment session; and
- (ii) Billing practices, including any advance payments and refunds;
- (i) Clients are to be informed that they as individuals have the right to refuse treatment and the right to choose a practitioner and treatment modality which best suits their needs;
- (j) This subsection does not grant (clients) new rights and is not intended to supersede state or federal laws and regulations, or professional standards;
- (k) The licensee must provide department of health contact information to the client so the client may obtain a list of or copy of the acts of unprofessional conduct listed under RCW 18.130.180. Department of health contact information must include the name, address, and telephone number for the health professions complaint process.

(2) Associates must provide each client or patient, during the first professional contact, with a disclosure form disclosing that he or she is an associate under the supervision of an approved supervisor. Associates may not independently provide clinical social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise.

(3) Signatures are required of both the licensee providing the disclosure (~~information~~) and the client following a statement that the client (~~had~~) has been provided a copy of the required disclosure information and that the client has read and understands the information provided. The date of signature by each party is to be included at the time of signing.

AMENDATORY SECTION (Amending WSR 13-16-034, filed 7/29/13, effective 8/29/13)

**WAC 246-809-730 Retired active credential.**

(1) To obtain a retired active license a licensed counselor must comply with chapter 246-12 WAC, Part 5.

(2) A licensed counselor with a retired active license may practice no more than ninety days each year in Washington, or practice only in emergency circumstances such as earthquakes, floods, time of declared war or other states of emergency; and

(3) A licensed counselor with a retired active license must renew yearly on their birthday, and must report (~~thirty-six~~) eighteen hours of continuing education including six hours in professional ethics and law as required under WAC 246-809-630 every two years.

**WSR 17-13-083**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

[Filed June 16, 2017, 5:03 p.m., effective July 17, 2017]

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

Purpose: WAC 246-811-280 Suicide assessment training standards, the adopted rule establishes that by July 2017 chemical dependency professionals must complete training in suicide assessment, including screening and referral, from the department of health's approved model list of trainings. This is to implement changes to RCW 43.70.442.

Citation of Existing Rules Affected by this Order: Amending WAC 246-811-280.

Statutory Authority for Adoption: RCW 18.205.060 and 43.70.442.

Adopted under notice filed as WSR 17-06-061 on February 28, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 16, 2017.

John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 14-09-102, filed 4/22/14, effective 4/22/14)

**WAC 246-811-280 Suicide assessment training standards.** ~~((A-qualifying))~~ **(1) A CDP must complete a training in suicide assessment, including screening and referral** ~~((must:~~

~~((1)))~~ The training must be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.

(a) Until July 1, 2017, the training must be approved by the American Foundation for Suicide Prevention; the Suicide Prevention Resource Center; an industry-recognized organization or an institution of higher learning listed in WAC 246-811-200; or an association which approves training programs based on observation and experiment or best available practices.

(b) Beginning July 1, 2017, the training must be on the department's model list for training programs in suicide assessment, treatment and management. The model list is developed in accordance with rules adopted by the department that establish minimum standards for training programs. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~(2) ((Be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.~~

~~((3)))~~ A certified chemical dependency professional who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

~~((4)))~~ **(3)** A certified chemical dependency professional who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

**WSR 17-13-102  
PERMANENT RULES  
PIERCE COLLEGE**

[Filed June 20, 2017, 10:23 a.m., effective July 21, 2017]

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

Purpose: Address current social and technological issues related to student rights, responsibilities and conduct of students at Pierce College.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Adopted under notice filed as WSR 17-09-038 on April 13, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 20, Amended 0, Repealed 75 [0].

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 20, Amended 0, Repealed 75 [0].

Number of Sections Adopted Using Negotiated Rule Making: New 20, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 20, 2017.

Michele Johnson  
Chancellor and CEO

**Chapter 132K-135 WAC**

**PIERCE COLLEGE—STUDENT CONDUCT CODE**

**NEW SECTION**

**WAC 132K-135-020 Authority.** The board, acting pursuant to RCW 28B.50.140(14), delegates to the chancellor of the college the authority to administer disciplinary action. The chancellor is authorized to delegate or reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary. Administration of the disciplinary procedures is the responsibility of the vice president of learning and student success or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

**NEW SECTION**

**WAC 132K-135-030 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

(1) "Assembly" means any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(2) "Board" means the board of trustees of Community College District No. 11, state of Washington.



(3) "Calendar day" means days will be counted by excluding the first day and including the last day of timelines. When the last day falls on a Saturday, Sunday, or holiday, the last day will be the next day which is not a Saturday, Sunday, or holiday. When the period of time prescribed or allowed is less than seven days, Saturdays, Sundays, and holidays are not included in the count.

(4) "College" means Pierce College district and any other community college centers or facilities established within Washington State Community College District No. 11.

(5) "College community" means students, employees, trustees, and volunteers.

(6) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased, or operated by the board of Washington state Community College District No. 11, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have educational agreement with the college.

(7) "College official" includes any person employed by the college performing assigned duties.

(8) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(9) "Complainant" is any person who submits a complaint alleging that a student violated the student conduct code, or in matters of sexual misconduct, a complainant is an alleged victim of sexual misconduct.

(10) "Conduct review officer" is the dean of student success or other college administrator designated by the chancellor to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

(11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(12) "Day" means a weekday, excluding weekends, college holidays, and college closures unless otherwise specified.

(13) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(14) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten days or a dismissal are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(15) "Faculty member" and "instructor" are any employee of Community College District No. 11 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, faculty advisor, or librarian.

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

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

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

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

(17) "President" is the president of a college campus. The president is authorized to delegate any and all responsibilities as set forth in the chapter as may be reasonably necessary.

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

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

(20) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(21) "Sexual misconduct" has the meaning ascribed to this term in WAC 132K-135-070(15).

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

(23) "Student conduct officer" is a college administrator designated by the president or vice president of learning and student success to be responsible for implementing and enforcing the student conduct code.

(24) "Student organization" means any number of students who have met the college's formal requirements of clubs or organizations.

(25) "WAC" means Washington Administrative Code which can be accessed at <http://app.leg.wa.gov/wac/>.

(26) "Visitors" means guests, applicants, contractors, vendors, advisory board members, foundation board members, and members of the public on college premises.

#### NEW SECTION

**WAC 132K-135-040 Statement of jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college-sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community and/or visitors or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic

travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of notification of acceptance at the college through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion on a case-by-case basis to determine whether the student conduct code will be applied to conduct that occurs off-campus.

#### NEW SECTION

**WAC 132K-135-050 Students abroad.** Students who participate in any college-sponsored or sanctioned international program shall observe the following:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is placed;
- (3) Any other agreements related to the student's program in another country; and
- (4) Pierce College's student conduct code.

#### NEW SECTION

**WAC 132K-135-060 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

- (1) Academic freedom.
  - (a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.
  - (b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).
  - (c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.
  - (d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate

and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

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

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

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

#### NEW SECTION

**WAC 132K-135-070 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

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

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment.

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

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

(d) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

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

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

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

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

(3) **Obstruction or disruption.** Obstruction or disruption of:

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

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

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct, which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property.

(5) **Bullying is severe or pervasive physical or verbal (written or oral) abuse.**

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

(7) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community, visitors, or organization; or

(d) Possession of such property or money after it has been stolen.

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

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

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

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

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

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

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization

that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

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

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

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

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

(d) **Tobacco, electronic cigarettes, and related products.** The college community and visitors will abide by all Washington state laws and college policy as it relates to the use of tobacco, electronic cigarettes, and related products.

(12) **Lewd conduct.** Conduct which is lewd, obscene, or indecent.

(13) **Disorderly conduct.** Conduct which disrupts campus operations or the educational, social, or housing programs, or assisting or encouraging another person to engage in such conduct.

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

(15) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors.

(b) **Sexual intimidation.** The term "sexual intimidation" means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

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

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

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

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Intimate partner violence is violence by a person who is or has been in a dating, romantic, or intimate relationship with the victim.

(v) Stalking is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) **Consent.** Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or action indicating freely given agreement to have sexual intercourse or sexual contact.

A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual activity.

An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual sexual activity.

(16) **Harassment.** Unwelcome and offensive conduct including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational, social, or housing programs or that creates an intimidating, hostile, or offensive environment for other college community members and/or visitors. Harassing conduct may include, but is not limited to, physical, verbal, written, social media, and electronic communications.

Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment."

(17) **Retaliation.** Any intentional, adverse action taken by an accused individual or allied third party, absent legitimate nondiscriminatory purposes, as reprisal against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliatory actions include, but are not limited to, threats or actual violence against the person or their property, adverse educational or employment consequences, ridicule, intimidation, bullying, or ostracism.

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

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

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

(20) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the college community and/or visitors, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

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

(22) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of profes-

sional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

#### NEW SECTION

**WAC 132K-135-090 Disciplinary sanctions—Terms—Conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be imposed. Other than college dismissal or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

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

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

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

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

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

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

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

(7) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately cer-

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

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

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

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

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

(10) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold will be released.

(11) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(12) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

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

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

### HEARING PROCEDURES

#### NEW SECTION

##### **WAC 132K-135-100 Initiation of disciplinary action.**

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

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing the student to attend a disciplinary meeting. The notice shall

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

(3) The student conduct officer, prior to taking disciplinary action in a case involving sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

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

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

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s) as described in WAC 132K-135-090.

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

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

#### NEW SECTION

**WAC 132K-135-110 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal consti-

tutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

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

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

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

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

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

(b) Dismissals; and

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

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

(a) Suspensions of ten days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 132K-135-120 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which

involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and the complainant in cases involving sexual misconduct. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the college's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

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

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

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

#### NEW SECTION

**WAC 132K-135-130 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided a party files a written request for review with the conduct review officer within ten days of service of the initial decision.

(2) The president shall not participate in any case in which involved as a complainant or witness, or in which there is direct or personal interest, prejudice, or bias, or in which previous actions have been taken in an advisory capacity.

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

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

disposition of the matter within twenty calendar days after the request is submitted.

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

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

#### NEW SECTION

**WAC 132K-135-140 Student conduct committee.** (1) The student conduct committee shall consist of five members appointed by the chancellor:

(a) Two full-time classified staff members;

(b) Two faculty members;

(c) One administrator (other than an administrator serving as a student conduct officer or conduct review officer).

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

(3) Hearings may be heard by a hearing panel consisting of a quorum of three members of the committee, so long as one member is the chair. Committee action may be taken upon a majority vote of all committee members presiding over the hearing.

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

#### NEW SECTION

**WAC 132K-135-150 Appeal—Student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

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

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

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the

hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

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

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

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

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

(9) Each party may be accompanied at the hearing by a nonattorney assistant of the party's choice. A respondent, or complainant in a case involving allegations of sexual misconduct, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132K-135-160 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

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

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

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

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

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

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

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

(7) In cases involving allegations of sexual misconduct, neither party shall directly question or cross examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

#### NEW SECTION

**WAC 132K-135-170 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

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

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

(4) The committee's initial decision shall also include a statement of the available procedures and time frames for seeking reconsideration or appeal.

(5) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of



record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

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

#### NEW SECTION

**WAC 132K-135-180 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a written notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

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

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

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

(5) The president has discretion to suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(6) Per RCW 34.05.455 the president shall not engage in any improper "ex parte" communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132K-135-190 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure is pending.

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

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

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

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

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

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

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

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

(c) The conditions, if any, under which the respondent may physically access the college premises or communicate with members of the college community and visitors. If the respondent has been trespassed from the college premises, a notice against trespass shall be included that warns the respondent that privilege to enter into or remain on college premises has been withdrawn and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college premises other than for a scheduled meeting with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

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

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

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

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

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall

include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

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

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

#### NEW SECTION

**WAC 132K-135-200 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in their classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

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

(3) Faculty members have the right to temporarily suspend any student(s) from a single class or related activity for the remainder of that day if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity, or the learning and teaching environment. The faculty member shall report this temporary suspension to the student conduct officer or designee on the same day. In consultation with the faculty member, the student conduct officer may set conditions for the student upon return to the class or activity.

#### NEW SECTION

**WAC 132K-135-210 Sexual misconduct proceedings.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

#### NEW SECTION

**WAC 132K-135-250 Brief adjudicative proceedings—College record.** The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review consistent with RCW 34.05.476. These records shall be maintained as the official record of the proceedings.

**WSR 17-13-105**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
(Board of Boiler Rules)

[Filed June 20, 2017, 10:28 a.m., effective July 31, 2017]

Effective Date of Rule: July 31, 2017.

Purpose: The board of boiler rules and the department of labor and industries boiler program is increasing fees by the fiscal-growth factor of 4.16 percent for fiscal year 2018 (office of financial management's maximum allowable fiscal growth rate) in WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The boiler program's budget and projected revenue were evaluated and a fee increase is necessary to cover the program's operating expenses.

Citation of Existing Rules Affected by this Order: Amending WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 17-09-066 on April 18, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 20, 2017.

Terry Chapin, Chair  
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 16-18-003, filed 8/25/16, effective 10/1/16)

**WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?** The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): \$((~~52.10~~)) 54.00.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$((~~22.40~~)) 23.30.

Hot water heaters per RCW 70.79.090, inspection fee: \$((~~6.90~~)) 7.10.

Heating boilers:	Internal	External
Cast iron—All sizes	<del>\$(37.80)</del> <u>39.30</u>	<del>\$(30.20)</del> <u>31.40</u>
All other boilers less than 500 sq. ft.	<del>\$(37.80)</del> <u>39.30</u>	<del>\$(30.20)</del> <u>31.40</u>
500 sq. ft. to 2500 sq. ft.	<del>\$(75.50)</del> <u>78.60</u>	<del>\$(37.80)</del> <u>39.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>\$(30.20)</del> <u>31.40</u>	<del>\$(14.80)</del> <u>15.40</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	<del>\$(37.80)</del> <u>39.30</u>	<del>\$(30.20)</del> <u>31.40</u>
100 sq. ft. to less than 500 sq. ft.	<del>\$(45.80)</del> <u>47.60</u>	<del>\$(30.20)</del> <u>31.40</u>
500 sq. ft. to 2500 sq. ft.	<del>\$(75.50)</del> <u>78.60</u>	<del>\$(37.80)</del> <u>39.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	<del>\$(30.20)</del> <u>31.40</u>	<del>\$(14.80)</del> <u>15.40</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
	Internal	External
Less than 15 sq. ft.	<del>\$(30.20)</del> <u>31.40</u>	<del>\$(22.40)</del> <u>23.30</u>
15 sq. ft. to less than 50 sq. ft.	<del>\$(44.80)</del> <u>46.60</u>	<del>\$(22.40)</del> <u>23.30</u>
50 sq. ft. to 100 sq. ft.	<del>\$(52.30)</del> <u>54.40</u>	<del>\$(30.20)</del> <u>31.40</u>
For each additional 100 sq. ft. or any portion thereof	<del>\$(52.20)</del> <u>54.30</u>	<del>\$(14.80)</del> <u>15.40</u>
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours	<del>\$(45.80)</del> <u>47.60</u>	
For each hour or part of an hour in excess of 8 hours		<del>\$(68.30)</del> <u>71.10</u>
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours		<del>\$(68.30)</del> <u>71.10</u>
For each hour or part of an hour in excess of 8 hours	<del>\$(106.80)</del> <u>111.20</u>	
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours	<del>\$(45.80)</del> <u>47.60</u>	

For each hour or part of an hour in excess of 8 hours ~~\$(68.30)~~  
71.10

When insurance company is authorized inspection agency:  
For each hour or part of an hour up to 8 hours ~~\$(68.30)~~  
71.10

For each hour or part of an hour in excess of 8 hours ~~\$(106.80)~~  
111.20

Examination fee: A fee of ~~\$(84.50)~~ 88.00 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ~~\$(45.70)~~ 47.50 for initial work card. A fee of ~~\$(28.40)~~ 29.50 for annual renewal.

If a special inspector changes companies: A work card fee of ~~\$(45.70)~~ 47.50.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of ~~\$(425.00)~~ 442.60 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

**WSR 17-13-124**

**PERMANENT RULES**

**DEPARTMENT OF COMMERCE**

[Filed June 21, 2017, 10:10 a.m., effective July 22, 2017]

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

Purpose: Changes to the Public Records Act, court decisions, and commerce's organizational structure and records disclosure procedures have made parts of commerce's Public Records Act rules obsolete. Rules are updated to reflect current standards and practices, and the chapter is moved from Title 130 WAC to Title 365 WAC to better align with other commerce WAC. In addition, WAC 365-04-030 is updated to reflect changes to commerce's address and business hours.

Citation of Existing Rules Affected by this Order: Repealing chapter 130-10 WAC, Public records—Disclosure; and amending WAC 365-04-030 Department organization.

Statutory Authority for Adoption: Chapters 42.56 and 43.330 RCW.

Adopted under notice filed as WSR 17-09-076 on April 19, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 12, Amended 1, Repealed 0.

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

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

Date Adopted: June 15, 2017.

Brian Bonlender  
Director

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

Chapter 130-10 WAC Public records—Disclosure.

AMENDATORY SECTION (Amending Order 73-4, filed 9/12/73)

**WAC 365-04-030 ((Agency)) Department organization.** (1) The executive head of the ~~((agency)) department~~ is a director appointed by the governor. The director may delegate such of his or her functions, powers, and duties to such officers and employees of the ~~((office)) department~~ as he or she deems expedient to the furtherance of the purposes of the ~~((agency)) department~~. The operating sections of the ~~((agency)) department~~ include the ~~((comprehensive health planning office, the law and justice planning office, and the local planning assistance, community services, model cities/planned variations, training and education, special projects, and administrative divisions))~~ administrative services division, the community services and housing division, the office of economic development and competitiveness, the energy division, and the local government division.

(2) The principal office of the ~~((agency)) department~~ shall be ~~((at Olympia, Washington, in care of the Director of the Planning and Community Affairs Agency, Insurance Building, which office))~~ located at 1011 Plum Street SE, Olympia, Washington. This office shall be open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., (Saturdays, Sundays, and legal holidays excepted). Submissions, requests and communications shall be sent to the Director, ((Planning and Community Affairs Agency, Insurance Building, Olympia, Washington 98504)) Washington State Department of Commerce, P.O. Box 42525, Olympia, Washington 98504-2525.

~~((3) Pursuant to chapter 39.34 RCW and Executive Order 73-03, the director of the agency has entered into a joint venture agreement under which the functions and responsibilities of the planning and community affairs agency's local planning assistance, model cities/planned variations, special projects, training and education, community services, comprehensive health planning, law and justice planning and the Indian economic and employment assistance divisions, sections, and programs; as well as portions of the agency's administrative division and supporting programs have been assigned and delegated to the office of community development. The office of community development shall act as the agent for the planning and community affairs agency in carrying out the agency's functions and responsibilities; the agency shall act through the office of community development in connection with all matters assigned and delegated to the office of community development under the joint venture agreement for the duration of that agreement.))~~

**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.

### Chapter 365-10 WAC

#### PUBLIC RECORDS—DISCLOSURE

##### NEW SECTION

**WAC 365-10-010 Purpose.** The purpose of this chapter shall be to ensure the department's compliance with the provisions of the Public Records Act, chapter 42.56 RCW.

##### NEW SECTION

**WAC 365-10-020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Department" means the department of commerce.
- (2) "Disclosure" means inspection and/or copying.
- (3) "Public record" has the meaning ascribed to it in RCW 42.56.010, available at leg.wa.gov.
- (4) "Writing" has the meaning ascribed to it in RCW 42.56.010, available at leg.wa.gov.

##### NEW SECTION

**WAC 365-10-030 Public disclosure officer.** The department shall designate a public disclosure officer who shall be responsible for implementing the department's rules regarding disclosure of public records, coordination of staff in this regard, and generally ensuring compliance by the staff with public records disclosure requirements.

##### NEW SECTION

**WAC 365-10-040 Public records—Availability.** (1) Public records are available for public inspection and copying during the department's normal business hours, which can be found in WAC 365-04-030. Records must be inspected at the main office of the department.

(2) The department will at all times take the most timely possible action on requests for disclosure, and shall respond in writing as set forth in WAC 365-10-090 within five business days of receipt of the request for records.

#### NEW SECTION

**WAC 365-10-050 Request for public records.** (1) Any person wishing to inspect or copy public records of the department may submit the request in writing to the department, attn. Public Disclosure Officer or via e-mail at [publicdisclosure@commerce.wa.gov](mailto:publicdisclosure@commerce.wa.gov). The department's current mailing address can be found in WAC 365-04-030. The request should include the following information:

- a) Name of requestor;
- b) Address of requestor;
- c) Other contact information, including telephone number and e-mail address;
- d) Identification of the public records sought adequate for the public records officer to locate the records; and
- e) The date and time of day of the request.

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

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

#### NEW SECTION

**WAC 365-10-060 Fees—Inspection and copying.** (1) No fee shall be charged for the inspection of public records.

(2) The charge for providing public records may be the actual cost incident to providing the records.

(a) The charge may include the actual cost of the postage or delivery, including the cost of the shipping container, cost of duplicating tape recordings, videotapes, photographs, slides, disks or similar media.

(b) There will be no charge for e-mailing electronic records to a requestor, unless another cost applies.

(3) If determining the actual cost is too burdensome or if the cost cannot be determined, the department may charge fifteen cents for each page, however produced, and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(4) Before beginning to copy public records, the public records officer may require:

(a) A deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor;

(b) The payment of the remainder of the copying costs before providing all the records; or

(c) The payment of the costs of copying an installment before providing that installment. The department will not charge sales tax when it makes copies of public records.

(5) Payment must be made by cash in the exact amount charged, check, or money order to the department.

#### NEW SECTION

**WAC 365-10-070 Protection of public records.** (1) No person shall knowingly alter, deface, or destroy public records of the department.

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

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

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

#### NEW SECTION

**WAC 365-10-080 Records index.** The department will maintain and make available for public inspection and copying an index in accordance with RCW 42.56.070(5).

#### NEW SECTION

**WAC 365-10-090 Disclosure procedure.** 1) Within five business days of receipt of the public records request, the public records officer will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, obtain clarification from the requestor. The public records officer may then revise the estimate of when records will be available; or

(e) Deny the request.

(2) In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure pursuant to RCW 42.56.540. The notice to the affected persons will include a copy of the request.

(3) Some records are exempt from disclosure, in whole or in part. If the department believes that an entire record is exempt from disclosure and should be withheld, the public records officer will identify the record, state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, the public records officer will redact the exempt portions, provide the nonexempt portions, state the specific exemption and provide a brief explanation of why the portions of the record are exempt from disclosure.

(4) When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the

public records officer will close the request and indicate to the requestor that the department has closed the request.

(5) When a response to a public records request is complex or involves a large number of records, the public records officer may provide access for inspection and copying in installments pursuant to RCW 42.56.080.

a) The requestor will be notified when an installment is ready for inspection. If, within thirty calendar days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer may close the request.

b) When the request is for copies of public records, the public records officer may require payment for each installment either prior to providing the installment or prior to providing subsequent installments. In addition, the requestor may be required to provide a deposit up to ten percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost within thirty days, the public records officer may close the request.

(6) The process for electronic public records is the same as paper public records.

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

(b) Whenever possible, the department will provide records in electronic format. If the department has only a paper copy of the record, the department, when feasible, may scan the paper record and provide the resulting electronic copy to the requestor. If the department maintains the record in electronic format, the record will be provided in the maintained electronic format unless the requestor specifically asks to receive the record in paper copies or it is otherwise not feasible to provide the record in electronic format.

(c) If a record exists on a web page, the department will respond to a request for the record by providing the link to the record on the web page.

(7) The department is not required to create a record that does not otherwise exist.

**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 365-10-100 Exemptions to public records disclosure.** (1) The department reserves the right to determine that a public record requested is exempt, in whole or in part, under the provisions of chapter 42.56 RCW or other applicable provision of law.

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

(3) The department is prohibited by statute from disclosing lists of individuals for commercial purposes pursuant to RCW 42.56.070(9).

#### NEW SECTION

##### **WAC 365-10-110 Qualifications on nondisclosure.**

(1) To the extent that nondisclosable information can be deleted from the specific records sought, the remainder of the records shall be disclosable.

(2) No exemptions shall be construed to require nondisclosure of statistical information not descriptive of identifiable persons, as required by RCW 42.56.210(1).

(3) Inspection and copying of any specific records otherwise nondisclosable is permissible pursuant to an order of the superior court enforcing a subpoena in accordance with the provisions of RCW 42.56.210(2).

#### NEW SECTION

##### **WAC 365-10-120 Review of denials of public records request.**

(1)(a) Any person who has been denied an opportunity to inspect or copy a public record by the department, or who believes that the department has not made a reasonable estimate of the time required to respond to a public record request, may petition the department for prompt review of its decision.

(b) The petition shall be in writing and shall include a copy of, or reasonably identify, the written statement by the public disclosure officer denying the request or providing the estimate.

(c) The petition shall be sent to the public disclosure officer who shall promptly provide the petition and any other relevant information to the department official designated by the department to conduct the review.

(2) The designated official will immediately consider the petition and either affirm or reverse the denial or the estimate. This review will be complete within two business days following the department's receipt of the petition, or within such times as mutually agreed by the department and the requestor.

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

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

#### WSR 17-13-125

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed June 21, 2017, 10:12 a.m., effective July 22, 2017]

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

Purpose: This rule-making order amends chapter 16-08 WAC, Practice and procedure, by:

1. Clarifying the department's process for brief adjudicative proceedings, including filing, department decisions, administrative review, and the agency record;

2. Adding actions and deleting actions that the department may review in a brief adjudicative proceeding, to address changes in law and other rules; and

3. Improving clarity and readability.

Citation of Existing Rules Affected by this Order: Amending WAC 16-08-002, 16-08-003, 16-08-004, 16-08-011, 16-08-091, 16-08-141, 16-08-151, and 16-08-171.

Statutory Authority for Adoption: RCW 43.17.060.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-10-068 on May 3, 2017.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 8, Repealed 0.

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

Date Adopted: June 21, 2017.

Derek I. Sandison  
Director

**AMENDATORY SECTION** (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

**WAC 16-08-002 Definitions.** The definitions in this section apply to this chapter unless the context otherwise requires:

"Date of service" means the date the department places a properly dated and stamped document into the United States Postal Service or other mail service for delivery.

"Department" means the department of agriculture of the state of Washington.

"Director" means the director of the department of agriculture.

"Person" means natural persons, sole proprietorship, corporations, trusts, unincorporated associations and partnerships.

"Presiding officer" means the person designated by the director to preside over adjudicative proceedings.

"Reviewing officer" means the director of agriculture or the person designated by the director to review initial orders and prepare and enter final orders for the director.

**AMENDATORY SECTION** (Amending WSR 04-02-063, filed 1/7/04, effective 2/7/04)

**WAC 16-08-003 ((Declaration of) Purpose ((and applicability)) of this chapter.** This chapter sets forth the rules of procedure that ~~((are applicable))~~ apply to adjudicative proceedings before the department. ~~((Because))~~ This chapter does not apply to civil penalties and orders issued by the department ((pursuant to)) under chapters 90.64 and 90.48 RCW in the ((livestock)) dairy nutrient management program ((are appealable only to the pollution control hearings board (PCHB) under chapter 43.21B RCW and chapter 371-08 WAC, this chapter is not applicable to those proceedings)).

**AMENDATORY SECTION** (Amending WSR 04-02-063, filed 1/7/04, effective 2/7/04)

**WAC 16-08-004 ((Livestock)) Dairy nutrient management program ((LNMP)) appeals.** (1) All appeals of civil penalties and orders issued by the ~~((department in the livestock))~~ department's dairy nutrient management program ((shall be)) are filed with the ~~((PCHB))~~ pollution control hearings board at the environmental hearings office and ~~((shall be))~~ are served on the department of agriculture ~~((pursuant to))~~ under RCW 43.21B.230 and 43.21B.300, and WAC 371-08-335 and 371-08-345.

(2) ~~((Pursuant to))~~ Under WAC 371-08-306, when referring to appeals related to civil penalties and orders issued by the department of ~~((agriculture in the livestock))~~ agriculture's dairy nutrient management program, all references to "department" in both chapters 43.21B RCW and 371-08 WAC ~~((shall))~~ mean the department of agriculture; all references to "director" ~~((shall))~~ mean the director of the department of agriculture.

**AMENDATORY SECTION** (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

**WAC 16-08-011 ((Adoption of)) The department of agriculture adopts the model rules of procedure.** The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge ~~((pursuant to))~~ under RCW 34.05.250 ~~((, as now or hereafter amended,))~~ are ~~((hereby))~~ adopted for use by the department. In the case of a conflict between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted in this chapter by the department ~~((shall))~~ take precedence.

**AMENDATORY SECTION** (Amending WSR 91-23-051, filed 11/15/91, effective 12/16/91)

**WAC 16-08-091 Depositions in adjudicative proceedings—Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the department of agriculture and all parties. The notice shall state the time and place for taking the deposition, the name and address of each person to be examined, if known, and if the name is not known, a general description sufficient to identify him or her or the particular class or group to which he or she belongs. On

motion of a party upon whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

**AMENDATORY SECTION** (Amending WSR 11-20-047, filed 9/29/11, effective 10/30/11)

**WAC 16-08-141 Brief adjudicative proceedings—Applicability.** ((1) Pursuant to RCW 34.05.482, the department will use brief adjudicative proceedings where not violative of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. Those circumstances may include:

- (a) Actions taken by the agency based on the failure:
  - (i) To maintain, supply, or display records; and/or
  - (ii) To display evidence of a license; and/or
  - (iii) To display or post information required by law; and/or
  - (iv) To possess required insurance, bonding or other security.
- (b) Actions taken with respect to late application renewal fees.
- (c) Actions taken with respect to certificate of compliance agreements under WAC 16-461-010.
- (d) Actions taken with respect to sale permits pursuant to RCW 15.13.270.
- (e) Actions taken to revoke certification of plant material as foundation or breeder planting stock pursuant to RCW 15.14.110.
- (f) Penalty actions taken with respect to cattle breed name use.
- (g) Penalty actions taken against milk producers pursuant to RCW 15.36.115 or 15.36.595.
- (h) Dairy degrade or permit suspension actions taken pursuant to chapter 15.36 RCW.
- (i) Actions taken with respect to licenses for sale of milk for animal food pursuant to RCW 15.37.030 et seq.
- (j) Actions taken with respect to registration of commercial feed pursuant to RCW 15.53.9036.
- (k) Actions taken with respect to pesticide registration under RCW 15.58.110.
- (l) Actions taken with respect to organic certification pursuant to RCW 15.86.060 and/or 15.86.070.
- (m) Actions taken with respect to mushroom buyer or dealer licenses pursuant to RCW 15.90.020.
- (n) Actions taken with respect to animal health certificates pursuant to RCW 16.36.050.
- (o) Actions taken with respect to destruction or treatment of quarantined animals pursuant to RCW 16.36.090.
- (p) Actions taken with respect to licenses for garbage feeding to swine pursuant to RCW 16.36.108.
- (q) Actions taken with respect to licenses related to custom farm slaughter pursuant to chapter 16.49 RCW.
- (r) Actions taken with respect to licenses related to custom meat facilities pursuant to chapter 16.49 RCW.

(s) Actions taken with respect to approval of livestock pens within feedlots pursuant to RCW 16.58.080.

(t) Actions taken with respect to certified feed lot licenses pursuant to RCW 16.58.130.

(u) Actions taken with respect to seizure and destruction of incorrect weights and measures pursuant to RCW 19.24.250.

(v) Actions taken with respect to licenses of grain dealers or warehousemen pursuant to RCW 22.09.471.

(w) Revocation of compliance agreements for the completion of state phytosanitary, sanitation, or brown garden snail certificates pursuant to chapters 15.13 and 17.24 RCW.

(x) Revocation of compliance agreements for preprinting or use of rubber stamps for nursery stock inspection certificates pursuant to chapter 15.13 RCW.

(y) Revocation of compliance agreements for root sampling of nursery stock pursuant to chapter 15.13 RCW.

(z) Agency refusal to certify seed stocks because of misleading or confusing labeling pursuant to chapter 15.60 RCW and WAC 16-316-345.

(aa) Rescinding of permit for seed conditioning pursuant to chapter 15.60 RCW and WAC 16-316-185(8).

(bb) Expulsion from or refusal to allow entry into a seed or plant certification program pursuant to chapters 15.60 and 15.13 RCW.

(2) A party to a brief adjudicative hearing has twenty-five days to file an application or request from the date of service of the department's notice of intent to take action. The application or request for a brief adjudicative hearing shall be filed at the address listed on the form provided by the department. The party filing the application or request for a brief adjudicative proceeding shall submit a written explanation of their view of the matter along with the application or request. Other parties may file a written response within ten days after service of the application for a brief adjudicative proceeding. Copies of the response shall be served on all parties. Oral statements may be submitted and considered as follows:

(a) If a party to a brief adjudicative proceeding desires an opportunity to make an oral statement, it should be requested in the application or request.

(b) A request to make an oral statement may be granted if the presiding officer believes such a statement would benefit him or her in reaching a decision. The presiding officer shall notify the parties within a reasonable time of the decision to grant or deny the request to hear oral comments, and if the request is granted, shall notify the parties of the time and place for hearing comments.

(3) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a brief statement of the reasons for the decision. Within ten days of the decision, the presiding officer shall give the parties a brief written statement of the reasons for the decision and information about any internal administrative review available.

(4) The presiding officer's written decision is an initial order. If no review is taken of the initial order, it shall be the final order.

(5) The reviewing officer shall conduct a review of an initial order resulting from a brief adjudicative proceeding upon the written or oral request of a party if the director receives the request within twenty-one days from the service



of the initial order. If no request is filed in a timely manner, the reviewing officer may review, on his or her own motion, an order resulting from a brief adjudicative proceeding and adopt, modify, or reject the initial order; but the reviewing officer shall not take any action on review less favorable to any party without giving that party notice and opportunity to explain his or her view of the matter.

(6) A request for review of an initial order shall contain an explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. The request for review shall be filed with the director and copies shall be served on all parties, and evidence of such service filed. Responses to a request for review of an initial order shall be filed with the director and served on all parties within ten days after service of the request for review.

(7) The order on review shall be in writing, shall include a brief statement of the reasons for the decision, and shall be entered within twenty days after the date of the initial order or of the request for review, whichever is later. The order shall include a description of any further available administrative review or, if none is available, a notice that judicial review may be available.

(8) The record in a brief adjudicative proceeding shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding and/or by the reviewing officer for any review.) (1) If an adjudicative proceeding is requested in a matter not listed in this section, a brief adjudicative proceeding may be conducted at the discretion of the presiding officer when use of a brief adjudicative proceeding will not violate any provision of law and protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties and:

(a) The only issues presented are issues of law; or

(b) Both parties have agreed to a brief adjudicative proceeding.

(2) Brief adjudicative proceedings may be used to determine the following issues including, but not limited to:

(a) Whether an applicant, permittee, or licensee satisfies all requirements to maintain, provide, make available for review, or display records or has committed other record-keeping violations.

(b) Whether an applicant, permittee, or licensee satisfies all requirements to create, maintain, provide, or make available for review data or reports.

(c) Whether an applicant, permittee, or licensee satisfies all requirements to display or post information required by law.

(d) Whether an applicant satisfies financial security requirements by providing adequate proof of insurance, surety bonds, custodial account, or other proof of financial security as required by law.

(e) Whether an applicant satisfies terms for reinstatement of a license or registration after a period of license or registration suspension or revocation.

(f) Whether an applicant meets minimum eligibility requirements for an initial or renewal application for a license, permit, registration, or certification.

(g) Whether an applicant, licensee, permittee, or registrant should be denied a license, permit, registration, or certification for failure to comply with labeling requirements.

(h) Whether an applicant, permittee, or licensee failed to cooperate in an investigation, examination, sample taking, or inspection by the department.

(i) Whether an applicant, permittee, or licensee violated the terms of a final order issued by the director or director's designee.

(j) Whether an applicant, permittee, licensee, or registrant failed to timely pay an application fee, renewal fee, or an assessment required for a license, registration, permit, or certification.

(k) Whether commercial use of a weighing or measuring instrument or device violates chapter 19.94 RCW or 16-674, 16-662, or 16-663 WAC.

(l) Whether motor fuel marketed for sale is in compliance with chapters 19.112 RCW and 16-662 WAC.

(m) Whether planting stock fails to meet the certification requirements under chapter 15.14 RCW.

(n) Whether a milk processing plant or producer license should be lowered in grade for failure to meet requirements under chapter 15.36 RCW.

(o) Whether a license for sale of milk for animal food should be denied, suspended, or revoked for violations under chapter 15.37 RCW.

(p) Whether a commercial feed registration of pet food and specialty pet food should be denied or canceled for failure to comply with requirements under chapter 15.53 RCW.

(q) Whether registration on the organic brand name materials list should be denied, suspended, or revoked for failure to meet the requirements under chapter 15.86 RCW.

(r) Whether an applicant for a custom farm slaughter license or a custom meat facility license should be denied, suspended, or revoked for failure to comply with the requirements under chapter 16.49 RCW.

(s) Whether an applicant for pesticide registration should be denied for failure to comply with the pesticide product or labeling requirements under chapter 15.58 RCW.

(t) Whether an applicant for fertilizer registration should be denied for failure to comply with commercial fertilizer product or labeling requirements under chapter 15.54 RCW.

(u) Whether an applicant for a license to feed garbage to swine should be denied, suspended, or revoked for failure to comply with the licensing requirements under chapter 16.36 RCW.

(v) Whether an applicant for a certified feed lot license should be denied, suspended, or revoked for failure to pay fees required under RCW 16.58.130.

(w) Whether a person is in violation of chapter 16.36 RCW for failure to secure a certificate of veterinary inspection for an animal being brought into Washington state.

(x) Whether a person is in violation of RCW 16.36.050 (2) for failure to transport or deliver an animal to the destination designated by a certificate of veterinary inspection, import health papers, permits, or other transportation documents required by law.

(y) Whether a person licensed to practice veterinary medicine, surgery, or dentistry in Washington state is in violation of RCW 16.36.080 for failure to report to the depart-

ment the existence or suspected existence of a reportable disease among animals within the state.

(z) Whether a seed conditioning permit should be revoked for failure to comply with chapters 15.49 RCW and 16-302 WAC.

#### NEW SECTION

**WAC 16-08-142 Brief adjudicative proceedings—Filing.** (1) A request for hearing (application for brief adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A party may request a brief adjudicative proceeding by completing the application form provided by the department, along with a written explanation of the party's view of the matter.

(2) A request for hearing is filed in a timely manner when the mailing is postmarked or received by the department within twenty-five days of service of the proposed department action giving rise to the request for hearing.

(3) A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) If the request for hearing is not timely filed with the department, the applicant waives his or her right to a hearing.

#### NEW SECTION

**WAC 16-08-144 Brief adjudicative proceedings—Procedure.** (1) Brief adjudicative proceedings shall be conducted by a presiding officer designated by the director in accordance with WAC 16-08-021.

(2) The parties or their representatives may present written documentation in addition to the request for hearing. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer may hear oral argument from the parties or their representatives if the presiding officer believes the statement will help in reaching a decision. If a party to a brief adjudicative proceeding desires to make an oral statement, a request shall be included in the application for the brief adjudicative proceeding. If the request is granted, the presiding officer will designate the time and place for taking oral statements and notify the parties.

(4) The parties may not call witnesses to testify.

(5) If a party fails to appear at the designated time and place for taking oral statements, the presiding officer shall take the oral statement of any party present and shall consider it and all written submissions.

#### NEW SECTION

**WAC 16-08-145 Brief adjudicative proceedings—Decisions.** (1) The presiding officer for brief adjudicative proceedings shall not issue an oral order.

(2) Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer shall

enter a written initial order. The initial order will contain a brief written statement of the reasons for the decision and information about any internal review available.

(3) If a party does not request administrative review of an initial order in accordance with WAC 16-08-148, the initial order becomes a final order on the twenty-first calendar day after service of the initial order.

#### NEW SECTION

**WAC 16-08-148 Brief adjudicative proceedings—Administrative review.** (1) Any party may request orally or in writing a review of the initial order issued under WAC 16-08-145. A petition for review of an initial order shall contain a written explanation of the party's view of the matter and a statement of reasons why the initial order is incorrect. Oral requests must be placed in writing.

(a) Petitions for review may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. A petition for review may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Petitions for review must be received by the department at the address designated in the initial order within twenty-one days of service of the initial order.

(b) Petitions for review shall be served on all parties, and evidence of such service filed at the address designated in the initial order.

(2) A party may file a response to a petition for a review.

(a) The response shall be filed at the address designated in the initial order within ten days of the date of service of the petition for review.

(b) Copies of the response shall be served on all other parties at the time the response is filed.

(3)(a) The department reviewing officer, upon his or her own motion, may petition for administrative review of an initial order.

(b) The reviewing officer shall provide notice to the parties of his or her determination to review the initial order within twenty-one days of service of the initial order. The notice to the parties shall state the date by which a decision shall be made. The reviewing officer shall not take any action on review that is less favorable than the initial order without giving all parties notice and an opportunity to explain his or her view of the matter.

(4) The reviewing officer shall enter a final order disposing of the proceeding. A final order shall be in writing and shall:

(a) Include a brief statement of the reasons for the decision;

(b) Be entered within twenty-one days after the date of the initial order or of the petition for review, whichever is later.

(5) If the reviewing officer deems it necessary, he or she may remand a matter for further proceedings.

#### NEW SECTION

**WAC 16-08-149 Brief adjudicative proceedings—Agency record.** The agency record in a brief adjudicative proceeding shall consist of any documents relating to the

matter that were considered or prepared by the presiding officer or by the reviewing officer for any review. The agency record shall include:

- (1) All initiating documents;
- (2) The request for hearing;
- (3) All documents submitted in the proceeding;
- (4) Any transcript or recording of any oral arguments presented; and
- (5) All orders issued in the case.

**AMENDATORY SECTION** (Amending WSR 98-09-085, filed 4/21/98, effective 5/22/98)

**WAC 16-08-151 Emergency adjudicative proceedings.** (1) Pursuant to RCW 34.05.479, the department shall use emergency adjudicative proceedings for the suspension or cancellation of authority in situations involving an immediate danger to the public health, safety, or welfare requiring immediate action by the department. Such situations shall include:

(a) Failure to possess required insurance, bonding or other security.

(b) Health, safety, or welfare violations when the violation involves an immediate danger to the public health, safety, or welfare, including, but not limited to, decisions by the department to:

(i) ~~Condemn horticultural plants under chapter 15.13 RCW; ((or to))~~

(ii) ~~Condemn infested or infected articles under chapter 15.08 RCW; ((or to))~~

(iii) ~~Issue stop sale, use, or removal order under chapter 15.49 RCW; ((or to))~~

(iv) ~~Quarantine apiaries under chapter 15.60 RCW; ((or to))~~

(v) ~~Quarantine animals under chapter 16.36 RCW; ((or to))~~

(vi) ~~Impound infested, infected, or regulated articles pursuant to chapter 17.24 RCW; ((or to)) and~~

(vii) ~~Close food processing facilities under chapter 69.07 RCW((;)) or under rules or regulations of the director adopted pursuant to such laws.~~

(2) The ~~((summary))~~ department shall enter a written order ~~((shall include))~~ containing a brief statement of findings of fact, conclusions of law, and justification for the determination of an immediate danger to the public health, safety, or welfare. The order shall be effective when entered. Service of the order shall be made pursuant to WAC 10-08-110. The order shall also give the affected party ~~((five days from service of the order))~~ instructions on how to request an adjudicative proceeding on the order, or, in the alternative, the ~~((director))~~ department may in the order automatically establish a date affording the affected party the opportunity to present any defense concerning why the ~~((summary))~~ order is incorrect.

(3) A ~~((decision made upon))~~ request for emergency hearing (application for an adjudicative proceeding) must be in writing and filed with the department during regular office hours at the address designated in the notice or instructions provided by the department. A request for hearing is filed in a timely manner when the mailing is postmarked or received

by the department within five days of service of the order. A request for hearing may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered, or certified mail. A request for hearing may be filed by electronic mail (email) only when instructions for email filings have been provided by the department.

(4) ~~The presiding officer~~ for the emergency adjudicative proceeding shall ~~((be expressed in))~~ issue a written order which shall be served on all parties ~~((within five days after its entry))~~. This written order is a final order.

~~((4))~~ (5) The ~~((summary))~~ order shall be effective pending disposition on the merits of the denial, suspension or revocation of authority.

**AMENDATORY SECTION** (Amending WSR 97-14-050, filed 6/27/97, effective 7/28/97)

**WAC 16-08-171 Documents—Filing.** Any documents filed with the director under provisions of the Administrative Procedure Act, chapter 34.05 RCW, Model rules of procedure, chapter 10-08 WAC, and this chapter, shall be filed with the Administrative Regulations Program, P.O. Box 42560, 1111 Washington St., S.E., Olympia, WA 98504-2560.

Unless otherwise required by law, ~~((filing of a document with the director shall be made personally, by first class mail, by certified or registered mail, by commercial parcel delivery company, or by electronic telefacsimile transmission and same day mailing of original showing same day postmark))~~ documents may be filed with the department by personal delivery, commercial delivery, fax, or first-class, registered or certified mail. Documents may be filed by electronic mail (email) only when instructions for email filings have been provided by the department. Filing shall occur within the period of time specified for filing by statute, rule, or order.

## WSR 17-13-130

### PERMANENT RULES

### DEPARTMENT OF AGRICULTURE

[Filed June 21, 2017, 11:27 a.m., effective July 22, 2017]

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

Purpose: This rule-making order amends WAC 16-302-240 Seed standards for alfalfa seed certification, by removing the seed certification requirement to test one pound of alfalfa seed for the presence of dodder.

This rule amendment qualifies for expedited rule making under RCW 34.05.353 (2)(c).

Citation of Existing Rules Affected by this Order: Amending WAC 16-302-240.

Statutory Authority for Adoption: RCW 15.49.005, 15.49.310, 15.49.370(3), chapter 17.24 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 17-09-040 on April 14, 2017.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2017.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-240 Seed standards for alfalfa seed certification.** (1) Seed standards for the production of alfalfa seed are as follows:

<b>Purity</b>	<b>Foundation</b>	<b>Registered</b>	<b>Blue Tag Certified</b>
Pure seed (minimum)	99.00%	99.00%	99.00%
Other crops (maximum)	.10%	.10%	.25%
Sweet clover (maximum)	none found	none found	90 per lb.
Inert matter (maximum)	1.00%	1.00%	1.00%
Weed seed (maximum)	.10%	.20%	.25%
Objectionable weed seeds (maximum)	none found	none found	18 per lb.
<i>Germination</i> (Min. total of germination and hard seed)	80.00%	85.00%	85.00%
or <i>Tetrazolium</i> (Min. total of Tetrazolium and hard seed)	82.00%	87.00%	87.00%

(2) Alfalfa seed must be free of prohibited noxious weed seeds and foundation class must be free of Brassica spp.

~~((3) One pound of seed will be examined for the presence of dodder.))~~