

WSR 18-21-049
PROPOSED RULES
BOARD OF INDUSTRIAL
INSURANCE APPEALS

[Filed October 8, 2018, 1:27 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedure (before the board of industrial insurance appeals (BIIA)).

Hearing Location(s): On December 4, 2018, at 10:30, at BIIA Oly, 2430 Chandler Court S.W., Olympia, WA.

Date of Intended Adoption: December 5, 2018.

Submit Written Comments to: David Threedy, P.O. Box 42401, Olympia, WA, email Dave.Threedy@biia.wa.gov, fax 855-586-5611, by November 23, 2018.

Assistance for Persons with Disabilities: Contact Laura Bradley, phone 360-753-6823, fax 885-586-5611, TTY 800-833-6388, web site www.biia.wa.gov, by November 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Public records: WAC 263-12-005, 263-12-016, 263-12-017, 263-12-01701, 263-12-018, 263-12-019**, amendments include added provisions for making an appointment with the public records officer in order to inspect records, waiver of copy fees when the amount would be considered de minimus, and various other housekeeping changes.

MEXMs and ROPs: WAC 263-12-093, amendment to the rule on agreements that are based on the parties informing the judge of the agreement without the need to issue a report of proceeding and separate order on agreement of parties. The judges can include all the parameters of the agreement in the order, negating the need to create a separate report of proceeding in order to issue an order on agreement of parties. Also amend rule on MEXMs to reflect current policy that the result will be an order on agreement of parties and not allow for the alternative result of a proposed decision and order.

Serving copies of filings on other parties: WAC 263-12-01501, our rule currently provides that copies of documents filed with the BIIA be *furnished* to other parties. Because practice requires litigants to *serve* parties, language of the rule will be amended accordingly.

Limited-English proficiency: WAC 263-12-145, amendment regarding time for filing a petition for review when a limited-English speaking party requests translation of a proposed decision and order. The time to file a petition for review will automatically be extended in order to allow for communication of the translated order.

Attorney fees: WAC 263-12-165, amendment to the attorney fee rule to provide direction on how fees will be determined under the cost shifting allowed by RCW 51.32.-185 and 51.32.187.

Significant decision rule: WAC 263-12-195, house-keeping for significant decision rule, it contains an update of applicable public records statute.

Reasons Supporting Proposal: **Public records: WAC 263-12-005, 263-12-016, 263-12-017, 263-12-01701, 263-**

12-018, 263-12-019, amendments include added provisions for making an appointment with the public records officer in order to inspect records, waiver of copy fees when the amount would be considered de minimus, and various other housekeeping changes.

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Attorney fees: WAC 263-12-165, amendment to the attorney fee rule provides direction on how fees will be determined under the cost shifting allowed by RCW 51.32.185 and 51.32.187 and the required information that will be considered.

Significant decision rule: WAC 263-12-195, house-keeping for significant decision rule, it contains an update of applicable public records statute.

Statutory Authority for Adoption: RCW 51.52.020.

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

Name of Proponent: BIIA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David E. Threedy, Olympia, 360-753-6823.

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

A cost-benefit analysis is not required under RCW 34.05.328. These are procedural rules relating to procedures, practices, or requirements relating to agency rules. There are no significant legislative rules proposed.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 8, 2018
David E. Threedy
Executive Secretary

AMENDATORY SECTION (Amending WSR 91-13-038, filed 6/14/91, effective 7/15/91)

WAC 263-12-005 Purpose. The purpose of this chapter is to promulgate rules concerning the board's practice and procedure pursuant to RCW 51.52.020 and to comply with RCW ((42.17.250 through 42.17.320)) 42.56.040 through 42.56.520 and chapter 40.14 RCW pertaining to public records.

AMENDATORY SECTION (Amending WSR 17-24-121, filed 12/6/17, effective 1/6/18)

WAC 263-12-01501 Communications and filing with the board. (1) **Where to file communications with the board.** Except as provided elsewhere in this section all written communications shall be filed with the board at its headquarters in Olympia, Washington. With written permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(2) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board by using one of four methods: Personally, by mail, by telephone facsimile, or by electronic filing. Failure of a party to comply with the filing methods selected by the party for use under this section, or as otherwise set forth in these rules or statute for filing written communications may prevent consideration of a document.

(a) **Filing personally.** The filing of a written communication with the board personally is accomplished by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(b) **Filing by mail.** The filing of a written communication with the board is accomplished by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(c) **Filing by telephone facsimile.**

(i) The filing of a written communication with the board by telephone facsimile is accomplished when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment during the board's customary office hours. All facsimile communications must be filed with the board via fax numbers listed on the board's web site.

(ii) The hours of staffing of the board's telephone facsimile equipment are the board's customary office hours. Docu-

ments sent by facsimile communication comments outside of the board's customary office hours will be deemed filed on the board's next business day.

(iii) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(iv) The party attempting to file a written communication by telephone facsimile bears the risk that the written communication will not be received or legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(v) The board may require a party to file an original of any document previously filed by telephone facsimile.

(d) **Electronic filing.** Electronic filing is accomplished by using the electronic filing link on the board's web site. Communication sent by email will not constitute or accomplish filing. Communication filed using the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. A separate transmission must be used for each appeal. Transmissions containing more than one docket number will be rejected and filing will not be accomplished, unless the multiple docket numbers have been previously consolidated by the board.

(3) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's web site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Appeals received via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(4) **Electronic filing of application for approval of claim resolution structured settlement agreement.** An application for approval of claim resolution structured settlement agreement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement agreement as provided on the board's web site. An electronic application for approval of claim resolution structured settlement agreement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Applications received by the board via the board's web site outside of the board's customary office hours will be deemed filed on the board's next business day. The board will issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement

agreement has been received. An electronic copy of the signed agreement for claim resolution structured settlement agreement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement agreement that fails to comply with the board's filing requirements. The board will notify the filing party of the rejection.

(5) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(6) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be ~~((furnished to))~~ serviced on all other parties or their representatives of record, and the original shall demonstrate compliance with ~~((this))~~ the requirement to serve all parties. All written communications with the board shall be on paper 8 1/2" x 11" in size.

AMENDATORY SECTION (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

WAC 263-12-016 Public records—Location. (1) Public records available. All public records of the board as defined in chapter 42.56 RCW are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW ~~((42.56.210-[42.56.480]))~~ 42.56.210 through 42.56.470.

(2) General information concerning the board may be obtained at its headquarters, 2430 Chandler Ct. S.W., P.O. Box 42401, Olympia, Washington 98504-2401.

(3) Public records officer. The public records officer shall be responsible for the following: The implementation of the board's rules and regulations regarding release of public records, coordinating the staff of the board in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 42.56 RCW.

(4) Indices are available providing identifying information as to the following: (a) Final decisions and orders of the board, including concurring and dissenting opinions; (b) proposed decisions and orders of the board's industrial appeals judges; (c) in addition, any indices maintained for intra-agency use are available for public inspection and copying.

(5) No fee will be charged for inspection of public records. Inspection will be during office hours, upon request and by appointment with the public records officer, in a space provided by the board and must be accomplished without excessive interference with the essential functions of the agency, and without causing damage or disorganization to public records.

(6) A fee shall be charged for copies of documents made with the board's equipment in an amount necessary to cover the cost to the agency of providing such service.

AMENDATORY SECTION (Amending WSR 14-24-105, filed 12/2/14, effective 1/2/15)

WAC 263-12-017 Request for public records. (1) In accordance with requirements of chapter 42.56 RCW, the board will make nonexempt "public records" available for inspection and copying.

(2) A request to inspect or copy public records should be made in writing through the records officer email address shown on the board web site upon the board's request form, which is available at its Olympia headquarters or its web site. The form may be presented to the public records officer, or to any member of the board's staff, if the public records officer is not available, at the headquarters of the board during customary office hours. The form may also be mailed, faxed, or emailed to the attention of the public records officer at the address or fax number provided on the board's web site.

The request should include the following information:

(a) The name and address of the person requesting the record and any other contact information, such as phone number or email address, that may aid in responding to the request;

(b) The date the request is made;

(c) The identity of the record(s) requested. If the record(s) requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index should be included whenever possible. If the requested record(s) is not identifiable by reference to the board's current index, as detailed a description as possible should be included to aid staff in identifying the records sought; and

(d) Whether the request is for copies or to inspect records.

(3) Requestors desiring copies of records shall make arrangements with the records officer to pay for the cost of providing the records. Costs shall include the cost of copies and the cost of mailing the records. The per page cost for standard size (8 1/2" x 11") black and white or color photocopies will be as posted on the board's web site. Nonstandard-sized documents and documents produced on something other than paper will be provided at the actual cost to reproduce and may include the cost of the materials used. Mailing cost will include actual postage and the cost of the container.

(4) Requestors desiring to inspect records shall make arrangements with the records officer for inspection. There is no cost to inspect records. Records will be made available for inspection at the board's Olympia headquarters during the board's customary office hours.

(5) In all cases in which a member of the public is making a request, the public records officer or staff member to whom the request is made will assist the member of the public in appropriately identifying the public record requested.

AMENDATORY SECTION (Amending WSR 17-24-121, filed 12/6/17, effective 1/6/18)

WAC 263-12-01701 Copying fees—Payments. (1) The following copying fees and payment procedures apply to requests to the board under chapter 42.56 RCW and received on or after July 23, 2017.

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

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

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

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

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

(4) Requestors are required to pay for copies in advance of receiving records. ~~((Fee waivers are an exception and are available for some small requests:))~~

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; ~~((or))~~

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule; or

(iii) The amount that could be charged is considered de minimis.

(b) Requested fee waivers are an exception and will be considered only upon receipt of a written request to the public records officer. Fee waivers are not applicable to records provided in installments.

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

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

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

AMENDATORY SECTION (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

WAC 263-12-018 Public records—Exemptions. (1) The board shall determine which public records requested in accordance with these rules are exempt under the provisions

of RCW ~~((42.56.210-[42.56.1480]))~~ 42.56.210 through 42.56.470.

(2) Pursuant to RCW ~~((42.56.070))~~ 42.56.050, the board may delete identifying details when it makes available or publishes any public record in any case where there is reason to believe that disclosure of such details would be an invasion of personal privacy.

(3) Denials of requests for public records will be accompanied by a written statement specifying the reason for the denial. A statement of the specific exemption in chapter 42.56 RCW or other statute authorizing withholding the record and a brief explanation of how the exemption applies to the record held will be included.

AMENDATORY SECTION (Amending WSR 86-03-021, filed 1/10/86)

WAC 263-12-019 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the board. The board shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision within two business days following the ~~((original denial))~~ receipt of the request for review.

(3) Administrative remedies shall not be considered exhausted until the board has returned the petition with a decision or until the close of the second business day following ~~((denial of inspection))~~ receipt of the request for review, whichever occurs first.

AMENDATORY SECTION (Amending WSR 06-12-003, filed 5/25/06, effective 6/25/06)

WAC 263-12-093 Conferences—Disposition of appeals by agreement. (1) If an agreement concerning final disposition of any appeal is reached by all the parties present or represented at a conference, an order shall be issued in conformity with their agreement, providing the board finds the agreement is in accordance with the law and the facts.

(a) In industrial insurance cases, if an agreement concerning final disposition of the appeal is reached by the employer and worker or beneficiary at a conference at which the department is represented, and no objection is interposed by the department, an order shall be issued in conformity with their agreement, providing the board finds that the agreement is in accordance with the law and the facts. If an objection is interposed by the department on the ground that the agreement is not in accordance with the law or the facts, a hearing shall be scheduled.

(b) In cases involving the Washington Industrial Safety and Health Act, an agreement concerning final disposition of the appeal among the parties must include regardless of other

substantive provisions covered by the agreement: (i) A statement reciting the abatement date for the violations involved, and (ii) a statement confirming that the penalty assessment for contested and noncontested violations has or will be paid.

(c) Where all parties concur in the disposition of an appeal but the industrial appeals judge is not satisfied that the agreement is in conformity with the facts and the law or that the board has jurisdiction or authority to order the relief sought, the industrial appeals judge may require such evidence or documentation necessary to adequately support the agreement in fact and/or in law.

(2) All agreements reached at a conference concerning final disposition of the appeal shall be stated on the record by the industrial appeals judge and the parties shall indicate their concurrence on the record. The record may either be transcribed by a court reporter or recorded and certified by the industrial appeals judge conducting the conference.

The industrial appeals judge may, in his or her discretion accept an agreement for submission to the board in the absence of one or more of the parties from the conference, or without holding a conference.

(a) In such cases the agreement may be confirmed in writing by the parties to the agreement not in attendance at a conference, except that the written confirmation of a party to the agreement not in attendance at a conference will not be required where the industrial appeals judge is satisfied of the concurrence of the party or that the party received notice of the conference and did not appear.

(b) In cases where no conference has been held but the parties have informed the judge of their agreement, yet no written confirmation has been received, ~~((the judge may submit a judge's report of proceedings))~~ a final order may be issued which encompasses the agreement.

(3) In the event concurrence of all affected employees or employee groups cannot be obtained in cases involving agreements for final disposition of appeals under the Washington Industrial Safety and Health Act, a copy of the proposed agreement shall be posted by the employer at each establishment to which the agreement applies in a conspicuous place or places where notices to employees are customarily posted. The agreement shall be posted for ten days before it is submitted to the board for entry of the final order. The manner of posting shall be in accordance with WAC 263-12-059. If an objection to the agreement is interposed by affected employees or employee groups prior to entry of the final order of the board, further proceedings shall be scheduled.

(4) The parties present at a conference may agree to a vocational evaluation or a further medical examination of a worker or crime victim, including further evaluative or diagnostic tests, except such as require hospitalization, by medical or vocational experts acceptable to them, or to be selected by the industrial appeals judge. In the event the parties agree that an order on agreement of parties ~~((or proposed decision and order))~~ may be issued based on the report of vocational evaluation or medical examination, the industrial appeals judge may arrange for evaluation or examination and the board will pay reasonable and necessary expenses involved. Upon receipt by the board, copies of the report of such examination or evaluation will be distributed to all parties represented at the conference and further appropriate proceedings

will be scheduled or an order on agreement of parties ~~((or proposed decision and order))~~ issued. If the worker or crime victim fails to appear at the evaluation or examination, the party or their representative may be required to reimburse the board for any fee charged for their failure to attend.

AMENDATORY SECTION (Amending WSR 16-24-054, filed 12/2/16, effective 1/2/17)

WAC 263-12-145 Petition for review. (1) **Time for filing.** Within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record, any aggrieved party may file with the board a written petition for review. When a petition for review is filed, the failure of any party not aggrieved by the proposed decision and order to file a petition for review shall not be deemed a waiver by such party of any objections or irregularities disclosed by the record.

(2) **A petition for review must be filed separately.** A petition for review must be filed separately from any other pleading or communication with the board and must note "PETITION FOR REVIEW" prominently on the first page of the submission.

(3) **Extensions of time.**

(a) The board may extend the time for filing a petition for review upon written request of a party filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record. Such extension of time, if granted, will apply to all parties to the appeal. Further extensions of time beyond any initial extension may be allowed only if ~~((a))~~ an application for further extension is filed within twenty days from the date of communication of the proposed decision and order to the parties or their representatives of record or ~~((b))~~ the board, on its own motion or at the request of a party, acts to further extend the time for filing a petition for review before the prior extended time for filing a petition for review has expired.

(b) A request for translation of a proposed decision and order by an unrepresented limited-English proficient party will be treated as a request for extension of time. When the board receives and mails the translated proposed decision and order, the board will also extend the time for filing a petition for review for all parties for an additional thirty days.

(4) **Contents.** A petition for review shall set forth in detail the grounds for review. A party filing a petition for review waives all objections or irregularities not specifically set forth therein. A general objection to findings of fact on the ground that the weight of evidence is to the contrary shall not be considered sufficient compliance, unless the objection shall refer to the evidence relied upon in support thereof. A general objection to all evidentiary rulings adverse to the party shall be considered adequate compliance with this rule. If legal issues are involved, the petition for review shall set forth the legal theory relied upon and citation of authority and/or argument in support thereof. The board shall, at the request of any party, provide a copy of the transcript of testimony and other proceedings at the hearing. The requesting party shall sign an acknowledgment that receipt of the transcript of proceedings shall constitute compliance by the

board with any statute requiring service on the party of a certified copy of the testimony.

(5) **Action by board on petition for review.** (a) After receipt of a petition for review, the board shall enter an order within twenty days either: (i) Denying the petition for review, in which case the proposed decision and order shall become the final order of the board, or (ii) granting the petition for review, in which case the board shall within one hundred and eighty days from the date the petition for review was filed issue a final decision and order based upon its review of the record. (b) After twenty days of receipt. If a petition for review is not acted upon by the board it shall be deemed to have been granted. (c) Remands for further hearing.

After review of the record, the board may set aside the proposed decision and order and remand the appeal to the hearing process, with instructions to the industrial appeals judge to whom the appeal is assigned on remand, to dispose of the matter in any manner consistent with chapter 263-12 WAC.

(6) **Reply to petition for review.** Any party may, within ten days of receipt of the board's order granting review, submit a reply to the petition for review, a written brief, or a statement of position regarding the matters to which objections were made, or the board may, on its own motion, require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters to which objections were made, within such time and on such terms as may be prescribed.

AMENDATORY SECTION (Amending WSR 11-23-154, filed 11/22/11, effective 12/23/11)

WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services rendered before the board, or before the department in a claim resolution structured settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution structured settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution structured settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of ten days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185 and 51.32.187, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) below.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be

established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution structured settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary, sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution structured settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution structured settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution structured settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

(3) Amount of fees.

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution structured settlement agreement is approved by the board, fees for attorney's services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final.

(h) When a firefighter, law enforcement officer, or Hanford site worker has prevailed and the final decision is to allow the claim, making the opposing party responsible for the payment of reasonable costs, including attorney fees, the fees may be established based on an hourly rate.

(i) The number of hours expended must be supported by documentation. The board will disregard inflated hours or hours reflecting reimbursement for clerical functions.

(ii) All requests for costs must be accompanied by invoices and documentation including hourly breakdowns where applicable.

(4) **Excess fee unlawful.** Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution structured settlement agreement, it is unlawful for the attorney to charge or receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

AMENDATORY SECTION (Amending WSR 17-24-121, filed 12/6/17, effective 1/6/18)

WAC 263-12-195 Significant decisions. (1) The board's publication "*Significant Decisions*," prepared pursuant to RCW 51.52.160, contains the decisions or orders of the board which it considers to have an analysis or decision of substantial importance to the board in carrying out its duties.

Together with the indices of decision maintained pursuant to WAC 263-12-016(4), "*Significant Decisions*" shall serve as the index required by RCW (~~(42.17.260 (4)(b) and (e))~~ 42.56.070 (5)(a) and (b)).

(2) The board selects the decisions or orders to be included in "*Significant Decisions*" based on recommendations from staff and the public. Generally, a decision or order is considered "significant" only if it provides a legal analysis or interpretation not found in existing case law, or applies settled law to unusual facts. Decisions or orders may be included which demonstrate the application of a settled legal principle to varying fact situations or which reflect the further development of, or continued adherence to, a legal principle previously recognized by the board. Nominations of decisions or orders for inclusion in "*Significant Decisions*" should be submitted in writing to the executive secretary.

(3) "*Significant Decisions*" consists of decisions and orders identified as significant and headnotes summarizing the proposition or propositions for which the board considers the decisions or orders "significant." Indices are also provided to identify each decision or order by name and by subject.

(4) "*Significant Decisions*" and indices may be accessed at the board's web site, www.biaa.wa.gov.

WSR 18-21-086
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 15, 2018, 9:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-23-155.

Title of Rule and Other Identifying Information: Chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration and WAC 246-254-001 Purpose and scope, 246-254-010 Definitions, abbreviations, and acronyms, 246-254-020 Payment of fees, 246-254-050 Method of payment, and 246-254-053 Radiation machine facility fees. The department of health (department) is proposing a revision to the fee structure for registering selective radiation machine facilities and making other housekeeping and technical corrections.

Hearing Location(s): On November 27, 2018, at 10:30 a.m., at the Department of Health, 111 Israel Road S.E., Room 145, Tumwater, WA 98501.

Date of Intended Adoption: December 11, 2018.

Submit Written Comments to: Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Nerissa Lacendorfer [Lacendorfer], phone 360-236-3214, TTY 360-833-6388 or 711, email Nerissa.Lacendorfer@doh.wa.gov, by November 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current language allows registrants that have a radiation machine facility or group of facilities under one administrative control that

employ two or more full time individuals whose position are entirely devoted to in-house radiation safety to pay a flat, annual fee of \$5,827 regardless of the number of radiation machine facilities or the number of radiation machine tubes. Upon evaluation, the department determined that this "flat" fee does not align with the cost of regulating these registrants and is proposing to remove this fee option. As part of this rule making, the department is also proposing to add a definition of a "radiation machine facility" in chapters 246-224 and 246-254 WAC for consistency and clarity.

Reasons Supporting Proposal: To illustrate the need for the proposed change with a hypothetical situation, one registrant with ten facilities and eighty tubes and another with thirty facilities and two hundred forty tubes could both pay the same flat fee. This is not equitable because it would cost the department approximately three times as much to inspect the thirty facilities and two hundred forty tubes compared to ten facilities and eighty tubes. With this recognition of this inequity, the department is proposing to eliminate the "flat" "radiation safety program fee." With this change, all registrants will pay for their respective cost of the regulatory program.

Statutory Authority for Adoption: RCW 43.70.250, 43.20B.020, 70.98.080, and 43.70.110.

Statute Being Implemented: RCW 43.70.250, 43.20B.020, 70.98.080, and 43.70.110.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4031; Implementation and Enforcement: Daniel Van Gent, Department of Health, 243 Israel Road S.E., Tumwater, WA 98501, 360-236-3231.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Peter Beaton, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, phone 360-236-4031, TTY 360-833-6388 or 711, email Peter.Beaton@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule does not impose more than minor costs on impacted businesses. The proposed [rules] will collectively generate approximately \$35,000 additional revenue annually. The three business classification[s] impacted include General medical and surgical hospitals (NAICS 6221), Aerospace products and parts (NAICS 3364) and Colleges, universities, and professional schools (NAICS 611310). These three industries have minor cost thresholds of \$656,425, \$557,647, and \$65,693 respectively.

October 12, 2018

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0001 Purpose. The purpose of this chapter is to regulate sources of ionizing radiation as required by RCW 70.98.050 and 70.98.080. This chapter provides for the registration of all radiation machine(~~s installed, manufactured, tested, used, or~~) facilities located in Washington state.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Agent" means a person, company, or dealer(~~;-which assembles, installs, repairs, sells, or leases X-ray machines~~) that sells, leases, transfers, lends, disposes of, assembles, repairs, replaces, or installs radiation machines or components in Washington state.

(2) "Application" means, for the purpose of this chapter, the business license application or business license renewal application and appropriate addenda used by the BLS of the department of revenue.

(3) "BLS" means the department of revenue's business licensing service.

(4) "Department" means the department of health.

(5) (~~"Facility" means all buildings, structures, and operations on one contiguous site or identified by one physical location address designation at which one or more radiation machines are installed, manufactured, tested, or used.~~

(6)) "FDA" means the United States Food and Drug Administration.

(~~(7)~~) (6) "Radiation" means, for the purposes of this chapter, ionizing radiation, including X-ray, electron beam, and other machine produced particulate radiation.

(~~(8)~~) "Radiation machine" means, for purposes of this chapter, a device that, when operated, produces X-ray or electron radiation, in a prescribed manner, with defined characteristics, techniques, or parameters. It does not include devices with radioactive material as the only source of radiation.) (7) "Radiation machine facility" means each separate building, structure, and operation or buildings, structures, and operations that connect through a walkway or share a common wall, where there is at least one radiation machine installed, manufactured, tested, or used. A vehicle that has one or more radiation machines installed, manufactured, tested, or used is considered a radiation machine facility.

(~~(9)~~) (8) "Registrant" means the owner or controller of the radiation machine who is responsible for the safe operation of the radiation machine.

(~~(10)~~) "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with regulations adopted by the department.

(~~(11)~~) (9) "Storage" means the status of a radiation machine that is approved by the department as being unable to produce radiation without substantial effort at set-up, reassembly, or reinstallation. (~~For facilities with a radiation con-~~

rol authority, (for example radiation safety office) a locking or disabling procedure may serve to provide this status.) A radiation machine is considered in storage if a registrant locks out or disables the radiation machine.

(10) "X-ray system" means an assemblage of components for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the X-ray system are considered integral parts of the system.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0020 ((Who must register a radiation machine?)) Radiation machine facility registration. ((Any X-ray facility within Washington state must register)) A registrant shall register each radiation machine facility with the department. A registrant shall include each radiation machine they own or control in a radiation machine facility registration except if:

(1) The radiation machine produces incidental X-rays with an equivalent dose rate that does not exceed 5 µSv/hr (0.5 mrem/hr) at 5 cm from any accessible equipment surface averaged over an area of 10 square centimeters;

(2) The radiation machine is in transit;

(3) The radiation machine is held for sale or lease by X-ray agents; or

(4) The department allows an exemption in accordance with WAC 246-220-050(1).

AMENDATORY SECTION (Amending WSR 08-09-079, filed 4/16/08, effective 5/17/08)

WAC 246-224-0040 ((What if we have separate locations with radiation machines?)) Registering radiation machine facilities. (1) ((Geographically separate facilities must register separately)) A registrant shall register each radiation machine facility even if these ((separate)) facilities are under one administrative control ((e.g.), for example, several satellite clinics operated by one health care institution((3)).

(2) Each radiation machine facility must ((designate a)) have a designated contact person.

(3) If ((machines are)) a radiation machine is routinely moved between or among separate radiation machine facilities, the registrant shall notify ((DOL)) BLS prior to moving the radiation machine ((being moved)), or notify the department at the time shielding plans are submitted for review.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0050 ((When and how do I register?)) Radiation machine facility registration process. (1) ((You must)) A registrant shall register a radiation machine facility with the department through submission of a business license application and appropriate addendum used by BLS no later than fifteen calendar days ((of)) after initial use unless a shielding plan((s)) review is required.

(2) ((Facilities requiring)) When a radiation machine facility requires a shielding plan review ((must)), the registrant shall register with BLS and submit plans to the department for review prior to construction or installation of radiation machines according to WAC 246-225-030((3)) General requirements—Plan review.

(3) Registration is valid for one year from the department approval date, or any other date as may be determined ((through partnership with)) by BLS.

(4) ((Pay applicable registration fees according to WAC 246-254-053, Radiation machine facility registration fees.

(5)) A registrant shall submit registration information and applicable fees identified in WAC 246-254-053 Radiation machine facility fees to BLS in accordance with ((their)) BLS instructions.

((Note: For BLS information, visit the following web site: www.bls.dor.wa.gov))

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0060 ((Are there other requirements besides registration?)) Applicability. ((All)) A registrant((s must)) shall:

(1) ((Follow applicable standards according to)) Comply with this chapter and the requirements under:

(a) Chapter 246-225 WAC((, Radiation protection—X-rays in the healing arts));

(b) Chapter 246-225A WAC;

(c) Chapter 246-226 WAC;

(d) Chapter 246-227 WAC((, Radiation protection—Industrial X-ray));

(e) Chapter 246-228 WAC((, Radiation protection—Analytical X-ray equipment)); and

(f) Chapter 246-229 WAC((, Radiation protection—Particle accelerators));.

(2) ((Meet)) Comply with general radiation protection rules and standards ((according to)) in accordance with:

(a) Chapter 246-220 WAC((, Radiation protection—General provisions));

(b) Chapter 246-221 WAC((, Radiation protection standards)); and

(c) Chapter 246-222 WAC((, Radiation protection—Worker rights; and

(3) Pay applicable fees for radiation machine use according to WAC 246-254-053, Radiation machine facility registration fees)).

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0070 ((When and how do I report)) Reporting changes to ((my)) a radiation machine facility registration((?)). ((1) You must notify BLS within thirty days of any change to your registration information.

(2) Submit registration changes to:

Department of Revenue
Business Licensing Service
P.O. Box 9034
Olympia, WA 98507-9034

Phone: 800-451-7985

Fax: 360-705-6699

Email: BLS@dor.wa.gov

Note: For office of radiation protection information, visit the following web site: www.doh.wa.gov.

For BLS information, visit the following web site: www.bls.dor.wa.gov.)

A registrant shall submit any change to the registration information to BLS and the department within thirty days.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0080 ~~((When and how do I renew my))~~ **Radiation machine facility registration** ~~((?))~~ **renewal requirements.** (1) ~~((You will receive registration renewal notices from BLS.~~

~~((2) You must submit))~~ A registrant shall renew their registration annually by submitting renewal information and the applicable fees to ~~((the department of revenue as specified by))~~ BLS.

~~((3))~~ (2) If ~~((you do))~~ a registrant does not receive a renewal notice, the registrant shall contact BLS.

AMENDATORY SECTION (Amending WSR 13-17-040, filed 8/13/13, effective 9/13/13)

WAC 246-224-0090 ~~((What are my obligations if I close my facility or get rid of a machine?))~~ **Requirements for closing a radiation machine facility or removing a radiation machine from service.** (1) ~~((You must notify the department or BLS of the machine status within thirty days of closure or removal.))~~ A registrant that closes a radiation machine facility or removes a radiation machine from service shall notify the department and BLS within thirty days.

(2) If ~~((the))~~ a radiation machine is disposed of or transferred within Washington state, ~~((you must))~~ the registrant shall provide the department the following:

- (a) The name and contact information of the recipient;
- (b) The address of the recipient; and
- (c) The date of the disposal or transfer.

(3) If the radiation machine is to be placed in storage and retained, ~~((contact))~~ the registrant shall obtain approval from the department ~~((for approval)).~~

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0100 ~~((What are the responsibilities of the))~~ **X-ray agent** ~~((?))~~ **responsibilities.** (1) Within fifteen calendar days, any agent who sells, leases, transfers, lends, disposes of, assembles, repairs, replaces, or installs radiation machines or components in Washington state ~~((must))~~ shall notify the department of the:

- (a) Recipient's name and radiation machine facility address;
- (b) Manufacturer, model, and serial number of each radiation machine master control; and
- (c) Date of transfer of the radiation machine.

((Note: An FDA form 2579 or equivalent may be used for this notification requirement.))

(2) ~~((Any))~~ An agent may use the FDA form 2579 or equivalent to meet the notification requirements of subsection (1) of this section.

(3) An agent who installs X-ray systems, controls, or components ~~((must))~~ shall ensure that the radiation machines, accessories, or components ~~((f))~~, including exposure switch placement~~((s))~~, meet the applicable requirements of:

(a) Chapter 246-225 WAC ~~((, Radiation protection — X-rays in the healing arts));~~

(b) Chapter 246-225A WAC;

(c) Chapter 246-226 WAC;

(d) Chapter 246-227 WAC ~~((, Radiation protection — Industrial X-ray));~~

(e) Chapter 246-228 WAC ~~((, Radiation protection — Analytical X-ray equipment));~~ and

(f) Chapter 246-229 WAC ~~((, Radiation protection — Particle accelerators)).~~

~~((3))~~ (4) An agent ~~((s must))~~ shall not install or transfer a radiation machine if the registrant does not ~~((complete))~~ submit:

(a) A required plan review according to chapter 246-225 ~~((WAC, Radiation protection — X-rays in the healing arts)), 246-226, or ((chapter)) 246-227 WAC~~ ~~((, Radiation protection — Industrial radiography));~~ or

(b) Shielding ~~((and/or required design construction))~~ plan or radiation machine facility design, or both if required.

~~((4))~~ (5) An agent ~~((s must))~~ shall assemble certified X-ray systems according to 21 C.F.R., ~~((subchapter J))~~ Sec. 1000 through 1050 (2018) so that manufacturer's specifications and intended performance designs are met.

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-224-0110 ~~((What if I want to bring a radiation machine into Washington state for temporary use from out-of-state?))~~ **Temporary use of an out-of-state radiation machine in Washington state.** (1) A registrant shall notify the department at least three business days prior to in-state use when bringing ~~((an X-ray))~~ a radiation machine into the state for any temporary use. The department may waive the time requirement upon a hardship request by the owner. Notification to the department includes, at a minimum, the:

(a) Type of radiation machine;

(b) Nature, duration, and scope of use; and

(c) Exact location where the radiation machine is to be used.

(2) All radiation machines and assemblies must comply with all applicable regulations.

(3) Any medical or dental use radiation ~~((e.g., X-ray))~~ machines within the state must register with the department according to WAC 246-224-0020.

(4) For radiation ~~((e.g., X-ray))~~ machines not intended for patient diagnosis and treatment, ~~((you must))~~ a registrant shall register the radiation machine if it is used for more than sixty calendar days. Registration is waived if the radiation machine is used for sixty or fewer calendar days per year.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-224-0030 Are there any radiation machines within Washington state that do not have to be registered?
- WAC 246-224-0120 What happens if I do not register my radiation machine?

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-001 Purpose and scope. This chapter establishes fees charged for licensing, permitting, registration, and inspection services (~~rendered by the office of radiation protection as authorized under chapters 43.70, 70.98, and 70.121 RCW~~). These fees apply to owners and operators of radiation (~~generating~~) machine(s) facilities, users of radioactive material, operators of low-level radioactive waste disposal facilities, owners and operators of facilities emitting airborne radioactivity, and owners and operators of certain mineral processing and uranium or thorium milling operations and their associated tailings or waste.

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-010 Definitions, abbreviations, and acronyms. (~~As used in this chapter, the following definitions apply~~) The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Application" means a completed RHF-1 or equivalent with supporting documentation requesting the department to grant authority to receive, possess, use, transfer, own or acquire radioactive material. For radiation machine facility registrations, "application" means the (~~master business application and appropriate addenda~~) forms used by (the master license service of the department of licensing) BLS.

(2) "BLS" means the department of revenue's business licensing service.

(3) "Compliance inspection" means a routinely scheduled visit to the licensee's facility and/or temporary job site(s) for the purpose of determining compliance with the radioactive material license and applicable regulations. This service is covered by the annual fee for the radioactive material license.

((3)) (4) "Department" means the department of health which has been designated as the state radiation control agency.

((4)) (5) "Direct staff time" means all work time directly applicable to or associated with a specific radioactive material licensee and includes license file review, inspection preparation, on-site visits, report writing, review and (~~acknowledgement~~) acknowledgment of correspondence, review of license applications, renewals and amendment requests, telephone contacts, and staff or management conferences specifically related to the license. Travel time is not considered direct staff time.

((5)) (6) "Emission unit" means the point of release of airborne emissions of radioactive material.

((6)) (7) "Environmental cleanup monitoring" means an on-site visit by the department to a licensee's facility or site of operation to determine the status of corrective actions to remove environmental radiation contamination resulting from the licensee's operation. Such a monitoring visit may include, but is not limited to, the review of the licensee's records pertaining to the environmental cleanup, observation of the licensee's cleanup work, sampling by the department for analysis, associated laboratory work, and the analysis of the information collected by the department.

((7)) (8) "Facility" means all buildings, structures and operations on one contiguous site using or identified by one physical location address designation.

((8)) (9) "Follow-up inspection" means an on-site visit to a licensee's facility to verify that prompt action was taken to correct significant items of noncompliance found by the department in a previous inspection. The first follow-up inspection is covered by the annual fee for the radioactive material license.

((9)) (10) "Inspection" means an official examination or observation by the department including but not limited to tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and conditions of the department.

((10)) (11) "Investigation" means an on-site visit to a licensee's facility or site of operation when, in the department's judgment, it is required for the purpose of reviewing specific conditions, allegations, or other information regarding unusual conditions, operations, or practices. This service is covered by the annual fee for the radioactive material license.

((11)) (12) "License" means a (~~license~~) document issued by the department in accordance with the regulations adopted by the department.

((12)) (13) "New license application" means a request to the department to use radioactive material from a person not currently a licensee or from a current licensee requesting authorization to use radioactive material in a new way such that a change of fee category is required.

((13)) (14) "Perpetual care and maintenance" means further maintenance, surveillance or other care of milling or tailings impoundment sites after termination of the site operator's decommissioning responsibilities and license.

((14) "Registration" means registration with the department by any person possessing a source of ionizing radiation in accordance with regulations adopted by the department.)

(15) "Radiation machine facility" means each separate building, structure, and operation or buildings, structures, and operations that connect through a walkway or share a common wall, where there is at least one radiation machine installed, manufactured, tested, or used. A vehicle that has one or more radiation machines installed, manufactured, tested, or used is considered a radiation machine facility.

(16) "Sealed source and device evaluation" means a radiological safety evaluation performed by the department on the design, manufacture, and test data of any single sealed source (~~and/or~~) or device model for the purpose of register-

ing the sealed source or device with the United States Nuclear Regulatory Commission.

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-020 Payment of fees. (1) Applicants, licensees, permittees, and registrants requesting or receiving licenses, permits, registrations, and actions or services by the department shall ~~((pay the))~~ submit to the department applicable ~~((fee or))~~ fees for the license, permit, registration, and action or service provided by the department.

(2) The department shall charge a fee for each:

- (a) Radiation machine facility registration~~((;))~~ and radiation machine ~~((at the facility, if applicable))~~ tube at the facility;
- (b) Radioactive material license;
- (c) Service or action with respect to a radioactive material licensee not otherwise covered by fees;
- (d) Cubic foot of low-level radioactive waste volume received at a commercial disposal site;
- (e) Kilogram of uranium or thorium milled from ore; and
- (f) Air emission ~~((permit))~~ license.

(3) The department shall charge a fee for each radioactive material license based on the single highest fee category describing activities subject to the conditions of the license.

(4) The department shall charge the applicable license fee for each category when multiple licenses are required.

(5) The department may require multiple radioactive material licenses based upon:

- (a) Physical separation of operations;
- (b) Organizational separations within a licensee's operation;
- (c) Complexity of uses of radioactive material such that two or more fee categories would apply to the operation.

(6) Each licensee, permittee, or registrant shall:

- (a) Remit the full fee ~~((;))~~ at the fee rate established by rule at the time such fee is paid~~((, and (ii))~~);
 - (i) At least thirty days prior to the annual anniversary date for licensees; or

~~((;))~~ (ii) On a payment schedule as provided in WAC 246-254-030 or other schedule as may be determined through partnership with ~~((the master license service of the department of licensing))~~ BLS.

(b) Consider the annual anniversary to be the month and day of the expiration date of the existing radioactive material license, or other date as may be determined through partnership with ~~((the master license service of the department of licensing))~~ BLS.

(7) The department shall refund one-half of the fee if an application is withdrawn prior to issuance of a radioactive material license.

(8) If there is a change by the applicant, licensee, permittee or registrant resulting in a higher fee category, the applicant, licensee, permittee, or registrant shall pay a prorated fee for the remainder of the fee interval.

(9) Each licensee, permittee, or registrant shall remit the full amount of any quarterly billing or individual billing for licensing or compliance actions within thirty days of receipt of the bill.

~~((10) Fees due on or after the effective date of these regulations shall be at the rate prescribed in this chapter.)~~

AMENDATORY SECTION (Amending WSR 07-14-130, filed 7/3/07, effective 8/3/07)

WAC 246-254-050 Method of payment. (1) ~~((For radiation machine facility registration application and renewal fees, applicants and registrants shall submit payment to the master license service of the department of licensing.))~~ A registrant shall submit radiation machine facility registration fees and radiation machine tube fees to BLS.

(2) For all other fees and charges including shielding plan review and follow-up inspection fees, licensees, permittees and registrants shall:

- (a) Submit fee payments by check, draft or money order made payable to the department ~~((of health))~~; and
- (b) Include fee payment with the application for license or submit the fee by mail, in person, or by courier to the address provided in the bill or bill correspondence.

AMENDATORY SECTION (Amending WSR 11-02-012, filed 12/28/10, effective 1/31/11)

WAC 246-254-053 Radiation machine facility ~~((registration))~~ fees. (1) ~~((Radiation machine facility fees apply to each person or facility owning, leasing or using radiation-producing machines. The annual facility fee consists of the base registration fee and a per tube charge, where applicable.))~~ A registrant shall comply with chapter 246-224 WAC when registering radiation machine facilities. A registrant shall pay the following applicable radiation machine facility registration fees and radiation machine tube fees for each radiation machine facility and tube annually as identified in Table A and B of this section.

Table A

((a)) Radiation Machine Facility <u>Registration Fees</u>			
<u>Type of Radiation Machine Facility</u>		((Facility Base Fee)) <u>Registration Fee per Facility</u>	((Added Fee per Tube))
((a)) (a)	Dental, podiatric, veterinary uses	\$107	((See following table))
((b)) (b)	Hospital, medical, chiropractic uses	\$207	((See following table))
((c)) (c)	Industrial, research, educational, security, or other facilities	\$107	((See following table))
((d)) (d)	Mammography only	\$89	((N/A))
((e)) (e)	Bone densitometry only	\$89	((N/A))
((f)) (f)	Electron microscopes only	\$89	((N/A))
((g)) (g)	Bomb squad only	\$89	((N/A))

((a)) Radiation Machine Facility Registration Fees			
Type of Radiation Machine Facility		((Facility Base Fee)) Registration Fee per Facility	((Added Fee per Tube))
((viii))	Radiation safety program as specified in subsection (3) of this section	\$5,827	N/A)

Table B

((b)) Radiation Machine Tube Fees		
Type of Tube		((Added)) Fee per Tube
((i)) (a)	Dental (intraoral, panoramic, cephalometric, dental radiographic, and dental CT)	\$27
((ii)) (b)	Veterinary (radiographic, fluoroscopic, portable, mobile)	\$46
((iii)) (c)	Podiatric uses (radiographic, fluoroscopic)	\$46
((iv)) (d)	Mammography	N/A
((v)) (e)	Bone densitometry	N/A
((vi)) (f)	Electron microscope	N/A
((vii)) (g)	Bomb squad	N/A
((viii)) (h)	Medical radiographic (includes R/F combinations, fixed, portable, mobile)	\$131
((ix)) (i)	Medical fluoroscopic (includes R/F combinations, C-arm, Simulator, fixed, portable, mobile)	\$131
((x)) (j)	Therapy (Grenz Ray, Orthovoltage, non-accelerator)	\$131
((xi)) (k)	Accelerators (therapy, other medical uses)	\$131
((xii)) (l)	Computer tomography (CT, CAT scanner)	\$131
((xiii)) (m)	Stereotactic (mammography)	\$107
((xiv)) (n)	Industrial radiographic	\$46
((xv)) (o)	Analytical, X-ray fluorescence	\$46
((xvi)) (p)	Industrial accelerators	\$46
((xvii)) (q)	Airport baggage	\$27
((xviii)) (r)	Cabinet (industrial, security, mail, other)	\$27
((xix)) (s)	Other industrial uses (includes industrial fluoroscopic uses)	\$27

(2) ~~((X-ray))~~ Radiation shielding plan review fees. ~~((a))~~ Radiation machine facilities regulated under the shielding plan requirements of WAC 246-225-030, 246-226-030, or 246-227-150 are subject to a ~~(\$344 X-ray)~~ three hundred forty-four dollar radiation shielding review fee for each X-ray room plan submitted~~((-or))~~:

~~((b))~~ (a) A registrant may request an expedited plan review for ~~(\$1000)~~ one thousand dollars for each X-ray room plan. An expedited plan means the department will complete the plan review within two business days of receiving all required information from the registrant.

~~((e))~~ (b) If a radiation machine facility regulated under WAC 246-225-030, 246-226-030, or 246-227-150 operates without submittal and departmental review of ~~((X-ray))~~ radiation shielding calculations and a floor plan it will be subject to a shielding design follow-up fee of ~~(\$656)~~ six hundred fifty-six dollars.

~~(3)~~ ~~((Radiation safety fee.~~ If a facility or group of facilities under one administrative control employs two or more full time individuals whose positions are entirely devoted to in-house radiation safety, the facility shall pay a flat, annual fee as specified in subsection (1)(a)(viii) of this section.

~~(4)~~ ~~Consolidation of registration.~~ Facilities may consolidate X-ray machine registrations into a single registration after notifying the department in writing and documenting that a single business license applies to all buildings, structures and operations on one contiguous site using or identified by one physical address location designation.

~~(5))~~ Inspection fees.

(a) The cost of routine, periodic inspections, including the initial inspection, are covered under ~~((the base fee and tube registration))~~ fees as described in subsection (1) of this section.

(b) Radiation machine facilities requiring follow-up inspections due to uncorrected noncompliance~~((s))~~ events must pay an inspection follow-up fee of ~~(\$118)~~ one hundred eighteen dollars for each reinspection required.

~~((6)~~ A facility's annual registration fee is valid for a specific geographical location and person only. It is) ~~(4)~~ The annual radiation machine facility registration fees and radiation machine tube fees are not transferable to another geographical location or ((owner or user)) registrant.

WSR 18-21-098
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed October 16, 2018, 10:09 a.m.]

Continuance of WSR 18-18-091.

Preproposal statement of inquiry was filed as WSR 17-18-085.

Title of Rule and Other Identifying Information: The department is amending WAC 388-78A-2190 Activities of daily living.

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 14, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-78A-2190 to assure compliance with SHB 1671 (chapter 201, Laws of 2017), which requires the term "medication assistance" to be added to the "activities of daily living" which currently includes bathing, dressing, eating, personal hygiene, transferring, toileting, and ambulation and mobility.

This notice is to announce a second public hearing on these proposed rules for November 27, 2018. This notice also extends the written comment deadline to 5:00 p.m., on November 27, 2018.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: RCW 18.20.310.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2591.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

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

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

Explanation of exemptions: This proposal implements changes from the 2017 legislative session (chapter 201, Laws of 2017).

October 15, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2190 Activities of daily living. Assistance with activities of daily living is ~~((an optional))~~ a service that the assisted living facility may provide.

(1) If an assisted living facility chooses not to provide assistance with activities of daily living:

(a) The assisted living facility must admit or retain only those residents who are independent in activities of daily living; except that

(b) A resident, or the resident's representative, may independently arrange for outside services to assist with activities of daily living.

(2) When an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the assisted living facility must provide that assistance consistent with the reasonable accommodation requirements in state and federal laws.

(3) When an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the assisted living facility must provide to each resident, consistent with the resident's assessed needs, minimal assistance with the following activities of daily living:

(a) **Bathing:** Minimal assistance with bathing means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to wash and dry all areas of the body as needed;

(ii) Stand-by assistance getting into and out of the tub or shower; and

(iii) Physical assistance limited to steadying the resident during the activity.

(b) **Dressing:** Minimal assistance with dressing means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to put on, take off, or lay out clothing, including prostheses when the assistance of a licensed nurse is not required;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(c) **Eating:** Minimal assistance with eating means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to eat and drink; and

(ii) Physical assistance limited to cutting food up, preparing food and beverages, and bringing food and fluids to the resident.

(d) **Personal hygiene:** Minimal assistance with personal hygiene means the assisted living facility must provide the resident with occasional:

(i) Reminding and cuing to comb hair, perform oral care and brush teeth, shave, apply makeup, and wash and dry face, hands and other areas of the body;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(e) **Transferring:** Minimal assistance in transferring means the assisted living facility must provide the resident with occasional:

(i) Reminders or cuing to move between surfaces, for example to and from the bed, chair and standing;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during self-transfers.

(f) **Toileting:** Minimal assistance in toileting means the assisted living facility must provide the resident with occasional:

(i) Reminders and cuing to toilet, including resident self-care of ostomy or catheter, to wipe and cleanse, and to change and adjust clothing, protective garments and pads;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(g) **Mobility:** Minimal assistance in mobility means the assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to move between locations on the assisted living facility premises;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity; and

(h) **Medication assistance:** As defined in RCW 69.41.-010.

(4) The assisted living facility may choose to provide more than minimal assistance with activities of daily living consistent with state and federal law.

WSR 18-21-100
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed October 16, 2018, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-087.

Title of Rule and Other Identifying Information: Chapter 51-50 WAC, Adoption and amendment of the 2018 International Building Code and International Existing Building Code and modifications to the 2015 International Building Code and International Existing Building Code.

Hearing Location(s): On November 30, 2018, at 10:00, at the Department of Enterprise Services, 1500 Jefferson Street, Room 3660, Olympia, WA 98504.

Date of Intended Adoption: December 1, 2018.

Submit Written Comments to: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, email Richard.brown@des.wa.gov, by November 30, 2018.

Assistance for Persons with Disabilities: Contact Lori Yantzer, phone 360-407-7974, email Richard.brown@des.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

Table 1604.5: The purpose is to close an unanticipated loophole regarding daycares.

Mass Timber: The purpose is to comply with ESB 5450.

1613.5: The purpose is to address a structural seismic engineering concern for structures between one hundred sixty feet and two hundred forty feet.

IBC/IFC 3101/3801: The purpose is to resolve inconsistent and conflicting code requirements between NFPA 130, the IBC and IFC as they pertain to passenger rail systems.

Reasons Supporting Proposal:

Table 1604.5: The 2015 IBC [has] been changed the educational and daycare uses for risk category III in Table 1604.5 to be "occupancy" based rather than "use" based as it was in the 2012 IBC. Buildings containing elementary

school, secondary school or day care facilities were changed to Group E occupancies. However, day care facilities are now classified in both Group E and Group I-4 occupancies. I-4 occupancies are not currently listed in Table 1604.5 which means that occupants attributed to I-4 will be classified under risk category II. This occurs even though the I-4 occupancy has a higher relative hazard compared to Group E. Including I-4 in Table 1604.5 for risk category III closes this loophole.

Mass Timber: These amendments (and those to the 2015 International Fire Code) allow for better use of developing technologies in the production of mass timber products and address the desire of our state legislature, as expressed in ESB 5450, directing the building code council to adopt rules for the use of mass timber products. The rules to be adopted must consider applicable national and international standards. These amendments rely on the work of the International Code Council's (ICC) Ad Hoc Committee on Tall Wood Buildings that published its report in January 2018 and was amended and approved by the ICC's Code Action Hearing in April 2018. The crux of these amendments is to revise the building code to allow for the use of mass timber in taller buildings. This is accomplished primarily by adding three new building types under the Type IV category, Type IV-A, Type IV-B, and Type IV-C.

1613.5: This amendment improves the safety of the occupants of buildings over one hundred sixty feet in height by ensuring that the current science related to structural design and post-earthquake resiliency is applied. This amendment creates a level playing field within the state regarding design loads that apply to buildings, exceeding one hundred sixty feet, to resist lateral loads. The amendment is based on recommendations from nationally recognized experts in structural review and design. The City of Seattle has implemented these rules.

IBC/IFC 3101/3801: Adoption of NFPA 130 resolves inconsistent and conflicting code requirements between NFPA 130, the IBC and IFC in many Puget Sound city building and fire departments. Due to federal requirements, Sound Transit must build its passenger light rail system, including, but not limited to, stations, trainways, emergency ventilation systems, vehicles, emergency procedures, communications, and control systems specifically in accordance with NFPA 130.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: Doug Orth, chair of the state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; and Enforcement: Local building officials, local jurisdiction address, phone varies.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Richard Brown, 1500 Jefferson Street

S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

There are costs imposed by the proposed rules but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not impact employment, reporting or recordkeeping.

The rules addressing buildings between one hundred sixty and two hundred forty feet in height may increase the construction cost by 0.213 to 3.33%. This increase, however, will not affect the current distribution of work between large and small contractors.

A copy of the statement may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

October 11, 2018
Doug Orth
Council Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. A dwelling, licensed by Washington state, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

ASSISTED LIVING FACILITY. A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

BOTTLE FILLING STATION. A plumbing fixture connected to the potable water distribution system and sanitary drainage system that is designed and intended for filling personal use drinking water bottles or containers not less than 10 inches (254 mm) in height. Such fixtures can be separate from or integral to a drinking fountain and can incorporate a water filter and a cooling system for chilling the drinking water.

CHILD CARE. The care of children during any period of a 24-hour day.

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

CLIMATE ZONE. A geographical region that has been assigned climatic criteria as specified in the Washington State Energy Code.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

EFFICIENCY DWELLING UNIT. A dwelling unit containing only one habitable room.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

MASS TIMBER. Structural elements of Type IV construction primarily of solid, built-up, panelized or engineered wood products that meet minimum cross section dimensions of Type IV construction.

NIGHTCLUB. An A-2 Occupancy use under the 2006 *International Building Code* in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

NONCOMBUSTIBLE PROTECTION (See MASS TIMBER). Non-combustible material, in accordance with Section 703.5, designed to increase the fire-resistance rating and delay the combustion of mass timber.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

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

STAGED EVACUATION. A method of emergency response, that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves moving or holding certain occupants at temporary locations for a brief period of time before evacuating the building. This response is used by ambulatory surgery facility and assisted living facilities to protect the health and safety of fragile occupants and residents.

WALL, LOAD-BEARING. Any wall meeting either of the following classifications:

1. Any metal or wood stud wall that supports more than 100 pounds per linear foot (1459 N/m) of vertical load in addition to its own weight.

2. Any masonry or concrete, or mass timber wall that supports more than 200 pounds per linear foot (2919 N/m) of vertical load in addition to its own weight.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0403 Section 403—High-rise buildings.

403.3.2 Water supply to required fire pumps. In all buildings that are more than 420 feet (128 m) in *building height*, and buildings of Type IV-A and IV-B that are more than 120 feet in *building height*, required fire pumps shall be supplied by connections to not fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.

EXCEPTION: Two connections to the same main shall be permitted provided that the main is valved such that an interruption can be isolated so that the water supply will continue without interruption through not fewer than one of the connections.

403.5.4 Smokeproof enclosures. Every required *interior exit stairway* serving floors more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be a *smokeproof enclosure* in accordance with Sections 909.20 and 1023.11.

EXCEPTION: Unless required by other sections of this code, portions of such stairways which extend to serve floors below the level of exit discharge need not comply with Sections 909.20 and 1023.11 provided the portion of the stairway below is separated from the level of exit discharge with a 1-hour fire barrier.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0504 Section 504—Building height and number of stories.

Table 504.3
Allowable Building Height in Feet Above Grade Plane^a

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A, B, E, F, M, S, U	NS ^b	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	270	180	85	85	70	60
H-1, H-2, H-3, H-5	NS ^{d,e}	UL	160	65	55	65	55	120	90	65	65	50	40
	S												
H-4	NS ^{d,e}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	140	100	85	85	70	60
I-1 Condition 1, I-3	NS ^{d,e}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
I-1 Condition 2, I-2	NS ^{d,e,f}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85									
I-4	NS ^{d,g}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
R	NS ^d	UL	160	65	55	65	55	65	65	65	65	50	40
	S13R	60	60	60	60	60	60	60	60	60	60	60	60
	S	UL	180	85	75	85	75	270	180	85	85	70	60

For SI: 1 foot = 304.8 mm.

UL = Unlimited; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

^aSee Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.

^bSee Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.

^cNew Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.

^dThe NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.

^eNew Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.

^fNew and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the International Fire Code.

^gFor new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.

^hNew Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.

Table 504.4
Allowable Number of Stories Above Grade Plane^{a,b}

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	5	3	2	3	2	3	3	3	3	2	1
	S	UL	6	4	3	4	3	9	6	4	4	3	2
A-2	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-3	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-4	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-5	NS	UL	UL	UL	UL	UL	UL	1	1	1	UL	UL	UL
	S	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
B	NS	UL	11	5	3	5	3	5	5	5	5	3	2
	S	UL	12	6	4	6	4	18	12	9	6	4	3
E	NS	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
F-1	NS	UL	11	4	2	3	2	3	3	3		2	1
	S	UL	12	5	3	4	3	10	7	5	5	3	2
F-2	NS	UL	11	5	3	4	3	5	5	5	5	3	2
	S	UL	12	6	4	5	4	12	8	6	6	4	3
H-1	NS ^{c,d}	1	1	1	1	1	1	NP	NP	NP	1	1	NP
	S							1	1	1			
H-2	NS ^{c,d}	UL	3	2	1	2	1	1	1	1	2	1	1
	S							2	2	2			
H-3	NS ^{c,d}	UL	6	4	2	4	2	3	3	3	4	2	1
	S							4	4	4			
H-4	NS ^{c,d}	UL	7	5	3	5	3	5	5	5	5	3	2
	S	UL	8	6	4	6	4	8	7	6	6	4	3
H-5	NS ^{c,d}	4	4	3	3	3	3	2	2	2	3	3	2
	S							3	3	3			
I-1 Condition 1	NS ^{d,e}	UL	9	4	3	4	3	4	4	4	4	3	2
	S	UL	10	5	4	5	4	10	7	5	5	4	3
I-1 Condition 2	NS ^{d,e}	UL	9	4	3	4	3	3	3	3	4	3	2
	S	UL	10	5				10	6	4			
I-2	NS ^{d,f}	UL	4	2	1	1	NP	NP	NP	NP	1	1	NP
	S	UL	5	3				7	5	1			
I-3	NS ^{d,e}	UL	4	2	1	2	1	2	2	2	2	2	1
	S	UL	5	3	2	3	2	7	5	3	3	3	2

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
I-4	NS ^{d,g}	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
M	NS	UL	11	4	2	4	2	4	4	4	4	3	1
	S	UL	12	5	3	5	3	12	8	6	5	4	2
R-1h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-2h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4	4								4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-3h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	3
	S13D	4	4									3	3
	S13R	4	4									4	4
	S	UL	12	5	5	5	5	18	12	5	5	4	4
R-4h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13D	4	4									3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	5	5	4	3
S-1	NS	UL	11	4	2	3	2	4	4	4	4	3	1
	S	UL	12	5	3	4	3	10	7	5	5	4	2
S-2	NS	UL	11	5	3	4	3	4	4	4	4	4	2
	S	UL	12	6	4	5	4	12	8	5	5	5	3
U	NS	UL	5	4	2	3	2	4	4	4	4	2	1
	S	UL	6	5	3	4	3	9	6	5	5	3	2

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

^aSee Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.

^bSee Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.

^cNew Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.

^dThe NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.

^eNew Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.

^fNew and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.

^gFor new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.

^hNew Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.

504.4.1 Stair enclosure pressurization increase. For Group R1 and R2 occupancies in buildings of Type VA construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, the maximum number of stories permitted in Section 504.2 may be increased by one provided the interior exit stairways and ramps are pressurized in accordance with Section 909. Legally required standby power shall be provided for buildings constructed in compliance with this section and be connected to stairway shaft pressurization equipment, elevators and lifts used for accessible means of egress, hoistway pressurization equipment (if provided) and other life safety equipment as determined by the authority having jurisdiction. For the purposes of this section, legally required standby power shall comply with 2014 NEC Section 701.12, options (A), (B), (C), (D), (F), or (G) or subsequent revised section number(s).

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0506 ((Reserved.)) Section 506—Building area.

**Table 506.2
Allowable Area Factor (At = NS, S1, S13R, S13D or SM, as applicable) In Square Feet^{a,b}**

Occupancy Classification	Sec Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	UL	15,500	8,500	14,000	8,500	45,000	30,000	18,000	15,000	11,500	5,500
	S1	UL	UL	62,000	34,000	56,000	34,000	180,000	120,000	75,000	60,000	46,000	22,000
	SM	UL	UL	46,500	25,500	42,000	25,500	135,000	90,000	56,250	45,000	34,500	16,500
A-2	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-3	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,000	45,000	34,500	18,000
A-4	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-5	NS	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S1												
	SM												
B	NS	UL	UL	37,500	23,000	28,500	19,000	108,000	75,000	45,000	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	432,000	288,000	180,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	324,000	216,000	135,000	108,000	54,000	27,000
E	NS	UL	UL	26,500	14,500	23,500	14,500	76,500	51,000	31,875	25,500	18,500	9,500
	S1	UL	UL	106,000	58,000	94,000	58,000	306,000	204,000	127,500	102,000	74,000	38,000
	SM	UL	UL	79,500	43,500	70,500	43,500	229,500	153,000	95,625	76,500	55,500	28,500
F-1	NS	UL	UL	25,000	15,500	19,000	12,000	100,500	67,000	41,875	33,500	14,000	8,500
	S1	UL	UL	100,000	62,000	76,000	48,000	402,000	268,000	167,500	134,000	56,000	34,000
	SM	UL	UL	75,000	46,500	57,000	36,000	301,500	201,000	125,625	100,500	42,000	25,500
F-2	NS	UL	UL	37,500	23,000	28,500	18,000	151,500	101,000	63,125	50,500	21,000	13,000
	S1	UL	UL	150,000	92,000	114,000	72,000	606,000	404,000	252,500	202,000	84,000	52,000
	SM	UL	UL	112,500	69,000	85,500	54,000	454,500	303,000	189,375	151,500	63,000	39,000
H-1	NS ^c	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	NP
	S1												
H-2	NS ^c	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	3,000
	S1												
	SM												
H-3	NS ^c	UL	60,000	26,500	14,000	17,500	13,000	25,000	25,000	25,000	25,500	10,000	5,000
	S1												
	SM												
H-4	NS ^{c,d}	UL	UL	37,500	17,500	28,500	17,500	75,000	54,000	40,500	36,000	18,000	6,500
	S1	UL	UL	150,000	70,000	114,000	70,000	288,000	216,000	162,000	144,000	72,000	26,000
	SM	UL	UL	112,500	52,500	85,500	52,500	216,000	162,000	121,500	108,000	54,000	19,500
H-5	NS ^{c,d}	UL	UL	37,500	23,000	28,500	19,000	72,000	54,000	40,500	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	288,000	216,000	162,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	216,000	162,000	121,500	108,000	54,000	27,000

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
I-1	NS ^{d,e}	UL	55,000	19,000	10,000	16,500	10,000	54,000	36,000	18,000	18,000	10,500	4,500
	S1	UL	220,000	76,000	40,000	66,000	40,000	216,000	144,000	72,000	72,000	42,000	18,000
	SM	UL	165,000	57,000	30,000	49,500	30,000	162,000	108,000	54,000	54,000	31,500	13,500
I-2	NS ^{d,f}	UL	UL	15,000	11,000	12,000	NP	36,000	24,000	12,000	12,000	9,500	NP
	S1	UL	UL	60,000	44,000	48,000	NP	144,000	96,000	48,000	48,000	38,000	NP
	SM	UL	UL	45,000	33,000	36,000	NP	108,000	72,000	36,000	36,000	28,500	NP
I-3	NS ^{d,e}	UL	UL	15,000	10,000	10,500	7,500	36,000	24,000	12,000	12,000	7,500	5,000
	S1	UL	UL	45,000	40,000	42,000	30,000	144,000	96,000	48,000	48,000	30,000	20,000
	SM	UL	UL	45,000	30,000	31,500	22,500	108,000	72,000	36,000	36,000	22,500	15,000
I-4	NS ^{d,g}	UL	60,500	26,500	13,000	23,500	13,000	76,500	51,000	25,500	25,500	18,500	9,000
	S1	UL	121,000	106,000	52,000	94,000	52,000	306,000	204,000	102,000	102,000	74,000	36,000
	SM	UL	181,500	79,500	39,000	70,500	39,000	229,500	153,000	76,500	76,500	55,500	27,000
M	NS	UL	UL	21,500	12,500	18,500	12,500	61,500	41,000	25,625	20,500	14,000	9,000
	S1	UL	UL	86,000	50,000	74,000	50,000	246,000	164,000	102,500	82,000	56,000	36,000
	SM	UL	UL	64,500	37,500	55,500	37,500	184,500	123,000	76,875	61,500	42,000	27,000
R-1	NS ^{d,h}	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
R-2	NS ^{d,h}	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
R-3	NS ^{d,h}	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S13R												
	S1												
	SM												
R-4	NS ^{d,h}	UL	UL	24,000	16,000	24,000	16,000	61,000	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
	SM	UL	UL	72,000	48,000	72,000	48,000	184,500	123,000	76,875	61,500	36,000	21,000
S-1	NS	UL	48,000	26,000	17,500	26,000	17,500	76,500	51,000	31,875	25,500	14,000	9,000
	S1	UL	192,000	104,000	70,000	104,000	70,000	306,000	204,000	127,500	102,000	56,000	36,000
	SM	UL	144,000	78,000	52,500	78,000	52,500	229,500	153,000	95,625	76,500	42,000	27,000
S-2	NS	UL	79,000	39,000	26,000	39,000	26,000	115,500	77,000	48,125	38,500	21,000	13,500
	S1	UL	316,000	156,000	104,000	156,000	104,000	462,000	308,000	192,500	154,000	84,000	54,000
	SM	UL	237,000	117,000	78,000	117,000	78,000	346,500	231,000	144,375	115,500	63,000	40,500
U	NS	UL	35,500	19,000	8,500	14,000	8,500	54,000	36,000	22,500	18,000	9,000	5,500
	S1	UL	142,000	76,000	34,000	56,000	34,000	216,000	144,000	90,000	72,000	36,000	22,000
	SM	UL	106,500	57,000	25,500	42,000	25,500	162,000	108,000	67,500	54,000	27,000	16,500

For SI: 1 square foot = 0.0929 m².

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S1 = Buildings a maximum of one story above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; SM = Buildings two or more stories above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2; S13D = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.3.

^aSee Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.

^bSee Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.

^cNew Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.

^dThe NS value is only for use in evaluation of existing building area in accordance with the International Existing Building Code.

^eNew Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.

^fNew and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.

^gFor new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.

^hNew Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.

ⁱThe maximum allowable area for a single-story nonsprinklered Group U greenhouse is permitted to be 9,000 square feet, or the allowable area shall be permitted to comply with Table C102.1 of Appendix C.

NEW SECTION

WAC 51-50-0508 Section 508—Mixed use and occupancy.

508.4.4.1 Construction. Required separations shall be *fire barriers* constructed in accordance with Section 707 or *horizontal assemblies* constructed in accordance with Section 711, or both, so as to completely separate adjacent occupancies. Mass timber elements serving as fire barriers or horizontal assemblies to separate occupancies in Type IV-B or IV-C construction shall be separated from the interior of the building with an approved thermal barrier consisting of a minimum of 1/2 inch (12.7 mm) gypsum board or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0509 Section 509—Incidental uses.

509.4.1.1 Type IV-B and IV-C construction. Where Table 509 specifies a fire-resistance-rated separation, mass timber

elements serving as fire barriers or a horizontal assembly in Type IV-B or IV-C construction shall be separated from the interior of the incidental use with an approved thermal barrier consisting of a minimum of 1/2 inch (12.7 mm) gypsum board or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.

**Table 509
Incidental Uses**

Room or Area	Separation and/or Protection
Dry type transformers over 112.5 kVA and required to be in a fire resistant room per NEC (NFPA 70) Section 450.21 (B) ¹	1 hour or provide automatic sprinkler system

¹ Dry type transformers rated over 35,000 volts and oil-insulated transformers shall be installed in a transformer vault complying with NFPA 70.

(Remainder of table unchanged)

NEW SECTION

WAC 51-50-0601 Section 601—General.

**Table 601
Fire-resistance Rating Requirements for Building Elements (hours)**

Building Element	Type I		Type II		Type III		Type IV				Type V	
	A	B	A	B	A	B	A	B	C	HT	A	B
Primary structural frame ^f (see Section 202)	3 ^a	2 ^a	1	0	1 ^b	0	3 ^a	2 ^a	2 ^a	HT	1	0
Bearing walls												
Exterior ^{s, f}	3	2	1	0	2	2	3	2	2	2	1	0
Interior	3 ^a	2 ^a	1	0	1	0	3	2	2	1/HT	1	0
Nonbearing walls and partitions exterior	See Table 602											
Nonbearing walls and partitions interior ^d	0	0	0	0	0	0	0	0	0	See Section 602.4.4.6	0	0

Building Element	Type I		Type II		Type III		Type IV				Type V	
	A	B	A	B	A	B	A	B	C	HT	A	B
Floor construction and associated secondary members (see Section 202)	2	2	1	0	1	0	2	2	2	HT	1	0
Roof construction and associated secondary members (see Section 202)	1 1/2 ^b	1 ^{b,c}	1 ^{b,c}	0 ^c	1 ^{b,c}	0	1 1/2	1	1	HT	1 ^{b,c}	0

For SI: 1 foot = 304.8 mm.

^aRoof supports: Fire-resistance ratings of primary structural frame and bearing walls are permitted to be reduced by 1 hour where supporting a roof only.

^bExcept in Groups F-1, H, M and S-1 occupancies, fire protection of structural members in roof construction shall not be required, including protection of primary structural frame members, roof framing and decking where every part of the roof construction is 20 feet or more above any floor immediately below. Fire-retardant-treated wood members shall be allowed to be used for such unprotected members.

^cIn all occupancies, heavy timber complying with Section 2304.11 shall be allowed where a 1-hour or less fire-resistance rating is required.

^dNot less than the fire-resistance rating required by other sections of this code.

^eNot less than the fire-resistance rating based on fire separation distance (see Table 602).

^fNot less than the fire-resistance rating as referenced in Section 704.10.

NEW SECTION

WAC 51-50-0602 Section 602—Construction classification.

Table 602
Fire-resistance Rating Requirements for Exterior Walls Based on Fire Separation Distance^{a,d,g}

Fire Separation Distance = X (feet)	Type of Construction	Occupancy Group H ^c	Occupancy Group F-1, M, S-1 ^f	Occupancy Group A, B, E, F-2, I, R ⁱ , S-2, U ^h
X < 5 ^b	All	3	2	1
5 ≤ X < 10	IA, IVA	3	2	11
	Others	2	1	
10 ≤ X < 30	IA, IB, IVA, IVB	2	1	1 ^c
	IIB, VB	1	0	0
	Others	1	1	1 ^c
X ≥ 30	All	0	0	0

For SI: 1 foot = 304.8 mm.

^aLoad-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.

^bSee Section 706.1.1 for party walls.

^cOpen parking garages complying with Section 406 shall not be required to have a fire-resistance rating.

^dThe fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.

^eFor special requirements for Group H occupancies, see Section 415.6.

^fFor special requirements for Group S aircraft hangars, see Section 412.3.1.

^gWhere Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.

^hFor a building containing only a Group U occupancy private garage or carport, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.

602.4 Type IV. Type IV construction is that type of construction in which the building elements are mass timber or non-combustible materials and have fire-resistance ratings in accordance with Table 601. Mass timber elements shall meet

the fire-resistance rating requirements of this section based on either the fire-resistance rating of the noncombustible protection, the mass timber, or a combination of both and shall be determined in accordance with Section 703.2 or 703.3.

The minimum dimensions and permitted materials for building elements shall comply with the provisions of this section including Table 602.4.4 and Section 2304.11. Mass timber elements of Types IV-A, IV-B and IV-C construction shall be protected with noncombustible protection applied directly to the mass timber in accordance with Sections 602.4.1 through 602.4.3. The time assigned to the noncombustible protection shall be determined in accordance with Section 703.8 and comply with 722.7.

Cross-laminated timber shall be labeled as conforming to ANSI/APA PRG 320 as referenced in Section 2303.1.4.

Exterior load-bearing walls and nonload-bearing walls shall be mass timber construction, or shall be of noncombustible construction.

EXCEPTION: Exterior load-bearing walls and nonload-bearing walls of Type IV-HT Construction in accordance with Section 602.4.4.

The interior building elements, including nonload-bearing walls and partitions, shall be of mass timber construction or of noncombustible construction.

EXCEPTION: Interior building elements and nonload-bearing walls and partitions of Type IV-HT Construction in accordance with Section 602.4.4.

Combustible concealed spaces are not permitted except as otherwise indicated in Sections 602.4.1 through 602.4.4. Combustible stud spaces within light frame walls of Type IV-HT construction shall not be considered concealed spaces, but shall comply with Section 718.

In buildings of Type IV-A, B, and C, construction with an occupied floor located more than 75 feet above the lowest level of fire department access, up to and including 12 stories or 180 feet above grade plane, mass timber interior exit and elevator hoistway enclosures shall be protected in accordance with Section 602.4.1.2. In buildings greater than 12 stories or 180 feet above grade plane, interior exit and elevator hoistway enclosures shall be constructed of noncombustible materials.

602.4.1 Type IV-A. Building elements in Type IV-A construction shall be protected in accordance with Sections 602.4.1.1 through 602.4.1.6. The required fire-resistance rating of noncombustible elements and protected mass timber elements shall be determined in accordance with Section 703.2 or Section 703.3.

602.4.1.1 Exterior protection. The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness

intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².

602.4.1.2 Interior protection. Interior faces of all mass timber elements, including the inside faces of exterior mass timber walls and mass timber roofs, shall be protected with materials complying with Section 703.5.

602.4.1.2.1 Protection time. Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.

602.4.1.3 Floors. The floor assembly shall contain a noncombustible material not less than 1 inch in thickness above the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. The underside of floor assemblies shall be protected in accordance with 602.4.1.2.

602.4.1.4 Roofs. The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.1.2. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

602.4.1.5 Concealed spaces. Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.

602.4.1.6 Shafts. Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.

602.4.2 Type IV-B. Building elements in Type IV-B construction shall be protected in accordance with Sections 602.4.2.1 through 602.4.2.6. The required fire-resistance rating of noncombustible elements or mass timber elements shall be determined in accordance with Section 703.2 or 703.3.

602.4.2.1 Exterior protection. The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354, and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².

602.4.2.2 Interior protection. Interior faces of all mass timber elements, including the inside face of exterior mass timber walls and mass timber roofs, shall be protected, as required by this section, with materials complying with Section 703.5.

602.4.2.2.1 Protection time. Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.

602.4.2.2.2 Protected area. All interior faces of all mass timber elements shall be protected in accordance with Section 602.4.2.2.1, including the inside face of exterior mass timber walls and mass timber roofs.

EXCEPTION: Unprotected portions of mass timber ceilings and walls complying with Section 602.4.2.2.4 and the following:

1. Unprotected portions of mass timber ceilings, including attached beams, shall be permitted and shall be limited to an area equal to 20% of the floor area in any dwelling unit or fire area; or
2. Unprotected portions of mass timber walls, including attached columns, shall be permitted and shall be limited to an area equal to 40% of the floor area in any dwelling unit or fire area; or
3. Unprotected portions of both walls and ceilings of mass timber, including attached columns and beams, in any dwelling unit or fire area shall be permitted in accordance with Section 602.4.2.2.3.
4. Mass timber columns and beams which are not an integral portion of walls or ceilings, respectively, shall be permitted to be unprotected without restriction of either aggregate area or separation from one another.

602.4.2.2.3 Mixed unprotected areas. In each dwelling unit or fire area, where both portions of ceilings and portions of walls are unprotected, the total allowable unprotected area shall be determined in accordance with Equation 6-1.

(Equation 6-1)

$$(U_{tc}/U_{ac}) + (U_{tw}/U_{aw}) \leq 1$$

where:

- U_{tc} = Total unprotected mass timber ceiling areas;
- U_{ac} = Allowable unprotected mass timber ceiling area conforming to Section 602.4.2.2.2, Exception 1;
- U_{tw} = Total unprotected mass timber wall areas;
- U_{aw} = Allowable unprotected mass timber wall area conforming to Section 602.4.2.2.2, Exception 2.

602.4.2.2.4 Separation distance between unprotected mass timber elements. In each dwelling unit or fire area, unprotected portions of mass timber walls and ceilings shall be not less than 15 feet from unprotected portions of other walls and ceilings, measured horizontally along the ceiling

and from other unprotected portions of walls measured horizontally along the floor.

602.4.2.3 Floors. The floor assembly shall contain a non-combustible material not less than 1 inch in thickness above the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. The underside of floor assemblies shall be protected in accordance with Section 602.4.1.2.

602.4.2.4 Roofs. The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.2.2 except, in nonoccupiable spaces, they shall be treated as a concealed space with no portion left unprotected. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

602.4.2.5 Concealed spaces. Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.

602.4.2.6 Shafts. Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.

602.4.3 Type IV-C. Building elements in Type IV-C construction shall be protected in accordance with Sections 602.4.3.1 through 602.4.3.6. The required fire-resistance rating of building elements shall be determined in accordance with Sections 703.2 or 703.3.

602.4.3.1 Exterior protection. The exterior side of walls of combustible construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².

602.4.3.2 Interior protection. Mass timber elements are permitted to be unprotected.

602.4.3.3 Floors. Floor finishes in accordance with Section 804 shall be permitted on top of the floor construction.

602.4.3.4 Roofs. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.

602.4.3.5 Concealed spaces. Concealed spaces shall not contain combustibles other than electrical, mechanical, fire pro-

tection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1.

602.4.3.6 Shafts. Shafts shall be permitted in accordance with Sections 713 and 718. Shafts and elevator hoistway and interior exit stairway enclosures shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1, on both the inside of the shaft and the outside of the shaft.

602.4.4 Type IV-HT. Type IV-HT construction (Heavy Timber, HT) is that type of construction in which the exterior walls are of noncombustible materials and the interior building elements are of solid wood, laminated heavy timber or structural composite lumber (SCL), without concealed spaces. The minimum dimensions for permitted materials including solid timber, glued-laminated timber, structural composite lumber (SCL) and cross-laminated timber (CLT) and details of Type IV construction shall comply with the provisions of this section, including Table 602.4.4 and Section 2304.11. Exterior walls complying with Section 602.4.4.1 or 602.4.4.2 shall be permitted. Interior walls and partitions not less than 1 hour fire-resistance rating or heavy timber conforming with Section 602.4.4.8.1 shall be permitted. Cross-laminated timber (CLT) dimensions used in this section are actual dimensions. Lumber decking shall be in accordance with Section 2304.9.

602.4.4.1 Fire-retardant-treated wood in exterior walls. Fire-retardant-treated wood framing and sheathing complying with Section 2303.2 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less.

602.4.4.2 Cross-laminated timber in exterior walls. Cross-laminated timber complying with Section 2303.1.4 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less, provided the exterior surface of the cross-laminated timber is protected by one of the following:

1. Fire-retardant-treated wood sheathing complying with Section 2303.2 and not less than 15/32 inch (12 mm) thick;
 2. Gypsum board not less than 1/2 inch (12.7 mm) thick;
- or
3. A noncombustible material.

602.4.4.3 Columns. Wood columns shall be sawn or glued laminated and shall be not less than 8 inches (203 mm), nominal, in any dimension where supporting floor loads and not less than 6 inches (152 mm) nominal in width and not less than 8 inches (203 mm) nominal in depth where supporting roof and ceiling loads only. Columns shall be continuous or superimposed and connected in an approved manner. Protection in accordance with Section 704.2 is not required.

602.4.4.4 Floor framing. Wood beams and girders shall be of sawn or glued-laminated timber and shall be not less than 6 inches (152 mm) nominal in width and not less than 10

inches (254 mm) nominal in depth. Framed sawn or glued-laminated timber arches, which spring from the floor line and support floor loads, shall be not less than 8 inches (203 mm) nominal in any dimension. Framed timber trusses supporting floor loads shall have members of not less than 8 inches (203 mm) nominal in any dimension.

602.4.4.5 Roof framing. Wood-frame or glued-laminated arches for roof construction, which spring from the floor line or from grade and do not support floor loads, shall have members not less than 6 inches (152 mm) nominal in width and have not less than 8 inches (203 mm) nominal in depth for the lower half of the height and not less than 6 inches (152 mm) nominal in depth for the upper half. Framed or glued-laminated arches for roof construction that spring from the top of walls or wall abutments, framed timber trusses and other roof framing, which do not support floor loads, shall have members not less than 4 inches (102 mm) nominal in width and not less than 6 inches (152 mm) nominal in depth. Spaced members shall be permitted to be composed of two or more pieces not less than 3 inches (76 mm) nominal in thickness where blocked solidly throughout their intervening spaces or where spaces are tightly closed by a continuous wood cover plate of not less than 2 inches (51 mm) nominal in thickness secured to the underside of the members. Splice plates shall be not less than 3 inches (76 mm) nominal in thickness. Where protected by approved automatic sprinklers under the roof deck, framing members shall be not less than 3 inches (76 mm) nominal in width.

602.4.4.6 Floors. Floors shall be without concealed spaces. Wood floors shall be constructed in accordance with Section 602.4.4.6.1 or 602.4.4.6.2.

602.4.4.6.1 Sawn or glued-laminated plank floors. Sawn or glued-laminated plank floors shall be one of the following:

1. Sawn or glued-laminated planks, splined or tongue-and-groove, of not less than 3 inches (76 mm) nominal in thickness covered with 1 inch (25 mm) nominal dimension tongue-and-groove flooring, laid crosswise or diagonally, 15/32 inch (12 mm) wood structural panel or 1/2 inch (12.7 mm) particleboard.

2. Planks not less than 4 inches (102 mm) nominal in width set on edge close together and well spiked and covered with 1 inch (25 mm) nominal dimension flooring or 15/32 inch (12 mm) wood structural panel or 1/2 inch (12.7 mm) particleboard.

The lumber shall be laid so that no continuous line of joints will occur except at points of support. Floors shall not extend closer than 1/2 inch (12.7 mm) to walls. Such 1/2 inch (12.7 mm) space shall be covered by a molding fastened to the wall and so arranged that it will not obstruct the swelling or shrinkage movements of the floor. Corbelling of masonry walls under the floor shall be permitted to be used in place of molding.

602.4.4.6.2 Cross-laminated timber floors. Cross-laminated timber shall be not less than 4 inches (102 mm) in thickness. Cross-laminated timber shall be continuous from support to support and mechanically fastened to one another. Cross-laminated timber shall be permitted to be connected to

walls without a shrinkage gap providing swelling or shrinking is considered in the design. Corbelling of masonry walls under the floor shall be permitted to be used.

602.4.4.7 Roofs. Roofs shall be without concealed spaces and wood roof decks shall be sawn or glued laminated, splined or tongue-and-groove plank, not less than 2 inches (51 mm) nominal in thickness; 1 1/8 inch thick (32 mm) wood structural panel (exterior glue); planks not less than 3 inches (76 mm) nominal in width, set on edge close together and laid as required for floors; or of cross-laminated timber. Other types of decking shall be permitted to be used if providing equivalent fire resistance and structural properties.

Cross-laminated timber roofs shall be not less than 3 inches (76 mm) nominal in thickness and shall be continuous from support to support and mechanically fastened to one another.

602.4.4.8 Partitions and walls. Partitions and walls shall comply with Section 602.4.4.8.1 or 602.4.4.8.2.

602.4.4.8.1 Interior walls and partitions. Interior walls and partitions shall be of solid wood construction formed by not less than two layers of 1 inch (25 mm) matched boards or laminated construction 4 inches (102 mm) thick, or of 1 hour fire-resistance-rated construction.

602.4.4.8.2 Exterior walls. Exterior walls shall be of one of the following:

1. Noncombustible materials.
2. Not less than 6 inches (152 mm) in thickness and constructed of one of the following:
 - 2.1. Fire-retardant-treated wood in accordance with Section 2303.2 and complying with Section 602.4.4.1.
 - 2.2. Cross-laminated timber complying with Section 602.4.4.2.

602.4.4.9 Exterior structural members. Where a horizontal separation of 20 feet (6096 mm) or more is provided, wood columns and arches conforming to heavy timber sizes complying with Table 602.4.4 shall be permitted to be used externally.

NEW SECTION

WAC 51-50-0603 Section 603—Combustible material in Types I and II construction.

603.1 Allowable materials. Combustible materials shall be permitted in buildings of Type I or II construction in the following applications and in accordance with Sections 603.1.1 through 603.1.3:

1. *Fire-retardant-treated wood* shall be permitted in:
 - 1.1. Nonbearing partitions where the required *fire-resistance rating* is 2 hours or less.
 - 1.2. Nonbearing *exterior walls* where fire-resistance-rated construction is not required.
 - 1.3. Roof construction, including girders, trusses, framing and decking.

EXCEPTION: In buildings of Type I-A construction exceeding two *stories above grade plane*, *fire-retardant-treated wood* is not permitted in roof construction where the vertical distance from the upper floor to the roof is less than 20 feet (6096 mm).

2. Thermal and acoustical insulation, other than foam plastics, having a *flame spread index* of not more than 25.

- EXCEPTIONS:
1. Insulation placed between two layers of noncombustible materials without an intervening airspace shall be allowed to have a *flame spread index* of not more than 100.
 2. Insulation installed between a finished floor and solid decking without intervening airspace shall be allowed to have a *flame spread index* of not more than 200.

3. Foam plastics in accordance with Chapter 26.
4. Roof coverings that have an A, B or C classification.
5. *Interior floor finish* and floor covering materials installed in accordance with Section 804.
6. Millwork such as doors, door frames, window sashes and frames.
7. *Interior wall and ceiling finishes* installed in accordance with Sections 801 and 803.
8. *Trim* installed in accordance with Section 806.
9. Where not installed greater than 15 feet (4572 mm) above grade, show windows, nailing or furring strips and wooden bulkheads below show windows, including their frames, aprons and show cases.
10. Finish flooring installed in accordance with Section 805.
11. Partitions dividing portions of stores, offices or similar places occupied by one tenant only and that do not establish a *corridor* serving an *occupant load* of 30 or more shall be permitted to be constructed of *fire-retardant-treated wood*, 1-hour fire-resistance-rated construction or of wood panels or similar light construction up to 6 feet (1829 mm) in height.
12. Stages and platforms constructed in accordance with Sections 410.3 and 410.4, respectively.
13. Combustible *exterior wall coverings*, balconies and similar projections and bay or oriel windows in accordance with Chapter 14.
14. Blocking such as for handrails, millwork, cabinets and window and door frames.
15. Light-transmitting plastics as permitted by Chapter 26.
16. Mastics and caulking materials applied to provide flexible seals between components of *exterior wall* construction.
17. Exterior plastic veneer installed in accordance with Section 2605.2.
18. Nailing or furring strips as permitted by Section 803.13.
19. Heavy timber as permitted by Note^c to Table 601 and Sections 602.4.4.9 and 1406.3.
20. Aggregates, component materials and admixtures as permitted by Section 703.2.2.
21. Sprayed fire-resistant materials and intumescent and mastic fire-resistant coatings, determined on the basis of *fire resistance* tests in accordance with Section 703.2 and installed in accordance with Sections 1705.14 and 1705.15, respectively.
22. Materials used to protect penetrations in fire-resistance-rated assemblies in accordance with Section 714.
23. Materials used to protect joints in fire-resistance-rated assemblies in accordance with Section 715.

24. Materials allowed in the concealed spaces of buildings of Types I and II construction in accordance with Section 718.5.

25. Materials exposed within plenums complying with Section 602 of the *International Mechanical Code*.

26. Wall construction of freezers and coolers of less than 1,000 square feet (92.9 m²), in size, lined on both sides with noncombustible materials and the building is protected throughout with an *automatic sprinkler system* in accordance with Section 903.3.1.1.

NEW SECTION

WAC 51-50-0703 Section 703—Fire-resistance ratings and fire tests.

703.8 Determination of noncombustible protection time contribution. The time, in minutes, contributed to the fire-resistance rating by the noncombustible protection of mass timber building elements, components, or assemblies, shall be established through a comparison of assemblies tested using procedures set forth in ASTM E119 or UL 263. The test assemblies shall be identical in construction, loading, and materials, other than the noncombustible protection. The two test assemblies shall be tested to the same criteria of structural failure.

1. Test Assembly 1 shall be without protection.
2. Test Assembly 2 shall include the representative noncombustible protection. The protection shall be fully defined in terms of configuration details, attachment details, joint sealing details, accessories and all other relevant details.

The noncombustible protection time contribution shall be determined by subtracting the fire resistance time, in minutes, of Test Assembly 1 from the fire resistance time, in minutes, of Test Assembly 2.

703.9 Sealing of adjacent mass timber elements. In buildings of Type IV-A, IV-B, and IV-C construction, sealant or adhesive shall be provided to resist the passage of air in the following locations:

1. At abutting edges and intersections of mass timber building elements required to be fire-resistance-rated.
2. At abutting intersections of mass timber building elements and building elements of other materials where both are required to be fire-resistance-rated.

Sealants shall meet the requirements of ASTM C920. Adhesives shall meet the requirements of ASTM D3498.

EXCEPTION: Sealants or adhesives need not be provided where a fire-resistance-rated assembly does not include them as a required component.

NEW SECTION

WAC 51-50-0718 Section 718—Concealed spaces.

718.2.1 Fireblocking materials. *Fireblocking* shall consist of the following materials:

1. Two inch (51 mm) nominal lumber.
2. Two thicknesses of 1 inch (25 mm) nominal lumber with broken lap joints.

3. One thickness of 0.719 inch (18.3 mm) wood structural panels with joints backed by 0.719 inch (18.3 mm) wood structural panels.

4. One thickness of 0.75 inch (19.1 mm) particleboard with joints backed by 0.75 inch (19 mm) particleboard.

5. One half inch (12.7 mm) gypsum board.

6. One fourth inch (6.4 mm) cement-based millboard.

7. Batts or blankets of mineral wool, mineral fiber or other approved materials installed in such a manner as to be securely retained in place.

8. Cellulose insulation installed as tested for the specific application.

9. Mass timber complying with Section 2304.11.

NEW SECTION

WAC 51-50-0722 Section 722—Calculated fire resistance.

722.7 Fire-resistance rating of mass timber. The required fire resistance of mass timber elements in Section 602.4 shall be determined in accordance with Section 703.2 or 703.3. The fire-resistance rating of building elements shall be as required in Tables 601 and 602 and as specified elsewhere in this code. The fire-resistance rating of the mass timber elements shall consist of the fire resistance of the unprotected element added to the protection time of the noncombustible protection.

722.7.1 Minimum required protection. When required by Sections 602.4.1 through 602.4.3, noncombustible protection shall be provided for mass timber building elements in accordance with Table 722.7.1(1). The rating, in minutes, contributed by the noncombustible protection of mass timber building elements, components, or assemblies, shall be established in accordance with Section 703.8. The protection contributions indicated in Table 722.7.1(2) shall be deemed to comply with this requirement when installed and fastened in accordance with Section 722.7.2.

Table 722.7.1(1)

Protection Required from Noncombustible Covering Material

Required Fire-Resistance Rating of Building Element per Tables 601 and 602 (hours)	Minimum Protection Required from Noncombustible Protection (minutes)
1	40
2	80
3 or more	120

Table 722.7.1(2)

Protection Provided by Noncombustible Covering Material

Noncombustible Protection	Protection Contribution (minutes)
1/2 inch Type X Gypsum board	25
5/8 inch Type X Gypsum board	40

722.7.2 Installation of gypsum board noncombustible protection. Gypsum board complying with Table 722.7.1(2) shall be installed in accordance with this section.

722.7.2.1 Interior surfaces. Layers of Type X gypsum board serving as noncombustible protection for interior surfaces of wall and ceiling assemblies determined in accordance with Table 722.7.1(1) shall be installed in accordance with the following:

1. Each layer shall be attached with Type S drywall screws of sufficient length to penetrate the mass timber at least 1 inch when driven flush with the paper surface of the gypsum board.

EXCEPTION: The third layer, where determined necessary by Section 722.7, shall be permitted to be attached with 1 inch #6 Type S drywall screws to furring channels in accordance with ASTM C645.

2. Screws for attaching the base layer shall be 12 inches on center in both directions.

3. Screws for each layer after the base layer shall be 12 inches on center in both directions and offset from the screws of the previous layers by 4 inches in both directions.

4. All panel edges of any layer shall be offset 18 inches from those of the previous layer.

5. All panel edges shall be attached with screws sized and offset as in items 1 through 4 above and placed at least 1 inch but not more than 2 inches from the panel edge.

6. All panels installed at wall-to-ceiling intersections shall be installed such that the ceiling panel(s) is installed first and the wall panel(s) is installed after the ceiling panel has been installed and is fitted tight to the ceiling panel. Where multiple layers are required, each layer shall repeat this process.

7. All panels installed at a wall-to-wall intersection shall be installed such that the panel(s) covering an exterior wall or a wall with a greater fire-resistance rating shall be installed first and the panel(s) covering the other wall shall be fitted tight to the panel covering the first wall. Where multiple layers are required, each layer shall repeat this process.

8. Panel edges of the face layer shall be taped and finished with joint compound. Fastener heads shall be covered with joint compound.

9. Panel edges protecting mass timber elements adjacent to unprotected mass timber elements in accordance with Section 602.4.2.2 shall be covered with 1 1/4 inch metal corner bead and finished with joint compound.

722.7.2.2 Exterior surfaces. Layers of Type X gypsum board serving as noncombustible protection for the outside of the exterior heavy timber walls determined in accordance with Table 722.7.1(a) shall be fastened 12 inches on center each way and 6 inches on center at all joints or ends. All panel edges shall be attached with fasteners located at least 1 inch but not more than 2 inches from the panel edge. Fasteners shall comply with one of the following:

1. Galvanized nails of minimum 12 gage with a 7/16 inch head of sufficient length to penetrate the mass timber a minimum of 1 inch.

2. Screws that comply with ASTM C1002 (Type S, Type W, or Type G) of sufficient length to penetrate the mass timber a minimum of 1 inch.

NEW SECTION

WAC 51-50-0803 Section 803—Wall and ceiling finishes.

803.3 Heavy timber exemption. Exposed portions of building elements complying with the requirements for buildings of Type IV construction in Section 602.4 shall not be subject to interior finish requirements except in interior exit stairways, interior exit ramps, and exit passageways.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1004 Section 1004.

Table 1004.1.2. Maximum Floor Area Allowances

Table 1004.1.2

Maximum Floor Area Allowances Per Occupant

<u>FUNCTION OF SPACE</u>	<u>OCCUPANT LOAD FACTOR^a</u>
<u>Accessory storage areas, mechanical equipment room</u>	<u>300 gross</u>
<u>Agricultural building</u>	<u>300 gross</u>
<u>Aircraft hangars</u>	<u>500 gross</u>
<u>Airport terminal</u>	
<u>Baggage claim</u>	<u>20 gross</u>
<u>Baggage handling</u>	<u>300 gross</u>
<u>Concourse</u>	<u>100 gross</u>
<u>Waiting areas</u>	<u>15 gross</u>
<u>Assembly</u>	
<u>Gaming floors (keno, slots, etc.)</u>	<u>11 gross</u>
<u>Exhibit gallery and museum</u>	<u>30 net</u>
<u>Assembly with fixed seats</u>	<u>See Section 1004.4</u>
<u>Assembly without fixed seats</u>	
<u>Concentrated (chairs only - Not fixed)</u>	<u>7 net</u>
<u>Standing space</u>	<u>5 net^b</u>
<u>Unconcentrated (tables and chairs)</u>	<u>15 net</u>
<u>Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas</u>	<u>7 net</u>
<u>Business areas</u>	<u>100 gross</u>
<u>Courtrooms - Other than fixed seating areas</u>	<u>40 net</u>
<u>Day care</u>	<u>35 net</u>
<u>Dormitories</u>	<u>50 gross</u>
<u>Educational</u>	
<u>Classroom area</u>	<u>20 net</u>
<u>Shops and other vocational room areas</u>	<u>50 net</u>
<u>Exercise rooms</u>	<u>50 gross</u>
<u>Group H-5 - Fabrication and manufacturing areas</u>	<u>200 gross</u>
<u>Industrial areas</u>	<u>100 gross</u>

<u>FUNCTION OF SPACE</u>	<u>OCCUPANT LOAD FACTOR^a</u>
<u>Institutional areas</u>	
<u>Inpatient treatment areas</u>	<u>240 gross</u>
<u>Outpatient areas</u>	<u>100 gross</u>
<u>Sleeping areas</u>	<u>120 gross</u>
<u>Kitchens, commercial</u>	<u>200 gross</u>
<u>Library</u>	
<u>Reading rooms</u>	<u>50 net</u>
<u>Stack area</u>	<u>100 gross</u>
<u>Locker rooms</u>	<u>50 gross</u>
<u>Mall buildings - Covered and open</u>	<u>See Section 402.8.2</u>
<u>Mercantile</u>	<u>60 gross</u>
<u>Storage, stock, shipping areas</u>	<u>300 gross</u>
<u>Parking garages</u>	<u>200 gross</u>
<u>Residential</u>	<u>200 gross</u>
<u>Skating rinks, swimming pools</u>	
<u>Rink and pool</u>	<u>50 gross</u>
<u>Decks</u>	<u>15 gross</u>
<u>Stages and platforms</u>	<u>15 net</u>
<u>Warehouses</u>	<u>500 gross</u>

For SI: 1 square foot = 0.0929 m², 1 foot = 304.8 mm.

^a Floor area in square feet per occupant.

^b The occupant load factor for fixed guideway transit and passenger rail systems shall be 15 net in accordance with NFPA 130.

1004.2 Increased occupant load. The *occupant load* permitted in any building, or portion thereof, is permitted to be increased from that number established for the occupancies in Table 1004.1.2, provided that all other requirements of the code are also met based on such modified number and the *occupant load* does not exceed one occupant per 7 square feet (0.65 m²) of occupiable floor space. Where required by the *building official*, an *approved aisle*, seating or fixed equipment diagram substantiating any increase in *occupant load* shall be submitted. Where required by the *building official*, such diagram shall be posted. See WAC 170-295-0080 (1)(b) for day care licensed by the state of Washington.

NEW SECTION

WAC 51-50-1406 Section 1406—Combustible materials on the exterior sides of exterior walls.

1406.3 Balconies and similar projections. Balconies and similar projections of combustible construction other than fire-retardant-treated wood shall be fire-resistance-rated where required by Table 601 for floor construction or shall be of Type IV construction in accordance with Section 602.4.4. The aggregate length of the projections shall not exceed 50 percent of the building's perimeter on each floor.

NEW SECTION

WAC 51-50-1604 Section 1604—General design requirements.

**Table 1604.5
Risk Category of Buildings and Other Structures**

<u>RISK CATEGORY</u>	<u>NATURE OF OCCUPANCY</u>
I	Buildings and other structures that represent a low hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> • Agricultural facilities. • Certain temporary facilities. • Minor storage facilities.
II	Buildings and other structures except those listed in Risk Categories I, III, and IV.
III	Buildings and other structures that represent a substantial hazard to human life in the event of failure including, but not limited to: <ul style="list-style-type: none"> • Buildings and other structures whose primary occupancy is public assembly with an occupant load greater than 300. • Buildings and other structures containing Group E or Group I-4 occupancies with an occupant load greater than 250. • Buildings and other structures containing educational occupancies for students above the 12th grade with an occupant load greater than 500. • Group I-2 occupancies with an occupant load of 50 or more resident care recipients but not having surgery or emergency treatment facilities. • Group I-3 occupancies. • Any other occupancy with an occupant load greater than 5,000.^a • Power-generating stations, water treatment facilities for potable water, wastewater treatment facilities and other public utility facilities not included in Risk Category IV. • Buildings and other structures not included in Risk Category IV containing quantities of toxic or explosive materials that: <p style="margin-left: 40px;">Exceed maximum allowable quantities per control area as given in Table 307.1(1) or 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>; and</p>

RISK CATEGORY	NATURE OF OCCUPANCY
	Are sufficient to pose a threat to the public if released. ^b
IV	<p>Buildings and other structures designated as essential facilities including, but not limited to:</p> <ul style="list-style-type: none"> • Group I-2 occupancies having surgery or emergency treatment facilities. • Fire, rescue, ambulance and police stations, and emergency vehicle garages. • Designated earthquake, hurricane, or other emergency shelters. • Designated emergency preparedness, communications and operations centers, and other facilities required for emergency response. • Power-generating stations and other public utility facilities required as emergency backup facilities for Risk Category IV structures. • Buildings and other structures containing quantities of highly toxic materials that: <ul style="list-style-type: none"> Exceed maximum allowable quantities per control area as given in Table 307.1(2) or per outdoor control area in accordance with the <i>International Fire Code</i>; and Are sufficient to pose a threat to the public if released.^b • Aviation control towers, air traffic control centers, and emergency aircraft hangars. • Buildings and other structures having critical national defense functions. • Water storage facilities and pump structures required to maintain water pressure for fire suppression.

^a For purposes of occupant load calculation, occupancies required by Table 1004.1.2 to use gross floor area calculations shall be permitted to use net floor areas to determine the total occupant load.

^b Where approved by the building official, the classification of buildings and other structures as Risk Category III or IV based on their quantities of toxic, highly toxic or explosive materials is permitted to be reduced to Risk Category II, provided it can be demonstrated by a hazard assessment in accordance with Section 1.5.3 of ASCE 7 that a release of the toxic, highly toxic or explosive materials is not sufficient to pose a threat to the public.

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-1613 ((Reserved-)) Section 1613.5—Amendments to ASCE 7.

1613.5 Amendments to ASCE 7. The provisions of Section 1613.5 shall be permitted as an amendment to the relevant provisions of ASCE 7. The text of ASCE 7 shall be amended as indicated in Sections 1613.5.2 through 1613.5.4.

1613.5.1 Transfer of anchorage forces into diaphragm. Modify ASCE 7 Section 12.11.2.2.1 as follows:

12.11.2.2.1 Transfer of anchorage forces into diaphragm. Diaphragms shall be provided with continuous ties or struts between diaphragm chords to distribute these anchorage forces into the diaphragms. Diaphragm connections shall be positive, mechanical or welded. Added chords are permitted to be used to form subdiaphragms to transmit the anchorage forces to the main continuous cross-ties. The maximum length-to-width ratio of a wood, wood structural panel or untopped steel deck sheathed structural subdiaphragm that serves as part of the continuous tie system shall be 2.5 to 1. Connections and anchorages capable of resisting the prescribed forces shall be provided between the diaphragm and the attached components. Connections shall extend into the diaphragm a sufficient distance to develop the force transferred into the diaphragm.

1613.5.2 Increased structural height limit. Modify ASCE 7 Section 12.2.5.4 as follows:

12.2.5.4 Increased structural height limit for steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls, and special reinforced concrete shear walls. The limits on height, h_n , in Table 12.2-1 are permitted to be increased from 160 ft (50 m) to 240 ft (75 m) for structures assigned to Seismic Design Categories D or E and from 100 ft (30 m) to 160 ft (50 m) for structures assigned to Seismic Design Category F, if all of the following are satisfied:

1. The structure shall not have an extreme torsional irregularity as defined in Table 12.3-1 (horizontal structural irregularity Type 1b).

2. The steel eccentrically braced frames, steel special concentrically braced frames, steel buckling-restrained braced frames, steel special plate shear walls or special reinforced concrete shear walls in any one plane shall resist no more than 60 percent of the total seismic forces in each direction, neglecting accidental torsional effects.

3. Where floor and roof diaphragms transfer forces from the vertical seismic force-resisting elements above the diaphragm to other vertical force-resisting elements below the diaphragm, these in-plane transfer forces shall be amplified by the over-strength factor, Ω_o for the design of the diaphragm flexure, shear, and collectors.

4. The earthquake force demands in foundation mat slabs, grade beams, and pile caps supporting braced frames and/or walls arranged to form a shear-resisting core shall be amplified by 2 for shear and 1.5 for flexure.

5. The earthquake shear force demands in special reinforced concrete shear walls shall be amplified by the overstrength factor, Ω_o .

1613.5.3 Analysis procedure selection. Modify ASCE 7 Section 12.6.1 and Table 12.6-1 as follows:

12.6.1 Analysis procedure. The structural analysis required by Chapter 12 shall consist of one of the types per-

mitted in Table 12.6-1, based on the structure's seismic design category, structural system, dynamic properties, and regularity, or with the approval of the authority having jurisdiction, an alternative generally accepted procedure is permitted to be used. The analysis procedure selected shall be completed in accordance with the requirements of the corresponding section referenced in Table 12.6-1.

Table 12.6-1 Permitted Analytical Procedures

<u>Seismic Design Category</u>	<u>Structural Characteristics</u>	<u>Equivalent Lateral Force Procedure, Section 12.8^a</u>	<u>Modal Response Spectrum Analysis, Section 12.9^a</u>	<u>Linear Seismic Response History Procedures, Chapter 16^a</u>	<u>Nonlinear Seismic Response History Procedures, Chapter 16^b</u>
B, C	All structures	P	P	P	P
D, E, F	Risk Category I or II buildings not exceeding two stories above the base	P	P	P	P
	Structures of light frame construction	P	P	P	P
	Structures with no structural irregularities and not exceeding 160 ft in structural height	P	P	P	P
	Structures exceeding 160 ft in structural height with no structural irregularities and with $T < 3.5T_s$	P	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P	P
	Structures not exceeding 160 ft in structural height and having only horizontal irregularities of Type 2, 3, 4, or 5 in Table 12.3-1 or vertical irregularities of Type 4, 5a, or 5b in Table 12.3-2	P	P	P	P
	All other structures \leq 240 ft in height	NP	P	P	P
	All structures $>$ 240 ft in height	NP	NP	NP	P ^c

^aP: Permitted; NP: Not Permitted; $T_s = S_{D1}/S_{DS}$.

^bWhen nonlinear response history procedure is used, one of the linear procedures shall also be performed.

^cRefer to Section 12.6.2 for additional requirements.

1613.5.4 Nonlinear response history procedure for buildings in excess of 240 ft (75 m) in height. Modify ASCE 7 Section 12.6.2 as follows:

In addition to any of the linear analysis procedures in Table 12.6-1, a nonlinear dynamic analysis in accordance with ASCE 7 Chapter 16 shall be performed, except that analysis shall be conducted for MCER ground motions.

Acceptance criteria shall be compatible with providing not greater than a 10 percent, 5 percent or 2-1/2 percent risk of collapse for Risk Category II, III and IV structures, respectively. In addition, proportioning of the seismic force-resisting system shall incorporate a capacity-based approach that identifies the mechanism of nonlinear lateral displacement of the structure, those structural actions expected to yield, and

those intended to remain elastic. Design shall be subject to an approved independent structural design review.

NEW SECTION

WAC 51-50-1705 Section 1705—Required special inspections and tests.

1705.5.3 Mass timber construction. *Special inspections of mass timber construction in buildings, structures, or portions thereof greater than 85 feet above grade plane shall be in accordance with Table 1705.5.3.*

Table 1705.5.3

Required Special Inspections of Mass Timber Construction

Type	Continuous Special Inspection	Periodic Special Inspection
1. Inspection of anchorage and connections of mass timber construction to timber deep foundation systems.		X
2. Inspect erection and sequence of mass timber construction.		X
3. Inspection of connections where installation methods are required to meet design loads.		
a. Threaded fasteners.		
1. Verify use of proper installation equipment.		X
2. Verify use of pre-drilled holes where required.		X
3. Inspect screws, including diameter, length, head type, spacing, installation angle, and depth.		X
b. Adhesive anchors installed in horizontal or upwardly inclined orientation to resist sustained tension loads.	X	
c. Bolted connections.		X
d. Other proprietary concealed connection.		X

1705.11.1 Structural wood. *Continuous special inspection is required during field gluing operations of elements of the main windforce-resisting system. Periodic special inspection*

is required for nailing, bolting, anchoring and other fastening of elements of the main windforce-resisting system, including wood shear walls, wood diaphragms, drag struts, braces and hold-downs.

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the main windforce-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

1705.12.2 Structural wood. For the seismic force-resisting systems of structures assigned to *Seismic Design Category C, D, E, or F:*

1. *Continuous special inspection* shall be required during field gluing operations of elements of the seismic force-resisting system.

2. *Periodic special inspection* shall be required for nailing, bolting, anchoring and other fastening of elements of the seismic force-resisting system, including wood shear walls, wood diaphragms, drag struts, braces, shear panels and hold-downs.

EXCEPTION: *Special inspections are not required for wood shear walls, shear panels and diaphragms, including nailing, bolting, anchoring and other fastening to other elements of the seismic force-resisting system, where the lateral resistance is provided by sheathing of wood structural panels, and the fastener spacing of the sheathing is more than 4 inches (102 mm) on center.*

1705.19 Sealing of mass timber. Periodic special inspections of sealants or adhesives shall be conducted where sealant or adhesive required by Section 703.9 is applied to mass timber building elements as designated in the approved construction documents.

NEW SECTION

WAC 51-50-2303 Section 2303—Minimum standards and quality.

2303.1.4 Structural glued cross-laminated timber. Cross-laminated timbers shall be manufactured and identified in accordance with ANSI/APA PRG 320. Cross-laminated timbers in Construction Types IV-A, IV-B, and IV-C shall be manufactured and identified in accordance with ANSI/APA PRG 320 - 18.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-2900 Chapter 29—Plumbing systems.

SECTION 2901—GENERAL.

2901.1 Scope. The provisions of this chapter and the state plumbing code shall govern the erection, installation, *alteration*, repairs, relocation, replacement, *addition* to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the state plumbing code.

2901.2 Health codes. In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

SECTION 2902—MINIMUM PLUMBING FACILITIES.

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1. Uses not shown in Table 2902.1 shall be determined individually by the *building official* based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Plumbing fixtures need not be provided for unoccupied buildings or facilities.

2902.1.1 Fixture calculations. To determine the *occupant load* of each sex, the total *occupant load* shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the *occupant load* of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

EXCEPTION: The total *occupant load* shall not be required to be divided in half where *approved* statistical data indicate a distribution of the sexes of other than 50 percent of each sex.

2902.1.1.1 Private offices. Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

2902.1.1.2 Urinals. Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum specified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.

2902.1.2 Family or assisted-use toilet and bath fixtures. Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.

2902.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

EXCEPTIONS:

1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or less.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.
4. Separate facilities shall not be required in spaces primarily used for drinking or dining with a total occupant load, including both employees and customers, of 30 or fewer.

2902.2.1 Family or assisted-use toilet facilities serving as separate facilities. Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is

required to have only one water closet, two family or assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.

2902.3 Employee and public toilet facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.

EXCEPTION: Public toilet facilities shall not be required in:

1. Open or enclosed parking garages where there are no parking attendants.
2. Structures and tenant spaces intended for quick transactions, including takeout, pickup and drop-off, having a public access area less than or equal to 300 square feet (28 m²).

3. Fixed guideway transit and passenger rail systems constructed in accordance with Section 3112.

2902.3.1 Access. The route to the public toilet facilities required by Section 2902.3 shall not pass through kitchens, food preparation areas, unpackaged food storage areas, storage rooms or closets. Access to the required facilities shall be from within the building or from the exterior of the building. Access to toilets serving multiple tenants shall be through a common use area and not through an area controlled by a tenant. All routes shall comply with the accessibility requirements of this code. The public shall have access to the required toilet facilities at all times that the building is occupied. For other requirements for plumbing facilities, see Chapter 11.

2902.3.2 Location of toilet facilities in occupancies other than malls. In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space required to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

EXCEPTION: The location and maximum distances of travel to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum distance of travel are *approved*.

2902.3.3 Location of toilet facilities in malls. In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91,440 mm). In mall buildings, the required facilities shall be based on total square footage (m²) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accor-

dance with this section. The maximum distance of travel to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum distance of travel shall be measured from the employees' work area of the store or tenant space.

2902.3.4 Pay facilities. Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

2902.3.5 Door locking. Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

2902.3.6 Prohibited toilet room location. Toilet rooms shall not open directly into a room used for the preparation of food for service to the public.

2902.4 Signage. Required public facilities shall be provided with signs that designate the sex as required by Section 2902.2. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1111.

2902.4.1 Directional signage. Directional signage indicating the route to the public toilet facilities shall be posted in a lobby, corridor, aisle or similar space, such that the sign can be readily seen from the main entrance to the building or tenant space.

2902.5 Drinking fountain location. Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a distance of travel of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.

2902.5.1 Drinking fountain number. Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

- EXCEPTIONS:
1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
 2. A drinking fountain need not be provided in a drinking or dining establishment.

2902.5.2 Multistory buildings. Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.

2902.5.3 Penal institutions. Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

2902.5.4 Bottle filling stations. Bottle filling stations shall be provided in accordance with Sections 2902.5.4.1 through 2902.5.4.3.

2902.5.4.1 Group E occupancies. In Group E occupancies with an occupant load over 30, a minimum of one bottle filling station shall be provided on each floor. This bottle filling station may be integral to a drinking fountain.

2902.5.4.2 Substitution. In all occupancies that require more than two drinking fountains per floor or secured area, *bottle filling stations* shall be permitted to be substituted for up to 50 percent of the required number of drinking fountains.

2902.5.4.3 Accessibility. At least one of the required bottle filling stations shall be located in accordance with Section 309 ICC A117.1.

2902.6 Dwelling units. Dwelling units shall be provided with a kitchen sink.

2902.7 Water closet space requirements. The water closet stool in all occupancies shall be located in a clear space not less than 30 inches (762 mm) in width, with a clear space in front of the stool of not less than 24 inches (610 mm).

2902.8 Water. Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

2902.9 Small occupancies. Drinking fountains shall not be required for an occupant load of 15 or fewer.

SECTION 2903—RESERVED.

SECTION 2904—RESERVED.

Table 2902.1
Minimum Number of Required Plumbing Fixtures^a
 (See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathrooms/ Showers
				Male	Female	Male	Female	
1	Assembly	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—
		A-5	Stadiums amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—
3	Educational	E ^g	Educational facilities	1 per 35	1 per 25	1 per 85	1 per 50	—
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		Check State (UPC)
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8
			I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per room ^c		1 per room ^c	
		I-3	Employees, other than residential care ^b	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
			Prisons ^b	1 per cell		1 per cell		1 per 15
		I-4	Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15
			Employees ^b	1 per 25		1 per 35		—
I-4	Adult day care and child day care	1 per 15		1 per 15		1		
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.

Reviser's note: The spelling 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 51-50-3102 Section 3102—Membrane structures.

3102.3 Type of construction. Noncombustible membrane structures shall be classified as Type II-B construction. Noncombustible frame or cable-supported structures covered by an *approved* membrane in accordance with Section 3102.3.1 shall be classified as Type II-B construction. Heavy timber frame-supported structures covered by an *approved* membrane in accordance with Section 3102.3.1 shall be classified as Type IV-HT construction. Other membrane structures shall be classified as Type V construction.

EXCEPTION: Plastic less than 30 feet (9144 mm) above any floor used in greenhouses, where occupancy by the general public is not authorized, and for aquaculture pond covers is not required to meet the fire propagation performance criteria of Test Method 1 or 2, as appropriate, of NFPA 701.

3102.6.1.1 Membrane. A membrane meeting the fire propagation performance criteria of Test Method 1 or 2, as appropriate, of NFPA 701 shall be permitted to be used as the roof or as a skylight on buildings of Type II-B, III, IV-HT and V construction, provided that the membrane is not less than 20 feet (6096 mm) above any floor, balcony or gallery.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3500 Chapter 35—((Reserved)) Referenced standards. Add the reference standards as follows:

<u>Standard reference number</u>	<u>Title</u>	<u>Referenced in code section number</u>
<u>ANSI/APA PRG-320-18</u>	<u>Standard for Performance-Rated Cross-Laminated Timber (revised 2018)</u>	<u>602.4, 2303.1.4</u>
<u>NFPA 130</u>	<u>Standard for Fixed Guideway Transit and Passenger Rail Systems</u>	<u>3101.1, 3112</u>

NEW SECTION

WAC 51-50-4700 Appendix D.

D102.2.5 Structural fire rating. Walls, floors, roofs and their supporting structural members shall be not less than 1 hour fire-resistance-rated construction.

- EXCEPTIONS:**
1. Buildings of Type IV-HT construction.
 2. Buildings equipped throughout with an *automatic sprinkler system* in accordance with Section 903.3.1.1.
 3. Automobile parking structures.
 4. Buildings surrounded on all sides by a permanently open space of not less than 30 feet (9144 mm).
 5. Partitions complying with Section 603.1, Item 11.

WSR 18-21-104
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2018-11—Filed October 16, 2018, 1:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-143.

Title of Rule and Other Identifying Information: Risk mitigation.

Hearing Location(s): On November 27, 2018, at 12:00 p.m., at the Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Tumwater, WA 98501.

Date of Intended Adoption: November 28, 2018.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 26, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email LorieV@oic.wa.gov, by November 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules for property insurers, except commercial, to provide goods and/or services to their insureds in order to mitigate or prevent losses.

Reasons Supporting Proposal: During the 2018 legislative session, the legislature enacted chapter 239, Laws of 2018 (SHB 2322) which has been codified in RCW 48.18.558, 48.18.559, and 48.19.530. This law allows property insurers, except commercial, to provide certain goods and/or services to its insured and not be in violation of inducement laws. RCW 48.18.559 allows the commissioner to consider adopting rules to address the notice to insureds about their ability to opt out of risk reduction programs, to increase the value of goods and/or services allowed, establishment of pilot programs by property insurers, and to identify what emergency response activities by property insurers are exempt from RCW 48.18.558, 48.19.530, 48.30.140, and 48.30.150.

Statutory Authority for Adoption: RCW 48.02.60 [48.02.060] and 48.18.559.

Statute Being Implemented: RCW 48.18.558 and 48.19.530.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation and Enforcement: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7100.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, email davidf@oic.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The businesses that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW. The office of the insurance commissioner has found that none of the existing insurance issuers impacted by the proposed rule may be considered small businesses under RCW 19.85.020(2).

October 16, 2018

Mike Kreidler

Insurance Commissioner

Chapter 284-33 WAC

RISK REDUCTION FOR PROPERTY INSURANCE

NEW SECTION

WAC 284-33-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) A "risk reduction program" means a program by a property insurance company to reduce either the probability of loss or extent of loss, or both, from a covered event as described in RCW 48.18.558(1) by supplying its named insured with either goods or services, or both, as described in WAC 284-33-030(1).

(2) "Commercial property insurance" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the line of property insurance as defined in RCW 48.11.040.

NEW SECTION

WAC 284-33-010 Purpose and scope. The purpose of this chapter is to implement RCW 48.18.558, 48.18.559, and 48.19.530 for property insurance by establishing rules:

(1) For property insurers' risk reduction programs for covered events, except commercial property insurance;

(2) For property insurers' pilot risk reduction programs for covered events, except commercial property insurance; and

(3) To identify which property insurers' disaster or emergency response activities for covered events are exempt from RCW 48.18.558, 48.19.530, 48.30.140, and 48.30.150.

NEW SECTION

WAC 284-33-015 Conditions of the risk reduction program, pilot risk reduction program, and disaster or emergency response activity. (1) Each insurer conducting any risk reduction program, pilot risk reduction program, or disaster or emergency response activity must maintain records regarding the insured's involvement with the risk reduction program, pilot risk reduction program, or disaster or emergency response activity for three years after its conclusion, and the record must be made available to the commissioner upon request.

(2) If the commissioner finds that a risk reduction program, pilot risk reduction program, or disaster or emergency response activity is in violation of any provision of either Title 48 RCW or 284 WAC, or both, the commissioner may order the insurer to end the risk reduction program, pilot risk reduction program, or disaster or emergency response activity.

NEW SECTION

WAC 284-33-020 Notice to insureds participating in risk reduction program. (1) The insurer must provide a clear and conspicuous notice to the named insured participating in either a risk reduction program, pilot risk reduction program, or both, that accurately describes the right to opt out. The notice must:

- (a) Identify and describe all risk reduction programs being offered to the insured;
- (b) State the goods provided in a program are owned by the named insured, even if the insurance is subsequently canceled or nonrenewed;
- (c) Inform the named insured they may opt out of a program at any time;
- (d) State that if an insured opts out of a program the premium cost of the policy may change; and
- (e) Include a reply form that contains the opt out notice information.

(2) If an insurer communicates with the insured electronically, the insurer may deliver the reply form and opt out notice information electronically, as an electronic form, and the insured may reply to the opt out option via electronic signatures and electronic attestation, in accordance with 15 U.S.C. Sec. 7001 and chapter 48.185 RCW. Electronic communication shall have the same force and effect as paper communications.

(3) The notice to opt out must be included at policy inception or, if the policy is already in effect, at the beginning of a risk reduction program or pilot risk reduction program.

(4) If a named insured elects to opt out of a risk reduction program and later requests to rejoin, an insurer must allow the named insured to rejoin at the earliest reasonable time available in the program.

(5) If a named insured elects to opt out of a pilot risk reduction program, an insurer may allow the insured to rejoin if the opportunity is available.

NEW SECTION

WAC 284-33-030 Goods and services. (1) All goods or services, or both, that are approved by the commissioner to be included within a property insurer's risk reduction program must be implemented by the insurer to reduce either the probability of damage or extent of damage, or both, by a peril covered under the property policy, and may include:

- (a) Smoke alarms;
- (b) Fire extinguishers;
- (c) Natural gas detectors;
- (d) Brush and other wildfire fuel source removal services;
- (e) Water monitors;
- (f) Water shut off systems;

- (g) Earthquake strapping;
- (h) Locking mechanisms to secure property;
- (i) Lightning protection devices;
- (j) Security lighting;
- (k) Security camera systems;
- (l) Home safety monitoring systems;
- (m) Educational material on home safety; and
- (n) Other goods or services, or both, the commissioner may approve through a form filing.

(2) A voucher provided from the insurer to the insured for either goods or services, or both, is only permissible for those items as described in subsection (1) of this section and must fully redeem either the goods or services, or both, being used in the risk reduction program.

NEW SECTION

WAC 284-33-040 Pilot program filing. (1) To qualify as a pilot program as described in RCW 48.18.558(6), a form for the pilot risk reduction program must be filed with and approved by the commissioner prior to offer to insured.

(2) Within the submitted form of the pilot risk reduction program, the insurer must provide the same information it offers its participants of the pilot risk reduction program, including:

- (a) The intent of the pilot risk reduction program;
- (b) A description of either the goods or services, or both, offered in the pilot risk reduction program; and
- (c) The intended start date of the pilot risk reduction program.

NEW SECTION

WAC 284-33-050 Identifying disaster or emergency response activity. To be exempt from RCW 48.18.558, 48.19.530, 48.30.140, and 48.30.150, all disaster or emergency response activity by property insurers must be as a result of imminent threat of damage to an insured's covered property and must be undertaken to either prevent or mitigate, or both, damage from a covered event to the insured's property and may include:

- (1) Wildfire suppression and defense measures; and
- (2) Floodwater diversion and sandbagging.

WSR 18-21-105
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed October 16, 2018, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-085.

Title of Rule and Other Identifying Information: Chapter 51-11C WAC, Adoption and amendment of the 2018 Washington State Energy Code, Commercial, and modifications to the 2015 Washington State Energy Code.

Hearing Location(s): On November 30, 2018, at 10:00, at the Department of Enterprise Services, 1500 Jefferson Street, Room 3660, Olympia, WA 98504.

Date of Intended Adoption: December 1, 2018.

Submit Written Comments to: Doug Orth, Council Chair, P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by November 30, 2018.

Assistance for Persons with Disabilities: Contact Lori Yantzer, phone 360-407-7974, email sbcc@des.wa.gov, by November 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: While reviewing code changes for the 2018 Washington State Energy Code, there were three amendments flagged that were deemed necessary to be adopted earlier than the intended July 2020 effective date.

The first two both pertain to Section C402.1.5. One makes editorial corrections to the UA calculations to correlate them with the training and implementation tools developed to assist enforcement. This also makes them consistent with the requirements in previous codes, including the limitations on glazing area found in other sections of the code. The other adds a missing section reference to the allowance for additional glazing using high efficiency glass. This change also includes coordinating changes in Sections 406.8, 503.2 and 505.1 to standardize terms.

The final change is in Section C404.6 and reinstates an exception that was unintentionally dropped from the 2015 code. This exception allows the end run of supply piping to remain uninsulated.

Reasons Supporting Proposal: These changes provide clarity and consistency within the Washington State Energy Code.

Statutory Authority for Adoption: RCW 19.27A.020, 19.27A.025.

Statute Being Implemented: Chapters 19.27A and 19.27 RCW.

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

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, 1500 Jefferson S.E., P.O. Box 41449, Olympia, WA, 360-407-9278; and Enforcement: Local jurisdictions.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Richard Brown, 1500 Jefferson S.E., P.O. Box 41449, Olympia, WA 98504-1449, phone 360-407-9277, email Richard.Brown@des.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed change clarifies the code requirements and does not impose any additional costs. In the case of the reinstated exemption, it actually removes costs.

October 15, 2018
Doug Orth
Council Chair

AMENDATORY SECTION (Amending WSR 17-10-062, filed 5/2/17, effective 6/2/17)

WAC 51-11C-40215 Section C402.1.5—Component performance alternative.

C402.1.5 Component performance alternative. Building envelope values and fenestration areas determined in accordance with Equation 4-2 shall be permitted in lieu of compliance with the *U*-factors and *F*-factors in Table C402.1.4 and C402.4 and the maximum allowable fenestration areas in Section C402.4.1.

Equation 4-2

$$A + B + C + D \leq \text{Zero}$$

Where:

A = Sum of the (UA Dif) values for each distinct assembly type of the building thermal envelope, other than slabs on grade

$$\text{UA Dif} = \text{UA Proposed} - \text{UA Table}$$

$$\text{UA Proposed} = \text{Proposed } U\text{-value} \times \text{Proposed Area}$$

$$\text{UA Table} = (U\text{-factor from Table C402.1.4 or C402.4}) \times \text{Area}$$

B = Sum of the (FL Dif) values for each distinct slab on grade perimeter condition of the building thermal envelope

$$\text{FL Dif} = \text{FL Proposed} - \text{FL Table}$$

$$\text{FL Proposed} = \text{Proposed } F\text{-value} \times \text{Proposed Perimeter length}$$

$$\text{FL Table} = (F\text{-factor specified in Table C402.1.4}) \times \text{Proposed Perimeter length}$$

The maximum allowed prescriptive vertical fenestration area, identified as "Vertical Fenestration Area allowed" in factor CA below, ((as a percent of)) is the gross above-grade wall area ((ratio is)) times either:

1. 30%
2. 40% if the building complies with Section C402.4.1.1 or Section ((C402.1.4.1)) C402.4.1.4; or
3. 40% if the *U*-values used in calculating A for vertical fenestration are taken from Section C402.4.1.3 rather than Table C402.4

Where the proposed vertical fenestration area is less than or equal to the ((maximum allowed prescriptive)) Vertical Fenestration Area allowed, the value of C (Excess Vertical Glazing Value) shall be zero. Otherwise:

$$C = (CA \times UV) - (CA \times U_{\text{Wall}}), \text{ but not less than zero}$$

CA	=	(Proposed Vertical Fenestration Area) - (Vertical Fenestration Area allowed)
((UA _{Wall}	=	Sum of the (UA Proposed) values for each opaque assembly of the exterior wall))
UAW	=	Sum of the (UA (proposed) <u>table</u>) values for each above-grade wall assembly
U _{Wall}	=	UAW/(sum of <u>proposed</u> wall area (((excludes vertical fenestration area)) + CA)
UAV	=	Sum of the (UA (Proposed) <u>Table</u>) values for each vertical fenestration assembly
UV	=	UAV/ <u>Total Vertical Fenestration Area allowed</u>

Where the proposed skylight area is less than or equal to the skylight area allowed by Section C402.4.1, the value of D (Excess Skylight Value) shall be zero. Otherwise:

$$D = (DA \times US) - (DA \times U_{\text{Roof}}), \text{ but not less than zero}$$

DA	=	(Proposed Skylight Area) - (Allowable Skylight Area from Section C402.4.1)
UAR	=	Sum of the (UA (Proposed) <u>Table</u>) values for each roof assembly
U _{Roof}	=	UAR/(sum of <u>proposed</u> roof area (((excludes skylight area)) + DA)
UAS	=	Sum of the (UA (Proposed) <u>Table</u>) values for each skylight assembly
US	=	UAS/ ((total)) <u>the Allowable Skylight Area from Section C402.4.1</u>

Where required by other sections of the code Proposed Total Envelope UA and Allowed Total Envelope UA shall be calculated as:

<u>Proposed Total Envelope UA</u>	≡	<u>Sum of UA Proposed and FL Proposed for each distinct envelope assembly</u>
<u>Allowed Total Envelope UA</u>	≡	<u>Sum UA Table - C — D</u>

Where:

<u>Sum UA Table</u>	≡	<u>Sum of UA Table and FL Table for each distinct envelope assembly</u>
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C402.1.5.1 Component U-factors. The U-factors for typical construction assemblies are included in Chapter 3 and Appendix A. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Chapter 3 or Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook—Fundamentals*, using the framing factors listed in Appendix A.

For envelope assemblies containing metal framing, the U-factor shall be determined by one of the following methods:

1. Results of laboratory measurements according to acceptable methods of test.
2. ASHRAE *Handbook—Fundamentals* where the metal framing is bonded on one or both sides to a metal skin or covering.
3. The zone method as provided in ASHRAE *Handbook—Fundamentals*.
4. Effective framing/cavity R-values as provided in Appendix A.

When return air ceiling plenums are employed, the roof/ceiling assembly shall:

- a. For thermal transmittance purposes, not include the ceiling proper nor the plenum space as part of the assembly; and
 - b. For gross area purposes, be based upon the interior face of the upper plenum surface.
5. Tables in ASHRAE 90.1 Normative Appendix A.

C402.1.5.2 SHGC rate calculations. ~~((Solar heat gain coefficient shall comply with Table C402.4. The target SHGCA_t and the proposed SHGCA_p shall be calculated using Equations 4-3 and 4-4 and the corresponding areas and SHGCs from Table C402.4.)) Fenestration SHGC values for individual components and/or fenestration are permitted to exceed the SHGC values in Table C402.4 and/or the maximum allowable fenestration areas in Section C402.4.1 where the proposed values result in SHGCA_p less than SHGCA_t as determined by Equations 4-3 and 4-4.~~

Equation 4-3—Target SHGCA_t

**Equation C402-3
Target SHGCA_t**

$$SHGCA_t = SHGC_{ogt}(A_{ogt}) + SHGC_{vgt}(A_{vgt} + A_{vgmt} + A_{vgmot} + A_{vgdt})$$

Where:

- | | | |
|---------------------|---|--|
| SHGCA _t | = | The target combined solar heat gain of the target fenestration area. |
| SHGC _{ogt} | = | The solar heat gain coefficient for skylight fenestration found in Table C402.4. |
| A _{ogt} | = | The (proposed) <u>target</u> skylight area. |

- SHGC_{vgt} = The solar heat gain coefficient for vertical fenestration found in Table C402.4 which corresponds to the proposed total fenestration area as a percentage of gross exterior wall.
- A_{vgt} = The ~~((proposed))~~ target vertical fenestration area with nonmetal framing.
- A_{vgmt} = The ~~((proposed))~~ target vertical fenestration area with fixed metal framing.
- A_{vgmtot} = The ~~((proposed))~~ target vertical fenestration area with operable metal framing.
- A_{vgd} = The proposed vertical fenestration area of entrance doors.
- NOTE: The vertical fenestration area does not include opaque doors and opaque spandrel panels.

If the proposed vertical fenestration area does not exceed the Vertical Fenestration Area allowed, the target area for each vertical fenestration type shall equal the proposed area. If the proposed vertical fenestration area exceeds the Vertical Fenestration Area allowed, the target area of each vertical fenestration element shall be reduced in the base envelope design by the same percentage and the net area of each above-grade wall type increased proportionately by the same percentage so that the total vertical fenestration area is exactly equal to the Vertical Fenestration Area allowed.

If the proposed skylight area does not exceed the Allowable Skylight Area from Section C402.4.1, the target area shall equal the proposed area. If the proposed skylight area exceeds the Allowable Skylight Area from Section C402.4.1, the area of each skylight element shall be reduced in the base envelope design by the same percentage and the net area of each roof type increased proportionately by the same percentage so that the total skylight area is exactly equal to the allowed percentage per Section C402.3.1 of the gross roof area.

**Equation 4-4
Proposed SHGCA_p**

$$SHGCA_p = SHGC_{og}A_{og} + SHGC_{vg}A_{vg}$$

Where:

- SHGCA_t = The combined proposed solar heat gain of the proposed fenestration area.
- SHGC_{og} = The solar heat gain coefficient of the skylights.
- A_{og} = The skylight area.
- SHGC_{vg} = The solar heat gain coefficient of the vertical fenestration.
- A_{vg} = The vertical fenestration area.

NOTE: The vertical fenestration area does not include opaque doors and opaque spandrel panels.

AMENDATORY SECTION (Amending WSR 16-03-072, filed 1/19/16, effective 7/1/16)

WAC 51-11C-40406 Section C404.6—Pipe insulation.

C404.6 Insulation of piping. Piping from a water heater to the termination of the heated water fixture supply pipe shall be insulated in accordance with Table C403.2.9. On both the inlet and outlet piping of a storage water heater or heated water storage tank, the piping to a heat trap or the first 8 feet (2438 mm) of piping, whichever is less, shall be insulated. Piping that is heat traced shall be insulated in accordance with Table C403.2.9 or the heat trace manufacturer's instructions. Tubular pipe insulation shall be installed in accordance with the insulation manufacturer's instructions. Pipe insulation shall be continuous except where the piping passes through a framing member. The minimum insulation thickness requirements of this section shall not supersede any greater insulation thickness requirements necessary for the protection of piping from freezing temperatures or the protection of personnel against external surface temperatures on the insulation.

- EXCEPTION: Tubular pipe insulation shall not be required on the following:
1. The tubing from the connection at the termination of the fixture supply piping to a plumbing fixture or plumbing appliance.
 2. Valves, pumps, strainers and threaded unions in piping that is 1 inch (25 mm) or less in nominal diameter.
 3. Piping from user-controlled shower and bath mixing valves to the water outlets.
 4. Cold-water piping of a demand recirculation water system.
 5. Tubing from a hot drinking-water heating unit to the water outlet.
 6. Piping at locations where a vertical support of the piping is installed.
 7. Piping surrounded by building insulation with a thermal resistance (R-value) of not less than R-3.
 8. Hot water piping that is part of the final pipe run to the plumbing fixture and is not part of the heated-water circulation system circulation path is not required to meet the minimum insulation requirements of C404.6.

AMENDATORY SECTION (Amending WSR 16-13-089, filed 6/15/16, effective 7/16/16)

WAC 51-11C-40608 Section C406.8—Envelope option.

C406.8 Enhanced envelope performance. The Proposed Total Envelope UA of the building thermal envelope shall be 15 percent lower than the ~~((maximum allowable))~~ Allowed Total Envelope UA for a building of identical configuration and fenestration area in accordance with Section C402.1.5 and Equation 4-2 ~~((, where UA equals the sum of the U-values of each distinct envelope assembly multiplied by the area in square feet of that assembly)).~~

AMENDATORY SECTION (Amending WSR 16-24-070, filed 12/6/16, effective 5/1/17)

WAC 51-11C-50300 Section C503—Alterations.

C503.1 General. Alterations to any building or structure shall comply with the requirements of the code for new construction. Alterations shall be such that the existing building or structure is no less conforming with the provisions of this code than the existing building or structure was prior to the alteration. Alterations to an existing building, building system or portion thereof shall conform to the provisions of this code as they relate to new construction without requiring the unaltered portions of the existing building or building system to comply with this code. Alterations shall not create an unsafe or hazardous condition or overload existing building systems.

EXCEPTION: The following alterations need not comply with the requirements for new construction provided the energy use of the building is not increased:

1. Storm windows installed over existing fenestration.
2. Surface applied window film installed on existing single pane fenestration assemblies to reduce solar heat gain provided the code does not require the glazing fenestration to be replaced.
3. Existing ceiling, wall or floor cavities exposed during construction provided that these cavities are insulated to full depth with insulation having a minimum nominal value of R-3.0 per inch installed per Section C402.
4. Construction where the existing roof, wall or floor cavity is not exposed.
5. *Roof recover*.
6. *Air barriers* shall not be required for *roof recover* and roof replacement where the *alterations* or renovations to the building do not include *alterations*, renovations or *repairs* to the remainder of the building envelope.
7. Replacement of existing doors that separate conditioned space from the exterior shall not require the installation of a vestibule or revolving door, provided however that an existing vestibule that separates a conditioned space from the exterior shall not be removed.

C503.2 Change in space conditioning. Any nonconditioned space that is altered to become *conditioned space* or *semi-heated space* shall be required to be brought into full compliance with this code. Any semi-heated space that is altered to become conditioned space shall be required to be brought into full compliance with this code.

EXCEPTION: Where the component performance building envelope option in Section C402.1.5 is used to comply with this Section, the Proposed Total Envelope UA is allowed to be up to 110 percent of the ((~~Target~~)) Allowed Total Envelope UA. Where the total building performance option in Section C407 is used to comply with this section, the annual energy consumption of the proposed design is allowed to be 110 percent of the annual energy consumption otherwise allowed by Section C407.3.

C503.3 Building envelope. New building envelope assemblies that are part of the alteration shall comply with Sections C402.1 through C402.5 as applicable.

EXCEPTION: Air leakage testing is not required for alterations and repairs, unless the project includes a change in space conditioning according to Section C503.2 or a change of occupancy or use according to Section C505.1.

C503.3.1 Roof replacement. *Roof replacements* shall comply with Table C402.1.3 or C402.1.4 where the existing roof assembly is part of the *building thermal envelope* and contains insulation entirely above the roof deck.

C503.3.2 Vertical fenestration. The addition of *vertical fenestration* that results in a total building vertical fenestration area less than or equal to that specified in Section C402.4.1 shall comply with Section C402.4. Alterations that result in a total building vertical fenestration area greater than specified in Section C402.4.1 shall comply with one of the following:

1. Vertical fenestration alternate per Section C402.1.3 for the new vertical fenestration added.
2. Vertical fenestration alternate per Section C402.4.1.1 for the area adjacent to the new vertical fenestration added.
3. Component performance option with target area adjustment per Section C402.1.5 or the total building performance option in Section C407 for the whole building.

C503.3.2.1 Application to replacement fenestration products. Where some or all of an existing *fenestration unit* is replaced with a new *fenestration product*, including sash and glazing, the replacement *fenestration unit* shall meet the applicable requirements for *U-factor* and *SHGC* in Table C402.4.

EXCEPTION: An area-weighted average of the *U-factor* of replacement fenestration products being installed in the building for each fenestration product category listed in Table C402.4 shall be permitted to satisfy the *U-factor* requirements for each fenestration product category listed in Table C402.4. Individual fenestration products from different product categories listed in Table C402.4 shall not be combined in calculating the area-weighted average *U-factor*.

C503.3.3 Skylight area. The addition of *skylights* that results in a total building skylight area less than or equal to that specified in Section C402.4.1 shall comply with Section C402.4. *Alterations* that result in a total building skylight area greater than that specified in Section C402.4.1 shall comply with the component performance option with target area adjustment per Section C402.1.5 or the total building performance option in Section C407 for the whole building.

C503.4 Mechanical systems. Those parts of systems which are altered or replaced shall comply with Section C403. Additions or alterations shall not be made to an existing mechanical system that will cause the existing mechanical system to become out of compliance.

EXCEPTION: Existing mechanical systems which are altered or where parts of the systems are replaced are not required to be modified to comply with Section C403.6 as long as mechanical cooling is not added to the system.

All new systems in existing buildings, including packaged unitary equipment and packaged split systems, shall comply with Section C403.

Where mechanical cooling is added to a space that was not previously cooled, the mechanical system shall comply with either Section C403.6 or C403.3.

- EXCEPTIONS:
1. Alternate designs that are not in full compliance with this code may be approved when the code official determines that existing building constraints including, but not limited to, available mechanical space, limitations of the existing structure, or proximity to adjacent air intakes/exhausts make full compliance impractical. Alternate designs shall provide alternate energy savings strategies including, but not limited to, Demand Control Ventilation or increased mechanical cooling or heating efficiency above that required by Tables C403.2.3(1) through C403.2.3(10).
 2. Qualifying small equipment: This exception shall not be used for unitary cooling equipment installed outdoors or in a mechanical room adjacent to the outdoors. This exception is allowed to be used for other cooling units and split systems serving one zone with a total cooling capacity rated in accordance with Section C403.2.3 of less than 33,000 Btu/h (hereafter referred to as qualifying small systems) provided that these are high-efficiency cooling equipment with SEER and EER values more than 15 percent higher than minimum efficiencies listed in Tables C403.2.3 (1) through (3), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all qualifying small equipment without economizers shall not exceed 72,000 Btu/h per building, or 5 percent of its air economizer capacity, whichever is greater. That portion of the equipment serving Group R occupancies is not included in determining the total capacity of all units without economizers in a building. Redundant units are not counted in the capacity limitations. This exception shall not be used for the shell-and-core permit or for the initial tenant improvement or for Total Building Performance.
 3. Chilled water terminal units connected to systems with chilled water generation equipment with IPLV values more than 25 percent higher than minimum part load efficiencies listed in Table C403.2.3(7), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all systems without economizers shall not exceed 480,000 Btu/h per building, or 20 percent of its air economizer capacity, whichever is greater. That portion of the equipment serving Group R occupancy is not included in determining the total capacity of all units without economizers in a building. This exception shall not be used for the initial permit (this includes any initial permit for the space including, but not limited to, the shell-and-core permit, built-to-suit permit, and tenant improvement permit) or for Total Building Performance Method.

Alterations to existing mechanical cooling systems shall not decrease economizer capacity unless the system complies with either Section C403.2.6 or C403.3. In addition, for existing mechanical cooling systems that do not comply with either Section C403.2.6 or C403.3, including both the individual unit size limits and the total building capacity limits on units without economizer; other alterations shall comply with Table C503.4.

When space cooling equipment is replaced, controls shall comply with all requirements under Section C403.6 and

related subsections or provide for integrated operation with economizer in accordance with Section C403.3.1.

Existing equipment currently in use may be relocated within the same floor or same tenant space if removed and reinstalled within the same permit.

**Table C503.4
Economizer Compliance Options for Mechanical Alterations**

	Option A	Option B (alternate to A)	Option C (alternate to A)	Option D (alternate to A)
Unit Type	Any alteration with new or replacement equipment	Replacement unit of the same type with the same or smaller output capacity	Replacement unit of the same type with a larger output capacity	New equipment added to existing system or replacement unit of a different type
1. Packaged Units	Efficiency: min. ¹ Economizer: C403.3 ²	Efficiency: min. ¹ Economizer: C403.3 ^{2,3}	Efficiency: min. ¹ Economizer: C403.3 ^{2,3}	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}
2. Split Systems	Efficiency: min. ¹ Economizer: C403.3 ²	Efficiency: + 10/5% ⁵ Economizer: shall not decrease existing economizer capability	Only for new units < 54,000 Btuh replacing unit installed prior to 1991 (one of two): Efficiency: + 10/5% ⁵ Economizer: 50% ⁶	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}
			For units > 54,000 Btuh or any units installed after 1991: Option A	
3. Water Source Heat Pump	Efficiency: min. ¹ Economizer: C403.3 ²	(two of three): Efficiency: + 10/5% ⁵ Flow control valve ⁷ Economizer: 50% ⁶	(three of three): Efficiency: + 10/5% ⁵ Flow control valve ⁷ Economizer: 50% ⁶ (except for certain pre-1991 systems ⁸)	Efficiency: min. ¹ Economizer: C403.3 ^{2,4} (except for certain pre-1991 systems ⁸)
4. Hydronic Economizer using Air-Cooled Heat Rejection Equipment (Dry Cooler)	Efficiency: min. ¹ Economizer: 1433 ²	Efficiency: + 10/5% ⁵ Economizer: shall not decrease existing economizer capacity	Option A	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}
5. Air-Handling Unit (including fan coil units) where the system has an air-cooled chiller	Efficiency: min. ¹ Economizer: C403.3 ²	Economizer: shall not decrease existing economizer capacity	Option A (except for certain pre-1991 systems ⁸)	Option A (except for certain pre-1991 systems ⁸)
6. Air-Handling Unit (including fan coil units) and Water-cooled Process Equipment, where the system has a water-cooled chiller ¹⁰	Efficiency: min. ¹ Economizer: C403.3 ²	Economizer: shall not decrease existing economizer capacity	Option A (except for certain pre-1991 systems ⁸ and certain 1991-2004 systems ⁹)	Efficiency: min. ¹ Economizer: C403.3 ^{2,4} (except for certain pre-1991 systems ⁸ and certain 1991-2015 systems ⁹)
7. Cooling Tower	Efficiency: min. ¹ Economizer: C403.3 ²	No requirements	Option A	Option A

	Option A	Option B (alternate to A)	Option C (alternate to A)	Option D (alternate to A)
Unit Type	Any alteration with new or replacement equipment	Replacement unit of the same type with the same or smaller output capacity	Replacement unit of the same type with a larger output capacity	New equipment added to existing system or replacement unit of a different type
8. Air-Cooled Chiller	Efficiency: min. ¹ Economizer: C403.3 ²	Efficiency: + 5% ¹¹ Economizer: shall not decrease existing economizer capacity	Efficiency (two of two): (1) + 10% ¹² and (2) multistage Economizer: shall not decrease existing economizer capacity	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}
9. Water-Cooled Chiller	Efficiency: min. ¹ Economizer: C403.3 ²	Efficiency (one of two): (1) + 10% ¹³ or (2) plate frame heat exchanger ¹⁵ Economizer: shall not decrease existing economizer capacity	Efficiency (two of two): (1) + 15% ¹⁴ and (2) plate-frame heat exchanger ¹⁵ Economizer: shall not decrease existing economizer capacity	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}
10. Boiler	Efficiency: min. ¹ Economizer: C403.3 ²	Efficiency: + 8% ¹⁶ Economizer: shall not decrease existing economizer capacity	Efficiency: + 8% ¹⁶ Economizer: shall not decrease existing economizer capacity	Efficiency: min. ¹ Economizer: C403.3 ^{2,4}

- ¹ Minimum equipment efficiency shall comply with Section C403.2.3 and Tables C403.2.3(1) through C403.2.3(10).
- ² System and building shall comply with Section C403.3 (including both the individual unit size limits and the total building capacity limits on units without economizer). It is acceptable to comply using one of the exceptions to Section C403.3 or C504.3.4.
- ³ All equipment replaced in an existing building shall have air economizer complying with Section C403.3 unless both the individual unit size and the total capacity of units without air economizer in the building is less than that allowed in Exception 2 to Section C503.4.
- ⁴ All separate new equipment added to an existing building shall have air economizer complying with Section C403.3 unless both the individual unit size and the total capacity of units without air economizer in the building is less than that allowed in Exception 3 to Section C503.4.
- ⁵ Equipment shall have a capacity-weighted average cooling system efficiency:
 - a. For units with a cooling capacity below 54,000 Btuh, a minimum of 10% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2).
 - b. For units with a cooling capacity of 54,000 Btuh and greater, a minimum of 5% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2).
- ⁶ Minimum of 50% air economizer that is ducted in a fully enclosed path directly to every heat pump unit in each zone, except that ducts may terminate within 12 inches of the intake to an HVAC unit provided that they are physically fastened so that the outside air duct is directed into the unit intake. If this is an increase in the amount of outside air supplied to this unit, the outside air supply system shall be configured to provide this additional outside air and equipped with economizer control.
- ⁷ Have flow control valve to eliminate flow through the heat pumps that are not in operation with variable speed pumping control complying with Section C403.4.2 for that heat pump.
 - When the total capacity of all units with flow control valves exceeds 15% of the total system capacity, a variable frequency drive shall be installed on the main loop pump.
 - As an alternate to this requirement, have a capacity-weighted average cooling system efficiency that is 5% greater than the requirements in note 5 (i.e., a minimum of 15%/10% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2)).
- ⁸ Systems installed prior to 1991 without fully utilized capacity are allowed to comply with Option B, provided that the individual unit cooling capacity does not exceed 90,000 Btuh.
- ⁹ Economizer not required for systems installed with water economizer plate and frame heat exchanger complying with previous codes between 1991 and June 2016, provided that the total fan coil load does not exceed the existing or added capacity of the heat exchangers.
- ¹⁰ For water-cooled process equipment where the manufacturers specifications require colder temperatures than available with waterside economizer, that portion of the load is exempt from the economizer requirements.
- ¹¹ The air-cooled chiller shall have an IPLV efficiency that is a minimum of 5% greater than the IPLV requirements in Table C403.2.3(7).
- ¹² The air-cooled chiller shall:
 - a. Have an IPLV efficiency that is a minimum of 10% greater than the IPLV requirements in Table C403.2.3(7); and
 - b. Be multistage with a minimum of two compressors.
- ¹³ The water-cooled chiller shall have an IPLV efficiency that is a minimum of 10% greater than the IPLV requirements in Table C403.2.3(7).

- ¹⁴ The water-cooled chiller shall have an IPLV efficiency that is a minimum of 15% greater than the IPLV requirements in Table C403.2.3(7).
- ¹⁵ Economizer cooling shall be provided by adding a plate-frame heat exchanger on the waterside with a capacity that is a minimum of 20% of the chiller capacity at standard AHRI rating conditions.
- ¹⁶ The replacement boiler shall have an efficiency that is a minimum of 8% higher than the value in Table C403.2.3(5), except for electric boilers.

C503.5 Service hot water systems. New service hot water systems that are part of the alteration shall comply with Section C404.

C503.6 Lighting and motors. Alterations that replace 50 percent or more of the luminaires in a space enclosed by walls or ceiling-height partitions, replace 50 percent or more of parking garage luminaires, or replace 50 percent or more of the total installed wattage of exterior luminaires shall comply with Sections C405.4 and C405.5. Where less than 50 percent of the fixtures in an interior space enclosed by walls or ceiling-height partitions or parking garage are new, or less than 50 percent of the installed exterior wattage is altered, the installed lighting wattage shall be maintained or reduced.

Where new wiring is being installed to serve added fixtures and/or fixtures are being relocated to a new circuit, controls shall comply with Sections C405.2.1, C405.2.3, C405.2.4, C405.2.5, C405.2.7, C405.3, and as applicable C408.3. In addition, office areas less than 300 ft² enclosed by walls or ceiling-height partitions, and all meeting and conference rooms, and all school classrooms, shall be equipped with occupancy sensors that comply with Section C405.2.1 and C408.3. Where a new lighting panel (or a moved lighting panel) with all new raceway and conductor wiring from the panel to the fixtures is being installed, controls shall also comply with the other requirements in Sections C405.2 and C408.3.

Where new walls or ceiling-height partitions are added to an existing space and create a new enclosed space, but the lighting fixtures are not being changed, other than being relocated, the new enclosed space shall have controls that comply with Sections C405.2.1, C405.2.2, C405.2.3, C405.2.4, C405.2.5 and C408.3.

Those motors which are altered or replaced shall comply with Section C405.8.

C503.7 Refrigeration systems. Those parts of systems which are altered or replaced shall comply with Section C410. Additions or alterations shall not be made to an existing refrigerated space or system that will cause the existing mechanical system to become out of compliance. All new refrigerated spaces or systems in existing buildings, including refrigerated display cases, shall comply with Section C410.

AMENDATORY SECTION (Amending WSR 16-03-072, filed 1/19/16, effective 7/1/16)

WAC 51-11C-50500 Section C505—Change of occupancy or use.

C505.1 General. Spaces undergoing a change in occupancy shall be brought up to full compliance with this code in the following cases:

1. Any space that is converted from an F, S or U occupancy to an occupancy other than F, S or U.

2. Any space that is converted to a Group R dwelling unit or portion thereof, from another use or occupancy.

3. Any Group R dwelling unit or portion thereof permitted prior to July 1, 2002, that is converted to a commercial use or occupancy.

Where the use in a space changes from one use in Table C405.4.2 (1) or (2) to another use in Table C405.4.2 (1) or (2), the installed lighting wattage shall comply with Section C405.4.

EXCEPTION: Where the component performance alternative in Section C402.1.5 is used to comply with this section, the Proposed Total Envelope UA is allowed to be up to 110 percent of the (~~target~~) Allowed Total Envelope UA. Where the total building performance option in Section C407 is used to comply with this section, the annual energy consumption of the proposed design is allowed to be 110 percent of the annual energy consumption otherwise allowed by Section C407.3.

WSR 18-21-107

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed October 16, 2018, 2:11 p.m.]

WAC 388-71-0548, proposed by the department of social and health services in WSR 18-08-072, appearing in issue 18-08 of the Washington State Register, which was distributed on April 18, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-21-108

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed October 16, 2018, 2:13 p.m.]

WAC 458-14-127, proposed by the department of revenue in WSR 18-08-077, appearing in issue 18-08 of the Washington State Register, which was distributed on April 18, 2018, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 18-21-121
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 17, 2018, 4:53 p.m.]

Supplemental Notice to WSR 18-13-079.

Preproposal statement of inquiry was filed as WSR 18-08-004.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearings (ADH) for food assistance and 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-446-0015 to align with federal regulations specifying administrative law judges' jurisdiction over administrative disqualification hearings for intentional program violations of the basic food and food assistance programs and WAC 388-412-0046 to align with federal regulations specifying what is considered misuse of basic food benefits. The text has been amended from the previous CR-102 filed as WSR 18-13-079 by the addition of WAC 388-412-0046.

Reasons Supporting Proposal: The proposed changes are necessary to clarify the jurisdiction of administrative law judges over the administrative disqualification and intentional program violation process for basic food or food assistance program recipients, and to clarify the allowable use of basic food assistance benefits and what is considered by the department to be misuse of benefits.

Statutory Authority for Adoption: The state legislature authorizes the department to administer SNAP and food assistance program for legal immigrants under RCW 74.04.-500, 74.04.510, and 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.16.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98501, 360-725-4611.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

October 16, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-05-063, filed 2/18/14, effective 3/21/14)

WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits? (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment or school related items; and
- (ix) Other necessary incidentals and items.

(d) It is not legal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
 - (A) The purchase of lottery tickets;
 - (B) The purchase of pull tabs;
 - (C) Use of punch boards;
 - (D) Purchase of bingo cards;
 - (E) Betting on horse racing;
 - (F) Participating in casino games; and

(G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.

(ii) Participate in or purchase any activities located in a tattoo, body piercing, or body art shop licensed under chapter 18.300 RCW;

(iii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iv) Purchase any alcoholic items regulated under Title 66 RCW;

(v) Purchase or participate in any activities in any of the following locations:

(A) Taverns licensed under RCW 66.24.330;

(B) Beer/wine specialty stores licensed under RCW 66.24.371;

(C) Nightclubs licensed under RCW 66.24.600;

(D) Contract liquor stores defined under RCW 66.04.-010;

(E) Bail bond agencies regulated under chapter 18.185 RCW;

(F) Gambling establishments licensed under chapter 9.46 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of eighteen are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of eighteen are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(c) You can use your food assistance benefits to buy items such as:

(i) Breads and cereals;()

(ii) Fruits and vegetables;

(iii) Cheese, milk, and other dairy products;

(iv) Meats, fish, poultry, and eggs;

(v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is not legal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household or your authorized representative.

(ii) Use food benefits (~~on your EBT card~~) for any purpose other than to buy food for eligible household members.

(iii) Exchange (~~your~~) food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging food benefits or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate (~~your~~) an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using (~~your~~) food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse (~~your~~) food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

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

AMENDATORY SECTION (Amending WSR 14-05-063, filed 2/18/14, effective 3/21/14)

WAC 388-446-0015 What is an intentional program violation (IPV) and administrative disqualification hearing((s)) (ADH) for basic food ((assistance))?

(1) An intentional program violation (IPV) is an act in which someone intentionally:

(a) Misrepresents, conceals, or withholds facts in order to be found eligible for benefits or to receive more benefits than their actual circumstances would allow(~~(--This includes))~~ including making a false statement regarding household circumstances(~~(-))~~;

(b) Acts in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations (~~((#))~~), any state statute, or WAC relating to the use, presenta-

tion, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits including ~~((:))~~; or

(c) Attempts to buy, sell, steal, or trade food assistance benefits issued and accessed via electronic benefit transfer (EBT) cards, EBT card numbers or personal identification numbers (PINs), for cash or anything other than eligible food, alone or acting with others.

(2) If we suspect someone has committed an IPV we refer their case for an administrative disqualification hearing (ADH), ~~((#))~~ unless:

(a) The ~~((suspected IPV causes an over issuance of four hundred fifty dollars or more))~~ case is currently referred for prosecution; or

(b) ~~((The suspected IPV is due to the trafficking of food benefits; and~~

~~((The person has not been referred for criminal proceedings))~~ A court or prosecutor already took action against the person for the same or related facts.

(3) An administrative disqualification hearing (ADH) is a formal hearing to determine if a person committed an IPV. ADHs are governed by the rules found in chapter 388-02 WAC. However, rules in this section are the overriding authority if there is a conflict.

(4) A person suspected of an IPV can choose to waive their right to an ADH by signing a disqualification consent agreement that waives their right to the hearing and accepts the IPV penalty under WAC 388-446-0020.

(5) If someone commits one or more IPV's and is suspected of committing another, we refer them for an ADH when the act of suspected violation occurred:

(a) After we mailed the disqualification notice to the client for the most recent IPV; or

(b) After criminal proceedings for the most recent IPV are concluded.

(6) When we ~~((suspect someone has committed an IPV, we))~~ refer ~~((their))~~ a case for an administrative disqualification hearing (ADH)~~((:))~~, the office of administrative hearings (OAH) sends ~~((them))~~ the person notice of ~~((an))~~ the ADH at least thirty days in advance of the hearing date. OAH sends the notice by certified mail, or personal service. The notice will contain the following information:

(a) The date, time, and place of the hearing;

(b) The charges against the person;

(c) A summary of the evidence, and how and where they may examine the evidence;

(d) A warning that a decision will be based entirely on the evidence the department provides if they fail to appear at the hearing;

(e) A statement that the person has ten days from the date of the scheduled hearing to show good cause for failing to attend the hearing and to ask for a new hearing date;

(f) A warning that a determination of IPV will result in a disqualification period; and

(g) A statement that if we schedule a telephone hearing, they ~~((can))~~ may request an in-person hearing by filing a request with the administrative law judge one week or more prior to the date of the hearing.

(7) The department may combine an ADH and a regular hearing when the reason for both hearings is related.

(8) The person or a representative ~~((shall have))~~ has the right to one continuance of up to thirty days if a request is filed ten days or more prior to the hearing date.

(9) The administrative law judge (ALJ) will conduct the ADH and render a decision even if the person or representative fails to appear, unless within ten days from the date of the scheduled hearing:

(a) The person can show good cause for failing to appear; and

(b) The person or representative requests the hearing be reinstated.

(10) We may change a scheduled telephone hearing to an in-person hearing if this is requested by the person or department representative at least ~~((a))~~ one week in advance. The person requesting a change less than one week in advance must show good cause for the requested change.

(11) The ALJ issues a final decision as specified in WAC 388-02-0215 through 388-02-0525. The decision determines whether the department had established with clear and convincing evidence that the person committed and intended to commit an IPV.

(12) The department and the client each have the right to request a reconsideration of the decision as specified in WAC 388-02-0610 through 388-02-0635. The final order or the reconsideration decision is the final agency decision.

(13) We will not implement a disqualification and continue benefits at the current amount if:

(a) The client can show good cause for not attending the hearing within thirty days from the date the disqualification notice was mailed; and

(b) An administrative law judge determines the client had good cause; or

(c) The client requests reconsideration or files a petition for judicial review to appeal the disqualification as specified in WAC 388-02-0530 (1) or (4).

WSR 18-21-128

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 18, 2018, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-24-085.

Title of Rule and Other Identifying Information: Chapter 308-96B WAC, Individuals with disabilities vehicle license privileges.

Hearing Location(s): On Wednesday, November 28, 2018, at 9:00 a.m., at the Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507. Check in at the first floor counter.

Date of Intended Adoption: November 29, 2018.

Submit Written Comments to: George Price, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email gprice@dol.wa.gov, fax 360-570-7827, by November 27, 2018.

Assistance for Persons with Disabilities: Contact George Price, phone 360-902-0120, fax 360-570-7827, email gprice@dol.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify existing language and align disabled parking privileges with recent legislation.

Reasons Supporting Proposal: Legislative changes to the corresponding RCW were effective as of July 1, 2015, and July 23, 2017, so these changes are to align our rules with current policies and procedures and clarify existing language.

Statutory Authority for Adoption: RCW 46.01.110, 46.19.020, 46.19.040.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Johnson, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-0183; Implementation and Enforcement: George Price, 1125 Washington Street S.E., Olympia, WA 98507, 360-902-0120.

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

A cost-benefit analysis is not required under RCW 34.05.328. The changes to this rule add no additional costs to stakeholders.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

October 18, 2018
Damon Monroe
Rules Coordinator

Chapter 308-96B WAC

~~((INDIVIDUALS WITH DISABILITIES VEHICLE LICENSE PRIVILEGES))~~ SPECIAL PARKING PRIVILEGES FOR PERSONS WITH DISABILITIES

AMENDATORY SECTION (Amending WSR 07-20-111, filed 10/3/07, effective 11/3/07)

WAC 308-96B-010 Definitions—~~((Individual with disabilities))~~ Special parking privileges for persons with disabilities. For the purposes of determining eligibility under ~~((RCW 46.16.381, for individual with disabilities special parking placards and license plates))~~ chapter 46.19 RCW, for special parking privileges for persons with disabilities, the following definitions apply:

(1) ~~(("Application for individual" means the form provided by the department that must be completed by the individual and physician.~~

(2) ~~("Application for organization" means the form provided by the department that must be completed by the organization.~~

(3) ~~("Identification card" means the identification card bearing the name and date of birth of the person to whom the placard/plate/tab is issued.~~

~~((4) "Licensed physician" is a health care provider to include: Chiropractor (DC), naturopath (ND), physician or surgeon (MD or DO), podiatrist (DPM), advanced registered nurse practitioner (ARNP), physician's assistant (PA). Licensed physician))~~ (2) "Health care practitioner" means that as defined in RCW 46.19.010(2). Health care practitioner does not include persons licensed in the professions of dentistry and optometry.

~~((5))~~ (3) "Permanent" means a ~~((licensed physician))~~ health care practitioner has certified the qualifying disability condition is expected to last at least five years.

~~((6))~~ (4) "Permit" means the eligibility for the temporary or permanent placard or special license plate(s), ~~((individual with disability))~~ license tab, and identification card.

~~((7) "Private carriers" means those entities contracting with public transportation authorities to transport persons with disabilities.~~

~~((8))~~ (5) "Privilege" means the right to utilize the benefits associated with the ~~((individuals with disabilities, parking placards, identification card, license plate(s) and tabs.~~

(9) "Public transportation authorities" means those entities operating motor vehicles owned or leased by Washington state, or a town, city, county, municipality, or metropolitan or municipal corporation within the state, or United States government agencies or Indian nations used for the primary purpose of transporting)) special parking privileges for persons with disabilities.

~~((10))~~ (6) "Signature" means any memorandum, mark, stamp, or sign made with intent to authenticate an application for a placard/plate, or the subscription of any person.

AMENDATORY SECTION (Amending WSR 07-20-111, filed 10/3/07, effective 11/3/07)

WAC 308-96B-020 General provisions. (1) ~~How~~ ~~((do~~ ~~¶))~~ to qualify for ~~((an individual with disabilities parking privilege))~~ special parking privileges for persons with disabilities? ~~((To qualify for temporary or permanent individual with disabilities parking privilege, a licensed physician as defined in WAC 308-96B-010(4))~~ A health care practitioner must certify, on a department approved application form and on a written authorization, that ~~((you have a disability that limits or impairs your ability to walk and that you meet the requirements listed in RCW 46.16.381(1). The physician must sign a declaration under penalty of perjury that you have a disability that limits or impairs the ability to walk and that you meet one of the following criteria:~~

~~(a) Cannot walk two hundred feet without stopping to rest;~~

~~(b) Are severely limited in ability to walk due to arthritic, neurological, or orthopedic condition;~~

~~(c) Have such a severe disability that you cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;~~

~~(d) Use portable oxygen;~~

~~(e) Are restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than one liter per second or the arterial oxygen tension is less than sixty mm/hg on room air at rest;~~

(f) Are impaired by cardiovascular disease or cardiac condition to the extent that your functional limitations are classified as class III or IV under standards accepted by the American Heart Association;

(g) Have a disability resulting from an acute sensitivity to automobile emissions which limits or impairs your ability to walk. Your personal physician as described in WAC 308-96B-010(4) must document that your disability is comparable in severity to the others listed in this subsection; or

(h) Is legally blind and has limited mobility;

(i) Limited by porphyria (acute sensitivity to light as defined in RCW 46.16.381).

The medical declaration is required on all original applications for permanent and temporary disability privileges and for permanent disability privileges that have been expired more than thirty days. A declaration is not required for renewal of existing Washington privileges for an individual with disabilities) an individual has a qualifying disability in accordance with those listed in RCW 46.19.010(1).

(2) How ~~((do I))~~ to apply for ~~((an individual with disabilities parking privilege? You))~~ special parking privileges for persons with disabilities? The individual must complete and sign ~~((your))~~ the appropriate portion of the application. Once the ~~((licensed physician))~~ health care practitioner portion of the application is completed, ~~((you submit it to most))~~ and the health care practitioner has provided a written authorization, submit these documents to a vehicle licensing office(s) or the department ~~((as noted on the application)).~~ The application and written authorization are required on all applications, originals and renewals.

(3) Can the materials be submitted electronically? No. The health care practitioner may send you the signed application and written authorization by electronic means of their choosing. You must remit the application and written authorization in hard copy to a vehicle licensing office or the department.

(4) Can my health care practitioner combine the application and written authorization? Yes. The application may be printed on the health care practitioner's letterhead or prescription paper and be submitted as a complete application.

~~((3))~~ (5) Who may sign the application for an individual ~~((with disabilities))~~ who is unable to sign or is a minor? An authorized representative of the individual ~~((with disabilities))~~ applying for the parking privilege may sign the application. The application must be accompanied by a copy of one of the following:

(a) A power of attorney;

(b) A Washington state court order or certification from the clerk of court confirming the court's action; or

(c) A declaration under penalty of perjury explaining why the applicant is unable to sign and explaining the signing person's association with the applicant. Example: Signature, Jane Doe, daughter.

~~((4))~~ When is the individual with disabilities parking privilege no longer valid?

(a) The plates expire;

(b) The privilege expires;

(c) Upon death of the individual with disabilities;

(d) If the disability no longer exists;

(e) The special license plates have been canceled by department administrative action;

(f) If the privilege was issued in error; or

(g) If the individual with disability is no longer shown on the department's record as being a registered owner of the vehicle.

~~(5) What do I receive when my application is approved for an individual with disabilities parking privilege?~~ An individual with disabilities identification card and:

(a) If you have a temporary disability, you will receive one temporary placard;

(b) If you have a permanent disability, you receive up to two privileges. You may choose to receive:

(i) Up to two permanent placards; or

(ii) One permanent placard and one set of individual with disabilities license plates or individual with disabilities year tab. The year tab may only be displayed on qualifying plates. The individual with disabilities must be a registered owner of the vehicle to receive these plates or tab.

~~(6) When can the individual with disabilities parking privileges be used?~~ When transporting the person to whom the plate or placard is issued.

~~(7))~~ (6) Why is the ~~((individual with disabilities))~~ identification card issued? The identification card is issued to identify the individual with ~~((disabilities))~~ the parking privilege and to ensure that only those who qualify use the parking privilege. The identification card must be available for display to law enforcement or parking enforcement officials.

If you have just applied for the parking privilege and have not yet received ~~((an individual with disabilities))~~ the identification card, show the receipt you received at the time of application when requested.

~~((8))~~ How do I display the individual with disabilities parking placard?

(a) The placard is hung from the rearview mirror post; or

(b) The placard may be placed on the dashboard, (in the absence of the rearview mirror post).

The entire placard must be visible through the vehicle windshield.

~~(9))~~ (7) How long is the ~~((individuals with disabilities parking privilege))~~ special parking privilege for persons with disabilities valid?

(a) Temporary privileges are valid for up to ~~((six))~~ twelve months from the date of ~~((issuance by the department))~~ authorization by the health care practitioner. The privilege is valid until the last day of the month of expiration.

(b) Permanent privileges are issued for five years ~~((and expire on the last day of the month of issuance))~~ from the date of authorization by the health care practitioner. The privilege is valid until the last day of the month of expiration. The expiration date can be located on the identification card or as marked on the placard. ~~((For example: If your expiration date is May 2008, your privilege will expire on May 31, 2008.~~

Note: License plates carry the expiration date of your vehicle registration and must be renewed annually.

~~(10))~~ (8) How do I renew or extend my ~~((individual with disabilities))~~ parking privilege?

(a) ~~((You cannot renew))~~ For a temporary privilege ~~((:)),~~ if your condition continues beyond the expiration date, you

~~((can obtain a new temporary individual with disabilities parking placard and identification card by submitting a new application completed and certified by a licensed physician, an advanced registered nurse practitioner, or a physician's assistant,)) must apply for a new privilege as described in WAC 308-96B-010((4)) (2).~~

~~(b) ((You can renew)) For a permanent privilege((-)), the department will mail you a ((renewal)) notice before your privilege expires. ((Submit the completed renewal notice or a new application to most vehicle licensing offices to renew. You will receive your new parking placard(s) and new identification card through the mail.~~

~~(c) If permanent privilege has been expired more than thirty days you must submit a new application completed and certified by a licensed physician, an advanced registered nurse practitioner, or a physician's assistant, as described in WAC 308-96B-010.~~

~~((11)) You must apply for a new privilege as described in WAC 308-96B-010(2).~~

~~(9) What if the ((individual with disabilities)) parking placard or identification card is lost, mutilated, destroyed, or stolen? To replace your ((individual with disabilities)) parking placard or identification card, complete and sign ((a statement explaining what happened to the placard or identification card)) an authorized department of licensing form indicating such. A new ((individual with disabilities)) parking placard or identification card will be issued, indicating the original expiration date. The placard or identification card being replaced are no longer valid and should be destroyed if located.~~

~~((12)) (10) What should I do with my placard and identification card when they are no longer valid? ((When your placard and identification card are no longer valid,)) They should be destroyed.~~

~~(Note: If the vehicle has been reported stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be used. This is a law enforcement issue and is for the protection of the public.)~~

AMENDATORY SECTION (Amending WSR 06-19-079, filed 9/19/06, effective 10/20/06)

~~WAC 308-96B-030 ((Permanent placard and individual with disabilities special license plates)) Special parking privileges for persons with disabilities for organizations. (1) When can a qualifying organization use disabled ((person)) parking license plate((s)) or parking placard((s))? Qualifying organizations may only use a disabled parking license plate((s)) or parking placard((s)) when transporting any person who meets the criteria under chapter 46.19 RCW ((46.16.381(1))).~~

~~(2) ((How does an organization qualify for individual with disabled parking license plates and permanent parking placards? The organization must:~~

~~(a) Service participants/clients who meet the criteria in RCW 46.16.381(3); and~~

~~(b) Report the status of each permanent individual with disabilities parking placard or disabled parking license plate to the department by April 30th each year.~~

~~(3)) How does a qualifying organization apply for ((disabled parking license plates and placards)) special parking privileges for persons with disabilities? The organization must submit a completed ((individual with disabilities parking privileges organization)) application with appropriate documentation as indicated on the application.~~

~~((4) When can a qualifying organization use disabled parking license plates or placards? Qualifying organizations can only use disabled parking license plates or placards when transporting persons who meet the criteria for an individual with disabilities.~~

~~(5)) (3) What ((can)) does a qualifying organization receive when approved for parking privileges?~~

~~(a) Disabled parking license plates ((can)). These may be issued for vehicles registered to the organization((- which regularly transport persons who have qualified or would qualify for this parking privilege)); or~~

~~(b) Parking placard(s) ((can)). These may be used only when the vehicle in which they are displayed is transporting persons who have or would qualify for the ((disabled)) parking privilege.~~

~~((An organization may receive up to ninety-nine placards, or disabled parking license plates can be issued to vehicles licensed in the name of the organization if used primarily for transporting persons who have or would qualify for the parking privileges. The department may approve exceptions.~~

~~(6) Where does a qualifying organization obtain individual with disabilities parking placard(s) or disabled parking license plates? A qualifying organization can obtain disabled parking placard(s) and disabled parking license plates at most Washington vehicle licensing offices.~~

~~(7)) (4) Is a qualifying organization issued an identification card? No.~~

~~((8)) (5) When do the disabled parking license plates or placard(s) for organizations expire? The ((parking placard(s)) placard expires five years from the date of issuance, on the last day of the month specified on the placard. ((Example: If the placard is marked to expire in May 2008, it expires May 31, 2008.~~

~~Note: License plates also carry the expiration of your vehicle registration and must be renewed annually.~~

~~(9)) (6) When are the disabled parking license plates and/or placard(s) no longer valid? The individual with disabled parking license plates are no longer valid when:~~

- ~~(a) The plates/placard(s) expire;~~
- ~~(b) The privilege expires;~~
- ~~(c) The vehicle is no longer being used for the purpose of transporting individuals with disabilities;~~
- ~~(d) The disabled parking license plates/placard(s) have been canceled by department administrative action;~~
- ~~(e) The organization no longer qualifies;~~
- ~~(f) The organization's business license is canceled or expires; or~~
- ~~(g) If the privilege was issued in error((- or~~
- ~~(h) If the organization fails to return the annual report by April 30th)).~~

~~((10)) (7) How does an organization replace placards or disabled parking license plates if they become lost, mutilated, destroyed, or stolen? The organization must complete and sign a ((statement)) department form explain-~~

ing what happened to the placard((s)) or plate((s and pay replacement fees)). A replacement ((permanent parking)) placard((s)) or disabled parking license plate((s)) will be issued indicating the original expiration date. ~~((This voids the previously issued permanent placards or plates.~~

Note: If the license plate has been reported as stolen or if the department record indicates the vehicle has been stolen, the same number/letter combination will not be issued. This is a law-enforcement issue and is for the protection of the public.

~~((11))~~ **(8) How does an organization renew its permanent ((disabled)) parking placard(s)?** The department will send a ((renewal)) notice to the organization before the privilege expires. The organization must submit ~~((the completed and signed renewal notice or a new application. Upon approval of the completed and signed renewal notice or application, the department will issue new placards))~~ a completed application with appropriate documentation as indicated on the application.

~~((12))~~ **(9) Does an organization qualify for disabled parking license plate tabs?** No.

WSR 18-21-129

PROPOSED RULES

DEPARTMENT OF COMMERCE

[Filed October 18, 2018, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-15-034.

Title of Rule and Other Identifying Information: Chapter 365-220 WAC, Developmental disabilities endowment trust fund.

Hearing Location(s): On December 10, 2018, at 9:30 - 10:30, at 1011 Plum Street S.E., Olympia, WA 98504-2525. Driving directions are available at <https://www.google.com/maps/place/1011+Plum+St+SE,+Olympia,+WA+98501/@47.0393734,-122.892165,16z/data=!4m2!3m1!1s0x549174e188b3aa8d:0xa295e21d13c91e23>. Public parking is available near building. A map is available at <http://www.commerce.wa.gov/wp-content/uploads/2018/06/Town-Square-Campus-Visitor-Parking-Map-v7.0.pdf> or calling 360-725-4000.

Date of Intended Adoption: Not sooner than December 30, 2018.

Submit Written Comments to: Leslie Wolff, P.O. Box 42525, Olympia, WA 98504-2525, email Leslie.Wolff@commerce.wa.gov, fax 360-586-8440, by December 15, 2018.

Assistance for Persons with Disabilities: Contact Peter Tassoni, phone 360-725-3125, fax 360-586-8440, email peter.tassoni@commerce.wa.gov, by December 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 365-220 WAC, Developmental disabilities endowment trust fund, as follows: Correcting RCW citations; correcting the name of the department; updating definitions; clarifying disbursement authorities and types; clarifying disposition plan authorities and processes; clarifying dispute

process; clarifying eligibility; correcting agency name of developmental disabilities administration; clarifying notification responsibilities when a beneficiary moves out of state; clarifying when a beneficiary no longer meets the eligibility definitions; clarifying the fees; clarifying transfer practices; and clarifying match practices.

Reasons Supporting Proposal: The changes to chapter 365-220 WAC update policy, improve clarity, and remove outdated information.

Statutory Authority for Adoption: RCW 43.330.430 through 43.330.437.

Statute Being Implemented: RCW 43.330.430 through 43.330.437.

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

Name of Proponent: Department of commerce on behalf of the developmental disabilities endowment trust fund governing board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Peter Tassoni, P.O. Box 42525, Olympia, WA 98504-2525, 360-725-3125.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 18, 2018

Leslie Wolff

Policy Advisor

Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-005 What is the purpose and scope of this chapter? The purpose of this chapter is to establish the rules for the developmental disabilities endowment trust fund to implement RCW ~~((43.330.195 through 43.330.240))~~ 43.330.430 through 43.330.437.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-010 How may a member of the public appear before the governing board? Members of the public may appear before the governing board at ~~((their))~~ the board's

regularly scheduled meetings or may submit written comments to the governing board for consideration at their regularly scheduled meetings. Requests for meeting schedules and agendas should be made to the ~~((program manager))~~ chair of the governing board or his or her designee. Meeting schedules and agendas are also available online at the department's boards and councils web page.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-015 What definitions apply to this chapter? "Beneficiary" means an eligible person for whom an individual trust account has been established within the trust fund and who is identified in the joinder agreement.

"Department" means the department of ~~((community, trade and economic development, office of community development))~~ commerce.

"Disbursement plan" means a plan, submitted by the primary donor at the time of enrollment as part of the joinder agreement, that identifies the goods or services most likely to be appropriate to the supplemental needs of the beneficiary. The primary donor may periodically change the disbursement plan by amending the joinder agreement.

"Disposition plan" means a plan, submitted by the primary donor at the time of enrollment as part of the joinder agreement, that directs how any remaining private funds will be disbursed from the individual trust account on the death of the beneficiary.

"Governing board" means the seven-member group established according to RCW ~~((43.330.210))~~ 43.330.433 to design and administer the trust fund.

"Individual trust account" means the account that holds assets for the benefit of an individual beneficiary within the trust fund.

"Joinder agreement" means an agreement establishing the primary donor's consent to the master trust document for the trust fund. The joinder agreement shall include the disbursement plan and the disposition plan for the individual trust account, and designate the primary representative and additional persons authorized to request disbursements.

"Master trust" means the developmental disabilities endowment trust I agreement or the developmental disabilities endowment trust II agreement, as may from time-to-time be amended.

"Primary donor" means the person ~~((who sets up an account for a beneficiary and submits and signs the joinder agreement. Under conditions described in the master trust document, the primary donor may be the beneficiary))~~ whose funds are contributed to an individual trust account at the time the individual trust account is established pursuant to the joinder agreement.

"Primary representative" means ~~((the person named in the joinder agreement with whom the governing board and/or the trust manager is authorized to communicate regarding an individual beneficiary's interests))~~ one or more persons designated in the joinder agreement as having the authority to communicate to the trust manager or governing board concerning the interests and needs of the beneficiary of an individual trust account. Multiple alternate primary repre-

sentatives may be designated in the joinder agreement and the joinder agreement may include a process to identify additional alternate primary representatives.

~~((**"Program manager"** means the person designated by the department to manage the developmental disabilities endowment fund and act as the department liaison with other state agencies to facilitate governing board activities.))~~

"Resident" means a person who lives in the state of Washington. For purposes of the trust fund, a beneficiary must be a resident at the time of enrollment.

"State administrator" means the person designated by the governing board to serve the administrative functions of the developmental disabilities endowment trust fund as defined by the governing board and act as the liaison with other state agencies to facilitate governing board activities.

"Trust fund" means the developmental disabilities endowment trust fund.

"Trust manager" means the person or persons or entity designated by the governing board pursuant to RCW ~~((43.330.200 to authorize disbursements from the trust fund))~~ 43.330.431. The trust manager ~~((is))~~ may be authorized to:

(a) Process enrollments;

(b) Receive contributions to individual trust accounts;

(c) Make disbursements in its discretion consistent with and as authorized under this chapter ~~((and will consider)),~~ upon consideration of the disbursement plan filed by the primary donor as part of the joinder agreement when making decisions regarding disbursements~~((The trust manager shall take into account how any individual disbursement will affect the ability of the account to sustain the needed disbursements over a significant portion of the beneficiary's anticipated remaining life));~~

(d) Manage and provide accounting information on the individual trust accounts; and

(e) Other duties as assigned by the governing board in accordance with the contract with the trust manager.

"Vested account" means an account that has initially qualified for matching funds by meeting requirements over a three-year period.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-020 Who authorizes disbursements?

The trust manager will review all disbursement requests submitted by persons authorized in the joinder agreement. Only the governing board and/or the trust manager may authorize disbursements. ~~((In the event of disbursement denial, the trust manager will provide a written explanation for such a denial on the request of the primary representative.))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-025 What types of disbursements are allowed? ~~((Recommended supplemental services and supports))~~ (1) Goods or services that are most likely to be appropriate to the supplemental needs of the beneficiary may include, but are not limited to:

~~((+))~~ (a) Education, information, and training opportunities.

~~((2))~~ (b) Living arrangements, including personal assistance services, skill building, financial management, medical monitoring, meal preparation, shopping, home maintenance, and house cleaning.

~~((3))~~ (c) Unusual or extraordinary disability-related shelter expenses.

~~((4))~~ (d) Capital expenses, including environmental modifications and transportation.

~~((5))~~ (e) Employment supports and tuition.

~~((6))~~ (f) Social productivity and personal fulfillment activities, such as volunteering, club membership, and recreation.

~~((7))~~ (g) Assistive technology, including computers and electronic equipment.

~~((8))~~ ~~Specialized clothing, or clothing not covered by public benefits.~~

~~((9))~~ (h) Clothing.

(i) Respite care.

~~((10))~~ (j) Disability-related support groups.

~~((11))~~ (k) Medical care, counseling, therapies, and other health related services, including alternative practitioners, not covered by public benefits.

~~((12))~~ (l) Utility and transportation costs, including the purchase of a vehicle.

~~((13))~~ (m) Vacation, travel, and recreation.

~~(14) Birthday and holiday presents for the beneficiary to give to others.~~

~~(15)), including travel companion(s) as appropriate to meet the beneficiary's needs.~~

(n) Advocacy and legal services.

~~((16))~~ (o) Prepaid funeral and burial expenses consistent with federal and state law.

(p) Individual trust account expenses including enrollment, bookkeeping, tax return preparation and filing, tax payments, annual management expenses, and other trust related fees.

~~((17))~~ (q) Items the trust manager deems appropriate and reasonable within the guidelines of the governing board.

(2) All disbursements shall be for the sole benefit of the beneficiary.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-040 What happens to an account when the beneficiary dies? ~~((At the time of enrollment, the primary donor will designate in the joinder agreement how any remaining private funds, and any earnings attributable to remaining private funds, will be distributed on the death of the beneficiary. The primary donor will indicate the amount of funds to be disbursed and to whom they will be disbursed.)) Upon the death of the beneficiary, the beneficiary's account shall be distributed consistent with the master trust, joinder agreement and disposition plan. In some cases, state and federal law may require certain distributions of remaining funds notwithstanding the joinder agreement and the disposition plan. ((When an individual trust account is closed by reason of the death of the beneficiary, the unexpended state matching money and any earnings attributable to the unex-~~

~~pended state matching money revert to the developmental disabilities endowment trust fund.))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-045 Can the disposition plan be changed? Once an individual trust account is funded, the primary donor cannot amend the joinder agreement to change the disposition plan. A change to the disposition plan may be made only by court order or other dispute resolution mechanism available under state law, including a nonjudicial resolution of dispute agreement under chapter 11.96A RCW. The nonjudicial resolution could be an agreement signed by all of the interested parties changing the terms of the disposition plan of a developmental disabilities endowment trust fund individual trust account. The agreement needs to be in writing, state that it is being made pursuant to RCW 11.96A.220, set forth the change that is being made to the trust, and be signed by the primary donor (if alive), the trustee, and all beneficiaries (current and residual) of the trust account.

NEW SECTION

WAC 365-220-048 What if a disbursement request is denied? In the event of disbursement denial, the trust manager will provide a written explanation for such a denial on the request of the primary representative.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-055 What is the dispute process? (1) To appeal a board decision, a primary donor or primary representative must send a letter addressed to the ~~((program manager at the department))~~ state administrator. The letter of appeal must be signed by the appealing party and be received by the ~~((program manager))~~ state administrator within thirty calendar days of the date of the decision. The letter must include:

- (a) The name and mailing address of the appealing party;
- (b) A description of the decision being appealed; and
- (c) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation.

(2) On receiving the letter of appeal, the ~~((program manager))~~ state administrator will send written notice to the appealing party within fourteen days, confirming the appeal has been received and indicating when a decision can be expected.

(3) The governing board or its designee will conduct appeals according to RCW 34.05.485. The governing board or its designee will review and decide the appeal based on the submitted documents unless the governing board or its designee and the appealing party agree to hold a hearing in person or by telephone.

(4) The ~~((program manager))~~ state administrator will send the appealing party written notification of the governing board or its designee's initial decision within ~~((ninety))~~ one hundred twenty days of receiving the letter of appeal. The

notice will include the reasons for the initial decision, and instructions on further appeal rights.

(5) The initial decision of the governing board or its designee becomes the final decision unless the ~~((program manager))~~ state administrator receives a request for a review hearing from the appealing party within thirty days of the date of the decision. The appealing party may, by written notice, request review of the initial decision. The person requesting review must reference the initial decision and provide any additional written information that the appealing party would like considered in the review. A review officer designated by the governing board will review the decision through a hearing conducted under RCW 34.05.488 through 34.05.494.

(6) The officer will review and decide the appeal based on submitted documents unless the governing board or its designee and the appealing party agree to hold a hearing in person or by telephone.

(7) The review officer will make any inquiries necessary to determine whether the proceeding must become a formal adjudicative proceeding under the provisions of chapter 34.05 RCW.

(8) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-060 Who is eligible to be a beneficiary in the trust fund? Individuals are eligible to be beneficiaries if they meet ~~((two))~~ the following conditions at the time of enrollment:

- (1) Beneficiaries must reside in Washington state; and
- (2) Must meet the definition of developmental disability in RCW 71A.10.020~~((3))~~ (5); and
- (3) Any other condition(s) required under the master trust.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-065 How is eligibility determined? At the time of enrollment, a prospective beneficiary must meet the definition of developmental disability in RCW 71A.10.020~~((3))~~ (5), as determined by a representative of the ~~((division of))~~ developmental disabilities administration of the department of social and health services. The primary donor must make arrangements for notification of this determination to be sent to the trust ~~((fund office))~~ manager.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-070 What happens if a beneficiary moves out of the state of Washington? If the beneficiary moves out of the state of Washington~~((s))~~:

(1) The primary representative is required to notify the trust manager in writing within thirty days of the beneficiary's move out of the state of Washington.

(2) The the governing board may elect, in its discretion, one of three options:

- A The balance of the beneficiary's individual trust account will be placed in another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account.

-OR-

- B The individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary ceases to be a resident of Washington.

-OR-

- C The beneficiary's individual trust account will be terminated and distributed as if the beneficiary had died.

~~((The primary representative is required to notify the trust manager if the beneficiary moves out of the state of Washington.))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-075 What happens if a beneficiary is determined to no longer meet the Washington state definition of developmental disability in RCW 71A.10.020 ~~((3))~~ (5)? (1) The primary representative is required to notify the trust manager in writing if the beneficiary is found to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(5) within thirty days of the decision.

(2) If the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020~~((3))~~ (5), the governing board may elect, at its discretion, one of three options:

- A The balance of the beneficiary's individual trust account will be placed in another existing special needs trust established for the beneficiary. Any costs relating to the transfer will be charged to the beneficiary's individual trust account.

-OR-

- B The beneficiary's individual trust account will remain open, and the account will be assessed fees at a level that will support all costs of maintaining the account. The beneficiary will no longer be eligible for the state match as of the date the beneficiary is determined to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020~~((3))~~ (5). New contributions will not be accepted into the individual

trust account during any period when the beneficiary does not meet the definition of the person with a developmental disability in RCW 71A.10.020(5).

-OR-

- C The trust manager will make or direct distributions to or for the benefit of the beneficiary or to an achieving a better life experience (ABLE) account of the beneficiary, after first, the taxes and administrative expenses are paid and after second, the medicaid payback is enforced (if applicable).

~~((The primary representative is required to notify the trust manager if the beneficiary is found to no longer meet the definition of a person with a developmental disability in RCW 71A.10.020(3).))~~

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-080 What fees must be paid to enroll in and participate in the trust fund? The following fees may be charged by entities or individuals associated with the developmental disabilities endowment trust fund as a condition of participation:

(1) State investment board fees. All investment and operating costs associated with the investment of money shall be paid to the state investment board from the trust fund, as required by RCW 43.33A.160 and 43.84.160.

(2) State treasurer fees. Fees charged for the services of the state treasurer will not exceed .00274% per day while funds remain in the custody of the state treasurer, as specified in RCW 43.08.190. State treasurer fees will be deducted from the trust fund.

(3) Annual management fees. An annual management fee will be charged to each individual trust account for services ~~((including bookkeeping, banking services, governing board and department activities, legal services,))~~ and other expenses deemed necessary by the governing board. The governing board shall authorize all changes in the annual management fees. The governing board may establish a minimum and a maximum annual management fee. Primary representatives of existing accounts will be notified sixty days in advance of the effective date of any changes in the minimum or maximum annual management fees.

(4) Enrollment fees. ~~((Each individual trust account will be charged))~~ A six hundred dollar enrollment fee will be charged for each individual trust account at the time of enrollment. The governing board may ~~((increase))~~ adjust the enrollment fee on an annual basis, ~~((within))~~ consistent with the limits set forth in RCW 43.135.055. The governing board shall authorize all changes in enrollment fees.

(5) Trust manager fees. Any fees for trust manager services will be charged by the entity under contract for trust management according to the terms of the contract between the trust manager and the developmental disabilities endowment trust fund. Current fee levels will be disclosed prior to enrollment. The governing board shall authorize all changes in the trust manager fees. Primary representatives of existing

accounts will be notified sixty days in advance of the effective date of any changes in trust manager fees.

(6) Tax return preparation and filing fees. As necessary, the fees associated with preparing and filing tax returns for individual trust accounts will be deducted from those accounts. Current fee levels will be disclosed prior to enrollment. The governing board shall authorize all changes in tax return preparation and filing fees. Primary representatives of existing accounts will be notified sixty days in advance of the effective date of any changes in tax return preparation and filing fees.

(7) Fees for locating remainder beneficiaries named in the disposition plan. The ~~((trust fund))~~ governing board or its designee reserves the right to charge fees to cover the costs associated with locating any remainder beneficiary under the disposition plan. Fees for locating a remainder beneficiary of an individual trust account will be levied only against such accounts.

(8) Fees for resolving disposition plans and remainder beneficiaries. The governing board or its designee reserves the right to charge fees to cover the costs associated with resolving any remainder beneficiary under a disposition plan or terminating an account. This could include, but not be limited to, resolving tribal per capita payments, payments under the Alaska Native Claims Settlement Act, unnamed heirs in law, and nonjudicial agreements changing the disposition plan pursuant to WAC 365-220-045. Fees for resolving disposition plans or terminating an individual trust account will be levied only against such accounts.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-095 What happens when fees are past due? Accounts with fees that are not paid for a period of ninety days will be closed. The primary representative of an account will be sent notification that the account will be closed prior to its closure. The ~~((trust manager))~~ governing board or its designee will make a determination regarding the disposition of any remaining money in the individual trust account.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-100 When and how may individual accounts be transferred? A primary representative may request governing board approval for a transfer of an account to another special needs trust. This must be done through written correspondence to the governing board stating the reasons for the request. The governing board shall review all requests for transfers. Only the governing board or its designee may approve transfers. Any such transfers shall be consistent with the master trust and federal and state law.

Transferring funds from an individual trust account to a qualified achieving a better life experience (ABLE) 529A account for the same beneficiary does not require governing board approval. The primary representative must contact the trust manager to initiate the funds transfer.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-115 How will access to state matching money be determined? The state matching money is limited. Individual trust accounts will be assigned access to state matching money on a first come, first served basis or on another prioritized basis as determined by the governing board. Matching policies apply only to those individual trust accounts that have been assigned access to matching funds.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-140 Are extensions allowed? One twelve-month extension may be granted to each individual trust account to extend the time to become vested (~~(or to maintain active participation)~~) to receive the match. To obtain the extension, a written request must be approved by the governing board or its designee.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-150 What is the amount of maximum annual contributions eligible for state matching money? The amount of maximum annual private contributions eligible for state matching money is three thousand one hundred dollars. The maximum annual state match available for each beneficiary is seven hundred (~~(fifty)~~) seventy-five dollars. The amount of the state match is based on the amount of private contributions, and does not take into account any return on the investment of the private contributions. This maximum may be changed at the discretion of the governing board.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-175 For beneficiaries with multiple individual trust accounts, how is it determined which individual trust account is eligible for state matching money? For beneficiaries with multiple individual trust accounts, the first individual trust account assigned access to the state match will be eligible to receive the state match, provided it is qualified.

If a beneficiary has only one individual trust account, and that account is closed after it has vested, the next individual trust account opened for that beneficiary and assigned access to state matching money will be eligible to receive matching funds, subject to the first come, first served policy or other prioritized policy as determined by the governing board.

If a beneficiary has multiple individual trust accounts, and if an individual trust account for which they have vested is closed, vesting and access to the match are automatically transferred to another individual trust account for that beneficiary, with the transfer made to the longest existing account first.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-180 In what proportion are state matching funds spent? State matching money will only be disbursed from an individual trust account after that individual trust account has vested. For every disbursement made from an individual trust account that has vested, the amount of state matching money disbursed will be equal to the percentage of the overall balance of the individual trust account which is represented by the state matching money (plus the earnings on the state matching money) (~~(for which the individual trust account has qualified)~~) multiplied by the amount of the disbursement.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-185 What is the enrollment match? After two hundred dollars of the enrollment fee is paid, the enrollment fee will be matched at the rate of one dollar to one dollar. The maximum enrollment match is four hundred dollars per beneficiary. The governing board may (~~(increase)~~) adjust the maximum enrollment match at its discretion. The enrollment match may be earned prior to vesting but may not be spent prior to vesting. Matching funds allocated for this purpose will not count against the beneficiary's maximum annual or lifetime match. The enrollment match will be credited to the individual trust account and begin to accumulate earnings when the enrollment process is completed for that individual trust account.

AMENDATORY SECTION (Amending WSR 02-07-026, filed 3/12/02, effective 4/12/02)

WAC 365-220-190 What is the annual management fee match? The annual management fee match will be (~~(applied to individual trust accounts that are levied annual management fees in excess of two percent of the account balance. This match will be applied at a rate of one dollar for each dollar the annual management fee exceeds two percent of the account balance. This match only applies when two percent of the account balance is greater than the minimum annual management fee.~~)

The annual management fee match may be earned prior to vesting but may not be spent prior to vesting. Matching funds allocated for this purpose will not count against the beneficiary's maximum annual or lifetime match) determined by the governing board.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 365-220-085 Is it possible to be placed on the list for state matching funds, and delay payment of the enrollment fees?

WAC 365-220-125 How does an individual trust account maintain qualification for state matching money?

WAC 365-220-130 What happens when an individual trust account becomes inactive?

WSR 18-21-134
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed October 19, 2018, 9:41 a.m.]

Supplemental Notice to WSR 18-12-065.

Preproposal statement of inquiry was filed as WSR 18-09-027.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-828-4200 What activities are assessed in the home living activities subscale of the support needs scale?, 388-828-4220 What activities are assessed in the community living activities subscale of the support needs scale?, 388-828-4240 What activities are assessed in the lifelong learning activities subscale of the support needs scale?, 388-828-4260 What activities are assessed in the employment activities subscale of the support needs scale?, 388-828-4280 What activities are assessed in the health and safety activities subscale of the support needs scale?, 388-828-4300 What activities are assessed in the social activities subscale of the support needs scale?, 388-828-4320 What activities are assessed in the supplemental protection and advocacy activities subscale?, 388-828-4360 What exceptional medical support activities are evaluated to assess your medical support needs?, 388-828-4380 What exceptional behavioral support activities are evaluated to assess your behavioral support needs?, 388-828-4400 How does DDD determine if you meet the eligibility requirements for ICF/MR level of care if you are age sixteen or older?, 388-828-5460 How does DDD determine your ADL support needs score if you are age sixteen or older?, 388-828-5700 How does DDD determine your medical acuity level?, 388-828-5800 How does DDD determine your interpersonal support needs score if you are age sixteen or older?, 388-828-5900 How does DDD determine your mobility acuity level if you are age sixteen or older?, 388-828-8040 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age birth through fifteen?, 388-828-8060 How does DDD determine which health and welfare needs must be addressed in your individual support plan if you are age sixteen or older?, 388-828-9560 How does the residential algorithm determine your daily support needs score?, 388-828-9580 How does the residential algorithm determine your mid-frequency support needs score?, 388-828-9650 How does the residential algorithm determine your toileting support needs score?, 388-828-9660 How does the residential algorithm calculate your daily critical support time?, 388-828-9670 How does the residential algorithm calculate your mid-frequency critical support time?, and 388-828-9680 How does the residential algorithm determine your weekly critical support time?

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health

Service (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than December 12, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 11, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending sections from chapter 388-828 WAC to align DDA's current supports intensity scale (SIS) with the American Association on Intellectual and Developmental Disabilities' (AAIDD) latest version of the supports intensity scale - adult version (SIS-A).

Reasons Supporting Proposal: These rules have not been updated since 2007 and amendments are necessary to align DDA's current SIS with the AAIDD's latest version of the SIS-A. The amendments clarify language and reorder the assessment questions without changing the effect of the rules. The text has been amended from the previous CR-102 filed as WSR 18-12-065 on June 1, 2018. A second public hearing is necessary to add more sections to the set of proposed rules. These amendments, like those in the first proposal, are not substantive; the algorithm in the assessment remains unchanged.

Statutory Authority for Adoption: RCW 71A.12.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Bob Morris, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1513.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from cost-benefit analysis requirements because the proposed amendments, as described under RCW 34.05.328 (5)(b)(iv), clarify the language of the rule without changing its effect.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

October 17, 2018
 Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-22 issue of the Register.

WSR 18-21-138
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed October 19, 2018, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-02-074.

Title of Rule and Other Identifying Information: Chapter 246-337 WAC, Residential treatment facilities, the department of health (department) proposes to amend and add new sections to existing rule to establish licensure, construction requirements and operational standards for pediatric transitional care facilities as directed by SSB 5152 (chapter 168, Laws of 2017).

Hearing Location(s): On November 28, 2018, at 9:30 a.m., at the Department of Health, Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: November 30, 2018.

Submit Written Comments to: John Hilger, P.O. Box 47852, 111 Israel Road S.W., Tumwater, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2321, by November 28, 2018.

Assistance for Persons with Disabilities: Contact John Hilger, phone 360-236-2929, fax 360-236-2321, TTY 360-833-6388 or 711, email john.hilger@doh.wa.gov, by November 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules add pediatric transitional care services (PTCS) as a new service type to the residential treatment facilities (RTF) rules in chapter 246-337 WAC consistent with the directives of SSB 5152. The proposed rules establish licensing, construction, staffing, and operational requirements for PTCS facilities by amending and adding new sections to the existing RTF rules. The proposed rules apply to existing or future residential treatment facilities that chose to offer PTCS, and future, stand-alone PTCS facilities. Any facility currently providing PTCS as a result of SSB 5152 is required to obtain a department RTF license as of January 1, 2019. There is only one such facility in Washington state.

Reasons Supporting Proposal: Each year, more than twelve thousand children are born in Washington state who have had prenatal exposure to drugs. Some of these infants need short-term, round-the-clock health care related to this exposure. Pediatric transitional care facilities are an alternative to continued hospitalization, and support the infant and family's transition to care at home. Rules are needed to set enforceable licensing, construction, staffing and operational requirements, and to establish the regulatory structure and specialized requirements for PTCS facilities to be licensed as an RTF.

Statutory Authority for Adoption: RCW 71.12.670.

Statute Being Implemented: SSB 5152 (chapter 263, Laws of 2017), codified in chapter 71.12 RCW.

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

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

Name of Agency Personnel Responsible for Drafting: John Hilger, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-2929; **Implementation and Enforcement:** Nancy Tyson, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4796.

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

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting John Hilger, P.O. Box 47852, 111 Israel Road S.E., Tumwater, WA 98504, phone 360-236-2929, fax 360-236-2321, TTY 360-833-6388 or 711, email john.hilger@doh.wa.gov.

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

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

Explanation of exemptions: WAC 246-337-005, 246-337-015, 246-337-055, 246-337-080, 246-337-095, 246-337-100, and 246-337-120 are exempt under RCW 34.05.310 (4)(d); WAC 246-337-021 and 246-337-030 are exempt as dictated by statute under RCW 34.05.310 (4)(c).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

What is the scope of the proposed rule package?

Compliance with the proposed requirements described in this document are not likely to cause the sole PTCS provider in Washington state to lose sales or revenue. SSB 5152 (2017) exempts PTSC facilities in existence prior to June 2017 from construction review, and this is reflected in the proposed amendments. The existing PTCS meets or exceeds the requirements in the proposed rules, and so is not expected to incur addition[al] costs of compliance. However, the proposed amendments describe the specific requirements any future RTF providing PTCS care, or newly established, stand-alone PTCS must follow, along with the requirements for future remodeling or renovation to an existing PTCS facility. These specific activities described in rule will result in compliance costs.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification [System] (NAICS) codes? What are their minor cost thresholds? All new PTCS construction will be impacted by the proposed rule package. Costs are described below by category:

Construction costs: The department consulted two standards for this analysis: Building valuation data collected by the International Council Code (IBC) and estimation data collected by RS Means, a common cost estimation reference manual. The IBC data RMS Means cost evaluation can be reviewed in full in the significant analysis associated with this rule package.

Comparative costs are presented below using the RS Means building construction cost data. Table A below represents construction high range costs per square foot for PTCS construction. It assumes that 2,500 square feet and below represents an "add on" to an existing RTF and 10,000 square feet and above represents a new, "stand-alone" PTCS.

Table A

Comparative Costs of PTCS "add-on" to RTF and "stand alone" PTCS.

Square Footage	PTCS	Annual Cost
2,500 sq. ft. (high)	\$775,000	\$19,872
10,000 sq. ft. (high)	\$3,100,000	\$79,487

Source: RS Means building construction cost data

According to IRS instructions, the depreciation period for a commercial building is thirty-nine years (as opposed to 27.5 years for a residential building). Using the RS Means instruction, the annualized construction costs for a 2,500 sq. ft. PTCS "add-on" to an existing RTF building is **\$775,000**. This figure (\$775,000) divided by 39 years = **\$19,872**.

Using the IRS instructions, the annualized construction costs for a 10,000 sq. [sq.] ft. stand along [alone] PTCS building is **\$3,100,000**. This figure (\$3,100,000) divided by 39 years = **\$79,487**.

Table B

Management of Human Resources Costs:

Additional Required Training and Assumed Training Cycle	Staff Type		Time to Complete Training	Cost of Training to New Business Every Two Years		TOTAL ANNUAL COST
	All RTF Staff	Trained Care Givers		Contractor	In-House	
Infant CPR (Red Cross, adult and pediatric CPR/AED certification, meets OSHA requirements). <i>Must be renewed every two years.</i>	X	X	1.5 hours*	\$93.00	N/A	\$46.50
Infant safe sleep, infant crying intervals, feeding and stimulus management, impacts of drugs on in utero development, therapeutic management, management of complex psychosocial family dynamics. <i>Assumed to be valid for two years.</i>	X	X	12 hours**	Unknown	\$424.32 (Hourly rate = \$33.36***)	\$212.16
Care of infants: Linen changing, therapeutic handling, bathing, weighing, charting, temperature taking, positioning, reading signs and signals, feeding, infection control. <i>Assumed to be valid for two years.</i>		X	6 hours***	Unknown	\$212.16 (Hourly rate = \$33.36****)	\$106.06
				TOTAL	\$636.48	\$364.74

Table C

Infection Control Costs:
Vaccination costs for each PTCS staff

Required Vaccination	Approximate Cost	Annual Cost
Chickenpox (varicella)	149.99 (10 - 20 year life span)**	149.99 ÷ 10 years = 14.99

Required Vaccination	Approximate Cost	Annual Cost
German measles (Rubella)	99.99 (20 year life span)**	$99.99 \div 20 \text{ years} =$ \$5.00
Mumps*	(99.99) (usually combined with Rubella)**	(99.99)
Whooping cough (pertussis)	63.99 (Once every 10 years)** (annualized over ten years = \$6.39)	$63.99 \div 10 =$ 6.39
Influenza (flu) (annual)	40.99 - 65.99 (Avg. 57.99)	57.99
Total cost of compliance	\$314.36	\$84.37

Source: <https://www.walgreens.com/topic/healthcare-clinic/price-menu.jsp>
 *Measles, mumps, Rubella (MRR) are generally combined in one vaccination
 **<https://www.cdc.gov/vaccines/schedules/hcp/adult.html>

Table D
Administrative, Staffing, Training, Medical Examinations, Transportation, and Equipment Costs:
Summary of one-time and annualized costs of compliance with new requirements

Cost Category	Description	Total Average	Annual Cost of Compliance for New PTCS
Administrative	Create policies and procedures that implement proposed WAC 246-337-081, including but not limited to admissions criteria, visitation, nursing staff utilization	\$41.87/hour x 16 to create new policies = \$669.92	$\$334.96 \div 10 =$ \$33.50
Staffing (Must provide twenty-four hour medical supervision)	LPN, trained caregivers, pediatrician, social worker	\$1,455,980.80	\$1,455,980.80
Training	Provision of infant care training for parents, legal guardians, foster parents or relatives (onsite, assumed 8 hours)	\$24,460.07	\$24,460.07
Medical Examinations	Includes initial assessment, development of initial management plan, developmental screenings, etc. within specific time frames and in specific intervals.	\$112.19 per infant, average 111 infants per year = \$12,453.09	\$12,453.09
Transportation	Provision of transportation, if needed, to and from facility meeting child passenger restraint requirements.	\$5,610.00	\$5,610.00
Equipment	Includes cardiac and respiratory monitors, warming beds, and other pediatric specific equipment necessary to provide specialized infant care.	\$13,072.65	\$1,412.58
TOTALS		\$1,512,246.53	\$1,499,950.04

NAICS code and minor cost threshold calculation:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll
623220	Residential mental health and substance abuse facilities	133*	$(88,082 \times 1,000/133) \times (0.01) =$ \$6,623

When amortized, the annual costs exceed the minor cost threshold. Additional administrative costs could be incurred to either update or establish policies and procedures. Total estimated compliance costs to establish a new, stand-alone PTCS = \$1,499,950.04 (operational, administrative, and amortized equipment costs) + \$79,487 (amortized construction costs) = **\$1,579,437.04**. Minor cost threshold (one percent of payroll) = \$6,623.00. The total annual cost of compliance per business exceeds the minor cost threshold.

Does the rule have a disproportionate impact on small business? There is only one existing facility in Washington state providing PTCS services. Based on the expensive nature of establishing this business, there can be disproportionate impact on small businesses (defined as those with less than fifty employees and not by their receipts/sales) to comply with the proposed requirements of these rules if they decide to start this type of business.

Did the department make an effort to reduce the impact of the rule? The current costs associated with the proposed rules are all related to necessary health and safety concerns and presumably nonnegotiable. However, the department worked to mitigate the costs and impact of the rules by reducing nurse staffing costs, mitigating medical equipment costs, and allowing the admitting pediatrician, physician's assistant or ARNP to use professional discretion to determine if the infant's medical needs are appropriate for PTCS staffing or operation level.

Did the department involve small businesses in the rule development process? The department engaged in meetings with stakeholders and other interested parties to develop and discuss the proposed rules. Comments collected in those meetings informed rule drafting. The department released an initial draft in April 2018 and solicited comments in person and by email. Revised drafts were released, and after the final meeting, the department refined the draft that is presented as part of this rule proposal.

The department facilitated approximately five hours of discussion that included representatives from the existing PTCS, and potential PTCS providers.

Will businesses have to hire or fire employees because of the requirements in the rule? The proposed rule would require a new PTCS facility caring for more than eight infants on morphine or controlled substance treatment, or more than sixteen infants not on morphine/controlled substance treatment to hire at least four RNs or LPNs to provide twenty-four hour coverage seven days per week. The department finds that this rule may provide opportunity for those who would like to invest in this type of business, and therefore increases the possibility of new PTCS facility establishment and increased employment.

A copy of the statement may be obtained by contacting John Hilger, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2929, fax 360-236-2321, TTY 360-833-6388 or 711, email john.hilger@doh.wa.gov.

October 18, 2018

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Administrator" means an individual person responsible for managing the day-to-day operations of the residential treatment facility.

(2) "Adult" means an individual eighteen years of age or older.

(3) "Authorized" means mandated or permitted, in writing, by the administrator to perform an act that is within a health care provider's lawful scope of practice, or that was lawfully delegated to the health care provider or to the unlicensed staff member.

(4) "Bathroom" means a room containing at least one bathtub or shower.

(5) "Child" or "minor" means an individual under the age of eighteen. A child or minor may include an infant as defined in subsection (17) of this section.

(6) "Communicable disease" means a disease caused by an infectious agent that can be transmitted from one person, animal, or object to another individual by direct or indirect means including transmission via an intermediate host or vector, food, water or air.

(7) "Confidential" means information that may not be disclosed except under specific conditions permitted or mandated by law or legal agreement between the parties concerned.

(8) "Construction" means:

(a) The erection of a facility;

(b) An addition, modification, alteration or change of an approved use to an existing facility; or

(c) The conversion of an existing facility or portion of a facility for use as an RTF.

(9) "Co-occurring services" means services certified by ~~((DSHS-DBHR))~~ the department that combine mental health services and substance use disorder services under a single RTF license.

(10) "Department" means the Washington state department of health.

~~((11))~~ ~~(("DSHS-DBHR" means the division of behavioral health and recovery within the Washington state department of social and health services.~~

~~((12))~~ (12) "Facility" means a building, portion of a building, or multiple buildings under a single RTF license.

~~((13))~~ (12) "Health assessment" means a systematic physical examination of the person's body conducted by an allopathic physician, osteopathic physician, naturopathic physician, allopathic physician's assistant, osteopathic physician's assistant, advanced registered nurse practitioner, registered nurse, or licensed practical nurse who is licensed under Title 18 RCW and operating within their scope of practice.

~~((14))~~ (13) "Health care" means any care, service, or procedure provided by a health care provider to diagnose, treat, or maintain a resident's physical or mental condition, or that affects the structure or function of the human body.

~~((15))~~ (14) "Health care prescriber" or "prescriber" means an allopathic physician, osteopathic physician, naturopathic physician, allopathic physician's assistant, osteopathic

physician's assistant, or advanced registered nurse practitioner licensed under Title 18 RCW operating within their scope of practice who by law can prescribe drugs in Washington state.

~~((16))~~ (15) "Health care provider" means an individual who is licensed, registered or certified under Title 18 RCW to provide health care within a particular profession's statutorily authorized scope of practice.

~~((17))~~ (16) "Health care screen" means a systematic interview or use of a questionnaire approved by a health care prescriber to determine the health history and care needs of a resident.

(17) "Infant" means a resident one year old or less at the time of admission for pediatric transitional care services.

(18) "Licensee" means the person, corporation, association, organization, county, municipality, public hospital district, or other legal entity, including any lawful successors to whom the department issues an RTF license.

(19) "Medication" means a legend drug prescribed for a resident by an authorized health care prescriber. Medication also means nonprescription drugs, also called "over-the-counter medications," that can be purchased by the general public without a prescription.

(20) "Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection, or any other means, whether self-administered by a resident, or administered by a parent or guardian for a minor, or an authorized health care provider.

(21) "Medication administration error" means a resident failing to receive the correct medication, medication at the correct time, the correct dose, or medication by the correct route.

(22) "Mental health services" means services certified by ~~((DSHS-DBHR))~~ the department under chapter ~~((388-865 or 388-877A))~~ 246-341 WAC to evaluate, stabilize, or treat one or more residents for a mental disorder.

(23) "Parent or guardian" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under joint custody agreement; or

(b) An individual or agency judicially appointed as legal guardian or custodian of the child.

(24) "Pediatric transitional care services" or "PTCS" means short-term, temporary, health and comfort services for drug exposed infants according to the requirements of this chapter.

(25) "Pediatric transitional care services unit" means the distinct spaces within a facility used exclusively for the provision of pediatric transitional care services.

(26) "Resident" means an individual admitted to an RTF licensed under this chapter.

~~((25))~~ (27) "Residential treatment facility" or "RTF" means a facility in which twenty-four hour on-site care is provided for the evaluation, stabilization, or treatment of residents for substance use, mental health, ~~((or))~~ co-occurring disorders, or for drug exposed infants.

~~((26))~~ (28) "Restraint" means any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a resident to move his or her arms, legs, body or head freely; or a drug or medication

when used as a restriction to manage the resident's behavior or restrict the resident's freedom of movement and is not a standard treatment or dosage for the resident's condition. Restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical or chemical restraint, accomplished with limited force and designed to:

(a) Prevent a resident from completing an act that would result in potential bodily harm to the resident or others or to damage property;

(b) Remove a disruptive resident who is unwilling to leave the area voluntarily; or

(c) Guide a resident from one location to another.

~~((27))~~ (29) "Seclusion" means the involuntary confinement of a resident alone in a room or area from which the resident is physically prevented from leaving.

~~((28))~~ (30) "Staff" means medical and administrative employees, independent contractors, trained caregivers, students, volunteers, and trainees performing duties at an RTF.

(31) "Substance use disorder services" means services certified by ~~((DSHS-DBHR))~~ the department under chapter ~~((388-877B))~~ 246-341 WAC to evaluate, stabilize, or treat one or more residents for alcoholism, drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

~~((29))~~ (32) "Survey" means an inspection or investigation conducted by the department to evaluate and monitor a licensee's compliance with chapter 71.12 RCW and this chapter.

~~((30))~~ (33) "Toilet room" means a room containing a water closet (toilet).

(34) "Trained caregiver" means a noncredentialed, unlicensed person who may not provide medical care to infants, working under the supervision of a registered nurse as defined in RCW 18.79.020(6).

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-015 Service types. A licensee must provide one or more of the following types of services in the RTF:

- (1) Mental health services;
- (2) Substance use disorder services; ~~((or))~~
- (3) Co-occurring services; or
- (4) Pediatric transitional care services.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-021 On-site surveys, complaint investigations, and enforcement. (1) To determine compliance with chapter 71.12 RCW and this chapter, the department may:

(a) Conduct unannounced on-site surveys after initial licensure; and

(b) Investigate complaints alleging noncompliance with chapter 71.12 RCW and this chapter.

(2) The licensee shall assist the department during on-site surveys and investigations in a cooperative manner.

(3) Notice of correction.

(a) When the department identifies deficiencies it does not determine to be major, broadly systemic, or of a recurring nature, the department will issue the administrator a notice of correction according to RCW 43.05.100.

(b) The "notice of correction" will include:

(i) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable law or rule;

(ii) A brief statement of what is required to achieve compliance;

(iii) The date by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department or other sources of technical assistance; and

(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(4) Plan of correction.

(a) At the same time the department issues a notice of correction as identified in subsection (3) of this section, the department will provide instructions on how the administrator will complete and submit a plan of correction.

(b) The "plan of correction" must be approved by the department and include:

(i) A statement that the administrator:

(A) Has or will correct each cited deficiency; and

(B) Will maintain correction of each cited deficiency.

(ii) A place for the administrator to describe the specific action(s) that must be taken to correct each cited deficiency;

(iii) A place for the administrator to indicate the individual responsible for assuring correction of each deficiency; and

(iv) A place for the administrator to indicate the time frame in which to complete the corrections.

(c) Time frames to correct each cited deficiency in the notice of correction must be approved by the department.

(d) Implementation of the corrective action must be completed within the approved time frame and is subject to verification by the department.

(e) The administrator or the administrator's designee shall:

(i) Complete, sign, date, and submit a written plan of correction to the department within ten business days of receiving a notice of correction; and

(ii) Submit to the department updated plans of correction as needed.

(5) Directed plan of correction.

(a) When the department identifies deficiencies it determines to be broadly systemic, recurring, or of a significant threat to public health and safety, it will issue a directed plan of correction.

(b) The directed plan of correction will include:

(i) Direction from the department on the specific corrective action(s) required for the licensee to correct each cited deficiency; and

(ii) The time frames in which the department requires the licensee to complete each cited deficiency.

(c) The department may reduce the time frames in the directed plan of correction to the minimum necessary. Imple-

mentation of the directed corrective action(s) must be completed within the approved time frame and is subject to verification by the department.

(6) The department may deny, suspend, modify, or revoke an RTF license under chapters 71.12, 43.70, 34.05 RCW, and 246-10 WAC, if the applicant or licensees have:

(a) Failed to correct any deficiencies within the required time frames as described in subsections (3) through (5) of this section;

(b) Failed to comply with any other provision of chapter 71.12 RCW or this chapter;

(c) Failed to meet (~~(DSHS-DBHR)~~) certification standards under chapters 71.05, (~~(70-96A)~~) 71.24, and 71.34 RCW(-);

(d) Been denied a license to operate a health care, child care, group care or personal care facility in this state or elsewhere, had the license suspended or revoked, or been found civilly liable or criminally convicted of operating the facility without a license;

(e) Committed, aided or abetted an illegal act in connection with the operation of any RTF or the provision of health care or residential services;

(f) Abandoned, abused, neglected, assaulted, or demonstrated indifference to the welfare and well-being of a resident;

(g) Failed to take immediate corrective action in any instance of assault, abuse, neglect, or indifference to the welfare of a resident; or

(h) Retaliated against a staff member, resident, or other individual for reporting suspected abuse or other alleged improprieties(-);

(7) The department may summarily suspend a license pending a proceeding for revocation or other action if the department determines a deficiency is an imminent threat to a resident's health, safety, or welfare.

(8) A licensee may contest a department decision or action according to the provision of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-030 Retroactivity. (1) Except as provided in subsections (2) and (3) of this section, any construction on or after ((the effective date of this chapter)) August 20, 2005, must comply with this chapter.

(2) RTFs that are licensed and operating on ((the effective date of this chapter)) August 20, 2005, may continue to operate without modifications to the facility, unless specifically required under this chapter, or as deemed necessary by either the local building official, the department, other licensing regulators, the state fire marshal, for the general safety and welfare of the occupants and public.

(3) Facilities providing pediatric transitional care services in a licensed capacity before January 1, 2019, are not subject to construction review by the department for an initial department of health license according to this chapter.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-040 Construction review services requirements. (1) Prior to beginning any construction or remodeling, the applicant or licensee must submit an application and fee specified in chapter 246-314 WAC, if applicable, to the department and receive written authorization by the department to proceed.

(2) The requirements of chapter 246-337 WAC in effect at the time the application and fee are submitted to the department, and the project number as assigned by the department, apply for the duration of the construction project.

~~(3) ((Standards for design and construction. Construction)) All facilities seeking to be licensed and existing licensed facilities seeking to renovate, alter, add, or relocate shall comply with~~

~~(a)) the state building code as adopted by the state building code council under the authority of chapter 19.27 RCW~~

~~(b) The~~.

(4) In addition to subsection (3) of this section, facilities, or any portion of the facility, licensed in their capacity to provide mental health, substance use disorder, or co-occurring services must follow physical environmental requirements in this chapter for new construction.

~~((4)) (5) In addition to subsection (3) of this section, facilities, or any portion of the facility, licensed in their capacity to provide pediatric transitional care services shall comply with the following physical environmental standards:~~

(a) The 2014 edition of the *Guidelines for Design and Construction of Hospitals and Outpatient Facilities* as developed by the Facilities Guidelines Institute and published by the American Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive, Chicago, IL 60606 for new construction; and

(b) The following specific construction standards:

(i) All doors accessing the pediatric transitional care services unit are locked doors in accordance with the Washington state adopted building code;

(ii) All resident sleeping rooms have windows in the hallway wall or door to promote high visibility;

(iii) Security cameras, video only, installed at all entry points into the PTCS unit, in hallways outside all resident sleeping rooms, and in all designated parent visitation areas;

(iv) Telephones installed in all resident sleeping rooms;

(v) A communication system, wired or wireless, that provides staff the means to summon on-duty staff assistance from key areas such as resident sleeping rooms, common rooms, corridors, nurse station, and administrative offices; and

(vi) Emergency power. The licensee must have an emergency generator that:

(A) Meets the definition in the NFPA 99, Health care facilities, as adopted by the state building code council; and

(B) Provides a minimum of seventy-two hours of effective facility operation.

(6) Preconstruction. The applicant or licensee must request and attend a presubmission conference with the department for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission con-

ference shall be scheduled to occur at the end of the design development phase or the beginning of the construction documentation phase of the project.

~~((5)) (7) Construction document review. The applicant or licensee must submit accurate and complete construction documents for proposed new construction to the department for review within ten days of submission to the local authorities. The construction documents must include:~~

~~(a) A written functional program, in accordance with RCW 71.12.470, outlining the types of services provided, types of residents to be served, and how the needs of the residents will be met including a narrative description of:~~

~~(i) Program goals;~~

~~(ii) Staffing and health care to be provided consistent with WAC 246-337-080;~~

~~(iii) Infection control consistent with WAC 246-337-060;~~

~~(iv) Safety and security consistent with WAC 246-337-065;~~

~~(v) Restraint and seclusion consistent with WAC 246-337-110;~~

~~(vi) Laundry consistent with WAC 246-337-112;~~

~~(vii) Food and nutrition consistent with WAC 246-337-111;~~

~~(viii) Medication consistent with WAC 246-337-105; and~~

~~(ix) Housekeeping.~~

~~(b) Drawings prepared, stamped, and signed by an architect or engineer licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate;~~

~~(c) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction, including:~~

~~(i) Site plan(s) showing streets, driveways, parking, vehicle and pedestrian circulation, and location of existing and new buildings;~~

~~(ii) Dimensioned floor plan(s) with the function of each room and fixed/required equipment designated;~~

~~(iii) Elevations, sections, and construction details;~~

~~(iv) Schedules of floor, wall, and ceiling finishes;~~

~~(v) Schedules of doors and windows - Sizes and type, and door finish hardware;~~

~~(vi) Mechanical systems - Plumbing and heating/venting/air conditioning; and~~

~~(vii) Electrical systems, including lighting, power, and communication/notification systems~~

~~(d) Specifications that describe with specificity the workmanship and finishes;~~

~~(e) Shop drawings and related equipment specifications for:~~

~~(i) An automatic fire sprinkler system; and~~

~~(ii) An automatic fire alarm system.~~

~~(f) An interim life safety measures plan to ensure the health and safety of occupants during construction and renovation; and~~

~~(g) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or~~

areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.

~~((6))~~ (8) Resubmittals. The licensee shall respond in writing when the department requests additional or corrected construction documents.

~~((7))~~ (9) Construction. The licensee or applicant shall comply with the following requirements during the construction phase:

(a) Assure conformance to the approved plans during construction;

(b) Submit addenda, change orders, construction change directives or any other deviation from the approved plans to the department prior to their installation; and

(c) Allow any necessary inspections for the verification of compliance with the construction documents, addenda, and modifications.

~~((8))~~ (10) Project closeout. The licensee or applicant shall not use any new or remodeled areas until:

(a) The department has approved construction documents;

(b) The local jurisdictions have completed all required inspections and approvals, when applicable or given approval to occupy; and

(c) The licensee or applicant notifies the department when construction is completed and includes:

(i) A copy of the local jurisdiction's approval for occupancy;

(ii) The completion date;

(iii) The actual construction cost; and

(iv) Additional information as required by the department.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-050 Management of human resources. (1) The licensee must ensure residents receive care from qualified staff authorized and competent to carry out assigned responsibilities.

(2) A sufficient number of staff must be present on a twenty-four hour per day basis to:

(a) Meet the care needs of the residents served;

(b) Manage emergency situations;

(c) Provide crisis intervention;

(d) Implement individual service plans; and

(e) Carry out required monitoring activities.

(3) At least one staff trained in basic first aid and age appropriate cardiopulmonary resuscitation (CPR) must be on-site twenty-four hours per day. Additionally, all staff providing hands-on care to infants must have a current certification in infant CPR.

(4) Staff must be trained, authorized, and where applicable credentialed to perform assigned job responsibilities consistent with scopes of practice, resident population characteristics and the resident's individual service plan.

(5) The licensee must document that staff receive the following training as applicable:

(a) Initial orientation and ongoing training to address the safety and health care needs of the residents served for all staff;

(b) Bloodborne pathogen training inclusive of HIV/AIDS training for staff involved in direct resident care or potential for having contact with blood or body fluids;

(c) If restraint or seclusion is used in the facility, initial and annual training in the proper and safe use of restraint or seclusion for staff required to perform restraint or seclusion procedures inclusive of:

(i) Techniques to identify staff and resident behaviors, events, and environmental factors that may trigger circumstances that require the use of restraint or seclusion;

(ii) The use of nonphysical intervention skills;

(iii) Choosing the least restrictive intervention based on an individualized assessment of the resident's medical or behavioral status or condition;

(iv) The safe application and use of all types of restraint or seclusion used in the RTF, including training in how to recognize and respond to signs of physical and psychological distress;

(v) Clinical identification of specific behavioral changes that indicate that restraint or seclusion is no longer necessary; and

(vi) Monitoring the physical and psychological well-being of the resident who is restrained or secluded including, but not limited to, respiratory and circulatory status, skin integrity, and vital signs; and

(d) Current basic first aid and age appropriate cardiopulmonary resuscitation for staff required to provide first aid or CPR.

(6) In addition to the requirements in subsection (5) of this section, an RTF in its licensed capacity to provide pediatric transitional care services must document that staff have received the following training:

(a) For all staff:

(i) Infant safe sleep;

(ii) Period of infant crying which is at its peak, unexpected, resists soothing, done with a pain-like face, is long lasting, and during the evening (commonly referred to as P.U.R.P.L.E. crying);

(iii) Reading signs and signals;

(iv) Managing feeding difficulties;

(v) Managing stimulus;

(vi) Impact of drugs in utero on developmental milestones;

(vii) Recognizing symptoms in infants exposed to specific drugs;

(viii) Therapeutic management techniques;

(ix) Managing your stress; and

(x) Managing complex psychosocial family dynamics.

(b) In addition to (a) of this subsection, trained caregivers must also receive training on the care of infants:

(i) Linen changing;

(ii) Therapeutic handling;

(iii) Bathing;

(iv) Weighing and tracking weight;

(v) Proper charting;

(vi) Techniques for taking temperature;

(vii) Positioning;

(viii) Reading signs and signals;

(ix) Feeding techniques; and

(x) Infection control.

(7) The licensee shall have written documentation for each staff member including:

- (a) Employment;
 - (b) Hire date;
 - (c) Verification of education and experience;
 - (d) Current signed job description;
 - (e) Criminal history disclosure statement and results of a background check, according to WAC 246-337-055, completed within the previous three months of hire date and annually thereafter;
 - (f) Current license, certification, or registration, if applicable;
 - (g) Current basic first aid and age appropriate CPR, if applicable;
 - (h) Current Washington state food and beverage service worker permit, if applicable;
 - (i) Current driver's license, if applicable;
 - (j) Initial and ongoing tuberculosis screening according to the facility risk assessment and tuberculosis written plan according to WAC 246-337-060; ~~((and))~~
 - (k) All vaccination documentation required by WAC 246-337-060; and
 - (l) Annual signed performance evaluation(s).
- ~~((7) For the purposes of this section staff includes: Independent contractors, consultants, students, volunteers and trainees providing direct care.))~~

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-055 Personnel criminal history, disclosure, and background inquiries. The licensee shall screen all prospective staff(~~(, independent contractors, consultants, students, volunteers and trainees))~~) with unsupervised access to residents for criminal history disclosure and background requirements using a Washington state patrol background check consistent with RCW 43.43.830 through 43.43.842. All background check reports and signed disclosure statements must be made available to the department upon request.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-060 Infection control. The licensee must implement and maintain an infection control program that prevents the transmission of infections and communicable disease among residents, staff, and visitors by:

- (1) Developing written policies and procedures for:
 - (a) Hand hygiene;
 - (b) Cleaning and disinfection;
 - (c) Standard precautions to prevent transmission of bloodborne pathogens in accordance with chapter 296-823 WAC;
 - (d) Resident hygiene;
 - (e) Preventing transmission of tuberculosis consistent with the department's *Washington State Tuberculosis Services Manual*, DOH 343-071 June 2012, and chapter 246-170 WAC;
 - (f) Management of staff with a communicable disease in an infectious stage;

- (g) Environmental management; and
- (h) Housekeeping functions.
- (2) Complying with chapters 246-100 and 246-101 WAC.

(3) Providing all necessary supplies and equipment to implement the infection control program.

(4)(a) An RTF licensed to provide pediatric transitional care services must require all staff to provide proof of full vaccination against, or show proof of acquired immunity for, the following:

- (i) Chickenpox (Varicella);
- (ii) German measles (Rubella);
- (iii) Measles (Rubeola);
- (iv) Mumps;
- (v) Whooping cough (pertussis); and
- (vi) Influenza (flu).

Influenza vaccination is annual and must be received within the first month it becomes publicly available.

(b) The licensee may exempt a person working at their facility from one or more of the vaccinations required by this subsection if acceptable medical documentation of a medical contraindication, signed by a health care provider, is provided to the licensee.

(c) For the purposes of this subsection:

(i) Full vaccination means vaccinations given at the ages and intervals according to the most current Center for Disease Control and Prevention immunization guidelines in "Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Adults Aged 19 Years or Older—United States, 2018"; as published in the "Morbidity and Mortality Weekly Report (MMWR) 2018; 67(5):158-160."

(ii) Acquired immunity means a medically documented positive titer.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-065 Safety and security. The licensee must protect resident safety and security by developing written policies and procedures that are consistent with the requirements of this chapter and address:

- (1) Management of disorderly residents, visitors, or staff.
- (2) The safety of residents during transportation, including:
 - (a) Disorderly residents;
 - (b) Minimum qualifications for transport staff; ~~((and))~~
 - (c) Any additional equipment in transport vehicles to ensure safety such as car seats for infants and children, and first-aid kits; and
 - (d) Transportation that is safe, reliable, and in conformance with state and federal safety laws.
- (3) Smoking, vaping, and tobacco use by residents, visitors, and staff.
- (4) Security, including:
 - (a) Controlling all entrances and exits and accounting for access to and egress from the RTF; and
 - (b) Conducting resident searches.
- (5) Reporting to the department and other appropriate agencies, by the end of the next business day of the incident

occurring, serious or undesirable outcomes that occur in the facility including:

- (a) Allegations of abuse;
- (b) Death;
- (c) Suicide;
- (d) Injuries resulting in an inpatient hospital stay; and
- (e) Disruption of services through internal or external emergency or disaster.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-080 Resident care services. Nothing in this section applies to an RTF in its licensed capacity to provide pediatric transitional care services according to this chapter.

(1) The licensee must establish and implement policies and procedures that:

- (a) Describe how the licensee meets the residents' health care needs by satisfying the requirements of this section; and
- (b) Are reviewed and approved by a health care prescriber at least biennially.

(2) The licensee must:

(a) Limit admission, transfer, discharge, and referral processes to residents for whom the RTF is qualified by staff, services, equipment, building design and occupancy to give safe care;

(b) Conduct or accept a current health care screening of each resident upon admission including a tuberculosis risk assessment and symptom screening;

(c) Refer residents for health care provided outside of the RTF as needed such as, but not limited to, laboratory, dental, ambulatory care or specialty services as needed;

(d) Assist residents in following all prescribed treatments, modified diets, activities or activity limitations;

(e) Assist residents to keep health care appointments;

(f) Provide access to a health assessment by a health care prescriber any time a resident exhibits signs or symptoms of an injury, illness or abnormality for which a medical diagnosis and treatment are indicated;

(g) Provide access to tuberculosis testing if the resident is high-risk or symptomatic of tuberculosis;

(h) Address serious illness, medical emergencies, or threat to life, to include:

(i) Criteria for determining the degree of medical stability of residents;

(ii) Observing residents for signs and symptoms of illness or trauma;

(iii) Reporting abnormal signs and symptoms according to an established protocol;

(iv) Criteria requiring a resident's immediate transfer to a hospital;

(v) How staff transmits the resident's medical and related data in the event of a transfer;

(vi) How to notify the parent or guardian, personal representative or next of kin in the event of an emergency, threat to life, serious change in the resident's condition, transfer of a resident to another facility, or death; and

(vii) When to consult with internal or external resource agencies or entities such as poison control, fire department or police.

(i) Provide access to emergency and prenatal care for pregnant residents, and postnatal care services for residents and infants; and

(j) Assure provisions of each resident's personal care items and durable medical equipment including storing and labeling each resident's personal care items separately, preventing contamination, and preventing access by other residents.

(3)(a) RTFs performing the following duties must meet the staffing requirements in (b) of this subsection:

(i) Have a health care prescriber initiate or adjust medication that is administered by staff according to the resident's individual service plan;

(ii) Otherwise administer medications to the resident; or

(iii) Use restraint or seclusion.

(b) RTFs performing any duties described in (a) of this subsection must meet the following staffing requirements:

(i) A registered nurse, licensed practical nurse, or prescriber must be available on-site during medication administration or while restraint or seclusion is being used, and otherwise available by phone twenty-four hours per day, seven days per week; and

(ii) A prescriber or registered nurse who is responsible for the supervision of resident care and nursing services must be available on-site at least four hours per calendar week.

(4) RTFs which do not perform any duties described in subsection (3)(a) of this section but have a health care prescriber initiate or adjust medication for residents to self-administer according to the resident's individual service plan must have a registered nurse or licensed practical nurse available at least by phone twenty-four hours per day, seven days per week.

(5) RTFs which meet the conditions in subsection (3) or (4) of this section must:

(a) Perform a health assessment for each resident. A prescriber or licensed nurse operating within their scope of practice shall conduct and complete the assessment following the resident's admission to the RTF unless a health assessment was performed within the past three months and is available to the RTF upon admission; and

(b) Develop and implement the policies and procedures explaining how nursing staff will be (~~utilized~~) used including:

(i) Scheduling of hours on-site and availability by phone;

(ii) Supervision, assessment, and training of other staff;

(iii) Delegation to other staff;

(iv) Medication management;

(v) Treatment planning;

(vi) Health screenings;

(vii) Health assessments; and

(viii) If applicable, restraint or seclusion.

NEW SECTION

WAC 246-337-081 Residential services—Pediatric transitional care. This section only applies to an RTF in its

licensed capacity to provide pediatric transitional care services according to this chapter.

(1) The licensee must establish and implement policies and procedures that:

(a) Describe how the licensee meets the infants' health care needs by satisfying the requirements of this section; and

(b) Are reviewed and approved by a pediatrician, a pediatric physician's assistant, or pediatric ARNP at least biennially.

(2) The licensee may only provide pediatric transitional care services to infants who:

(a) Are less than one year of age;

(b) Have been exposed to drugs before birth;

(c) Require twenty-four-hour continuous residential care and skilled nursing services as a result of drug exposure; and

(d) Are medically assessed by a pediatrician, physician's assistant, or pediatric ARNP and referred to the RTF by the department of children, youth, and families regional hospitals or private parties.

(3) The licensee may only admit drug exposed infants that primarily require withdrawal management services and whose condition has been determined by a pediatrician, physician's assistant, or pediatric ARNP to be otherwise medically stable and predictable.

Admissions must contain a complete discharge summary from the sending facility.

(4) The licensee shall not admit complex medical conditions requiring specialized care, monitoring, and equipment including, but not limited to, respiratory compromise requiring assisted ventilation or continuous oxygen, conditions requiring a peripherally inserted central catheter line, or conditions requiring nasogastric tubes.

(5) The staffing and staffing ratios in this subsection apply at all times. The licensee shall provide twenty-four-hour medical supervision to infants according to the following minimum staffing requirements:

(a) One registered nurse shall be present and on duty at the facility at all times;

(b)(i) One registered nurse or licensed practical nurse shall be present and on duty for every eight infants requiring morphine or other controlled substances for treatment of condition;

(ii) One registered nurse or licensed practical nurse shall be present and on duty for every sixteen infants provided that the staffing ratio of subsection (3) of this section is not exceeded.

(c) One trained caregiver to four infants; and

(d) A pediatrician, physician's assistant, or pediatric ARNP responsible for the supervision of infant medical care and nursing services must be available by phone twenty-four hours a day for consultation and on-site for medical examinations.

(6) The licensee may provide services for an infant for up to forty-five days. Pediatric transitional care services may be extended beyond forty-five days if the pediatrician, physician's assistant, or pediatric ARNP on staff determines it to be medically necessary. The assessment and determination must be conducted and entered into the infant's record no less than two days before the infant's forty-fifth day at the RTF and must include the medical reasons for the extended stay.

(7) The licensee shall provide trainings to parents or legal guardians, foster parents, and relatives on:

(a) Reading your infant's signs and signals;

(b) Managing feeding difficulties;

(c) Managing stimulus in a family environment;

(d) Impact of drugs in utero on developmental milestones;

(e) Managing your stress and that of your family; and

(f) Therapeutic benefits of touch, sound and light in modulating infant behavior.

(8) The licensee shall provide for medical examinations and consultations by a pediatrician, physician's assistant, or pediatric ARNP for each infant with the frequency and regularity recommended by the American Academy of Pediatrics and according to the time frames in this subsection.

Medical assessments, examinations, screenings, and other services relevant to an infant's individual service plan shall include:

(a) An initial health assessment of the infant conducted and completed by a registered nurse upon the infant's arrival;

(b) An initial medical examination of the infant conducted and completed by a pediatrician, physician's assistant or pediatric ARNP within twenty-four hours, if on morphine, otherwise forty-eight hours of the infant's arrival unless a pediatrician, physician's assistant or pediatric ARNP orders a shorter time frame;

(c) Medical examinations of infants conducted every two weeks by a pediatrician, physician's assistant, or pediatric ARNP unless a pediatrician, physician's assistant or pediatric ARNP orders a shorter time frame;

(d) A plan of management for neonatal abstinence syndrome (NAS). Licensees must use a NAS scoring tool approved by the department. NAS scoring must be conducted and completed based on the infant's condition and treatment by a trained licensed practical nurse, registered nurse, pediatrician, physician's assistant, or pediatric ARNP on staff at the RTF. A licensed practical nurse can gather NAS scoring data but cannot analyze the data to inform medication dosage and other treatment decisions;

(e) Infant developmental screening tests, approved by the department, within thirty days after the infant's arrival at the RTF; and

(f) If written consent is given by the parent or guardian, administration of all routinely recommended vaccinations to the infant at the ages and intervals according to the most current national immunization guidelines in the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Children and Adolescents Aged 18 Years or Younger—United States, 2018*"; as published in the "*Morbidity and Mortality Weekly Report (MMWR) 2018; 67(5):156-157.*"

(9) The licensee must:

(a) Provide transportation of the infant to and from the RTF, if needed. Transportation requirements shall include the following:

(i) All vehicles used for transportation must be in good working condition and insured by the licensee;

(ii) Drivers must be at least twenty-one years of age, have proof of a valid driver's license, and be employed by the RTF;

(iii) Drivers must be accompanied by a trained caregiver or licensed health care provider employed by the RTF to attend to the infant during transport; and

(iv) Child passenger restraint requirements must be in compliance with RCW 46.61.687.

(b) Limit admission, transfer, discharge, and referral processes to infants for whom the RTF is qualified by staff, services, equipment, building design and occupancy to provide safe care;

(c) Refer infants for health care provided outside of the RTF as needed such as, but not limited to, laboratory, dental, ambulatory care, or specialty services;

(d) Follow all prescribed treatments, modified diets, activities, or activity limitations;

(e) Keep health care appointments;

(f) Provide a health assessment any time an infant exhibits signs or symptoms of an injury, illness or abnormality for which a medical diagnosis and treatment are indicated;

(g) Address serious illness, medical emergencies, or threat to life, to include:

(i) Criteria for determining the degree of medical stability of infants;

(ii) Observing infants for signs and symptoms of illness or trauma;

(iii) Reporting abnormal signs and symptoms according to an established protocol;

(iv) Criteria requiring an infant's immediate transfer to a hospital;

(v) How staff transmits the infant's medical and related data in the event of a transfer;

(vi) How to notify the parent or guardian, personal representative, or next of kin in the event of an emergency, threat to life, serious change in the infant's condition, transfer of an infant to another facility, or death; and

(vii) When to consult with internal or external resource agencies or entities such as poison control, fire department, or police.

(h) Assure provisions of each infant's personal care items and durable medical equipment including storing and labeling each resident's personal care items separately, preventing contamination, and preventing access by other residents;

(i) Develop and implement the policies and procedures explaining how nursing staff will be used including:

(i) Scheduling of hours on-site and availability by phone;

(ii) Supervision, assessment, and training of other staff;

(iii) Delegation to other staff;

(iv) Medication management;

(v) Treatment planning;

(vi) Health screenings; and

(vii) Health assessments.

(10) In satisfying the requirements of this chapter, the licensee must also collaborate with the department of child, youth, and families regarding individual safety plans and to meet family and medical needs as contractually required.

(11) The licensee shall have equipment to support infants receiving pediatric transitional care services in adequate supply to meet the medical needs of the population:

(a) Cardiac respiratory monitors for each infant receiving morphine or as medically indicated;

(b) Pediatric pulse oximeter in each infant room;

(c) Plumbed or portable oxygen tanks and suction devices in an adequate supply to meet infant needs;

(d) Digital thermometers designed for pediatric use in each infant room;

(e) Scales in each infant room used for weighing infants;

(f) Warming beds in adequate supply to meet infant needs;

(g) Refrigerator with thermometer for storing infant formula;

(h) Refrigerator with thermometer, approved for storing medications and vaccinations consistent with *Centers for Disease Control and Prevention Vaccine Storage and Handling Guidelines*;

(i) Infant automated external defibrillator; and

(j) Infant first-aid kit.

(12) The licensee must develop and implement policies and procedures that ensure unauthorized persons do not access the pediatric transitional care services unit.

NEW SECTION

WAC 246-337-082 Pediatric transitional care services—Parent-infant visitation. This section only applies to an RTF in its licensed capacity to provide pediatric transitional care services according to this chapter.

(1) The licensee, in collaboration with the infant's family, and the department of child, youth, and families, if applicable, shall identify persons who are authorized to visit the infant or call and receive verbal updates on the infant's condition.

(2) The licensee shall make all reasonable efforts to provide an initial visit between parents and infants at the facility within seventy-two hours of admission to the RTF, unless directed otherwise by a court order.

(3) At the first initial visit, the licensee shall develop a written visitation plan in collaboration with the infant's family and the department of child, youth, and families, if applicable.

(4) The licensee shall develop and implement policies and procedures regarding how to address safety concerns that are identified with persons visiting or wanting to visit an infant receiving pediatric transitional care services.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-095 Resident health care records. The licensee must ensure the RTF meets the following requirements:

(1) Develop and implement procedures for maintaining current health care records as required by chapter 70.02 RCW and other applicable laws.

(2) Health care records may be integrated into a resident's individual service plan so long as the requirements of this section are met.

(3) Make health care records accessible for review by appropriate direct care staff, the resident, the parent or guardian, and the department in accordance with applicable law.

(4) Document health care information in a standardized manner.

(5) Record health care information by the health care provider or direct care staff with resident contact to include typed or legible handwriting in ink, verified by signature or unique identifier, title, date and time.

(6) Maintain the confidentiality and security of health care records in accordance with applicable law.

(7) Maintain health care records in chronological order in their entirety or chronologically by sections.

(8) Keep health care records current with all documents filed according to the licensee's written timeline policy.

(9) Include the following, at a minimum, in each health care record:

(a) Resident's name, date of birth, sex, marital status, date of admission, voluntary or other commitment, name of health care prescriber, diagnosis, date of discharge, previous address and phone number, if any;

(b) Resident's receipt of notification of resident's rights;

(c) Resident's consent for health care provided by the RTF, unless the resident is admitted under an involuntary court order;

(d) A copy of any authorizations, advance directives, powers of attorney, letters of guardianship, or other similar documentation;

(e) Original reports, where available or, if not available, durable, legible copies of original reports on all tests, procedures, and examinations performed on the resident;

(f) Individual service plan according to WAC 246-337-100 or 246-337-103, as applicable;

(g) Individuals whom the resident consents for the RTF to freely communicate with regarding the health care of the resident including the individual's name, relationship to the resident, and address;

(h) Dated and signed notes describing all health care provided for each contact with the resident pertinent to the resident's individual service plan including:

(i) Physical and psychosocial history;

(ii) Health screening;

(iii) Health care service and treatment provided, including resident's response to treatment and any adverse reactions and resolution of health care issues and when applicable;

(iv) Medication administration, and medical staff notification of medication administration errors, adverse effects, or side effects;

(v) Use of restraint or seclusion consistent with WAC 246-337-110;

(vi) Staff actions or response to health care needs;

(vii) Instructions or teaching provided to the resident in connection with his or her health care; and

(viii) Discharge summary, including:

(A) Summary of the resident's physical and mental history, as applicable;

(B) Condition upon discharge;

(C) List of current medications;

(D) Recommendations for services, follow-up or continuing care; and

(E) Date and time of discharge.

(10) Retain the health care records at least six years beyond the resident's discharge or death date, whichever occurs sooner, and at least six years beyond the age of eighteen.

(11) Destroy the health care records in accordance with applicable law and in a manner that preserves confidentiality.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-100 Resident's individual service plan. This section does not apply to an RTF in its licensed capacity to provide pediatric transitional care services according to this chapter.

(1) The licensee must develop and implement an individual service plan for each resident based on the resident's:

(a) Initial health on admission; and

(b) Health assessment(s).

(2) Individual service plans must:

(a) Be prepared by one or more staff involved in the resident's care with participation by the resident and by either his or her personal representative or parent or guardian when minors are involved;

(b) Address the needs of a mother and baby during pregnancy and after delivery, if applicable;

(c) Include work assignments given to a resident as part of their individual service plan, if applicable;

(d) Be updated as additional needs are identified during treatment; and

(e) Include a discharge health care plan.

NEW SECTION

WAC 246-337-103 Individual service plan—Pediatric transitional care services. (1) This section only applies to an RTF in its licensed capacity to provide pediatric transitional care services according to this chapter.

(2) The licensee must develop, implement, and update at least weekly an individual service plan for each infant receiving pediatric transitional care services based on the infant's:

(a) Initial health on admission; and

(b) Health assessment(s) described in WAC 246-337-081.

(3) Each individual service plan must:

(a) Establish a plan of management for neonatal abstinence syndrome prepared by a health care provider who is:

(i) Involved with the infant's care; and

(ii) Working within their scope of practice.

(b) Be prepared in accordance with the infant's standing orders;

(c) Include short-term goals;

(d) Establish timelines for initial and ongoing visitation between the infant and parents, guardians, or identified family resources according to WAC 246-337-082;

(e) Include a discharge plan that addresses, at minimum, the following:

(i) Medical release from a pediatrician, physician's assistant, or pediatric ARNP indicating that the infant is medically stable and appropriate for discharge;

(ii) Verification of a receiving physician, pediatrician, physician's assistant, or ARNP who will assume infant care and receive relevant health care records;

(iii) Verification from a registered nurse that the infant has achieved weight and feeding milestones appropriate for discharge;

(iv) Written after care plan for the infant, developed in collaboration with the parents, which includes specific tasks for parents. Parents must sign the after care plan prior to infant discharge; and

(v) Assessment that the home environment and family dynamics are appropriate to receive and care for the infant.

(f) Include an aftercare plan that addresses, at minimum, the following:

(i) Weekly phone calls to the family up to six months after discharge to check on the infant's condition and offer consultation and community resource referrals as needed; and

(ii) Provide the infant's family appropriate staff contacts in case family needs consultation.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-110 Use of restraint and seclusion. (1)

This section only applies to an RTF that uses restraint or seclusion. This section does not apply to an RTF in its licensed capacity to provide pediatric transitional care services according to this chapter, nor are any of the practices described in this section permitted when providing services to infants. The licensee shall have policies and procedures addressing the application and use of restraint or seclusion consistent with this chapter.

(2) The following facilities must have a minimum of one seclusion room for seclusion or temporary holding of residents awaiting transfer:

(a) Any RTF certified under chapter 388-865 WAC as an evaluation and treatment facility, competency restoration facility or involuntary crisis triage facility; or

(b) Any RTF certified under chapter 388-877B WAC as a detoxification facility providing secure detoxification services as defined in RCW 70.96B.010.

(3)(a) At admission, the incoming resident must be informed and provided a copy of the RTF's policy regarding the use of restraint or seclusion. An acknowledgment that the information and policy has been received must be obtained in writing from the resident; or

(b) In the case of a minor, the resident's parent(s) or guardian(s) must be informed and provided a copy of the RTF policy and acknowledge in writing that the information has been received.

(4) Restraint or seclusion must be safe, based on:

(a) Assessment of behavior;

(b) Chronological and developmental age;

(c) Size;

(d) Gender;

(e) Physical, medical, and psychiatric condition; and

(f) Personal history.

(5) Restraint or seclusion must only be used in emergency situations to ensure the physical safety of the individual resident or other residents or staff of the RTF, and when less restrictive measures have been found to be ineffective to protect the resident or others from harm.

(6) A prescriber must authorize use of the restraint or seclusion.

(7) If the order for restraint or seclusion is verbal, the verbal order must be received by a registered nurse or licensed practical nurse.

(8) "Whenever needed" or "as needed" orders for use of restraint or seclusion are prohibited.

(9) In emergency situations in which an order cannot be obtained prior to the application of restraint or seclusion, the order must be obtained either during the emergency application of the restraint or seclusion, or immediately after the restraint or seclusion has been applied. Policies and procedures must identify who can initiate the emergency application of restraint or seclusion prior to obtaining an order from a health care prescriber.

(10) Restraint and seclusion cannot be used simultaneously with persons under twenty-one years of age.

(11) Staff shall continuously observe and monitor residents in restraint or seclusion using:

(a) Face-to-face observation and monitoring; or

(b) Both direct sight video and two-way audio communications.

(12) The health care prescriber must:

(a) Limit each order of restraint or seclusion as follows:

(i) Adults: Four hours;

(ii) Children and adolescents at least nine years old but less than eighteen years old: Two hours; and

(iii) Children under nine years of age: One hour((;)).

(b) Be available to staff for consultation, at least by phone, throughout the period of emergency safety intervention;

(c) Examine the resident before the restraint or seclusion exceeds more than twenty-four hours; and

(d) Only renew the original order in accordance with the limits in (a) of this subsection for up to a total of twenty-four hours. For each subsequent twenty-four hour period of restraint or seclusion, repeat the examination.

(13) A health care prescriber or registered nurse must, within one hour of initiation of restraint or seclusion, conduct a face-to-face assessment of the resident including the residents' physical and psychological status, behavior, appropriateness of intervention, and any complications resulting from the intervention of the resident and consult the ordering health care prescriber. If restraint or seclusion is discontinued before the face-to-face assessment is performed, the face-to-face assessment must still be performed.

(14) The following documentation must be included in the residents' individual service plan when restraint or seclusion is used:

(a) The original and any subsequent order for the restraint or seclusion including name of the health care prescriber;

(b) The date and time the order was obtained;

(c) The specific intervention ordered including length of time and behavior that would terminate the intervention;

(d) Time the restraint or seclusion began and ended; and

(e) Time and results of the one hour face-to-face assessment.

(15) During the period a resident is placed in restraint or seclusion, appropriately trained staff must assess the client and document in the individual service plan at a minimum of every fifteen minutes:

(a) Resident's behavior and response to the intervention used including the rationale for continued use of the intervention;

(b) Food/nutrition offered;

(c) Toileting; and

(d) Physical condition of the resident.

(16) Additional documentation in the individual service plan must include:

(a) Alternative methods attempted or the rationale for not using alternative methods;

(b) Resident behavior prior to initiation of the restraint or seclusion;

(c) Any injuries sustained during the restraint or seclusion;

(d) Post intervention debriefing with the resident to include the names of staff who were present for the debriefing, and any changes to the resident's individual service plan that result from the debriefing; and

(e) In the case of a minor, notification of the parent or guardian including the date and time of notification, and the name of the staff person providing the notification.

(17) Within twenty-four hours after the initiation of the restraint or seclusion, staff and the resident shall have a face-to-face discussion. This discussion must, to the extent possible, include all staff involved in the intervention except when the presence of a particular staff person may jeopardize the well-being of the resident. Other staff and the resident's parent(s) or guardian(s) may participate in the discussion when it is deemed appropriate by the RTF. Discussions must be conducted in a language that is understood by the resident and by the resident's parent(s) or legal guardian(s). The discussion must provide both the resident and the staff the opportunity to discuss the circumstances resulting in the use of restraint or seclusion and strategies to be used by the staff, the resident, or others that could prevent the future use of restraint or seclusion.

(18) Restraint or seclusion must be provided in a safe environment. Every licensee must:

(a) Perform a risk assessment that identifies risks in the physical environment to residents, staff and the public when any level of restraint or seclusion is carried out;

(b) Identify location(s) in the RTF where restraint or seclusion is performed;

(c) Ensure that risks in the physical environment are mitigated as appropriate to the type of restraint or seclusion used and the planned population; and

(d) Ensure that restraint or seclusion rooms are constructed as required in WAC 246-337-127. Previously reviewed and approved seclusion rooms are permitted to comply with the requirements of the rule under which they were constructed.

(19) A seclusion room may be used for multiple purposes but must be equipped to allow immediate use for seclusion purposes.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-113 Resident sleeping room accommodations. In resident rooms used for sleeping, the licensee

shall provide furniture appropriate for the age and physical condition of each resident, including:

(1) A bed at least thirty-six or more inches wide for adults and appropriate size for children, spaced at least thirty-six inches apart.

(2) No more than two infants per room using two single level nonstacking cribs or bassinets for licensees providing pediatric transitional care services.

(3) Equipping each bed with:

(a) A mattress that is clean, in good repair, and fits the frame;

(b) One or more pillows that are clean, and in good repair for each resident over two and one-half years of age;

(c) Bedding that includes a tight-fitting sheet or cover for the sleeping surface, and a clean blanket or suitable cover; and

(d) Bedding that is in good repair, changed weekly or more often as necessary to maintain cleanliness.

~~((3))~~ (4) A single level nonstacking crib, infant bed, bassinet or playpen for children twenty-four months of age and younger meeting chapter 70.111 RCW, and including:

(a) Sleep equipment having secure latching devices; and

(b) A mattress that is:

(i) Snug-fitting to prevent the infant from becoming entrapped between the mattress and crib side rails;

(ii) Waterproof and easily sanitized; and

(iii) Free of crib bumpers, stuffed toys or pillows.

~~((4))~~ (5) A youth bed or regular bed for children twenty-five months of age and older.

~~((5))~~ (6) If bunk beds are used, prohibit children six years of age or less from using the upper bunk.

AMENDATORY SECTION (Amending WSR 18-06-092, filed 3/6/18, effective 4/16/18)

WAC 246-337-120 Facility and environment requirements. (1) The licensee must maintain the facility, exterior grounds, and component parts such as fences, equipment, outbuildings, and landscape items in a manner that is safe, free of hazards, clean, and in good repair.

(2) Each facility must be located on a site which is accessible by emergency vehicles on at least one street, road or driveway usable under all weather conditions and free of major potholes or obstructions.

(3) ~~((Policies [Policies]))~~ Policies and procedures must be developed and implemented for routine preventative maintenance, including:

(a) Heating ventilation and air conditioning, plumbing and electrical equipment;

(b) Certification and calibration of biomedical and therapeutic equipment; and

(c) Documentation of all maintenance.

(4) Stairways must be equipped with more than one riser and ramps with slopes greater than one in twenty with handrails on both sides. Ends of handrails must be designed in a manner that eliminates a hooking hazard.

(5) Excluding child care, school facilities serving residents on the same grounds as the RTF must meet all requirements for health and safety and comply with chapter 246-366 WAC.

(6) Access and egress control devices must be (~~un-~~~~alized~~) used to support the policies of the RTF.

WSR 18-21-142
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 19, 2018, 2:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-077.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-492-0070 How are my WASHCAP food benefits calculated?

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendment will clarify WAC language to align with the requirements of the Washington application demonstration project (WASHCAP).

Reasons Supporting Proposal: The United States Department of Agriculture, Food and Nutrition Service (FNS) enforces the provisions of the federal Supplemental Nutrition Assistance Program as enacted in the 2008 Food and Nutrition Act and codified in the Code of Federal Regulations. The department will develop amendments to WASHCAP rules that are consistent with the act, federal regulations, and our approved WASHCAP demonstration project waiver while ensuring cost neutrality of the program.

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.

Rule is necessary because of federal law, 7 C.F.R. 282.1.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4895.

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

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under

RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.1 (if the rule is not adopted the state will be out of compliance with federal regulations).

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

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

October 17, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-24-008, filed 11/27/17, effective 1/1/18)

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 more than 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 or less a month for shelter, we use two hundred ten 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 (a) or (b) of this 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 18-21-143
PROPOSED RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)

[Filed October 19, 2018, 2:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-07-045.

Title of Rule and Other Identifying Information: WAC 246-933-285 through 246-933-480 veterinary board of governors (board) veterinary continuing education (CE) rules. The board is proposing multiple changes for CE rules.

Hearing Location(s): On December 3, 2018, at 10:00 a.m., at the Washington State Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: December 3, 2018.

Submit Written Comments to: Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 19, 2018.

Assistance for Persons with Disabilities: Contact Lorelei Walker, phone 360-236-4947, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov, by November 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would modernize veterinary CE rules and streamline requirements. Proposed changes to the rule include decreasing the reporting period, so that thirty hours would be required every two years instead of every three years (increasing the per-year requirement); allowing specialty certification or a residency program to qualify in lieu of the thirty hour requirement; clarification of expectations when a veterinarian is audited; setting a minimum requirement of twenty scientific or clinical hours; allowing a maximum of ten hours to be obtained through teaching; designating live, web-based coursework to be equivalent to in-person coursework; and expanding the approved provider list.

Reasons Supporting Proposal: The board intends to create a more robust standard that increases both access and flexibility for CE rules. The board proposes to accomplish this by increasing the number of CE hours required each year, setting a minimum standard for scientifically-supported education programs, and discontinuing the board's review and approval of courses not approved by rule. To add options and flexibility for veterinarians to meet these new standards, the board proposes to allow alternative pathways to meeting the CE requirement, to remove the ten hour limit for qualifying

live and interactive webinars, to allow credit options for teaching, and expand the approved CE provider list using input from multiple stakeholders. This proposal brings the rules more into alignment with national standards.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4947.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4947, fax 360-236-2901, TTY 360-833-6388 or 711, email loralei.walker@doh.wa.gov.

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

Tawney Carrier, Chair
Veterinary Board of Governors

NEW SECTION

WAC 246-933-285 HIV/AIDS prevention and information education requirements. An applicant shall complete four clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8. Alternatives to formal course work may be from professional journal articles or electronic media that contain current or updated information.

AMENDATORY SECTION (Amending WSR 07-19-130, filed 9/19/07, effective 10/20/07)

WAC 246-933-420 ((Basic requirement—Amount.))
Continuing education requirement. ~~((Continuing veterinary medical education consists of programs of learning which contribute directly to the advancement or enhancement of skills in the practice of veterinary medicine, surgery and dentistry. Licensed veterinarians must complete thirty hours of continuing veterinary medical education every three years as required in chapter 246-12 WAC, Part 7. No more than ten hours can be earned in practice management courses in any three year reporting period.))~~ (1) A licensed veterinarian shall complete and document thirty hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) A licensed veterinarian shall meet the continuing education requirement by either:

(a) Completing thirty hours of education that complies with WAC 246-933-401 through 246-933-460; or

(b) Alternatively, providing proof that he or she:

(i) Became board-certified by a veterinary specialty organization recognized by the American Veterinary Medical Association (AVMA) within the continuing education reporting period; or

(ii) Has been enrolled in a residency program approved by a veterinary specialty organization recognized by the AVMA during the entire continuing education reporting period for a maximum of two reporting periods.

(3) The two-year reporting period begins January 1, 2019. A veterinarian shall complete the continuing education requirements as follows:

<u>If continuing education is due on the veterinarian's renewal date in:</u>	<u>The next continuing education due date is on the veterinarian's renewal date in the year below and every two years thereafter:</u>
<u>2019</u>	<u>2021</u>
<u>2020</u>	<u>2022</u>
<u>2021</u>	<u>2023</u>

(4) The board may audit up to twenty-five percent of veterinarians after the license is renewed and may audit a veterinarian for cause.

(a) Upon request by the board, the veterinarian is responsible for submitting documentation of completed continuing education. Documentation must include, at a minimum:

- (i) The name and credentials or qualifications of the continuing education provider;
- (ii) The date of attendance or completion;
- (iii) Course title or subject; and
- (iv) The number of hours earned.

(b) Documentation for continuing education earned pursuant to WAC 246-933-445(3) must include, in addition to (a)(i) through (iv) of this subsection, a list of attendees, and a copy of the presentation or lecture.

(c) Failure by a veterinarian to cooperate with an audit or provide the requested proof of continuing education to the board is grounds for disciplinary action.

NEW SECTION

WAC 246-933-425 Approval of courses. The board will not authorize or approve specific continuing education courses or materials. All continuing education courses must be provided by organizations, institutions, or individuals in WAC 246-933-460 and contribute to the professional knowledge and development of the practitioner, enhance services provided to patients, and contribute to the practitioner's ability to deliver current standards of care. The board will accept continuing education that reasonably falls within these criteria, and relies upon the integrity of each individual practitioner, as well as that of program sponsors, in complying with this requirement and experiencing meaningful and meritorious learning. Courses cannot be exclusively for product promotion. The board reserves the right to not accept credits from any area for any practitioner if, upon auditing, it determines that a course or material did not provide appropriate information or training.

AMENDATORY SECTION (Amending WSR 07-19-130, filed 9/19/07, effective 10/20/07)

WAC 246-933-440 Exceptions. The board may excuse from or grant an extension of continuing veterinary medical education requirements to a licensee due to illness or other extenuating circumstances.

Licensees seeking an extension ~~((must))~~ shall petition the board, in writing, at least ~~((forty-five))~~ thirty days prior to the end of the reporting period.

NEW SECTION

WAC 246-933-445 Areas of continuing education activities. (1) Scientific or clinical. A minimum of twenty scientific or clinical credit hours must be earned in any two-year reporting period. Credits must be obtained through education offered by an approved provider listed in WAC 246-933-460. There is no limit for credit hours earned through live courses attended remotely, provided that attendees have the documented opportunity to question the instructor, hear the questions of other attendees, and receive responses in real time.

(2) Practice management or professional development. A maximum of ten practice management or professional development credit hours may be granted in any two-year reporting period. Credits must be obtained through education offered by an approved provider listed in WAC 246-933-460. Credit hours may be earned through live courses attended remotely, provided that attendees have the documented opportunity to question the instructor, hear the questions of other attendees, and receive responses in real time.

(3) Teaching. A maximum of ten teaching credit hours may be granted in any two-year reporting period. Qualifying courses must either meet the criteria under WAC 246-933-460 or must be presented through an accredited health care learning institution. Courses must be presented to veterinarians, other credentialed health care providers, or students of health care professions. Three credit hours will be granted for each course hour taught. Credit will be granted for only the first time a course is taught.

(4) Preprogrammed materials. Preprogrammed educational materials are noninteractive and may be presented in any form of printed or electronic media. A maximum of ten credit hours may be granted in any two-year reporting period for completion of preprogrammed educational materials. The materials must be obtained through education offered by an approved provider listed in WAC 246-933-460, and must require successful completion of an examination or assessment.

AMENDATORY SECTION (Amending WSR 16-09-119, filed 4/20/16, effective 5/21/16)

WAC 246-933-460 Organizations, institutions or individuals approved by the veterinary board to provide continuing education courses. ~~(((1) The veterinary board designates the following organizations, institutions or individuals as providing approved continuing veterinary medical education courses:~~

~~(a) The American Association of Veterinary State Boards (AAVSB);~~

~~(b) The American Veterinary Medical Association (AVMA);~~

~~(c) The Washington State Veterinary Medical Association;~~

~~(d) Any board approved college or school of veterinary medicine;~~

~~(e) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization;~~

~~(f) The American Animal Hospital Association;~~

~~(g) Veterinary specialty boards recognized by the American Veterinary Medical Association;~~

~~(h) Conferences offered by regional or allied organizations recognized by AAVSB;~~

~~(i) The Registry of Approved Continuing Education (RACE);~~

~~(j) The Registry of Alternative and Integrative Veterinary Medical Education (RAIVE);~~

~~(k) The United States Animal Health Association;~~

~~(l) The American Association of Veterinary Laboratory Diagnosticians;~~

~~(m) The Washington state department of agriculture;~~

~~(n) A board certified veterinarian who is certified by a veterinary specialty board recognized by the American Veterinary Medical Association when teaching a course within his or her area of certification;~~

~~(o) A veterinarian who is a faculty member of an accredited college or school of veterinary medicine when teaching a course within his or her area of expertise;~~

~~(2) Continuing veterinary medical education courses offered by the organizations, institutions, or individuals listed in subsection (1) of this section are presumed to qualify as continuing veterinary medical education courses for purposes of fulfillment of the requirements of WAC 246-933-420 without specific prior approval by the board.~~

~~(3) Other organizations, institutions, or individuals may submit course information to the board for determination whether the course qualifies as continuing veterinary medical education under WAC 246-933-401 through 246-933-480 for purposes of fulfillment of the requirements of WAC 246-933-420.) The board approves continuing veterinary medical education courses provided by organizations, institutions, or individuals (providers) including, but not limited to, the following:~~

~~(1) The American Association of Veterinary Laboratory Diagnosticians (AAVLD);~~

~~(2) The American Association of Veterinary State Boards (AAVSB) Registry of Approved Continuing Education (RACE)-approved courses;~~

~~(3) The American Veterinary Medical Association (AVMA);~~

~~(4) AVMA Council on Education (COE) accredited veterinary medical colleges;~~

~~(5) AVMA recognized veterinary specialty organizations;~~

~~(6) A board certified veterinarian who is certified by a veterinary specialty organization recognized by the AVMA when teaching a course within his or her area of certification;~~

(7) Federal, state, or local governmental agencies;

(8) An instructor with credentials or qualifications in the health, husbandry, or therapy of minor species. "Minor species" are all animals other than humans that are not one of the major species and include, but are not limited to, animals such as zoo animals, ornamental fish, parrots, ferrets, guinea pigs, sheep, goats, catfish, game birds, and honey bees. Major species include horses, dogs, cats, cattle, pigs, turkeys, and chickens;

(9) An instructor with credentials or qualifications in practice management or professional development;

(10) Any international, national, state, provincial, regional or local veterinary medical association;

(11) The Resources for Alternative and Integrative Veterinary Education (RAIVE);

(12) A resident or intern in training for an AVMA recognized veterinary specialty organization;

(13) The United States Animal Health Association (USAHA);

(14) A veterinarian who is a faculty member of an accredited college of veterinary medicine when teaching a course within his or her area of expertise;

(15) The Washington physicians health program (WPHP).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-933-465 Self-study continuing veterinary medical education activities.

WAC 246-933-480 AIDS prevention and information education requirements.

WSR 18-21-149

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 19, 2018, 3:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-12-098.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) division of child support (DCS) is proposing to amend several sections in chapter 388-14A WAC as we implement Part I of SSB 6334 (chapter 150, Laws of 2018); the effective date of Part I of the act was June 7, 2018. These sections include WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-3312 The division of child support serves a notice of support owed to establish a fixed dollar amount owed by either parent for medical support, 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312?, 388-14A-3925 Who can ask to modify an administrative support

order?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide medical support for my children, what do I have to do?, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide medical support?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4160 Are there any limits on the amount an obligated parent may be required to pay for health insurance premiums?, 388-14A-4175 Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS medicaid purchasing administration?, and 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation.

SSB 6334 introduces new terminology, but does not change the way that medical support obligations are established, either in court or in the administrative process. However, there are changes in the policies and procedures regarding how DCS enforces medical support obligations, most notably that an obligated parent can satisfy his or her health care coverage obligation by enrolling the child(ren) in public health care coverage. In Washington, "public health care coverage" means medicaid and the other programs included in the apple health program.

At the same time as we commenced the permanent rule-making process, DCS adopted emergency rules effective June 7, 2018, under WSR 18-13-011; a second emergency rule was necessary because emergency rules may not remain in effect for longer than one hundred twenty days after filing with the office of the code reviser and it is not always possible to complete the permanent rule adoption process within that time limit. The second emergency rule, adopted under WSR 18-21-022, took effect on October 6, 2018, in order to maintain the status quo as the permanent rule adoption process continues; the text of the second emergency rule is exactly the same as the text of the first emergency rule.

The text of the proposed permanent rules differs from the text of the emergency rules; although the intent of the rules remains the same, there have been some changes made. Please review the text of the proposed rules carefully.

Hearing Location(s): On December 11, 2018, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than December 12, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., December 11, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS DCS is proposing to adopt permanent rules to implement Part I of SSB 6334 (chapter 150, Laws of 2018), which made changes to the law and terminology concerning medical child support obligations. The statutory change introduces new terminology, but does not change the way that medical support obligations are established, either in court or in the administrative process. However, there are changes in the policies and procedures regarding how DCS enforces medical support obligations, most notably that an obligated parent can satisfy his or her health care coverage obligation by enrolling the child(ren) in public health care coverage. In Washington, "public health care coverage" means medicaid and the other programs included in the apple health program.

Reasons Supporting Proposal: The proposed rules provide updates to, and clarification of, procedures and requirements dealing with medical support obligations. Part I of SSB 6334 amended various statutes dealing with medical child support obligations as required under the final rule entitled *Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs* ("Flexibility Rule"), which was published on December 20, 2016, in the Federal Register, Volume 81, Number 244, on page 93492. Under the implementation schedule for the Flexibility Rule, 45 C.F.R. 303.31 (a)(2) was required to be implemented on or before July 1, 2018. In light of that requirement, the Washington legislature passed SSB 6334 and made Part I of the bill effective on June 7, 2018. Other parts of the bill take effect January 1, 2019.

Statutory Authority for Adoption: Part I of SSB 6334 (chapter 150, Laws of 2018), effective date June 7, 2018; RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, 74.20.040(9).

Statute Being Implemented: Part I of SSB 6334 (chapter 150, Laws of 2018), effective date June 7, 2018; SSB 6334 amended RCW 26.09.105, 26.18.020, 26.18.170, 26.23.050, 74.20A.055, 74.20A.056, 74.20A.059, and 74.20A.300.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507, 360-664-5065.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(vii) provides that no cost-benefit analysis is required for rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025.

Explanation of exemptions: RCW 19.85.025(4) provides that chapter 19.85 RCW does not apply to the adoption of a

rule if an agency is able to demonstrate that the proposed rule does not affect small businesses. These rules apply only to the establishment of support obligations for dependent children.

October 16, 2018
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 18-22 issue of the Register.

WSR 18-21-150
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 19, 2018, 3:25 p.m.]

Continuance of WSR 18-08-072.

Preproposal statement of inquiry was filed as WSR 17-17-074.

Title of Rule and Other Identifying Information: The department is proposing to create WAC 388-71-0548 When is an individual provider subject to an overpayment?

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose for adding this new overpayment section for individual providers to chapter 388-71 WAC is to define the circumstances in which an individual provider is subject to an overpayment, clarify the department's authority to collect an overpayment, clarify an individual provider's right to an administrative hearing when they receive an overpayment notice, and provide information about how an individual provider requests an administrative hearing related to an overpayment.

This CR-102 is being filed as a continuance to the CR-102 filed as WSR 18-08-072 on April 3, 2018.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 43.20B.675, 74.09.220, 74.09.290, 74.09.520.

Statute Being Implemented: RCW 43.20B.675, 41.05A.-170.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2533.

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

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

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

October 18, 2018
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-71-0548 When is an individual provider subject to an overpayment? (1) Unless payment is otherwise required by state or federal law, it is an overpayment as defined in RCW 43.20B.010 and 41.05A.170 if an individual provider (IP) is paid by the department and:

- (a) Did not actually perform the work;
- (b) Payment is for dates of service after the death of the client;
- (c) Payment is for services provided when the client was admitted to a hospital, nursing home, or other institutional setting;
- (d) Payment is for dates of service when the client was outside of the United States;
- (e) Did not have a valid IP services contract at the time the services were provided and had been notified by the department to stop the provision of services;
- (f) Had not completed required training or obtained required certification at the time the services were provided and had been notified by the department to stop the provision of services;
- (g) Had a disqualifying crime or negative action at the time the services were provided and had been notified by the department to stop the provision of services;
- (h) Provided services after being notified by the department to stop the provision of services;
- (i) Provided services that are not included in the client's plan of care;
- (j) Provided services that exceeded the amount of the client's benefit in the client's plan of care where those services were not necessitated by an emergent and immediate need of the client and the IP is not a family member or household member of the client; or
- (k) Received duplicate payment(s).

(2) If the department determines an IP was overpaid, even if it was due to department error, the department recovers any moneys that the IP received as a result of overpay-

ments, as authorized under chapter 41.05A RCW or 43.20B RCW.

(a) The department will send the IP notice of the overpayment.

(b) The IP has a right to request an administrative hearing when notice of an overpayment is received from the department.

(c) To request an administrative hearing, an IP must send a written request to the office of financial recovery within twenty-eight days of the IP's receipt of notice of the overpayment that:

(i) States the basis for contesting the overpayment notice;

(ii) Includes a copy of the department's notice with the request; and

(iii) Is sent by certified mail return receipt requested (CMRRR) or another trackable delivery service.

(d) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW).

WSR 18-21-155

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed October 22, 2018, 9:08 a.m.]

Supplemental Notice to WSR 18-15-056.

Preproposal statement of inquiry was filed as WSR 17-17-140.

Title of Rule and Other Identifying Information: Chapter 246-817 WAC, the dental quality assurance commission (commission) proposes supplemental filing for changes to originally proposed new sections and changes to existing rule that will establish requirements and standards for prescribing opioid drugs by dentists consistent with the directives of ESHB 1427. The commission agreed with stakeholder comments at the September 7, 2018, hearing that substantive changes were necessary before adoption of the rules.

Hearing Location(s): On December 7, 2018, at 9:35 a.m., at the Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501.

Date of Intended Adoption: December 7, 2018.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by November 30, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.wa.gov, by November 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of the proposal and its anticipated effects, including any changes in existing rules: The commission is proposing establishing new sections of rule to implement the provisions of ESHB 1427. The bill directed five boards and commissions to consider the agency medical directors' group and the centers for disease control guidelines, and to work in consultation with the

department, the University of Washington, and the professional association of each profession to develop requirements for prescribing opioid drugs. The commission is also proposing amendments to the current pain management rules to assure alignment with the proposed opioid prescribing rules, increase consistent rule application, and reduce duplication between existing and new rules. The proposed rules implement section 3 of ESHB 1427 by creating new rules and amending and reorganizing existing pain management rules to reduce duplication and assure harmonization with the new opioid prescribing requirements. The commission changed the original proposal to add cancer-related pain definition to WAC 246-817-905, deleted WAC 246-817-912 Patient evaluation and patient record, and changed the query requirement in WAC 246-817-980 from every prescription to a prescription monitoring program (PMP) query upon first refill or renewal and transitions of pain phases.

Reasons Supporting Proposal: The proposed rules are necessary to establish and implement opioid prescribing requirements for dentists. The proposed rules provide a necessary framework and structure for safe, consistent opioid prescribing practice consistent with directives of ESHB 1427. The proposed rules recognize instances where clinical judgement is appropriate by providing practice guidance without being overly prescriptive, and are designed to reduce the risks associated with opioid use in the management of pain, while increasing public health and safety. The goal is to reduce the number of people who inadvertently become addicted to opioids and, consequently, reduce the burden on opioid treatment programs. The supplemental proposal is different from the previous CR-102 filed as WSR 18-15-056 on July 16, 2018; the previous CR-102 rules lacked a cancer-related pain definition, had duplicative rules for patient evaluation and patient record which were streamlined, and required changes to the rule for queries related to PMP. These changes were made based upon significant stakeholder concerns expressed during the previous CR-102 hearing.

Statutory Authority for Adoption: RCW 18.32.002, 18.32.0365, and 18.32.800.

Statute Being Implemented: ESHB 1427 (chapter 297, Laws of 2017), codified in part as RCW 18.32.800.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4893.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4893, fax 360-236-2901, TTY 360-833-6388 or 711, email jennifer.santiago@doh.wa.gov.

The proposed rule does impose more-than-minor costs on businesses. Briefly summarize the agency's analysis showing how costs were calculated. The proposed rules impact dental clinic businesses if the dentist(s) in the business prescribe opioids for pain management. The proposed

rules do not apply to dentists who do not prescribe opioids. The cost calculations and analysis has not changed as a result of this new proposal. The following North American Industrial Classification System (NAICS) six-digit codes, total number of businesses in Washington state in 2013, total combined and average business payroll (rounded to the thousands), and minor cost thresholds have been applied to the proposal:

1. NAICS code: 621210 Offices of Dentists
Total establishments in Washington: 3,551
Total combined annual payroll: \$1,212,689,000.00
Average annual payroll (total payroll divided by total establishments): \$341,506
Minor cost threshold (average payroll multiplied by .01): \$3,415

The commission has analyzed the anticipated costs of compliance for a business at \$29.40 for every patient encounter only when a dentist prescribes opioids, and only if the dentist performs all of the tasks required in the proposed rules. Many of the required tasks in the rules are often performed by other staff (such as dental assistants) at much lower costs. For example, regarding the following tasks required under the proposed rules at every patient encounter when an opioid is prescribed:

- Documenting patient history and physical condition
- Documenting/updating the patient health record
- Completing a PMP check

A dentist performing these tasks would cost the business an estimated \$20.16*; or

A dental assistant could perform the same task for an estimated \$4.46*.

Depending on the patient's phase of pain management, the business may incur the following additional cost:

- a. From \$0 per patient encounter for a patient whose pain level and function meet the expected course of recovery; up to
- b. An estimated \$5.88 per patient encounter when the dentist must reevaluate a patient transitioning to another pain phase.

Based on these anticipated costs, the commission has determined that the proposed rules would not impose more-than-minor costs for businesses that must comply.

*Based on United States Department of Labor Statistics, Occupational Employment and Wages 2017 for 29-1021 Dentists, General, and 31-9091, Dental Assistants.

October 22, 2018
John R. Liu, DDS, Chairperson
Dental Quality Assurance Commission

~~((PAIN MANAGEMENT))~~ OPIOID PRESCRIBING

Opioid Prescribing—General Provisions

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-901 ~~((Pain management—))~~ **Intent and scope.** ~~((These rules))~~ WAC 246-817-901 through 246-

817-980 govern the ~~((use))~~ prescribing of opioids in the treatment of ~~((patients for chronic noneancer))~~ pain.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-905 Exclusions. ~~((The rules adopted under))~~ WAC 246-817-901 through ~~((246-817-965))~~ 246-817-980 do not apply to:

(1) The treatment of patients with cancer-related pain. Cancer-related pain means pain that is unpleasant, persistent, subjective sensory and emotional experience associated with actual or potential tissue injury or damage or described in such terms and is related to cancer or cancer treatment that interferes with usual functioning;

(2) The provision of palliative, hospice, or other end-of-life care; ~~((or~~

~~((2) The management of acute pain caused by an injury or surgical procedure.))~~

(3) The treatment of inpatient hospital patients. Inpatient means a person who has been admitted to the hospital for more than twenty-four hours; or

(4) The provision of procedural medications.

NEW SECTION

WAC 246-817-906 Definitions. The definitions in this section apply to WAC 246-817-901 through 246-817-980 unless the context clearly requires otherwise:

(1) "Aberrant behavior" means behavior that indicates misuse, diversion or substance use disorder. This includes, but is not limited to, multiple early refills or renewals, or obtaining prescriptions for the same or similar drugs from more than one dentist or other health care practitioner.

(2) "Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal, or mechanical stimulus and typically is associated with invasive procedures, trauma, and disease. Acute pain is considered to be six weeks or less in duration.

(3) "Biological specimen test" or "biological specimen testing" means tests of urine, hair or other biological samples for various drugs and metabolites.

(4) "Chronic pain" means a state in which pain persists beyond the usual course of an acute disease or healing of an injury, or that may or may not be associated with an acute or chronic pathologic process, that causes continuous or intermittent pain over months or years. Chronic pain includes pain resulting from the treatment of cancer or the residual effects of a previous cancer tumor of a patient who has completed treatment, is cured or in full clinical remission with no current evidence of disease, or is under cancer surveillance only.

(5) "Comorbidities" means a preexisting or coexisting physical or psychiatric disease or condition.

(6) "High dose" means ninety milligram MED or more, per day.

(7) "High-risk" is a category of patient at increased risk of morbidity or mortality, such as from comorbidities, polypharmacy, history of substance use disorder or abuse, aberrant behavior, high dose opioid prescription, or the use of any central nervous system depressant.

(8) "Hospice" means a model of care that focuses on relieving symptoms and supporting patients with life expectancy of six months or less.

(9) "Hospital" means any institution, place, building, or agency licensed under chapter 70.41 or 71.12 RCW, or designated under chapter 72.23 RCW to provide accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis.

(10) "Low-risk" means a category of patient at low risk of opioid induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, and dose of opioids of less than 50 MED.

(11) "Medication assisted treatment" or "MAT" means the use of pharmacologic therapy, often in combination with counseling and behavioral therapies, for the treatment of substance use disorders.

(12) "Moderate-risk" means a category of patient at moderate risk of opioid induced morbidity or mortality, based on factors and combinations of factors such as medical and behavioral comorbidities, polypharmacy, past history of substance use disorder or abuse, aberrant behavior, and dose of opioids between 50-90 MED.

(13) "Morphine equivalent dose" or "MED" means a conversion of various opioids to a morphine equivalent dose by the use of accepted conversion tables.

(14) "Multidisciplinary pain clinic" means a facility that provides comprehensive pain management and includes care provided by multiple available disciplines, practitioners, or treatment modalities.

(15) "Nonoperative pain" means acute pain which does not occur as a result of surgery.

(16) "Opioid analgesic" or "opioid" means a drug that is used to alleviate moderate to severe pain that is either an opiate derived from the opium poppy or opiate-like that is a semi-synthetic or synthetic drug. Examples include morphine, codeine, hydrocodone, oxycodone, fentanyl, meperidine, and methadone.

(17) "Palliative care" means care that maintains or improves the quality of life of patients and their families facing serious, advanced, or life-threatening illness. With palliative care particular attention is given to the prevention, assessment, and treatment of pain and other symptoms, and to the provision of psychological, spiritual, and emotional support.

(18) "Pain" means an unpleasant sensory or emotional experience associated with actual or potential tissue damage, or described in terms of such damage.

(19) "Perioperative pain" means acute pain that occurs as the result of surgery.

(20) "Practitioner" means an advanced registered nurse practitioner licensed under chapter 18.79 RCW, a dentist licensed under chapter 18.32 RCW, a physician licensed under chapter 18.71 or 18.57 RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or a podiatric physician licensed under chapter 18.22 RCW.

(21) "Prescription monitoring program" or "PMP" means the Washington state prescription monitoring program authorized under chapter 70.225 RCW.

(22) "Subacute pain" is considered to be a continuation of pain, of six to twelve weeks in duration.

(23) "Substance use disorder" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. Substance use disorder is not the same as physical dependence or tolerance that are normal physiological consequences of extended opioid therapy for pain. It is characterized by behaviors that include, but are not limited to, impaired control over drug use, craving, compulsive use, or continued use despite harm.

NEW SECTION

WAC 246-817-907 Patient notification, secure storage, and disposal. (1) The dentist shall provide information to the patient educating them of risks associated with the use of opioids. The dentist shall document such notification in the patient record.

(2) Patient notification must occur, at a minimum, at the following points of treatment:

(a) The first issuance of a prescription for an opioid; and

(b) The transition between phase of treatment, as follows:

(i) Acute nonoperative pain or acute perioperative pain to subacute pain; and

(ii) Subacute pain to chronic pain.

(3) Patient notification must include information regarding:

(a) The safe and secure storage of opioid prescriptions; and

(b) The proper disposal of unused opioid medication including, but not limited to, the availability of recognized drug take-back programs.

(4) This requirement may be satisfied with a document provided by the department of health.

NEW SECTION

WAC 246-817-908 Use of alternative modalities for pain treatment. The dentist shall consider multimodal pharmacologic and nonpharmacologic therapy for pain rather than defaulting to the use of opioid therapy alone whenever reasonable, evidence-based, clinically appropriate alternatives exist.

NEW SECTION

WAC 246-817-909 Continuing education requirements for opioid prescribing. (1) In order to prescribe an opioid in Washington state, a dentist licensed to prescribe opioids shall complete a one-time continuing education requirement regarding best practices in the prescribing of opioids and the rules in this chapter. The continuing education must be at least three hours in length.

(2) The dentist shall complete the one-time continuing education requirement described in subsection (1) of this section by the end of the dentist's first full continuing education

reporting period after January 1, 2019, or during the first full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing the training in opioid prescribing under this section count toward meeting applicable continuing education requirements for dentist license renewal.

NEW SECTION

WAC 246-817-911 Diagnosis identified on prescription. The practitioner shall include the diagnosis, indication for use, or the International Classification of Diseases (ICD) code on all opioid prescriptions.

Opioid Prescribing—Acute Nonoperative Pain and Acute Perioperative Pain

NEW SECTION

WAC 246-817-913 Treatment plan—Acute nonoperative pain and acute perioperative pain. The dentist shall comply with the requirements in this section when prescribing opioid analgesics for acute nonoperative pain or acute perioperative pain and shall document completion of these requirements in the patient record:

(1) The dentist shall consider prescribing nonopioid analgesics as the first line of pain control in patients in accordance with the provisions of WAC 246-817-908 unless not clinically appropriate.

(2) The dentist, or their designee, shall conduct queries of the PMP in accordance with the provisions of WAC 246-817-980 to identify any Schedule II-V medications or drugs of concern received by the patient and document their review and any concerns in the patient record.

(3) If the dentist prescribes opioids for effective pain control, such prescription must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids.

(a) A three-day supply or less will often be sufficient;

(b) More than a seven-day supply will rarely be needed;

(c) The dentist shall not prescribe beyond a seven-day supply without clinical documentation in the patient record to justify the need for such a quantity. For more specific best practices, the dentist may refer to clinical practice guidelines including, but not limited to, those produced by the agency medical directors' group, the Centers for Disease Control and Prevention, or the Bree collaborative.

(4) The dentist shall reevaluate the patient who does not follow the expected course of recovery. If significant and documented improvement in function or pain control has not occurred, the dentist shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated.

(5) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes, at a minimum:

(a) Change in pain level;

(b) Change in physical function;

(c) Change in psychosocial function; and

(d) Additional planned diagnostic evaluations to investigate causes of continued acute nonoperative pain or acute perioperative pain or other treatments.

(6) Long-acting or extended release opioids are not indicated for acute nonoperative pain. Should a dentist need to prescribe a long-acting opioid for acute pain, the dentist shall document the reason in the patient record.

(7) A dentist shall not discontinue medication assisted treatment medications when treating acute pain, except as consistent with the provisions of WAC 246-817-976.

(8) If the dentist elects to prescribe a combination of opioids with a medication listed in WAC 246-817-975 or to a patient known to be receiving a medication listed in WAC 246-817-975 from another practitioner, such prescribing must be in accordance with WAC 246-817-975.

(9) If the dentist elects to treat a patient with opioids beyond the six-week time period of acute nonoperative pain or acute perioperative pain, the dentist shall document in the patient record that the patient is transitioning from acute pain to subacute pain. Rules governing the treatment of subacute pain in WAC 246-817-915 and 246-817-916 shall apply unless there is documented improvement in function or pain control and there is a documented plan and timing for discontinuation of all opioid medications.

Opioid Prescribing—Subacute Pain

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-915 Patient evaluation and patient record. The dentist shall ~~((obtain, evaluate))~~ comply with the requirements in this section when prescribing opioid analgesics for subacute pain, and shall document completion of these requirements in the ~~((patient's health history and physical examination in the health record prior to treating for chronic noneancer pain.~~

~~(1) The patient's health history shall include:~~

~~(a) Current and past treatments for pain;~~

~~(b) Comorbidities; and~~

~~(c) Any substance abuse.~~

~~(2) The patient's health history should include:~~

~~(a) A review of any available prescription monitoring program or emergency department-based information exchange; and~~

~~(b) Any relevant information from a pharmacist provided to the dentist.~~

~~(3) The initial patient evaluation shall include:~~

~~(a) Physical examination;~~

~~(b) The nature and intensity of the pain;~~

~~(c) The effect of the pain on physical and psychological function;~~

~~(d) Medications including indication(s), date, type, dosage, and quantity prescribed;~~

~~(e) A risk screening of the patient for potential comorbidities and risk factors using an appropriate screening tool. The screening should address:~~

~~(i) History of addiction;~~

~~(ii) Abuse or aberrant behavior regarding opioid use;~~

~~(iii) Psychiatric conditions;~~

- (iv) Regular concomitant use of benzodiazepines, alcohol, or other central nervous system medications;
 - (v) Poorly controlled depression or anxiety;
 - (vi) Evidence or risk of significant adverse events, including falls or fractures;
 - (vii) Receipt of opioids from more than one prescribing practitioner or practitioner group;
 - (viii) Repeated visits to emergency departments seeking opioids;
 - (ix) History of sleep apnea or other respiratory risk factors;
 - (x) Possible or current pregnancy; and
 - (xi) History of allergies or intolerances.
- (4) The initial patient evaluation should include:
- (a) Any available diagnostic, therapeutic, and laboratory results; and
 - (b) Any available consultations.
- (5) The health record shall be maintained in an accessible manner, readily available for review, and should include:
- (a) The diagnosis, treatment plan, and objectives;
 - (b) Documentation of the presence of one or more recognized indications for the use of pain medication;
 - (c) Documentation of any medication prescribed;
 - (d) Results of periodic reviews;
 - (e) Any written agreements for treatment between the patient and the dentist; and
 - (f) The dentist's instructions to the patient record.
- (1) Prior to prescribing an opioid for subacute pain, the dentist shall:
- (a) Conduct an appropriate history and physical examination or review and update the patient's existing history and examination taken during the acute nonoperative or acute perioperative phase;
 - (b) Evaluate the nature and intensity of the pain;
 - (c) Inquire about other medications the patient is prescribed or taking, including date, type, dosage, and quantity prescribed;
 - (d) Conduct, or cause their designee to conduct, a query of the PMP in accordance with the provisions of WAC 246-817-980 to identify any Schedule II-V medications or drugs of concern received by the patient and document in their review and any concerns;
 - (e) Obtain a biological specimen test if the patient's function is deteriorating or if pain is escalating; and
 - (f) Screen or refer the patient for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety.
- (2) The dentist treating a patient for subacute pain with opioids shall ensure that, at a minimum, the following are documented in the patient record:
- (a) The presence of one or more recognized diagnoses or indications for the use of opioid pain medication;
 - (b) The observed significant and documented improvement in function or pain control forming the basis to continue prescribing opioid analgesics beyond the acute pain episode;
 - (c) The result of any queries of the PMP and any concerns the dentist may have;
 - (d) All medications the patient is known to be prescribed or taking;

- (e) An appropriate pain treatment plan, including the consideration of, or attempts to use, nonpharmacological modalities and nonopioid therapy;
 - (f) Results of any aberrant biological specimen testing results and the risk-benefit analysis if opioids are to be continued;
 - (g) Results of screening or referral for further consultation for psychosocial factors which may be impairing recovery including, but not limited to, depression or anxiety;
 - (h) Results of screening for the patient's level of risk for aberrant behavior and adverse events related to opioid therapy;
 - (i) The risk-benefit analysis of any combination of prescribed opioid and benzodiazepines or sedative-hypnotics, if applicable; and
 - (j) All other required components of the patient record, as established in statute or rule.
- (3) Follow-up visits for pain control must include objectives or metrics to be used to determine treatment success if opioids are to be continued. This includes at a minimum:
- (a) Change in pain level;
 - (b) Change in physical function;
 - (c) Change in psychosocial function; and
 - (d) Additional planned diagnostic evaluations or other treatments.

NEW SECTION

WAC 246-817-916 Treatment plan—Subacute pain.

- (1) The dentist shall recognize the progression of a patient from the acute nonoperative or acute perioperative phase to the subacute phase and take into consideration the risks and benefits of continued opioid prescribing for the patient.
- (2) If tapering has not begun prior to the six- to twelve-week subacute phase, the dentist shall reevaluate the patient who does not follow the expected course of recovery. If significant and documented improvement in function or pain control has not occurred, the dentist shall reconsider the continued use of opioids or whether tapering or discontinuing opioids is clinically indicated. The dentist shall make reasonable attempts to discontinue the use of opioids prescribed for the acute pain event by no later than the twelve-week conclusion of the subacute phase.
- (3) If the dentist prescribes opioids for effective pain control, such prescriptions must not be in a greater quantity than needed for the expected duration of pain severe enough to require opioids. The dentist shall not prescribe beyond a fourteen-day supply of opioids without clinical documentation to justify the need for such a quantity during the subacute phase.
- (4) If the dentist elects to prescribe a combination of opioids with a medication listed in WAC 246-817-975 or prescribes opioids to a patient known to be receiving a medication listed in WAC 246-817-975 from another practitioner, the dentist shall prescribe in accordance with WAC 246-817-975.
- (5) If the dentist elects to treat a patient with opioids beyond the six- to twelve-week subacute phase, the dentist shall document in the patient record that the patient is transitioning from subacute pain to chronic pain. Rules governing

the treatment of chronic pain in WAC 246-817-919 through 246-817-967, shall apply.

Opioid Prescribing—Chronic Pain Management

NEW SECTION

WAC 246-817-919 Patient evaluation and patient record. The dentist shall evaluate and document the patient's health history and physical examination in the patient record prior to treating for chronic pain.

- (1) History. The patient's health history must include:
 - (a) The nature and intensity of the pain;
 - (b) The effect of pain on physical and psychosocial function;
 - (c) Current and past treatments for pain, including medications and their efficacy;
 - (d) Review of any significant comorbidities;
 - (e) Any current or historical substance use disorder;
 - (f) Current medications and, as related to treatment of the pain, the efficacy of medications tried; and
 - (g) Medication allergies.
- (2) Evaluation. The patient evaluation prior to opioid prescribing must include:
 - (a) Appropriate physical examination;
 - (b) Consideration of the risks and benefits of chronic pain treatment for the patient;
 - (c) Medications the patient is taking including indication(s), date, type, dosage, quantity prescribed, and, as related to treatment of the pain, efficacy of medications tried;
 - (d) Review of the PMP to identify any Schedule II-V medications or drugs of concern received by the patient in accordance with the provisions of WAC 246-817-980;
 - (e) Any available diagnostic, therapeutic, and laboratory results;
 - (f) Use of a risk assessment tool and assignment of the patient to a high, moderate or low-risk category;
 - (i) The dentist should use caution and shall monitor a patient more frequently when prescribing opioid analgesics to a patient identified as high-risk;
 - (ii) "Risk assessment tool" means professionally developed, clinically accepted questionnaires appropriate for identifying a patient's level of risk for substance abuse or misuse.
 - (g) Any available consultations, particularly as related to the patient's pain;
 - (h) Pain related diagnosis, including documentation of the presence of one or more recognized indications for the use of pain medication;
 - (i) Written agreements, as described in WAC 246-817-930, for treatment between the patient and the dentist;
 - (j) Patient counseling concerning risks, benefits, and alternatives to chronic opioid therapy; and
 - (k) Treatment plan and objectives including:
 - (i) Documentation of any medication prescribed;
 - (ii) Biologic specimen testing ordered; and
 - (iii) Any labs or imaging ordered.
- (3) The health record must be maintained in an accessible manner, readily available for review, and contain documentation of requirements in subsections (1) and (2) of this

section, as well as all other required components of the patient record, as set out in statute or rule.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-920 Treatment plan. (1) ~~((The written))~~ When the patient enters the chronic pain phase, the dentist shall reevaluate the patient by treating the situation as a new disease.

(2) The chronic pain treatment plan ((shall)) must state the objectives that will be used to determine treatment success and ((shall)) must include, at a minimum:

- (a) Any change in pain relief;
- (b) Any change in physical and psychosocial function; and
- (c) Additional diagnostic evaluations or other planned treatments.

~~((2))~~ (3) After treatment begins, the dentist ((should)) shall adjust drug therapy to the individual health needs of the patient. ((The dentist shall include indications for medication use on the prescription and require photo identification of the person picking up the prescription in order to fill. The dentist shall advise the patient that it is the patient's responsibility to safeguard all medications and keep them in a secure location.

~~(3) Other treatment modalities or a rehabilitation program may be necessary depending on the etiology of the pain and the extent to which the pain is associated with physical and psychosocial impairment.))~~

(4) The dentist shall complete patient notification in accordance with the provisions of WAC 246-817-907.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-930 Written agreement for treatment. ~~((Chronic noncancer pain patients should receive all chronic pain management prescriptions from one dentist and one pharmacy whenever possible. If the patient is at high risk for medication abuse, or has a history of substance abuse, or psychiatric comorbidities, the prescribing))~~ The dentist shall use a written agreement for treatment with the patient ((outlining patient)) who requires long-term opioid therapy for chronic pain that outlines the patient's responsibilities. This written agreement for treatment ((shall)) must include:

(1) The patient's agreement to provide biological samples for ((urine/serum medical level screening)) biological specimen testing when requested by the dentist;

(2) The patient's agreement to take medications at the dose and frequency prescribed with a specific protocol for lost prescriptions and early refills or renewals. "Refill" or "renewal" means a second or subsequent filling of a previously issued prescription that is authorized to be dispensed when the patient has exhausted their current supply. For the purposes of WAC 246-817-901 through 246-817-980, refills or renewals are subject to the same limitation and requirements as initial prescriptions;

(3) Reasons for which ((drug)) opioid therapy may be discontinued ((e.g.)) such as, but not limited to, violation of agreement((?));

(4) The requirement that all chronic (~~pain management~~) opioid prescriptions are provided by a single prescriber, a single clinic, or multidisciplinary pain clinic (and);

(5) The requirement that all chronic opioid prescriptions are to be dispensed by a single pharmacy or pharmacy system whenever possible;

~~((5))~~ (6) The patient's agreement to not abuse (alcohol or use other medically unauthorized) substances that can put the patient at risk for adverse outcomes;

~~((6))~~ (7) A written authorization for:

(a) The dentist to release the agreement for treatment to:

(i) Local emergency departments(,);

(ii) Urgent care facilities(,);

(iii) Other practitioners caring for the patient who might prescribe pain medications; and

(iv) Pharmacies(, and);

(b) The dentist to release the agreement to other practitioners (or) so other practitioners can report violations of the agreement (back) to the dentist(;

(7) A written authorization that the dentist may notify the proper authorities if he or she has reason to believe the patient has engaged in illegal activity;

(8) Acknowledgment that a violation of the agreement may result in a tapering or discontinuation of the prescription;

(9) treating the patient's chronic pain and to the PMP.

(8) Acknowledgment that it is the patient's responsibility to safeguard all medications and keep them in a secure location; and

~~((10))~~ (9) Acknowledgment that if the patient violates the terms of the agreement, the violation and the dentist's response to the violation will be documented, as well as the rationale for changes in the treatment plan.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-935 Periodic review. (1) The dentist shall periodically review the course of treatment for chronic (noncancer pain, the patient's state of health, and any new information about the etiology of the pain. Generally, periodic reviews shall take place at least every six months. However, for treatment of stable patients with chronic noncancer pain involving non-escalating daily dosages of forty milligrams of a morphine equivalent dose (MED) or less, periodic reviews shall take place at least annually.

(4)) pain. The frequency of visits, biological testing, and PMP queries must be determined based on the patient's risk category:

(a) For a high-risk patient, at least quarterly;

(b) For a moderate-risk patient, at least semiannually;

(c) For a low-risk patient, at least annually;

(d) Immediately upon indication of concerning aberrant behavior; and

(e) More frequently at the dentist's discretion.

(2) During the periodic review, the dentist shall determine:

(a) The patient's compliance with any medication treatment plan;

(b) If pain, function, or quality of life have improved (or), diminished, or are maintained using objective evidence(, considering any available information from family members or other caregivers); and

(c) If continuation or modification of medications for pain management treatment is necessary based on the dentist's evaluation of progress towards treatment objectives.

~~((2))~~ (3) Periodic patient evaluations must also include:

(a) History and physical examination related to the pain;

(b) Use of validated tools to document either maintenance of function and pain control or improvement in function and pain level; and

(c) Review of the Washington state PMP to identify any Schedule II-V medications or drugs of concern received by the patient at a frequency determined by the patient's risk category, and otherwise in accordance with the provisions of WAC 246-817-980 and subsection (1) of this section.

(4) The dentist shall assess the appropriateness of continued use of the current treatment plan if the patient's progress or compliance with current treatment plan is unsatisfactory. The dentist shall consider tapering, changing, or discontinuing treatment (when:

(a) Function or pain does not improve after a trial period;

(b) There is evidence of significant adverse effects;

(c) Other treatment modalities are indicated; or

(d) There is evidence of misuse, addiction, or diversion.

(3) The dentist should periodically review information from any available prescription monitoring program or emergency department-based information exchange.

(4) The dentist should periodically review any relevant information from a pharmacist provided to the dentist) in accordance with the provisions of WAC 246-817-966.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-950 Consultation—Recommendations and requirements. (1) The dentist shall consider referring the patient for additional evaluation and treatment as needed to achieve treatment objectives. Special attention should be given to those chronic (~~noncancer~~) pain patients who are under eighteen years of age(,) or who are (~~at risk for medication misuse, abuse, or diversion~~) potential high-risk patients. The management of pain in patients with a history of substance abuse or with comorbid psychiatric disorders may require extra care, monitoring, documentation, and consultation with, or referral to, an expert in the management of such patients.

(2) The mandatory consultation threshold (~~for adults~~) is one hundred twenty (~~milligrams morphine equivalent dose (MED) (oral). In the event a~~) MED. Unless the consultation is exempted under WAC 246-817-955 or 246-817-960, the dentist who prescribes a dosage amount that meets or exceeds the mandatory consultation threshold (of one hundred twenty milligrams MED (orally) per day, a consultation with a) shall comply with the pain management specialist ((as) consultation requirements described in WAC 246-817-965 ((is required, unless the consultation is exempted under WAC 246-817-955 or 246-817-960. Great caution should be used

when prescribing opioids to children with chronic noncancer pain and appropriate referrals to a specialist is encouraged:

~~(a))~~ The mandatory consultation ~~((shall))~~ must consist of at least one of the following:

~~((i))~~ (a) An office visit with the patient and the pain management specialist;

~~((ii))~~ (b) A ~~((telephone))~~ consultation between the pain management specialist and the dentist;

~~((iii))~~ An electronic consultation between the pain management specialist and the dentist; or

~~((iv))~~ (c) An audio-visual evaluation conducted by the pain management specialist remotely, where the patient is present with either the dentist or with a licensed health care practitioner designated by the dentist or the pain management specialist; or

(d) Other chronic pain evaluation services as approved by the dental quality assurance commission.

~~((b))~~ (3) A dentist shall document each ~~((mandatory))~~ consultation with the pain management specialist. ~~((Any written record of the consultation by the pain management specialist shall be maintained as a patient record by the specialist.))~~ If the pain management specialist provides a written record of the consultation to the dentist, the dentist shall maintain it as part of the patient record.

~~((3))~~ Nothing in this chapter shall limit any person's ability to contractually require a consultation with a pain management specialist at any time. For the purposes of WAC 246-817-901 through 246-817-965, "person" means an individual, a trust or estate, a firm, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.) (4) The dentist shall use great caution when prescribing opioids to children and adolescents with chronic pain, appropriate referral to a specialist is encouraged.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-955 Consultation—Exemptions for exigent and special circumstances. A dentist is not required to consult with a pain management specialist as described in WAC 246-817-965 when ~~((he or she))~~ the dentist has documented adherence to all standards of practice as defined in WAC ~~((246-817-901 through 246-817-965))~~ 246-817-919 through 246-817-967 and when ~~((any))~~ one or more of the following conditions ~~((apply))~~ are met:

(1) The patient is following a tapering schedule;

(2) The patient requires treatment for acute pain, which may or may not include hospitalization, requiring a temporary escalation in opioid dosage~~((;))~~ with expected return to ~~((or below))~~ their baseline dosage level or below;

(3) The dentist documents reasonable attempts to obtain a consultation with a pain management specialist and the circumstances justifying prescribing above one hundred twenty milligrams ~~((morphine equivalent dose-))~~ MED~~((;))~~ per day without first obtaining a consultation; or

(4) The dentist documents the patient's pain and function is stable and the patient is on a ~~((non-escalating))~~ nonescalating dosage of opioids.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-960 Consultation—Exemptions for the dentist. The dentist is exempt from the consultation requirement in WAC 246-817-950 if one or more of the following qualifications are met:

(1) The dentist is a pain management specialist ~~((as described in))~~ under WAC 246-817-965; ~~((or))~~

(2) The dentist has successfully completed ~~((, within the last two))~~ every four years~~((;))~~ a minimum of twelve continuing education hours on chronic pain management ~~((approved by the profession's continuing education accrediting organization)),~~ with at least two of these hours dedicated ~~((to long-acting opioids, to include methadone))~~ substance use disorders; ~~((or))~~

(3) The dentist is a pain management practitioner working in a multidisciplinary chronic pain treatment center~~((;))~~ or a multidisciplinary academic research facility; or

(4) The dentist has a minimum three years of clinical experience in a chronic pain management setting, and at least thirty percent of ~~((his or her))~~ their current practice is the direct provision of pain management care.

AMENDATORY SECTION (Amending WSR 11-10-061, filed 5/2/11, effective 7/1/11)

WAC 246-817-965 Pain management specialist. A pain management specialist shall meet ~~((one or more of))~~ the following qualifications:

(1) ~~((If a physician or osteopathic physician:~~

~~(a) Board certified or board eligible by an American Board of Medical Specialties approved board (ABMS) or by the American Osteopathic Association (AOA) in physical medicine and rehabilitation, rehabilitation medicine, neurology, rheumatology, or anesthesiology; or~~

~~(b) Has a subspecialty certificate in pain medicine by an ABMS approved board; or~~

~~(c) Has a certification of added qualification in pain management by the AOA; or~~

~~(d) A minimum of three years of clinical experience in a chronic pain management care setting; and~~

~~(i) Credentialed in pain management by an entity approved by the Washington state medical quality assurance commission for physicians or the Washington state board of osteopathic medicine and surgery for osteopathic physicians; and~~

~~(ii) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and~~

~~(iii) At least thirty percent of the physician's or osteopathic physician's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.~~

~~(2) If a dentist: Board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.~~

~~(3) If an advanced registered nurse practitioner (ARNP):~~

~~(a) A minimum of three years of clinical experience in a chronic pain management care setting;~~

~~(b) Credentialed in pain management by a Washington state nursing care quality assurance commission approved~~

~~national professional association, pain association, or other credentialing entity;~~

~~(e) Successful completion of a minimum of at least eighteen continuing education hours in pain management during the past two years; and~~

~~(d) At least thirty percent of the ARNP's current practice is the direct provision of pain management care or is in a multidisciplinary pain clinic.~~

~~(4) If a podiatric physician:~~

~~(a) Board certified or board eligible in a specialty that includes a focus on pain management by the American Board of Podiatric Surgery, the American Board of Podiatric Orthopedics and Primary Podiatric Medicine, or other accredited certifying board as approved by the Washington state podiatric medical board; or~~

~~(b) A minimum of three years of clinical experience in a chronic pain management care setting; and~~

~~(c) Credentialed in pain management by a Washington state podiatric medical board approved national professional association, pain association, or other credentialing entity; and~~

~~(d) Successful completion of a minimum of at least eighteen hours of continuing education in pain management during the past two years, and at least thirty percent of the podiatric physician's current practice is the direct provision of pain management care.)~~ A dentist shall be board certified or board eligible in oral medicine or orofacial pain by the American Board of Oral Medicine or the American Board of Orofacial Pain.

(2) An allopathic physician shall meet requirements in WAC 246-919-945 and an allopathic physician assistant shall meet requirements in WAC 246-918-895.

(3) An osteopathic physician shall meet requirements in WAC 246-853-750 and an osteopathic physician assistant shall meet requirements in WAC 246-854-330.

(4) An advanced registered nurse practitioner (ARNP) shall meet requirements in WAC 246-840-493.

(5) A podiatric physician shall meet requirements in WAC 246-922-750.

NEW SECTION

WAC 246-817-966 Assessment of treatment plan. (1) The dentist shall assess and document the appropriateness of continued use of the current treatment plan if the patient's response to or compliance with the current treatment plan is unsatisfactory.

(2) The dentist shall consider tapering, changing, discontinuing treatment, or referral for a substance use disorder evaluation when:

(a) The patient requests;

(b) The patient experiences deterioration in function or pain;

(c) The patient is noncompliant with the written agreement;

(d) Other treatment modalities are indicated;

(e) There is evidence of misuse, abuse, substance use disorder, or diversion;

(f) The patient experiences a severe adverse event or overdose;

(g) There is unauthorized escalation of doses; or

(h) The patient is receiving an escalation in opioid dosage with no improvement in pain, function, or quality of life.

NEW SECTION

WAC 246-817-967 Patients with chronic pain, including those on high doses, establishing a relationship with a new dentist.

(1) When a patient receiving chronic opioid pain medications changes to a new dentist, it is normally appropriate for the new dentist to initially maintain the patient's current opioid doses. Over time, the dentist may evaluate if any tapering or other adjustments in the treatment plan can or should be done.

(2) A dentist's treatment of a new high dose chronic pain patient is exempt from the mandatory consultation requirements of WAC 246-817-950 and the tapering requirements of WAC 246-817-966 if:

(a) The patient was previously being treated with a dosage of opioids in excess of one hundred twenty milligram MED for chronic pain under an established written agreement for treatment of the same chronic condition or conditions;

(b) The patient's dose is stable and nonescalating;

(c) The patient has a demonstrated history in their record of compliance with treatment plans and written agreements as documented by medical records and PMP queries; and

(d) The patient has documented functional stability, pain control, or improvements in function or pain control, in excess of one hundred twenty milligram MED dose.

(3) With respect to the treatment of a new patient under subsection (1) or (2) of this section, this exemption applies for the first three months of newly established care, after which the requirements of WAC 246-817-950 and 246-817-966 shall apply.

Opioid Prescribing—Special Populations

NEW SECTION

WAC 246-817-970 Special populations—Patients twenty-four years of age or under, pregnant patients, and aging populations.

(1) Patients twenty-four years of age or under. In the treatment of pain for patients twenty-four years of age or under, the dentist shall treat pain in a manner equal with that of an adult but must account for the weight of the patient and adjust the dosage prescribed accordingly. Eight to twelve tablets supply will often be sufficient. The dentist shall not prescribe beyond twelve tablets without clinical documentation in the patient record to justify the need for such a quantity.

(2) Pregnant patients. A dentist shall not discontinue use of MAT opioids, such as methadone or buprenorphine, by a pregnant patient without oversight by the MAT prescribing practitioner. The dentist shall weigh carefully the risks and benefits of opioid detoxification during pregnancy.

(3) Aging populations. As people age, their tolerance and metabolizing of opioids may change. The dentist shall consider the distinctive needs of patients who are sixty-five years of age or older and who have been on chronic opioid therapy or who are initiating opioid treatment.

NEW SECTION

WAC 246-817-971 Episodic care of chronic opioid patients. (1) When providing episodic care for a patient who the dentist knows is being treated with opioids for chronic pain, such as for emergency or urgent care, the dentist shall review the PMP to identify any Schedule II-V or drugs of concern received by the patient and document in the patient record their review and any concerns.

(2) A dentist providing episodic care to a patient who the dentist knows is being treated with opioids for chronic pain should provide additional opioids to be equal to the severity of the acute pain. If opioids are provided, the dentist shall limit the use of opioids to the minimum amount necessary to control the acute nonoperative pain, acute perioperative pain, or similar acute exacerbation of pain until the patient can receive care from the practitioner who is managing the patient's chronic pain treatment.

(3) The episodic care dentist shall report known violations of the patient's written agreement to the patient's treatment practitioner who provided the agreement for treatment.

(4) The episodic care dentist shall coordinate care with the patient's chronic pain treatment practitioner if that person is known to the episodic care dentist, when practicable.

(5) For the purpose of this section "episodic care" means medical or dental care provided by a practitioner other than the designated primary care practitioner in the acute care setting; for example, urgent care or emergency department.

Opioid Prescribing—CoprescribingNEW SECTION

WAC 246-817-975 Coprescribing of opioids with certain medications. (1) The dentist shall not knowingly prescribe opioids in combination with the following Schedule II-IV medications without documentation of clinical judgment and discussion of risks with patient:

- (a) Benzodiazepines;
- (b) Barbiturates;
- (c) Sedatives;
- (d) Carisoprodol; or
- (e) Sleeping medications also known as Z drugs.

(2) If a patient receiving an opioid prescription is known to be concurrently prescribed one or more of the medications listed in subsection (1) of this section, the dentist prescribing opioids shall consult with the other prescriber(s) to establish a patient care plan for the use of the medications concurrently or consider whether one of the medications should be tapered.

NEW SECTION

WAC 246-817-976 Coprescribing of opioids for patients receiving medication assisted treatment. (1) Where practicable, the dentist providing acute nonoperative pain or acute perioperative pain treatment to a patient known to be receiving MAT shall prescribe opioids for pain relief either in consultation with the MAT prescribing practitioner or a pain specialist.

(2) A dentist shall not discontinue MAT medications when treating acute nonoperative pain or acute perioperative pain without documentation of the reason for doing so.

(3) A dentist shall not deny necessary operative intervention for use of these medications by a patient.

NEW SECTION

WAC 246-817-977 Coprescribing of naloxone. The dentist shall confirm or provide a current prescription for naloxone or refer the patient to a pharmacist for further counseling and evaluation when opioids are prescribed to a high-risk patient.

Opioid Prescribing—Prescribing Monitoring ProgramNEW SECTION

WAC 246-817-980 Prescription monitoring program—Required registration, queries, and documentation. (1) The dentist shall register to access the PMP or demonstrate proof of having assured access to the PMP if they prescribe opioids in Washington state.

(2) The dentist is permitted to delegate performance of a required PMP query to an authorized designee.

(3) At a minimum, the dentist shall ensure a PMP query is performed prior to the prescription of an opioid at the following times:

- (a) Upon the first refill or renewal of an opioid prescription for acute nonoperative pain or acute perioperative pain;
- (b) The time of transition from acute to subacute pain; and
- (c) The time of transition from subacute to chronic pain.

(4) For chronic pain management, the dentist shall ensure a PMP query is performed at a minimum frequency determined by the patient's risk assessment, as follows:

- (a) For a high-risk patient, a PMP query must be completed at least quarterly;
- (b) For a moderate-risk patient, a PMP must be completed at least semiannually; and
- (c) For a low-risk patient, a PMP must be completed at least annually.

(5) The dentist shall ensure a PMP query is performed for any chronic pain patient immediately upon identification of aberrant behavior.

(6) The dentist shall ensure a PMP query is performed when providing episodic care to a patient whom the dentist knows to be receiving opioids for chronic pain, in accordance with WAC 246-817-971.

(7) If the dentist is using an electronic medical record or EMR that integrates access to the PMP into the workflow of the EMR, the dentist shall ensure a PMP query is performed for all prescriptions of opioids and medications listed in WAC 246-817-975.

(8) For the purposes of this section, the requirement to consult the PMP does not apply when the PMP or the EMR cannot be accessed by the dentist or their designee due to a temporary technological or electrical failure.

(9) Pertinent concerns discovered in the PMP must be documented in the patient record.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-817-910 Definitions.

WAC 246-817-925 Informed consent.

WAC 246-817-940 Long-acting opioids, including methadone.

WAC 246-817-945 Episodic care.

WSR 18-21-156**PROPOSED RULES****BUILDING CODE COUNCIL**

[Filed October 22, 2018, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-09-090.

Title of Rule and Other Identifying Information: Chapter 51-54A WAC, Adoption and amendment of the 2018 International Fire Code and modifications to the 2015 International Fire Code.

Hearing Location(s): On November 30, 2018, at 10:00, at the Department of Enterprise Services, 1500 Jefferson Street, Room 3660, Olympia, WA 98504.

Date of Intended Adoption: December 1, 2018.

Submit Written Comments to: Doug Orth, 1500 Jefferson Street S.E., Olympia, WA 98504, email SBCC@des.wa.gov, by November 30, 2018.

Assistance for Persons with Disabilities: Contact Lori Yantzer, phone 360-407-7974, email Richard.brown@des.wa.gov, by November 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Mass timber: The purpose is to comply with ESB 5450.

IBC/IFC 3101/3801: The purpose is to resolve inconsistent and conflicting code requirements between NFPA 130, the IBC and IFC as they pertain to passenger rail systems.

IFC 907.10.2 and 907.10.3: The purpose of this is to add the ESA/NTS as an approved testing and maintenance certification to the code.

Reasons Supporting Proposal: Mass timber: These amendments (and those to the 2015 International Fire Code) allow for better use of developing technologies in the production of mass timber products and address the desire of our state legislature, as expressed in ESB 5450, directing the building code council to adopt rules for the use of mass timber products. The rules to be adopted must consider applicable national and international standards. These amendments rely on the work of the International Code Council's (ICC) ad hoc committee on tall wood buildings that published its report in January 2018 and was amended and approved by the ICC's code action hearing in April 2018. The crux of these amendments is to revise the building code to allow for the use of mass timber in taller buildings. This is accomplished primarily by adding three new building types under the Type IV category, Type IV-A, Type IV-B, and Type IV-C.

IBC/IFC 3101/3801: Adoption of NFPA 130 resolves inconsistent and conflicting code requirements between NFPA 130, the IBC and IFC in many Puget Sound city building and fire departments. Due to federal requirements, Sound Transit must build its passenger light rail system, including, but not limited to, stations, trainways, emergency ventilation systems, vehicles, emergency procedures, communications, and control systems specifically in accordance with NFPA 130.

IFC 907.10.2 and 907.10.3: Adoption of this proposal, will allow the trades more options for an equivalent certification in the fire alarm testing, programming and maintenance trades.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, 360-407-9277; and Enforcement: Local building officials, local jurisdiction address, varies.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

There are costs imposed by the proposed rules but the costs do not fall disproportionately on small businesses. These rules will not affect the distribution of impacted work, whether by small businesses or not, doing the work. The rules do not impact employment, reporting or recordkeeping.

A copy of the statement may be obtained by contacting Richard Brown, 1500 Jefferson Street S.E., Olympia, WA 98504, phone 360-407-9277, email Richard.brown@des.wa.gov.

October 11, 2018

Doug Orth
Council Chair

NEW SECTION**WAC 51-54A-0701 General.**

701.3 Owner's responsibility. The owner shall maintain an inventory of all required fire-resistance-rated construction, construction installed to resist the passage of smoke and the construction included in Sections 703 through 707 and Sections 602.4.1 and 602.4.2 of the *International Building Code*. Such construction shall be visually inspected by the owner annually and properly repaired, restored or replaced where damaged, altered, breached or penetrated. Records of inspec-

tions and repairs shall be maintained. Where concealed, such elements shall not be required to be visually inspected by the owner unless the concealed space is accessible by the removal or movement of a panel, access door, ceiling tile or similar movable entry to the space.

AMENDATORY SECTION (Amending WSR 18-01-104, filed 12/19/17, effective 7/1/18)

WAC 51-54A-0907 Fire alarm and detection systems.

907.2.3 Group E. Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:

3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or

3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).

4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

4.1 Interior corridors are protected by smoke detectors.

4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.

4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:

5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.

5.3 Manual activation is provided from a normally occupied location.

907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

907.2.6 Group I. A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS: 1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.

2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS: 1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.

2. Smoke detection is not required for exterior balconies.

907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.

2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

907.10 NICET: National Institute for Certification in Engineering Technologies and ESA/NTS: Electronic Security Association/National Training School.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review: All construction documents shall be reviewed by a NICET III, an ESA/NTS Certified Fire Alarm Designer (CFAD) Level III Fire in fire alarms, or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2018).

907.10.3 Testing/maintenance: All inspection, testing, maintenance and programing not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II or ESA/NTS Certified Fire Alarm Technician (CFAT) Level II Fire in fire alarms (effective July 1, 2018).

NEW SECTION

WAC 51-54A-3308 Owner's responsibility for fire protection.

3308.8 Fire safety requirements for buildings of Types IV-A, IV-B, and IV-C construction. Buildings of Types IV-A, IV-B, and IV-C construction designed to be greater than six stories above grade plane shall meet the following requirements during construction unless otherwise approved by the fire code official.

1. Standpipes shall be provided in accordance with Section 3313.
2. A water supply for fire department operations, as approved by the fire code official and the fire chief.
3. Where building construction exceeds six stories above grade plane, at least one layer of noncombustible protection where required by Section 602.4 of the *International Building Code* shall be installed on all building elements more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor levels.

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.

4. Where building construction exceeds six stories above grade plane required exterior wall coverings shall be installed on all floor levels more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor level.

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.

NEW SECTION

WAC 51-54A-3900 Fixed guideway transit and passenger rail systems.

3901.1 Scope. Fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130.

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-8000 Referenced standards.

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations	609.3
NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units	1103.9
<u>NFPA 130-17 Standard for Fixed Guideway Transit and Passenger Rail Systems</u>	<u>3901.1</u>

**WSR 18-21-159
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2018-13—Filed October 22, 2018, 1:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-088.

Title of Rule and Other Identifying Information: Charitable gift annuities.

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at the Office of the Insurance Commissioner, 301 [302] Sid Snyder Avenue S.W., Olympia, WA 98501.

Date of Intended Adoption: November 28, 2018.

Submit Written Comments to: Jim Tompkins, P.O. Box 40620, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 26, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email LorieV@oic.wa.gov, by November 26, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules to update the accounting requirements for licensing in the state of Washington for charities offering charitable gift annuities to comport with a change in accounting rules.

Reasons Supporting Proposal: Recent financial accounting rule changes, FASB ASU 2016-14, have changed the definition of what is considered unrestricted net assets for charities.

Statutory Authority for Adoption: RCW 48.02.060 and 48.38.075.

Statute Being Implemented: RCW 48.38.010.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7036; Implementation: Steve Drutz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7209; and Enforcement: Doug Hartz, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule adopts national consensus codes that generally establish industry standards.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

October 22, 2018

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 14-05-017, filed 2/10/14, effective 3/15/14)

WAC 284-38-010 Definitions. The definitions in this section apply throughout this chapter:

"Certificate holder" means any insurer or educational, religious, charitable, or scientific institution that has been issued a certificate of exemption by the commissioner to conduct a charitable gift annuity business.

"Complete filing" means a package of information containing charitable gift annuity contracts, supporting information, documents and exhibits submitted to the commissioner electronically using the system for electronic rate and form filing (SERFF).

"Contract" means a charitable gift annuity contract as described in chapter 48.38 RCW.

"Date filed" means the date a complete charitable gift annuity contract filing has been received and accepted by the commissioner.

"Filer" means a person, organization, or other entity that files charitable gift annuity contracts with the commissioner.

"Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a charitable gift annuity contract under RCW 48.38.010(9), 48.18.110, 48.38.030, or 48.38.042.

"SERFF" means the system for electronic rate and form filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule, and form filings electronically to the commissioner.

"Unrestricted net assets" also means "net assets without donor restrictions."

WSR 18-21-160

PROPOSED RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2018-14—Filed October 22, 2018, 1:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-099.

Title of Rule and Other Identifying Information: Adjuster licensing special education criteria.

Hearing Location(s): On November 28, 2018, at 1:00 p.m., at the Office of the Insurance Commissioner, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98501. All attendees should check in at reception.

Date of Intended Adoption: November 29, 2018.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Lorie Villaflores, phone 360-725-7087, TTY 360-586-0241, email LorieV@oic.wa.gov, by November 27, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would likely create new and amend existing subsections of WAC 284-17-123 to clarify the special education condition found in RCW 48.17.380 (3)(d) for an adjuster license candidate.

Reasons Supporting Proposal: This proposed rule more clearly communicates the requirements and responsibilities of a license candidate that wants to use the special education qualification to be eligible for an adjuster license.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: RCW 48.17.380.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260,

360-725-7042; Implementation and Enforcement: Jeff Baughman, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7156.

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

A cost-benefit analysis is not required under RCW 34.05.328. The office of the insurance commissioner has determined that under RCW 34.05.328 (5)(b)(iv), this rule making will only clarify language of a rule without changing its effect.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

October 22, 2018
Mike Kreidler
Insurance Commissioner

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

WAC 284-17-123 Resident and nonresident adjuster licenses(~~—Trainees~~). (1) Applicants for a resident adjuster license may satisfy the experience or special training requirements of RCW 48.17.380(~~((4))~~) (3)(d) by employment as a "trainee" for a minimum period of (~~(not fewer than)~~) six months.

(a) Each trainee must be supervised by a resident licensed adjuster. Trainees must receive training in all adjustment activities and responsibilities. Activities of the trainee must be restricted to participation in factual investigation and tentative closing of losses. All adjusting transactions must be completed in the name of the supervising licensed adjuster who must review, confirm, and be responsible for all acts of the trainee. Compensation of a trainee must be on a salary basis only.

(b) Any person employing trainees must immediately advise the commissioner and provide the exact date that employment of the trainee begins and ends. The employer must submit an application completed by each trainee and one fingerprint card.

(c) Trainees are eligible to take the adjuster's examination required by the commissioner after completing (~~(no fewer than)~~) a minimum period of six months as a trainee.

(d) The maximum period a person may be designated as a trainee is one nine-month period.

(e) Any violation of this section or a violation of any provision of the insurance code subjects both the trainee and the supervisory adjuster to penalties of the code.

(2) Applicants for a resident adjuster license may satisfy the special education requirements of RCW 48.17.380 (3)(d) by:

(a) Successful completion of the chartered property casualty underwriter (CPCU) program and earning the CPCU professional designation from the American Institute for Chartered Property Casualty Underwriters, also known as the institutes;

(b) Successful completion of the associate in claims (AIC) program and earning the AIC professional designation from the American Institute for Chartered Property Casualty Underwriters, also known as the institutes; or

(c) Successful completion of the property program and earning the property claim law specialist (PCLS) professional designation from the American Educational Institute.

(3) Applicants who are not residents of Washington may be licensed as nonresident adjusters as follows:

(a) A nonresident adjuster license will be issued if the applicant has and maintains an adjuster license in good standing in his or her home state and the home state reciprocates and licenses Washington adjusters as nonresident adjusters.

(b) If the home state of an applicant for an adjuster license does not issue an adjuster license, the applicant must pass this state's written adjuster examination.

(c) If the home state of an applicant for a nonresident adjuster license does not issue an adjuster license but he or she has an active adjuster license as a nonresident in a state other than Washington that requires passing an examination, and he or she has taken and passed the examination and is in good standing with that state, the nonresident adjuster is deemed by the commissioner to have satisfied the examination required for adjusters in this state.

WSR 18-21-169
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 23, 2018, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-15-072.

Title of Rule and Other Identifying Information: Proposed fee increases for contractor registration, elevator, and factory assembled structures (FAS) programs. The proposed rules include: Chapter 296-200A WAC, Contractor certificate of registration renewals—Security—Insurance; chapter 296-96 WAC, Safety regulations and fees for all elevators, dumbwaiters, escalators and other conveyances; chapter 296-150C WAC, Commercial coaches; chapter 296-150F WAC, Factory-built housing and commercial structures; chapter 296-150I WAC, Manufactured home installer training and certification program; chapter 296-150M WAC, Manufactured homes; chapter 296-150P WAC, Recreational park trailers; chapter 296-150R WAC, Recreational vehicles; chapter 296-150T WAC, Factory-built temporary worker housing structures; and chapter 296-150V WAC, Conversion vendor units and medical units.

Hearing Location(s): On November 27, 2018, at 8:30 a.m., at the Department of Labor and Industries, 7273 Linder-son Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: December 4, 2018.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by 5 p.m. on November 27, 2018.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by 5 p.m. on November 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose fee increases by the fiscal growth factor rate of four percent for the contractor registration, elevator, and FAS programs. This is the office of financial management's maximum allowable fiscal growth factor for fiscal year 2019. The fee increase is needed to support the programs' operating expenses for inspections and other public safety activities.

Reasons Supporting Proposal: The programs have not increased fees for several years. The last fee increases took effect June 30, 2007, for contractor registration, April 1, 2014, for elevator, and April 30, 2012, for FAS. Fee increases are necessary to ensure that revenues match expenditures; otherwise, services may need to be reduced.

Statutory Authority for Adoption: Chapters 18.27, 70.87, 43.22, and 43.22A RCW.

Statute Being Implemented: Chapters 18.27, 70.87, 43.22, and 43.22A RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Dean Simpson, Program Manager, Tumwater, Washington, 360-902-5571, Dotty Stanlaske, Program Manager, Tumwater, Washington, 360-902-6456, or Craig Sedlacek, Program Manager, Tumwater, Washington, 360-902-5218; Implementation and Enforcement: David Puente, Jr., Assistant Director, Tumwater, Washington, 360-902-6348.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from the cost-benefit analysis requirement under the Administrative Procedure Act, RCW 34.05.328 (5)(b)(vi) [states] rules that set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

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

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

October 23, 2018
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-18-068, filed 8/31/18, effective 10/1/18)

WAC 296-96-00922 Licensing fees. The following are the department's elevator license fees:

Type of Fee	Period Covered by Fee	Dollar Amount of Fee
Elevator contractor/mechanic application fee (not required for renewal of valid license)	Per application	\$((64.30)) <u>66.80</u>
Elevator contractor/mechanic examination fee	Per application	\$((193.60)) <u>201.30</u> ***
Reciprocity application fee	Per application*	\$((64.30)) <u>66.80</u>
Elevator mechanic license	2 years	\$((129.00)) <u>134.10</u>
Elevator contractor license	2 years	\$((129.00)) <u>134.10</u>
Temporary elevator mechanic license	30 days	\$((32.00)) <u>33.20</u>
Emergency elevator mechanic license	30 days	\$((32.00)) <u>33.20</u>
Elevator mechanic/contractor timely renewal fee	2 years	\$((129.00)) <u>134.10</u>
Elevator mechanic/contractor late renewal fee	2 years	\$((258.30)) <u>268.60</u>
Training provider application/renewal fee	2 years	\$((129.00)) <u>134.10</u>
Continuing education course fee by approved training provider	1 year**	Not applicable
Replacement of any licenses		\$((19.20)) <u>19.90</u>
Refund processing fee		\$((38.50)) <u>40.00</u>

* Reciprocity application is only allowed for applicants who are applying for licensing based upon possession of a valid license that was obtained in state(s) with which the department has a reciprocity.

** This fee is paid directly to the continuing education training course provider approved by the department.

***This fee may be collected by an outside vendor for some exams and may differ from the fee shown above.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01005 Obtaining permits. (1) See WAC 296-96-01000 for the permit process.

(2) Construction and alteration permits are valid for one year from the date of issue. However, permits may be renewed if:

- (a) Application for a renewal permit is submitted before the current permit expires;
 - (b) The department approves the request for a renewal permit; and
 - (c) A renewal fee of \$((~~58.30~~)) 60.60 is paid to the department for each permit renewed;
- (3) If the permit has expired the applicant shall reapply for a new permit.
- (4) See WAC 296-96-01006 for work requiring a permit.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01010 Installation and alteration permit fees. Permit fees are based on the total cost of the conveyance or alteration and the labor to install or alter the conveyance. The following permit fees apply to the construction, alteration, or relocation of all conveyances except personnel and material hoists (see WAC 296-96-01025):

TOTAL COST OF INSTALLATION OR ALTERATION	FEE
\$0 to and including \$1,000	\$((64.30)) <u>66.80</u>
\$1,001 to and including \$5,000	\$((96.50)) <u>100.30</u>
\$5,001 to and including \$7,000	\$((161.20)) <u>167.60</u>
\$7,001 to and including \$10,000	\$((193.60)) <u>201.30</u>
\$10,001 to and including \$15,000	\$((258.30)) <u>268.60</u>
OVER \$15,000 for installation only*	\$((361.60)) 376.00 plus
OVER \$15,000 for alteration only*	\$((258.30)) <u>268.60</u>
*Each additional \$1,000 or fraction thereof	\$((8.90)) <u>9.20</u>

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01025 Permit fees for personnel and material hoists. The fee for each personnel hoist or material hoist installation is ((~~258.30~~)) \$268.60.

See WAC 296-96-01035(2) for requirements for jumps.

Note: An operating certificate is also required for these types of conveyances.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01027 Permit fee refunds. The initial installation permit fees are refundable minus a processing fee if the installation work has not been performed. No refunds will be issued for expired permits. All requests for refunds shall be submitted in writing to the elevator section and shall

identify the specific permits and the reasons for which the refunds are requested.

The processing fee for each refund is ((~~38.50~~)) \$40.00.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01030 Plan approval. Prior to the start of construction and the issuance of a permit, the applicant shall submit to the department for approval plans for new installations or major alterations. To be approved, the plan shall comply with the latest adopted applicable standard and applicable Washington Administrative Code (WAC). In addition, the plans shall include all information necessary to determine whether each installation/alteration complies with all applicable codes. The permit holder shall keep a copy of the approved plan on the job site until the department has witnessed all acceptance tests. Any alterations to the approved plan shall be submitted to the department for approval before a final inspection will be conducted. The nonrefundable fees for reviewing the plans are \$((~~32.00~~)) 33.20 for each installation/major alteration.

Exception: Residential incline chair lifts will not require plan review. Equipment shall be listed and labeled by a product testing laboratory which is accredited by the department and plans supplied by the manufacturer shall be on-site. If the equipment is not listed and labeled as per RCW 19.28.010 it shall be field evaluated or replaced with equipment that is listed and labeled by a product testing laboratory which is accredited by the department.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01035 Inspection fees. The initial inspection of construction, alteration or relocation of a conveyance is included with the permit fee. Once the department has approved the initial installation of the conveyance a temporary 30-day operating certificate will be issued. Prior to the expiration of the 30-day temporary operating certificate the application for an annual operating certificate and the appropriate fees shall be paid to the department. Once the department has received the appropriate fees and application the owner will be issued the first annual operating certificate. The owner or owner's representative will receive an invoice from the department for renewal. The owner is required to renew the annual operating certificate yearly.

The following inspections require an additional inspection fee:

(1) **Reinspection.** If a conveyance does not pass an initial inspection and an additional inspection is required, the fee for each reinspection of a conveyance is \$((~~129.00~~)) 134.10 per conveyance plus \$((~~62.60~~)) 65.10 per hour for each hour in addition to the first hour.

The department may waive reinspection fees.

(2) **Inspecting increases in the height (jumping) of personnel and material hoists.**

The fee for inspecting an increase in the height (jumping) of each personnel hoist or material hoist is \$((~~129.00~~)) 134.10 plus \$((~~64.30~~)) 66.80 per hour for each hour in addi-

tion to 2 hours. This fee is for inspections occurring during regular working hours.

The permit holder may be allowed to operate a hoist prior to the jump inspection if:

(a) The electrical limits will not allow the lift to operate above the previously inspected landing; and

(b) The state elevator inspector is contacted, agrees and can schedule an inspection within 3 days.

(3) Variance inspections.

(a) The fee for an on-site variance inspection is \$((~~193.60~~) 201.30 per conveyance plus \$((~~64.30~~) 66.80 per hour for each hour in addition to 2 hours. This fee is for inspections occurring during regular working hours.

(b) The fee for a variance that does not require an on-site inspection is \$((~~64.30~~) 66.80 per conveyance. The individual requesting the variance shall provide the department with pictures, documentation, or other information necessary for the department to review the variance. The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary. If an on-site variance inspection is performed, the fees in (a) of this subsection will apply.

(4) **"Red tag" status fee.** The annual fee for a conveyance in "Red tag" status is \$((~~32.00~~) 33.20.

Note: The department shall be provided with written approval from the building official, indicating that the conveyance is not required for building occupancy, when applying to have the conveyance placed in voluntary red tag status.

(5) **Decommission inspection.** The fee for performing a decommission inspection is \$((~~64.30~~) 66.80. Once the decommission inspection has been performed and approved, the conveyance will no longer require annual inspections until such time that the conveyance is brought back into service. Prior to operating the conveyance, a new inspection and annual operating permit shall be obtained.

(6) **Voluntary inspections by request.** The owner or potential purchaser of a building within the department's jurisdiction may request a voluntary inspection of a conveyance. The fee for this inspection will be \$((~~129.00~~) 134.10 per conveyance and \$((~~64.30~~) 66.80 per hour for each hour in addition to 2 hours plus the standard per diem and mileage allowance granted to department inspectors. The owner/potential purchaser requesting the voluntary inspection will not be subject to any penalties based on the inspector's findings.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01040 Construction-use inspection fee.

(1) The fee for the inspecting and testing of elevators used for construction is \$((~~103.10~~) 107.20, in addition to any other fees required in this chapter. This fee purchases a 30-day temporary use permit that may be renewed at the department's discretion.

(2) When this temporary use permit is purchased, a notice declaring that the equipment has not received final approval from the department shall be conspicuously posted in the elevator.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01045 Residential elevator inspection and fees. (1) Chapter 70.87 RCW requires the department to inspect all new, altered or relocated conveyances operated exclusively for single-family use in private residences. Prior to installation, a licensed elevator contractor shall complete a permit application as described in WAC 296-96-01005 and pay the appropriate fee listed in WAC 296-96-01010.

(2) Chapter 70.87 RCW allows the department to inspect conveyances operated exclusively for single-family use in private residences when the department is investigating an accident or an alleged or apparent violation of the statute or these rules.

(3) No annual inspection and operating certificate is required for a private residence conveyance operated exclusively for single-family use unless the owner requests it. When an owner requests an inspection and an annual operating certificate, the following fee shall be paid prior to an inspection:

TYPE OF CONVEYANCE	FEE
Each inclined stairway chair lift in private residence	\$((30.00) <u>31.20</u>)
Each inclined wheel chair lift in a private residence	\$((30.00) <u>31.20</u>)
Each vertical wheel chair lift in a private residence	\$((37.80) <u>39.30</u>)
Each dumbwaiter in a private residence	\$((30.00) <u>31.20</u>)
Each inclined elevator at a private residence ..	\$((107.30) <u>111.50</u>)
Each private residence elevator	\$((69.10) <u>71.80</u>)
Duplication of a lost, damaged or stolen operating permit	\$((12.60) <u>13.10</u>)

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01055 Technical services and consultations. A person, firm, corporation, or governmental agency may request elevator field technical services from the department by paying a fee of \$((~~77.30~~) 80.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors. These field technical services may include code evaluation, code consultation, plan examination, code interpretation and clarification of technical data relating to the application of the department's conveyance rules. Field technical services do not include inspections.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01057 Accident investigations. The department shall investigate an injury-related accident reported by the owner or owner's duly authorized agent. The

department may charge at a rate of \$~~((77.30))~~ 80.30 per hour (including travel time) plus the standard per diem and mileage allowance granted to department inspectors.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01060 Inspections after normal business hours. An inspection outside of normal business hours and business days (i.e., Monday through Friday excluding holidays; 7:00 a.m. to 5:00 p.m.) may be requested under the following conditions:

- (1) An inspector is available; and
- (2) The inspection is authorized by the department.
- (3) The minimum fee for an after-hours inspection is \$~~((96.50))~~ 100.30 and \$~~((96.50))~~ 100.30 per hour for each hour in addition to the first hour plus the standard per diem and mileage allowance granted to department inspectors.
- (4) This fee is in addition to any other fees required for the project.

AMENDATORY SECTION (Amending WSR 18-18-070, filed 8/31/18, effective 10/1/18)

WAC 296-96-01065 Annual operating permit fees.

An annual operating certificate will be issued to the building owner upon payment of the appropriate fee. The owner of record shall be invoiced by the department. If a change of ownership has occurred, it is the new owner's responsibility to ensure the department has the corrected information. Below is the fee structure table:

TYPE OF CONVEYANCE	FEE
Each hydraulic elevator	\$ ((129.00)) <u>134.10</u>
Each roped-hydraulic elevator	\$ ((161.20)) <u>167.60</u>
plus for each hoistway opening in excess of two	\$ ((12.60)) <u>13.10</u>
Each cable elevator	\$ ((161.20)) <u>167.60</u>
plus for each hoistway opening in excess of two	\$ ((12.60)) <u>13.10</u>
Each cable elevator traveling more than 25 feet without an opening—for each 25 foot traveled	\$ ((12.60)) <u>13.10</u>
Each limited-use/limited-application (—LULA) elevator	\$ ((129.00)) <u>134.10</u>
Each escalator	\$ ((107.20)) <u>111.40</u>
Each dumbwaiter in other than a private residence	\$ ((69.10)) <u>71.80</u>
Each material lift	\$ ((129.00)) <u>134.10</u>
Each incline elevator in other than a private residence	\$ ((138.70)) <u>144.20</u>

TYPE OF CONVEYANCE	FEE
Each belt manlift	\$ ((129.00)) <u>134.10</u>
Each stair lift in other than a private residence	\$ ((69.10)) <u>71.80</u>
Each wheel chair lift in other than a private residence	\$ ((69.10)) <u>71.80</u>
Each personnel hoist	\$ ((129.00)) <u>134.10</u>
Each grain elevator personnel lift	\$ ((107.20)) <u>111.40</u>
Each material hoist	\$ ((129.00)) <u>134.10</u>
Each special purpose elevator	\$ ((129.00)) <u>134.10</u>
Each private residence elevator installed in other than a private residence	\$ ((129.00)) <u>134.10</u>
Each casket lift	\$ ((107.20)) <u>111.40</u>
Each sidewalk freight elevator	\$ ((107.20)) <u>111.40</u>
Each hand-powered manlift or freight elevator	\$ ((72.60)) <u>75.50</u>
Each boat launching elevator	\$ ((107.20)) <u>111.40</u>
Each auto parking elevator	\$ ((107.20)) <u>111.40</u>
Each moving walk	\$ ((107.20)) <u>111.40</u>
Duplication of a damaged, lost or stolen operating permit	\$ ((12.60)) <u>13.10</u>

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)

WAC 296-150C-3000 Commercial coach fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction: VB	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$
STRUCTURAL PLAN REVIEW FEE*	
8. One year design review: (Valid for one year) multiply the total on line 7 by ((0.35)) <u>0.364</u>	\$
9. Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.50)) <u>0.52</u>	\$
* Minimum plan review fee is 2 1/2 hours x \$((76.00)) <u>79.00</u> per hour	
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)	
10. Fire and life-safety plan review:	
a. One year design—Multiply the total on line 7 by ((0.15)) <u>0.156</u>	\$
b. Master plan design—Multiply the total on line 7 by ((0.25)) <u>0.26</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A and I occupancy	
PLUMBING PLAN-REVIEW FEE	
11. Plumbing ((\$18.00 + \$6.00)) <u>\$18.70 + \$6.20</u> per fixture	\$
12. Medical gas ((\$18.00 + \$6.00)) <u>\$18.70 + \$6.20</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM	
13. ((40)) <u>10.4%</u> of building permit + \$((76.00)) <u>79.00</u>	\$
RESUBMITTAL	
14. ((40)) <u>10.4%</u> of building permit + \$((76.00)) <u>79.00</u>	\$
ELECTRICAL PLAN-REVIEW FEE	
15. See WAC 296-46B-906(9) for electrical review fees	
INSIGNIA FEES	
16. FIRST SECTION	\$ ((22.80)) <u>23.70</u>
17. EACH ADDITIONAL SECTION	\$ ((14.10)) <u>14.60</u>
TOTAL FEES	
18. Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
19. Total fees due: Includes plan fees and insignia fees	\$
20. Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50

Total Valuation	Fee
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	\$((37.60)) <u>39.10</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee \times 1.04*	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee \times 1.04*	
RENEWAL FEE - 10% of permit fee \times 1.04 +	\$((76.00)) <u>79.00</u>
RESUBMIT FEE - 10% of permit fee \times 1.04 +	\$((76.00)) <u>79.00</u>
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee \times 1.04 +	\$((76.00)) <u>79.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.40)) 5.60 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, \$((48.00)) 18.70 + PER FIXTURE FEE of	\$((6.00)) <u>6.20</u>
MEDICAL GAS PLAN FEE, \$((48.00)) 18.70 + PER OUTLET FEE of	\$((6.00)) <u>6.20</u>
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee \times 1.04	
One year design 15% of the permit fee \times 1.04	
ELECTRICAL PLAN REVIEW - Find fee @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN (minimum 3 hours)	\$((76.00)) <u>79.00</u> per hour
INITIAL FEE - ONE YEAR DESIGN (minimum 2 hours)	\$((76.00)) <u>79.00</u> per hour
RENEWAL FEE (minimum 1 hour)	\$((76.00)) <u>79.00</u> per hour
ADDENDUM (minimum 1 hour)	\$((76.00)) <u>79.00</u> per hour
PLANS APPROVED BY PROFESSIONALS - 10% of permit fee \times 1.04 +	\$((76.00)) <u>79.00</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS - 5% of permit fee \times 1.04 +	\$((76.00)) <u>79.00</u>
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time* and mileage***)	\$((76.00)) <u>79.00</u>

TRAVEL (Per hour)	\$((76.00)) <u>79.00</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((76.00)) <u>79.00</u>
TRAVEL (Per hour**)	\$((76.00)) <u>79.00</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
ALTERATION INSPECTION (one hour minimum + alteration insignia fee)	\$((98.80)) <u>102.70</u>
INSIGNIA FEES:	
FIRST SECTION (NEW or ALTERATION)	\$((22.80)) <u>23.70</u>
EACH ADDITIONAL SECTION (NEW or ALTERATION)	\$((14.10)) <u>14.60</u>
REISSUED-LOST/DAMAGED	\$((14.10)) <u>14.60</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$((76.00)) <u>79.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((14.10)) <u>14.60</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum plan review fee is 2 1/2 hours at the field technical service rate	
** Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
*** Per state guidelines	
**** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)

WAC 296-150F-3000 Factory-built housing and commercial structure fees.

GENERAL INFORMATION	
Manufacture:	Manufacturer #
1. Building use:	2. Building occupancy:
3. Type of construction:	4. Square footage of building:
5. Valuation of the building shall be based on the following:	
• Square footage of the building multiplied by the amount in the BVD valuation table	\$
6. Total valuation:	\$
PERMIT FEE	
7. Calculate from building permit fee table using the total valuation	\$

STRUCTURAL PLAN REVIEW FEE*		
8.	One year design review: (Valid for one year) multiply the total on line 7 by ((0.35)) <u>0.364</u>	\$
9.	Master plan review: (Valid for the code cycle) multiply the total on line 7 by ((0.50)) <u>0.52</u>	\$
* Minimum plan review fee is 2 1/2 hours x \$(85.50)) <u>88.90</u> per hour		
FIRE AND LIFE-SAFETY PLAN REVIEW FEE (if required)		
10.	Fire and life-safety plan review:	
a.	One year design—Multiply the total on line 7 by ((0.15)) <u>0.156</u>	\$
b.	Master plan design—Multiply the total on line 7 by ((0.25)) <u>0.26</u>	\$
• Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy		
PLUMBING PLAN-REVIEW FEE		
11.	Plumbing (\$(18.00 + \$6.00)) <u>\$18.70 + \$6.20</u> per fixture	\$
12.	Medical gas (\$(18.00 + \$6.00)) <u>\$18.70 + \$6.20</u> per gas outlet	\$
DESIGN RENEWAL OR ADDENDUM		
13.	((10)) <u>10.4%</u> of building permit + \$(85.50)) <u>88.90</u>	\$
RESUBMITTAL		
14.	((10)) <u>10.4%</u> of building permit + \$(85.50)) <u>88.90</u>	\$
ELECTRICAL PLAN-REVIEW FEE		
15.	See WAC 296-46B-906(9) for electrical review fees	
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)		
16.	Notification to local enforcement agency fee:	\$ ((37.00)) <u>38.40</u>
INSIGNIA FEES		
17.	FIRST SECTION	\$ ((273.40)) <u>284.30</u>
18.	EACH ADDITIONAL SECTION	\$ ((24.60)) <u>25.50</u>
TOTAL FEES		
19.	Total plan review fees: Add lines 8 or 9 and 10 through 15	\$
20.	Total fees due: Includes plan fees, insignia fees, and NLEA fees	\$
21.	Total amount paid	\$

Square Foot Construction Costs (BVD Table)^{a, b, c, and d}

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-1 Assembly, theaters, with stage	211.15	203.98	198.73	190.05	178.25	173.30	183.31	162.97	156.05
A-1 Assembly, theaters, without stage	193.16	185.99	180.74	172.06	160.31	155.36	165.32	145.04	138.12
A-2 Assembly, nightclubs	163.22	158.56	154.17	148.00	138.96	135.24	142.52	126.06	121.36
A-2 Assembly, restaurants, bars, banquet halls	162.22	157.56	152.17	147.00	136.96	134.24	141.52	124.06	120.36
A-3 Assembly, churches	195.10	187.93	182.68	174.00	162.21	157.26	167.26	146.94	140.02
A-3 Assembly, general, community halls, libraries, museums	163.81	156.64	150.39	142.71	129.91	125.96	135.97	114.63	108.71

Group (2009 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
A-4 Assembly, arenas	192.16	184.99	178.74	171.06	158.31	154.36	164.32	143.04	137.12
B Business	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
E Educational	176.97	170.85	165.64	158.05	146.37	138.98	152.61	127.91	123.09
F-1 Factory and industrial, moderate hazard	97.87	93.28	87.66	84.46	75.44	72.26	80.79	62.17	58.48
F-2 Factory and industrial, low hazard	96.87	92.28	87.66	83.46	75.44	71.26	79.79	62.17	57.48
H-1 High hazard, explosives	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	N.P.
H-2, 3, 4 High hazard	91.74	87.15	82.53	78.33	70.49	66.31	74.66	57.22	52.53
H-5 HPM	164.76	158.78	153.49	145.97	132.45	127.63	139.92	116.43	110.93
I-1 Institutional, supervised environment	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
I-2 Institutional, hospitals	277.07	271.09	265.80	258.28	243.90	N.P.	252.23	227.88	N.P.
I-2 Institutional, nursing homes	193.00	187.02	181.74	174.22	160.98	N.P.	168.16	144.96	N.P.
I-3 Institutional, restrained	187.72	181.73	176.45	168.93	156.64	150.82	162.87	140.63	133.13
I-4 Institutional, day care facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
M Mercantile	121.57	116.92	111.53	106.36	96.96	94.25	100.88	84.07	80.36
R-1 Residential, hotels	166.21	160.43	155.99	149.29	137.39	133.80	145.70	123.43	119.10
R-2 Residential, multiple family	139.39	133.61	129.17	122.47	111.23	107.64	119.54	97.27	92.94
R-3 Residential, one and two family	131.18	127.60	124.36	121.27	116.43	113.53	117.42	108.79	101.90
R-4 Residential, care/assisted living facilities	164.82	159.04	154.60	147.90	135.84	132.25	144.15	121.88	117.55
S-1 Storage, moderate hazard	90.74	86.15	80.53	77.33	68.49	65.31	73.66	55.22	51.53
S-2 Storage, low hazard	89.74	85.15	80.53	76.33	68.49	64.31	72.66	55.22	50.53
U Utility, miscellaneous	71.03	67.02	62.71	59.30	52.86	49.43	56.33	41.00	39.06

- a Private garages use utility, miscellaneous
- b Unfinished basements (all use group) = \$15.00 per sq. ft.
- c For shell only buildings deduct 20 percent
- d N.P. = not permitted

Table 1-A - Building Permit Fees

Total Valuation	Fee
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00

Total Valuation	Fee
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.65 for each additional \$1,000.00, or fraction thereof

INITIAL FILING FEE (first time applicants)	\$(66.80) 69.40
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN (code cycle), 50% of permit fee $\times 1.04^*$	
INITIAL FEE - ONE YEAR DESIGN, 35% of permit fee $\times 1.04^*$	
RENEWAL FEE - 10% of permit fee $\times 1.04 +$	\$(85.50) 88.90
RESUBMIT FEE - 10% of permit fee $\times 1.04 +$	\$(85.50) 88.90
ADDENDUM (approval expires on same date as original plan) - 10% of permit fee $\times 1.04 +$	\$(85.50) 88.90
ELECTRONIC PLAN SUBMITTAL FEE \$(5.40) 5.60 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
PLUMBING PLAN FEE, \$(48.00) 18.70 + PER FIXTURE FEE of	\$(6.00) 6.20
MEDICAL GAS PLAN FEE, \$(48.00) 18.70 + PER OUTLET FEE of	\$(6.00) 6.20
Note: Mechanical systems are included in the primary plan fee	
FIRE SAFETY PLAN REVIEW AS REQUIRED (Required for all structures that are more than 4,000 square feet and for all A, I, and H occupancy)	
MASTER DESIGN - 25% of permit fee $\times 1.04$	
One year design - 15% of the permit fee $\times 1.04$	
ELECTRICAL PLAN REVIEW - Find fees @ http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE-MASTER DESIGN (minimum 3 hours)	\$(85.50) 88.90 per hour
INITIAL FEE-ONE YEAR DESIGN (minimum 2 hours)	\$(85.50) 88.90 per hour
RENEWAL FEE (minimum 1 hour)	\$(85.50) 88.90
ADDENDUM (minimum 1 hour)	\$(85.50) 88.90 per hour
PLANS APPROVED BY DESIGN PROFESSIONALS - 10% of permit fee $\times 1.04 +$	\$(85.50) 88.90
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST THREE SETS - 5% of permit fee $\times 1.04 +$	\$(85.50) 88.90
DEPARTMENT INSPECTION FEES	
INSPECTION/REINSPECTION (Per hour** plus travel time** and mileage***)	\$(85.50) 88.90
TRAVEL (Per hour**)	\$(85.50) 88.90
PER DIEM***	
HOTEL ****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	

DEPARTMENT AUDIT FEES:	
AUDIT (Per hour**)	\$((85.50)) <u>88.90</u>
TRAVEL (Per hour**)	\$((85.50)) <u>88.90</u>
PER DIEM***	
HOTEL****	
MILEAGE***	
RENTAL CAR****	
PARKING****	
AIRFARE****	
INSIGNIA FEES:	
FIRST SECTION	\$((273.40)) <u>284.30</u>
EACH ADDITIONAL SECTION	\$((24.60)) <u>25.50</u>
REISSUED-LOST/DAMAGED	\$((66.80)) <u>69.40</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour** plus travel time** and mileage***)	\$((85.50)) <u>88.90</u>
NOTIFICATION TO LOCAL ENFORCEMENT AGENCY (NLEA)	\$((37.00)) <u>38.40</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((13.70)) <u>14.20</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum plan review fee is 2 1/2 hours at the field technical service rate.	
** Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
*** Per state guidelines.	
**** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 17-23-173, filed 11/21/17, effective 1/1/18)

WAC 296-150I-3000 Penalties, fees, and refunds. Penalties

(1) Monetary penalties for infractions listed in WAC 296-150I-0210 shall be assessed for each violation of chapter 43.22A RCW in the following amount:

(a) Failure to have a certified installer on the installation site whenever installation work is being performed:

First Final Violation	\$250.00
Each Additional Final Violation	\$1,000.00

(b) Failure to correct all nonconforming aspects of the installation identified by the local enforcement agency or by an authorized representative of the department within thirty days of issuance of notice of the same:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(c) Failure by a certified installer to affix a certification tag to an installed manufactured/mobile home:

First Final Violation	Warning
Second Final Violation	\$250.00
Third Final Violation	\$500.00
Each Additional Final Violation	\$1,000.00

(d) Transfer of certification tag(s) from a certified installer to another certified installer without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

(e) Transfer of certification tag(s) from a certified installer to a noncertified installer:

First Final Violation to Each Contractor in Violation	\$250.00
Each Additional Final Violation to Each Contractor in Violation	\$1,000.00

(f) Transfer of unused installer certification tags by a manufactured home retailer to a new ownership without prior written approval of the department:

First Final Violation	Warning
Each Additional Final Violation	\$250.00

Retake failed examination and training	\$(39.00) 40.50
Manufactured home installer training manual	\$(13.00) 13.50
Installer certification tag	\$(9.10) 9.40

Fees and Refunds

The following fees are payable to the department in advance:

Training and certification	\$(260.00) 270.40
Training only 10 hours	\$(130.00) 135.20
Manufactured/mobile home installation inspector training	\$(130.00) 135.20
Refund	\$(26.00) 27.00
Certification renewal	\$(130.00) 135.20
Continuing education class	\$(52.00) 54.00

(2) The department shall refund fees paid for training and certification or certification renewal as a manufactured home installer if the application is denied for failure of the applicant to comply with the requirements of chapter 43.22A RCW or these rules.

(3) If an applicant has paid fees to attend training or to take an examination and is unable to attend the scheduled training or examination, the applicant may:

- (a) Change to another scheduled training and examination; or
 - (b) Request a refund.
- (4) An applicant who fails the examination shall not be entitled to a refund.

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)

WAC 296-150M-3000 Manufactured/mobile home fees.

DESIGN PLAN FEES:	
STRUCTURAL ALTERATION	\$(166.20) 172.80
RESUBMITTAL FEE	\$(73.50) 76.40
ADDENDUM (Approval expires on the same date as original plan.)	\$(73.50) 76.40
ELECTRONIC PLAN SUBMITTAL FEE \$(5.20) 5.40 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT INSPECTION FEES:	
Combination permit - Mechanical and electrical inspections	\$(181.60) 188.80
Heat pump	\$(181.60) 188.80
Air conditioning	\$(181.60) 188.80
Air conditioning with replacement furnace	\$(181.60) 188.80
Gas furnace installation includes gas piping	\$(181.60) 188.80
Fire safety inspection	\$(181.60) 188.80
MECHANICAL	\$(80.70) 83.90
Gas*** Piping	\$(80.70) 83.90
Wood Stove	\$(80.70) 83.90
Pellet Stove	\$(80.70) 83.90

Gas*** Room Heater	\$((80.70)) 83.90
Gas*** Decorative Appliance	\$((80.70)) 83.90
Range: Changing from electric to gas***	\$((80.70)) 83.90
Gas*** Water Heater Replacement	\$((60.50)) 62.90
ELECTRICAL	\$((101.00)) 105.00
Electric Water Heater Replacement	\$((101.00)) 105.00
Electric Water Heater replacing Gas*** Water Heater	\$((101.00)) 105.00
Each added or modified 120 volt circuit (maximum charge is two circuits)	\$((101.00)) 105.00
Each added 240 volt circuit (for other than Heat Pumps, Air Conditioners, Furnaces, Water Heaters, Ranges, Hot Tubs or Spas)	\$((101.00)) 105.00
Hot Tub or Spa (power from home electrical panel)	\$((101.00)) 105.00
Replace main electrical panel/permanently installed transfer equipment	\$((101.00)) 105.00
Low voltage fire/intrusion alarm	\$((101.00)) 105.00
Any combination of Furnace, Range and Water Heater changing from electric to gas***	\$((101.00)) 105.00
PLUMBING	
Fire sprinkler system	\$((226.90)) 235.90
Each added fixture	\$((60.50)) 62.90
Replacement of water piping system (this includes two inspections)	\$((202.50)) 210.60
STRUCTURAL	
Inspection as part of a mechanical/fire safety installation (cut truss/floor joist, sheet rocking)	\$((90.60)) 94.20
Reroofs (may require a plan review)	\$((161.90)) 168.30
Changes to home when additions bear loads on home per the design of a professional (also requires a plan review)	\$((161.90)) 168.30
Other structural changes (may require a plan review)	\$((161.90)) 168.30
MISCELLANEOUS	
OTHER REQUIRED INSPECTIONS (Per hour*)	\$((66.30)) 68.90
ALL REINSPECTIONS (Per hour*)	\$((66.30)) 68.90
Refund	\$((20.10)) 20.90
INSIGNIA FEES:	
REISSUED - LOST/DAMAGED	\$((20.10)) 20.90
IPIA	
DEPARTMENT AUDIT FEES	
REGULARLY SCHEDULED IPIA AUDIT:	
First inspection on each section (one time only)	\$((33.30)) 34.60

Second and succeeding inspections of unlabeled sections (Per hour*)	\$((73.50)) <u>76.40</u>
OTHER IPIA FEES:	
Red tag removal during a regularly scheduled IPIA audit (Per hour*separate from other fees)	\$((73.50)) <u>76.40</u>
Red tag removal at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Increased frequency surveillance (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Attendance at manufacturers training classes (Per hour* only)	\$((73.50)) <u>76.40</u>
Subpart "I" investigations (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Alterations to a labeled unit (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
IPIA Issues/Responses (Per hour* Plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Monthly surveillance during a regularly scheduled IPIA audit (Per hour*plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Monthly surveillance at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
Plant certifications, recertifications and addenda updates (Per hour* plus travel time* and mileage** per each inspector)	\$((73.50)) <u>76.40</u>
Response to HBT Audit during a regularly scheduled IPIA audit (Per hour*)	\$((73.50)) <u>76.40</u>
Response to HBT Audit at a time other than a regularly scheduled IPIA audit (Per hour* plus travel time*and mileage**)	\$((73.50)) <u>76.40</u>
Alternative construction (AC) letter inspections at placement site (Per hour* plus travel time*and mileage**)	\$((73.50)) <u>76.40</u>
Replacement of HUD labels (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
State Administrative Agency (SAA) inspection fee (Per hour* plus travel time* and mileage**)	\$((73.50)) <u>76.40</u>
State Administrative Agency (SAA) dispute resolution filing fee	\$((73.50)) <u>76.40</u>
State Administrative Agency (SAA) dispute resolution (Per hour*)	\$((73.50)) <u>76.40</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour plus travel time* and mileage**)	\$((68.20)) <u>70.90</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((13.40)) <u>13.90</u>
VARIANCE INSPECTION FEE	\$((161.80)) <u>168.20</u>
HOMEOWNER REQUESTED INSPECTION	\$((161.80)) <u>168.20</u>
DECERTIFICATION OF A MOBILE/MANUFACTURED HOME	\$((161.80)) <u>168.20</u>
DEMOLITION OF A MOBILE/MANUFACTURED HOME	\$((161.80)) <u>168.20</u>
ENERGY CONSERVATION PERMIT	\$((27.60)) <u>28.70</u>
NOTE: Local jurisdictions may have other fees that apply.	
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Gas means all gases; natural, propane, etc.	

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)**WAC 296-150P-3000 Recreational park trailer fees.**

INITIAL FILING FEE	\$((34.70)) <u>36.00</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE WITHOUT STRUCTURAL REQUIREMENTS	\$((98.20)) <u>102.10</u>
NEW PLAN REVIEW FEE WITH STRUCTURAL REQUIREMENTS	\$((129.90)) <u>135.00</u>
RESUBMITTAL FEE	\$((70.20)) <u>73.00</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((70.20)) <u>73.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.20)) 5.40 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((70.20)) <u>73.00</u>
TRAVEL (per hour)*	\$((70.20)) <u>73.00</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((70.20)) <u>73.00</u>
TRAVEL (per hour)*	\$((70.20)) <u>73.00</u>
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((104.90)) <u>109.00</u>
INSIGNIA FEES:	
STATE CERTIFIED	\$((25.00)) <u>26.00</u>
ALTERATION	\$((34.70)) <u>36.00</u>
REISSUED-LOST/DAMAGED	\$((12.90)) <u>13.40</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((70.20)) <u>73.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year upon request)	\$((13.10)) <u>13.60</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)**WAC 296-150R-3000 Recreational vehicle fees.**

STATE PLAN	
INITIAL FILING FEE	\$((33.70)) 35.00
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE	\$((93.90)) 97.60
RESUBMITTAL FEE	\$((67.80)) 70.50
ADDENDUM (Approval expires on same date as original plan.)	\$((67.80)) 70.50
ELECTRONIC PLAN SUBMITTAL FEE \$((5-10)) 5.30 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((67.90)) 70.60
TRAVEL (per hour)*	\$((67.90)) 70.60
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((67.90)) 70.60
TRAVEL (per hour)*	\$((67.90)) 70.60
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((101.60)) 105.60
INSIGNIA FEES:	
STATE CERTIFIED	\$((25.00)) 26.00
ALTERATION	\$((33.70)) 35.00
REISSUED-LOST/DAMAGED	\$((12.10)) 12.50
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((67.90)) 70.60
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$((12.70)) 13.20
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

SELF CERTIFICATION	
INITIAL FILING FEE	\$((33.70)) <u>35.00</u>
DESIGN PLAN FEES:	
NEW PLAN REVIEW FEE (one time fee)	\$((95.10)) <u>98.90</u>
RESUBMITTAL FEE	\$((67.90)) <u>70.60</u>
ADDENDUM (Approval expires on same date as original plan.)	\$((67.90)) <u>70.60</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.10)) 5.30 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
DEPARTMENT AUDIT FEES:	
AUDIT (per hour)*	\$((67.90)) <u>70.60</u>
TRAVEL (per hour)*	\$((67.90)) <u>70.60</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING	
AIRFARE***	
DEPARTMENT INSPECTION FEES:	
INSPECTION (per hour)*	\$((67.90)) <u>70.60</u>
TRAVEL (per hour)*	\$((67.90)) <u>70.60</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
SELF CERTIFIED	\$((25.00)) <u>26.00</u>
ALTERATION	\$((33.70)) <u>35.00</u>
REISSUED-LOST/DAMAGED	\$((12.10)) <u>12.50</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (per hour* plus travel time* and mileage**)	\$((67.90)) <u>70.60</u>
PUBLICATION PRINTING AND DISTRIBUTION OF RCWs AND WACs (One free copy per year)	\$((12.70)) <u>13.20</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)

WAC 296-150T-3000 Factory-built temporary worker housing fees.

INITIAL FILING FEE	\$((52.70)) 54.80
DESIGN PLAN FEES:	
INITIAL ONE YEAR DESIGN	\$((152.70)) 158.80
RENEWAL FEE	\$((52.70)) 54.80
RESUBMIT FEE	\$((76.00)) 79.00
ADDENDUM (Approval expires on same date as original plan)	\$((76.00)) 79.00
ELECTRONIC PLAN SUBMITTAL FEE \$((5.30)) 5.50 per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
Supplemental submissions of plans (resubmittals, addendums, renewals, code updates, etc.) shall be charged per hour or fraction of an hour*	\$((90.10)) 93.70
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((14.10)) 14.60
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((76.00)) 79.00
TRAVEL (Per hour)*	\$((76.00)) 79.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
DEPARTMENT AUDIT FEES:	
AUDIT (Per hour*)	\$((76.00)) 79.00
TRAVEL (Per hour*)	\$((76.00)) 79.00
PER DIEM**	
HOTEL***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	
INSIGNIA FEES:	
FIRST SECTION	\$((214.20)) 222.70
EACH ADDITIONAL SECTION	\$((20.70)) 21.50
REISSUED-LOST/DAMAGED	\$((52.70)) 54.80
ELECTRICAL COMMERCIAL/INDUSTRIAL	
Electrical Service/feeders 200 Amperage plus Service/feeder	\$((221.90)) 230.70
Additional Feeder	\$((42.04)) 43.70
ELECTRICAL MULTIFAMILY RESIDENTIAL	
Electrical Service/feeders 200 Amperage plus	

Service/feeder	\$((117.60)) <u>122.30</u>
Additional Feeder	\$((29.90)) <u>31.00</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((76.00)) <u>79.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF ((RCW'S AND WAC'S)) RCWs AND WACs (One free per year)	\$((14.10)) <u>14.60</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments	
** Per state guidelines	
*** Actual charges incurred	

AMENDATORY SECTION (Amending WSR 12-06-069, filed 3/6/12, effective 4/30/12)

WAC 296-150V-3000 Conversion vendor units and medical units—Fees.

INITIAL FILING FEE	\$((37.60)) <u>39.10</u>
DESIGN PLAN FEES:	
INITIAL FEE - MASTER DESIGN	\$((260.50)) <u>270.90</u>
INITIAL FEE - ONE YEAR DESIGN	\$((106.50)) <u>110.70</u>
RENEWAL FEE	\$((45.20)) <u>47.00</u>
RESUBMIT FEE	\$((76.00)) <u>79.00</u>
ADDENDUM (Approval expires on same date as original plan)	\$((76.00)) <u>79.00</u>
ELECTRONIC PLAN SUBMITTAL FEE \$((5.30)) <u>5.50</u> per page for the first set of plans and \$1.00 per page for each additional set of plans. These fees are in addition to any applicable design plan fees required under this section.	
ELECTRICAL PLAN REVIEW - For medical units, find fees at http://apps.leg.wa.gov/wac/default.aspx?cite=296-46B-906	
RECIPROCAL PLAN REVIEW:	
INITIAL FEE - MASTER DESIGN	\$((116.10)) <u>120.70</u>
INITIAL FEE - ONE YEAR DESIGN	\$((70.10)) <u>72.90</u>
RENEWAL FEE	\$((70.10)) <u>72.90</u>
ADDENDUM	\$((70.10)) <u>72.90</u>
APPROVAL OF EACH SET OF DESIGN PLANS BEYOND FIRST TWO SETS	\$((14.10)) <u>14.60</u>
DEPARTMENT INSPECTION FEES:	
INSPECTION/REINSPECTION (Per hour* plus travel time* and mileage**)	\$((76.00)) <u>79.00</u>
TRAVEL (Per hour)*	\$((76.00)) <u>79.00</u>
PER DIEM**	
HOTEL ***	
MILEAGE**	
RENTAL CAR***	
PARKING***	
AIRFARE***	

ALTERATION INSPECTION (One hour plus insignia alteration fee)	\$((113.80)) <u>118.30</u>
INSIGNIA FEES:	
FIRST SECTION/ALTERATION	\$((21.90)) <u>22.70</u>
REISSUED-LOST/DAMAGED	\$((14.10)) <u>14.60</u>
EXEMPT	\$((37.60)) <u>39.10</u>
OTHER FEES:	
FIELD TECHNICAL SERVICE (Per hour* plus travel time* and mileage**)	\$((76.00)) <u>79.00</u>
PUBLICATION PRINTING AND DISTRIBUTION OF ((RCW'S AND WAC'S)) RCWs AND WACs (One free copy per year upon request)	\$((14.10)) <u>14.60</u>
REFUND FEE	\$((25.00)) <u>26.00</u>
* Minimum charge of 1 hour; time spent greater than 1 hour is charged in 1/2 hour increments.	
** Per state guidelines.	
*** Actual charges incurred.	

AMENDATORY SECTION (Amending WSR 08-16-091, filed 8/4/08, effective 9/4/08)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

(1) \$((113.40)) 117.90 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registration is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) \$((53.60)) 55.70 for the reinstatement of a certificate of registration.

(3) \$((12.60)) 13.10 for providing a duplicate certificate of registration.

(4) \$((25.60)) 26.60 for each requested certified letter prepared by the department.

(5) \$((162.00)) 168.40 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs \$((13.50)) 14.00.

(6) \$2.00 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be \$((28.10)) 29.20.

(7) \$((50.00)) 52.00 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) \$((25.00)) 26.00 is required to cover the costs for the service of processing refunds.

WSR 18-21-170
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 23, 2018, 10:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-152.

Title of Rule and Other Identifying Information: Chapter 296-900 WAC, Administrative rules: WAC 296-900-140 through 296-900-14020, monetary penalties.

Hearing Location(s): On November 28, 2018, at 1:00 p.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501.

Date of Intended Adoption: December 18, 2018.

Submit Written Comments to: Cynthia Ireland, P.O. Box 44620, Olympia, WA 98504, email cynthia.ireland@lni.wa.gov, fax 360-902-5619, by December 5, 2018.

Assistance for Persons with Disabilities: Contact Cynthia Ireland, phone 360-902-5522, fax 360-902-5619, email cynthia.ireland@lni.wa.gov, by November 14, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under chapter 128, Laws of 2018 (SHB 1953). The rule making under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless required to be higher by the federal Occupational Safety and Health Act (OSHA). The proposed rules set up an annual adjustment system to match OSHA's penalty levels. Below are the proposed amendments:

WAC 296-900-140 Monetary penalties.

- Add a definition for the term "Standard penalty." It reads, "... means any penalty that does not have an otherwise designated minimum amount."

WAC 296-900-14005 Reasons for monetary penalties.

- In the note, change the reference from "MSDS" to "SDS" to be consistent with chapter 296-901 WAC.
- Add the word "standard" in the phrase addressing one hundred dollar civil penalties.
- Add language relating to willful violations to match the recent change to RCW 49.17.180. It reads, "Five thousand dollars per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state."

WAC 296-900-14010 Base penalties.

- Add the word "standard" in the phrase addressing one hundred dollar civil penalties.
- Add language relating to the maximum statutory penalty for a serious violation to match the recent change to RCW 49.17.180. It reads, "The maximum statutory penalty for a serious violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more."
- Add links to the federal OSHA penalties, 29 C.F.R. 1903.15 and RCW 49.17.180.

WAC 296-900-14015 Base penalty adjustments.

- Add the word "standard" in the phrase addressing one hundred dollar civil penalties.
- Add language relating to the minimum penalty for willful violations to match the recent change to RCW 49.17.180. It reads, "The minimum penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state."
- Add language relating to the maximum adjusted base penalty for a violation to match the recent change to RCW 49.17.180. It reads, "The maximum adjusted base penalty for a violation will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more."
- Delete the note relating to repeat, willful, egregious and failure to abate violations.

WAC 296-900-14020 Increases to adjusted base penalties.

- Add language relating to the maximum statutory penalty to match the recent change to RCW 49.17.180. It reads, "The maximum statutory penalty will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more."
- Add language relating to the minimum statutory penalty for willful violations to match the recent change to RCW 49.17.180. It reads, "The minimum statutory penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29

C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state."

Reasons Supporting Proposal: In 2015, congress passed the federal Civil Penalties Inflation Adjustment Act Improvements Act requiring several federal agencies, including OSHA, adjust their maximum and minimum penalties for inflation on an annual basis. OSHA is required to publish the annual penalty adjustments in rule no later than January 15 of each year and the adjustments are effective upon publication of the rules.

States that operate their own occupational safety and health plans are required to adopt maximum penalty levels that are at-least-as-effective-as federal OSHA's. Therefore, it will not require the department to adjust the current formula used to determine actual civil penalty amounts assessed.

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

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 U.S.C. 667, 29 C.F.R. 1902.4 (c)(2)(xi), 29 C.F.R. 1902.37 (b)(12), 29 C.F.R. 1903.15, and RCW 49.17.180.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, 360-902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, 360-902-5090.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt from the cost-benefit analysis requirement under RCW 34.05.328 (5)(b)(iii) because it adopts federal and state law. This rule making is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under chapter 128, Laws of 2018 (SHB 1953). The rule making under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless higher amounts required by OSHA. 29 U.S.C. 667 requires OSHA-approved state plans to have standards and an enforcement program that are at-least-as-effective-as federal OSHA's standards and enforcement program. OSHA-approved state plans must have maximum and minimum penalty levels that are at-least-as-effective-as federal OSHA's under 29 U.S.C. 667, 29 C.F.R. 1902.4 (c)(2)(xi), and 29 C.F.R. 1902.37 (b)(12). State plans are required to increase their penalties in alignment with OSHA's penalty increases under 29 C.F.R. 1903.15 to maintain at-least-as-effective penalty levels.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 29 U.S.C. 667 requires OSHA-approved state plans to have standards and an enforcement program that are at-least-as-effective-as federal OSHA's standards and enforcement program.

OSHA-approved state plans must have maximum and minimum penalty levels that are at-least-as-effective-as federal OSHA's under 29 U.S.C. 667, 29 C.F.R. 1902.4 (c)(2)(xi), and 29 C.F.R. 1902.37 (b)(12). State plans are required to increase their penalties in alignment with OSHA's penalty increases annually adopted under 29.C.F.R. 1903.15 to maintain at-least-as-effective penalty levels. This rule making is a result of the recent amendment to RCW 49.17.180 during the 2018 legislative session under chapter 128, Laws of 2018 (SHB 1953). The rule making under consideration will adopt the recent amendment to RCW 49.17.180 which retains current penalty maximums for all violations and the minimum for willful violations in statute unless required to be higher by the federal OSHA.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The rule making under consideration will adopt the recent amendment to RCW 49.17.180 which retains the current penalty maximums for all violations and the minimum for willful violations in statute unless higher amounts required by OSHA. The proposed rule incorporates by reference OSHA's rule establishing annual penalty amounts in rule (29 C.F.R. 1903.15).

October 23, 2018
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

WAC 296-900-140 Monetary penalties.

Summary:

Employer responsibility:

To pay monetary penalties if assessed.

Contents:

Reasons for monetary penalties

WAC 296-900-14005.

Base penalties

WAC 296-900-14010.

Base penalty adjustments

WAC 296-900-14015.

Increases to adjusted base penalties

WAC 296-900-14020.

Definitions:

• "Base penalty" means that penalty amount calculated for a violation by considering either specific statutory penalty amounts or the gravity of the violation.

• "Division" or "DOSH" means the division of occupational safety and health, Washington state department of labor and industries.

• "Gravity" for purposes of calculating a penalty, means the amount calculated by multiplying a violation's severity rate by its probability rate.

• "Inpatient hospitalization" means formal admission to the inpatient service of a hospital or an equivalent medical facility on an emergent basis for a work-related injury, or illness.

• "Monetary penalties" are fines assessed against an employer for violations of safety and health requirements.

• "Probability" means a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest).

• "Severity" for purposes of calculating a penalty, means the most serious injury, illness, or disease that could be reasonably expected to occur, ranging from 1 (lowest) to 3 (highest), because of a hazardous condition.

• "Standard penalty" means any penalty that does not have an otherwise designated minimum amount.

• "WISHA" means the Washington Industrial Safety and Health Act.

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

WAC 296-900-14005 Reasons for monetary penalties.

• DOSH **may** assess monetary penalties when a citation and notice is issued for any violation of safety and health rules or statutes.

• DOSH **will** assess monetary penalties under the following conditions:

- When a citation and notice is issued for a serious, willful, or egregious violation.

- When civil penalties are specified by statute as described in RCW 49.17.180.

Note: In addition to penalties specified by WISHA, there are penalties specified by other statutes, such as:

• Asbestos construction projects, RCW 49.26.016.

• Right to know (RTK)—((MSDS)) SDS, RCW 49.70.190.

• Right to know—Penalty for late payment, RCW 49.70.177.

• The minimum civil penalties assessed by DOSH are:

- One hundred dollars for any standard penalty.

- Two thousand five hundred dollars per violation for serious violations contributing to a fatality.

- Five thousand dollars per violation for all willful violations unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

- Two hundred fifty dollars per day for asbestos good faith inspection (RCW 49.26.016 and 49.26.013).

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

WAC 296-900-14010 Base penalties.

• DOSH calculates the base penalty for a violation by considering the following:

- Specific amounts that are dictated by statute;

OR

- By assigning a weight to a violation, called "gravity."

Gravity is calculated by multiplying a violation's severity rate by its probability rate. Expressed as a formula:

$$\text{Gravity} = \text{Severity} \times \text{Probability}$$

Note: Most base penalties are calculated by the gravity method.

• Severity and probability are established in the following ways:

Severity:

- Severity rates are based on the most serious injury, illness, or disease that could be reasonably expected to occur because of a hazardous condition.

- Severity rates are expressed in whole numbers and range from 1 (lowest) to 3 (highest).

- Tables 3 and 4 are used to determine the severity rate for a violation.

**Table 3
Severity - Serious Violations**

3	<ul style="list-style-type: none"> • Death • Injuries involving permanent disability • Chronic, irreversible illness
2	<ul style="list-style-type: none"> • Disability of a limited nature • Injuries or reversible illnesses resulting in hospitalization
1	<ul style="list-style-type: none"> • Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery

**Table 4
Severity - General Violations**

General violation
<ul style="list-style-type: none"> • Conditions that could cause injury or illness to an employee but would not result in serious physical harm

Probability:

Definition:

A probability rate is a number that describes the likelihood that an injury, illness, or disease will occur ranging from 1 (lowest) to 3 (highest). See Table 5.

- When determining probability, DOSH considers a variety of factors, depending on the situation, such as:

- Frequency and amount of exposure.
- Number of employees exposed.
- Instances, or number of times, the hazard is identified in the workplace.

- How close an employee is to the hazard, i.e., the proximity of the employee to the hazard.

- Weather and other working conditions.

- Employee skill level and training.

- Employee awareness of the hazard.

- The pace, speed, and nature of the task or work.

- Use of personal protective equipment.

- Other mitigating or contributing circumstances.

**Table 5
Probability**

3	<ul style="list-style-type: none"> • If the factors considered indicate the likelihood of injury or illness would be relatively high.
2	<ul style="list-style-type: none"> • If the factors considered indicate the likelihood of injury or illness would be moderate.
1	<ul style="list-style-type: none"> • If the factors considered indicate an injury or illness could occur, but the likelihood would be relatively low.

- Table 6 is used to determine the dollar amount for each gravity-based penalty, unless otherwise specified by statute.

**Table 6
Gravity-Based Penalty - Serious Violations
Severity x Probability = Gravity**

9 High	\$7,000
6	\$6,000
4	\$4,000
3	\$3,000
2	\$2,000
1 Low	\$1,000

The minimum penalty for a standard serious violation = ((\$100)) one hundred dollars.

(A penalty is required by statute for a serious violation; where adjustments would result in a penalty below the minimum, the minimum will be applied.)

The maximum statutory penalty for a serious violation ((=\$7,000)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more.

Links:

- Occupational Safety and Health Administration—OSHA penalties.

- Occupational Safety and Health Administration 29 C.F.R. 1903.15 Proposed penalties.

- RCW 49.17.180 Violations—Civil penalties.

Table 7
General Violations Penalty

General violation (first time nonstatutory)	\$0
General violation base penalty	\$200

A penalty is not applied to first time general violations. The base penalty is used to calculate the penalty for willful, repeat, or failure to abate general violations.

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

WAC 296-900-14015 Base penalty adjustments.

- Tables 8 through 11 describe the various factors DOSH considers when adjusting a base penalty, and the effect on the fine.

- The minimum adjusted base penalty for any standard violation carrying a penalty is one hundred dollars.

- The minimum adjusted penalty for serious violations contributing to a fatality is two thousand five hundred dollars.

- The minimum penalty for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

- The maximum adjusted base penalty for a violation (~~is seven thousand dollars~~) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more.

- No adjustments are made to minimum penalty amounts specified by statute.

(Note: Repeat, willful, egregious, or failure to abate (failure to correct) penalty adjustments can exceed seven thousand dollars. See Tables 12 through 14 in WAC 296-900-14020 for those penalties.)

Table 8
Employer Inspection History

History Assessment	Penalty Adjustment
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None

History Assessment	Penalty Adjustment
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

- History is based on the prior three years statewide.
- No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9 or any violations contributing to a fatality.

Table 9
Good Faith

Good Faith	Penalty Adjustment
Good	-20%
Average	None
Below Average	+20%

Based on:

- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.

- Efforts to fully communicate safety and health policies.
- Employees are clearly involved in the safety and health programs.

- Management's commitment at all levels is apparent.

- Employer's injury and illness rate.

No reduction is given for violations classified as willful, repeat, or failure to abate.

Table 10
Abatement Quick-Fix Reduction

Immediate correction of hazard provided such corrective action is substantial and not temporary or superficial	-15%
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No reduction is given for:

- Violations classified as willful, repeat, or failure to abate.

- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employees.

- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

Table 11
Size of Workforce

Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

Based on workforce size nationwide.

AMENDATORY SECTION (Amending WSR 15-13-049, filed 6/9/15, effective 9/1/15)

WAC 296-900-14020 Increases to adjusted base penalties.

• Tables 12 through 14 describe circumstances where an increase may be applied by DOSH to an adjusted base penalty.

**Table 12
Repeat Violations**

(increases the adjusted base penalty, after willful assessment)

1 st time x 2
2 nd time x 5
3 rd time x 8
4 th time x 12
5 th time x 15

(*) History is based on the prior three years.

(*) The maximum statutory penalty ((=~~\$70,000~~)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.

Note: For repeat willful violations the repeat adjustment is applied after the willful assessment.

**Table 13
Willful Violations**

Multiply the adjusted based penalty by 10.
• No reduction is given for good faith, history, or abatement quick-fix.

The minimum statutory penalty ((=~~\$5,000~~)) for willful violations is five thousand dollars per violation unless set to a specific higher amount by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 and this state is required to equal the higher penalty amount to qualify as a state plan state.

The maximum statutory penalty ((=~~\$70,000~~)) will be the maximum civil penalty established under the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seventy thousand dollars, whichever is more.

**Table 14
Failure to Abate**

Increases the adjusted base penalty:
Adjusted base penalty is multiplied by the number of calendar days past the correction date, with a minimum of five days.
• No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

The maximum statutory penalty ((~~cannot exceed \$7,000~~)) will be the maximum civil penalty established by the federal Occupational Safety and Health Administration under 29 C.F.R. 1903.15 or seven thousand dollars, whichever is more, per day if violation is not corrected.

**Table 15
Egregious Violation**

<p>If the violation was willful and at least one of the following:</p> <ul style="list-style-type: none"> • The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. • The violation resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities. • The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place. 	<ul style="list-style-type: none"> • The adjusted base penalty may be increased as follows: With a separate penalty issued for each instance, the employer fails to follow a specific requirement.
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**Table 16
Penalty Calculation Method**

All penalty adjustments factors are summed.
• History: Up to a 10% reduction
• Good Faith: Up to a 20% reduction
• Quick-Fix: Up to a 15% reduction
• Size: Up to a 70% reduction

WSR 18-21-171
PROPOSED RULES
SECRETARY OF STATE

[Filed October 23, 2018, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-097.

Title of Rule and Other Identifying Information: Permanent adoption of amendments to WAC 434-208-060 and 434-250-120 relating to electronic return of ballots for non-UOCAVA voters, these amendments changed the ballot return process for nonservice and nonoverseas voters to require return of ballots using the mail or a ballot drop box. Reducing email and fax ballot return to only service and overseas voters.

Hearing Location(s): On December 3, 2018, at 1:00 p.m., at 520 Union Avenue, Olympia, 98504.

Date of Intended Adoption: December 4, 2018.

Submit Written Comments to: Sheryl Moss, P.O. Box 40229, Olympia, WA 98504, email sheryl.moss@sos.wa.gov, fax 360-664-4169, by December 3, 2018.

Assistance for Persons with Disabilities: Contact Sheryl Moss, phone 360-664-4169, fax 360-586-5629, email Sheryl.moss@sos.wa.gov, by November 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing process required submission of many types of computer files, from many unsecured locations, introducing the potential for spear-phishing attacks, viruses, and other cyber-attacks on the election system. The current system required return of the hard copy ballot in order for the vote to be counted, this is not changed.

Reasons Supporting Proposal: The office of the secretary of state has been alerted to evidence of ongoing illegal attempts to gain access to and interfere with electronic systems that Washington elections officials use during an election. None of these attempts were successful, but election security experts have recently advised Washington elections officials to take steps to reduce opportunities for bad actors to attempt to interfere with Washington elections through electronic means. These amendments maintain the ability of service and overseas voters to submit ballots by fax or email as required by federal and state statutes, while eliminating email and fax submission of other ballots in order to limit vulnerability and reduce the risk of election tampering. Accurate and fair elections are central to the general welfare of Washington's citizens.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Mark Neary, assistant secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lori Augino, Olympia, 360-902-4151.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 23, 2018

Mark Neary

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day (~~(- Voted ballots and signed ballot declarations from voters who are neither service nor overseas voters received no later than 8:00 p.m. on election day, as long as hard copies of the ballot and ballot declaration are received no later than the day before certification of the election));~~

(e) Resolutions from cities, towns, and other districts calling for a special election;

(f) Voter registration forms, unless the form is illegible or the signature image is poor quality requiring the county auditor to reject the form;

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to RCW 29A.60.165 and WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

(4) County auditors must use best practices provided by the secretary of state for securely handling documents received by fax and email.

AMENDATORY SECTION (Amending WSR 18-10-003, filed 4/19/18, effective 5/20/18)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature. A valid signature may be the voter's name or a distinctive mark or symbol signed by the voter.

(i) If the voter is unable to sign his or her name, the voter may make a mark or symbol with two witnesses' signatures.

A signature stamp accompanied by two witness signatures is an acceptable mark.

(ii) A power of attorney cannot be used as a signature for a voter;

(b) The signature has been verified pursuant to WAC 434-379-020; and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election. A postmark is any official mark, imprint, or application that verifies when a ballot entered the U.S. postal system. The postmark on the envelope is the official date of mailing. If there are two postmarks, the earlier postmark is the date of mailing. A hand cancellation by an agent of the U.S. Postal Service is a postmark.

If the postmark is illegible or missing, the date of the voter's signature is the date of mailing as per RCW 29A.40-110. If the postmark is illegible or missing and the voter did not include a date with their signature, county auditors may use available U.S. Postal Service tools to verify the date of mailing;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) For service and overseas voters, the ballot is received by fax or email no later than 8:00 p.m. on election day. ((If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.)) Only service and overseas voters can submit ballots by fax or email.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4)((~~(a)~~)) For service and overseas ballots returned by fax or email, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by email, the county auditor must print the email and attachments; the printed email and signed declaration page must be processed and retained like other ballot declarations, and the printed

ballot must be processed and retained like other ballots. The electronic versions of the email, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted service and overseas ballots returned by email may be returned with multiple attachments or ((~~as~~)) in multiple emails.

~~((b)) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.~~

~~(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.~~

~~(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.~~

~~(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.~~

~~((~~e~~)) (a) Service and overseas ballots returned ((electronically)) by fax or email with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.~~

(b) Only service and overseas voters are eligible to return a ballot electronically. For electronic ballots received from voters who are not service or overseas voters the county auditor must:

(i) Contact the voter immediately if a fax or email ballot is received to notify the voter that they must return their ballot by mail or ballot drop box.

(ii) Count only the ballot received by mail or ballot drop box if the voter returns both an electronic ballot and a ballot by mail or ballot drop box.

(iii) Send the electronic ballot to the canvassing board for rejection if the voter did not return a ballot by mail or ballot drop box.

(5) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

WSR 18-21-176

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 23, 2018, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-147.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-408-0025 When can I choose who is in my TANF or SFA assistance unit?

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia,

WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 28, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 27, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 13, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-408-0025 to disregard the relationship between siblings and half-siblings, when the adult applying for a child-only grant has no legal responsibility for the child(ren).

Reasons Supporting Proposal: The proposed amendments are necessary to protect the well-being of children living with a relative/caregiver.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4769.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

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

Explanation of exemptions: Client eligibility.

October 18, 2018
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-017, filed 12/27/04, effective 1/27/05)

WAC 388-408-0025 When can I choose who is in my TANF or SFA assistance unit? If you are a child's parent or other caretaker relative (a relative who cares for the child's basic needs as defined in WAC 388-454-0010), use the table below to find who you may choose to include or exclude in your TANF or SFA AU. If you include a child in your AU, it could cause you to get more or less benefits. If someone is not

allowed in the AU under WAC 388-408-0020, you cannot choose to include them in your TANF or SFA AU.

(1) If you are the parent of the child, you may choose whether or not to include:	(a) Yourself in the AU if the child gets SSI; and (b) The child in the AU if: (i) You already receive TANF or SFA; (ii) You are not married to the child's other parent; and (iii) The child lives with both parents.
(2) If you are not the child's parent, and do not live with the parents of the child, you may choose to:	(a) Include yourself if you are a relative defined in WAC 388-454-0010; (b) Include someone else that cares for the child and is a relative defined in WAC 388-454-0010; or (c) Receive a grant for the child only <u>and:</u> <u>(i) Exclude a full, half, or adoptive sibling if that sibling:</u> <u>(A) Receives income; or</u> <u>(B) Would otherwise cause the household to be ineligible, with the exception of noncompliance sanction.</u>
(3) If you are the child's parent or caretaker relative, you may choose whether or not to include any of the following children:	(a) Brothers or sisters of a child who gets SSI; (b) Stepsisters and stepbrothers of a child; and (c) Other children that are not the child's brother or sister.

WSR 18-21-177
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed October 23, 2018, 1:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-107.

Title of Rule and Other Identifying Information: Chapter 296-14 WAC, Industrial insurance—Pension tables, pension discount rate and mortality tables, amending WAC 296-14-8810.

Hearing Location(s): On November 28, 2018, at 1:30 p.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Auditorium, Tumwater, WA 98501.

Date of Intended Adoption: December 18, 2018.

Submit Written Comments to: Suzy Campbell, P.O. Box 44250, Olympia, WA 98504-4250, email suzanne.campbell@lni.wa.gov, fax 360-902-9101, by 5:00 p.m. on November 29, 2018.

Assistance for Persons with Disabilities: Contact Tara Osuna, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email Tara.Osuna@lni.wa.gov, by November 19, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate (PDR) is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The purpose of this rule making is to lower the PDR using different assumptions for annual investment returns for the reserve funds for self-insured and state fund pension claims, and to align with recent department requested legislation passed in the 2018 session, chapter 282, Laws of 2018, allowing for the department to use different methods of calculating state fund and self-insured liabilities when determining the annuity values of a pension based on the rates of mortality, disability, remarriage, and interest.

This rule making will consider reducing the pension discount rate to 4.5 percent for the state fund and to 6.0 percent for self-insurance.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

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

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

October 23, 2018

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 18-05-081, filed 2/20/18, effective 4/1/18)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;
(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; ~~((and))~~

(iii) A pension discount rate of ~~((6.1))~~ 4.5 percent for state fund pensions;

(iv) A pension discount rate of 6.0 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 18-21-183

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed October 24, 2018, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-172.

Title of Rule and Other Identifying Information: Chapter 16-54 WAC, Animal importation.

Hearing Location(s): On December 7, 2018, at 10:00 a.m., at the Department of Agriculture, Conference Room 238, 21 North First Avenue, Yakima, WA 98902; and on December 10, 2018, at 10:00 a.m., at the Department of Agriculture, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 31, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., December 10, 2018.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services division, operations manager, phone 360-902-1889, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by December 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-54 WAC to align with recently enacted legislation to require a certificate of veterinary inspection for all livestock imported into a category two restricted holding facility.

Reasons Supporting Proposal: Currently, under chapter 16.36 RCW, it is unlawful for anyone to bring an animal into Washington state without first securing a certificate of veterinary inspection verifying that the animal meets Washington state animal health requirements except under two situa-

tions - if the animal is being delivered within twelve hours to a federally inspected slaughter plant or the animal is being delivered to a public livestock market for sale and subsequent delivery within twelve hours to a federally inspected slaughter plant. During the 2018 legislative session, the legislature passed SB 6369 (codified as RCW 16.36.140(1)). This legislation repealed a provision that allowed an exemption from obtaining a certificate of veterinary inspection for animals that are delivered to a feed lot for slaughter. This change was made to align state statute with federal regulations (9 C.F.R. Part 86) that require cattle to be accompanied by a certificate of veterinary inspection when moving interstate. The department is proposing to adopt the change made in RCW 16.36.140(1) and remove the certificate of veterinary inspection exemption.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is necessary because of federal law, 9 C.F.R. Section 86.4.

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

Name of Agency Personnel Responsible for Drafting: Jodi Jones, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1889; Implementation: Dr. Brian Joseph, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1881; and Enforcement: John Price, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1946.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 9 C.F.R. Section 86.4, by not revising this rule to remove the exemption requiring a certificate of veterinary inspection for animals being delivered to a feedlot for slaughter the department is creating confusion to the industry by having rules that are inconsistent with federal regulations.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: This rule proposal adopts into rule changes made to RCW 16.36.140 that repealed an exemption for obtaining a certificate of veterinary inspections for animals delivered directly to a feedlot for slaughter. This revision falls under the exemption in RCW 34.05.310 (4)(c) and (e).

October 24, 2018
Dr. Brian E. Joseph
State Veterinarian

AMENDATORY SECTION (Amending WSR 16-23-108, filed 11/18/16, effective 12/19/16)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 C.F.R. Part 77.7 (January 1, 2014).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories or other USDA, APHIS-approved facility.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from USDA, APHIS executed by a licensed and accredited veterinarian or a veterinarian approved by USDA, APHIS. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 C.F.R. Part 78.41 (January 1, 2014).

"Consigned" means to deliver for custody or sale.

"Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed used to produce milk or other dairy products for human consumption including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, and Milking Shorthorn.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;

- Swine that have been released or born into the wild state;
- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or
- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter facility within twelve hours of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 C.F.R. Part 77.11 (January 1, 2014).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 C.F.R. Part 78.1 (January 1, 2014).

"Official brucellosis vaccinate" means an official adult vaccinate or official calthood vaccinate as defined by Title 9 C.F.R. Part 78.1 (January 1, 2014).

"Official individual identification" means identifying an animal using USDA-approved devices or methods, or an alternative form of identification agreed upon by the sending and receiving states, such as unique breed registry tattoos when accompanied by registration documentation. A group of animals may be identified by registered brands when accompanied by a certificate of inspection from a brand inspection authority recognized by the director when agreed upon by the sending and receiving states.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl.

"Psittacine" means birds belonging to the family *Psittacidae* including, but not limited to, parrots, macaws, and parakeets.

~~("Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.)~~

"Restricted holding facility" means an isolated area approved and licensed by the director under chapter 16-30 WAC, as advised by the state veterinarian.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually intact male bovine less than eighteen months of age, as determined by dentition inspection by an accredited veterinarian or verified by breed registration documents, that is confirmed by a statement and

the signature of the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010.

AMENDATORY SECTION (Amending WSR 16-23-108, filed 11/18/16, effective 12/19/16)

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements. (1) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 C.F.R. (January 1, 2014) for movement or importation from foreign countries.

(2) Certificate of veterinary inspection:

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in this chapter. Certificates of veterinary inspection expire thirty days from the date of issuance.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing and identification requirements under Title 9 C.F.R. Part 86 (January 1, 2014).

(c) Livestock entering Washington state for veterinary care or as part of a veterinary research project where there will be constant veterinary care or supervision for the duration of the time spent in Washington state are exempt from import test requirements and certificate of veterinary inspection requirements. An entry permit is required.

(d) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

(e) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that ~~(are:~~

(i) Consigned to)) will be delivered within twelve hours after entry into Washington state to:

(i) Federally inspected slaughter facilities for immediate slaughter; or

(ii) ((Consigned to)) State-federal approved livestock markets for sale for immediate slaughter only; or

(iii) ((Consigned to)) No more than one approved livestock market where import requirements can be met; or

(iv) ((Consigned to a category 2 restricted holding facility, unless originating from a state or country with less than free status; or

(v)) Cattle moving interstate from contiguous states on grazing permits, as long as testing and vaccination requirements are met, as required by each state veterinarian.

(3) Entry permit: An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis;

- (g) Equine reproductive products from donors that test positive to equine viral arteritis; and
- (h) Wild and exotic animals.
- (4) Entry permits are granted at the discretion of the director and may be obtained from:

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
 Phone: 360-902-1878.

AMENDATORY SECTION (Amending WSR 12-02-067, filed 1/3/12, effective 2/3/12)

WAC 16-54-031 Physical address requirements. (1) Certificate of veterinary inspection, entry permit, movement permit, and temporary grazing permits shall contain the destination physical address for animals entering Washington state except where specifically exempted in this section. For purposes of this section, a physical address is the actual street location of the destination.

(2) All animals must be transported and delivered directly to the physical address noted on the certificate of veterinary inspection, entry permit, movement permit, or temporary grazing permit.

(a) Animals shall not be diverted to any other physical address except for a temporary destination due to a medical emergency where the immediate health of the animal is in jeopardy. If a physical address destination change is necessary for a medical emergency, the notification requirements listed in subsection (3) of this section shall apply.

(b) Notification requirements listed in subsection (3) of this section will apply to category two restricted holding facilities, as defined in chapter 16-30 WAC, when ~~((cattle))~~ livestock are not transported and delivered to the destination physical address as permitted on the original entry permit and noted on the certificate of veterinary inspection. Category two restricted holding facilities may only change the destination physical address as permitted on the original permit and certificate of veterinary inspection if the ~~((cattle))~~ livestock will be transported and delivered to a lot of like status.

(3) Requirements for reporting changes to physical address destinations noted in subsection (2) of this section.

(a) Contact the department within twenty-four hours by phone at 360-902-1878 or by email at ahealth@agr.wa.gov.

(b) Report the official document number and the physical address to where the animal(s) was transported and delivered to.

(4) Failing to provide the required destination physical address or acceptable alternative per subsection (5)(a) of this section or diverting animals from the destination physical address may result in a civil penalty as authorized by RCW 16.36.113 and defined in chapter 16-90 WAC.

(5) Exemptions to destination physical address requirements.

(a) If the destination physical address cannot be determined due to no physical address assigned by the appropriate

county jurisdiction or local emergency services, the following shall apply:

(i) Descriptive driving directions to the physical location of where the animal(s) is being transported and delivered to must be included on the certificate of veterinary inspection, entry permit, movement permit or temporary grazing permit; or

(ii) The global positioning system (GPS) coordinates of the physical location of where the animal(s) is being transported and delivered to must be included on the certificate of veterinary inspection, entry permit, movement permit or temporary grazing permit. GPS coordinates must contain two latitude or three longitude digits to the left of the decimal point and six digits to the right of the decimal point.

(b) Poultry, or other animals, that are permitted under this chapter and chapter 16.30 RCW and are approved by the United States Postal Service's (USPS) list of mailable live animals are exempt from the destination physical address requirement. For a list of mailable live animals, please visit http://pe.usps.com/text/pub52/pub52c5_007.htm.

WSR 18-21-184

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed October 24, 2018, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-171.

Title of Rule and Other Identifying Information: Chapter 16-30 WAC, Restricted feedlots and restricted holding facilities.

Hearing Location(s): On December 7, 2018, at 10:00 a.m., at the Department of Agriculture, Conference Room 238, 21 North First Avenue, Yakima, WA 98902; and on December 10, 2018, at 10:00 a.m., at the Department of Agriculture, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 31, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email WSDARulesComments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., December 10, 2018.

Assistance for Persons with Disabilities: Contact Jodi Jones, animal services division, operations manager, phone 360-902-1889, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov, by December 3, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend the requirements regarding restricted holding facilities in chapter 16-30 WAC by:

- Requiring additional oversight of Category 1 restricted holding facilities.
- Removing the certificate of veterinary inspection exemption for out-of-state cattle entering a Category 2 restricted holding facility.
- Requiring additional oversight of Category 3 restricted holding facilities.

- Increasing notification and reporting requirements.
- Amending the definition of "official individual identification" to mean an official United States Department of Agriculture (USDA) approved individual identification tag.
- Adding a definition of "designated surveillance area."
- Removing the restriction that a Category 2 restricted holding facility has to be a "dry" feed yard "with no provision for grazing."
- Repealing WAC 16-30-025 and 16-30-030 and removing all references to "restricted feed lot."
- Clarifying that Category 2 restricted holding facilities can have both in-state and out-of-state cattle.
- Changing some references of "cattle" to "livestock."

Reasons Supporting Proposal: RCW 16.36.010 mandates the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state. The department accomplishes this by enforcing vaccination, testing, and identification requirements, monitoring the health and movement of animals entering the state, prohibiting the entry of certain species, and minimizing exposure to animal diseases. In some cases the department must even euthanize animals that are infected with an incurable disease.

Currently, under chapter 16.36 RCW, it is unlawful for anyone to bring an animal into Washington state without first securing a certificate of veterinary inspection verifying that the animal meets Washington state animal health requirements except under two situations - if the animal is being delivered within twelve hours to a federally inspected slaughter plant or the animal is being delivered to a public livestock market for sale and subsequent delivery within twelve hours to a federally inspected slaughter plant. During the 2018 legislative session, the legislature passed SB 6369 (codified as RCW 16.36.140(1)). This legislation repealed a provision that allowed an exemption from obtaining a certificate of veterinary inspection for animals that are delivered to a feed lot for slaughter. This change was made to align state statute with federal regulations (9 C.F.R. Part 86) that require cattle to be accompanied by a certificate of veterinary inspection when moving interstate. The department is proposing to adopt the change made in RCW 16.36.140(1) and remove the certificate of veterinary inspection exemption.

Chapter 16.36 RCW allows the department to adopt rules establishing requirements for restricted holding facilities. Restricted holding facilities are isolated areas approved and licensed by the department to either temporarily or permanently contain animals imported into the state that do not meet animal health importation requirements. These holding facilities provide industry with additional flexibility in meeting Washington state animal importation requirements. Use of these facilities is not mandatory and producers always have the option of meeting import requirements prior to entry without endangering the state's disease-free status.

The department is also proposing to add additional oversight on Categories 1 and 3 holding facilities, and to increase the notification and reporting requirements when animals are moved.

RCW 16.36.010 mandates the prevention and suppression of infectious, contagious, communicable, and dangerous diseases affecting animals. Category 1 restricted holding facilities contain animals that are high risk because they have entered the state without meeting animal health entry requirements (testing/vaccination). The establishment of Category 3 restricted holding facilities allows the owners of animals infected with an incurable disease to keep the animal(s) under permanent quarantine instead of being euthanized. Currently, Categories 1 and 3 restricted holding facilities have limited department oversight - a single inspection is conducted when a facility applies for licensure and also as part of the annual license renewal process. The department is proposing to treat both Categories 1 and 3 restricted holding facilities the same as Category 2 facilities by conducting at least two and up to four unannounced onsite audits during each annual licensing period by the state veterinarian in order to ensure compliance with holding facility requirements.

Increasing oversight will aid in protecting Washington animals from high risk animals. Unapproved movement of restricted animals, inadequate sanitation practices, and inadequate biosecurity protocols associated with these facilities poses an unacceptable risk to the animal population of the state.

The proposed amendments to remove the restriction that a Category 2 restricted holding facility has to be a "dry" feed yard "with no provision for grazing," changing some references of "cattle" to "livestock," and clarifying that Category 2 restricted holding facilities can have both in-state and out-of-state livestock reflects currently acceptable practices and allows them more flexibility with what kind of animals can be held.

The proposed amendment to remove all reference of "restricted feedlot" and repeals WAC 16-30-025 and 16-30-030 which simplifies the chapter since these facilities are considered Category 2 restricted holding facilities and have to meet all of the same requirements of Category 2 restricted holding facilities as specified in WAC 16-30-035 through 16-30-040.

The proposed revision to the definition of "official individual identification" enhances animal disease traceability.

The proposed addition of the definition for "designated surveillance area" adds clarity to the rule by defining a term currently used in the rule language.

Statutory Authority for Adoption: RCW 16.36.040.

Statute Being Implemented: Chapter 16.36 RCW.

Rule is necessary because of federal law, 9 C.F.R. Section 86.4.

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

Name of Agency Personnel Responsible for Drafting: Jodi Jones, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1889; Implementation: Dr. Brian Joseph, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1881; and Enforcement: John Price, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1946.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 9 C.F.R. Section 86.4, by not revising this rule to remove the exemption requiring a certificate of veterinary inspection for animals being delivered to a feedlot for slaughter the department is creating confusion to the industry by having rules that are inconsistent with federal regulations.

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

Explanation of exemptions: This rule proposal adopts into rule changes made to RCW 16.36.140 that repealed an exemption for obtaining a certificate of veterinary inspections for animals delivered directly to a feedlot for slaughter. This revision falls under the exemption in RCW 34.05.310 (4)(c) and (e). Modifying the definition for "official individual identification" and adding the definition for "designated surveillance area" fall under the exemption in RCW 34.005.-310 [34.05.310] (4)(d).

Small Business Economic Impact Statement

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

Based on a 2014 economic contribution analysis conducted by Washington State University's School of Economic Sciences, the total economic contribution of the beef industry to Washington state was \$5.691 billion, while a 2013 analysis found that the dairy industry contributed over \$5.2 billion to the state's economy. The impact to these industries of an animal disease outbreak can be astounding. An animal disease outbreak can sicken or kill entire livestock herds, require animals to be quarantined or euthanized and, in some cases, pose a public health risk to humans. They are also expensive to manage and costly to the livestock industry.

A 2003 case of BSE, or bovine spongiform encephalopathy (a.k.a. "mad cow disease"), in our state closed some foreign markets to Washington beef products until only recently, including China. Prior to market access closure, the United States (U.S.) was China's largest supplier of imported beef, providing seventy percent of their total consumption. It is estimated that this one incident of BSE cost the U.S. beef industry more than \$11 billion - mainly due to market closures of U.S. beef imports.

RCW 16.36.010 directs the department to "supervise the prevention of the spread and the suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through, and imported into the state." The department accomplishes this by enforcing vaccination, testing, and identification requirements. And, also by monitoring the health and movement of animals entering the state, prohibiting the entry of certain species, and minimizing exposure to animal diseases.

Currently, under chapter 16.36 RCW, it is unlawful for anyone to bring an animal into Washington state without first securing a certificate of veterinary inspection verifying that the animal meets Washington state animal health requirements except under two situations - if the animal is being delivered within twelve hours to a federally inspected slaughter plant or the animal is being delivered to a public livestock market for sale and subsequent delivery within twelve hours to a federally inspected slaughter plant. During the 2018 legislative session, the legislature passed SB 6369 (codified as RCW 16.36.140(1)). This legislation repealed a provision that allowed an exemption from obtaining a certificate of veterinary inspection for animals that are delivered to a feed lot for slaughter. This change was made to align state statute with federal regulations (9 C.F.R. Part 86) that require cattle to be accompanied by a certificate of veterinary inspection when moving interstate.

Chapter 16.36 RCW allows the department to adopt rules establishing requirements for restricted holding facilities. Restricted holding facilities are isolated areas approved and licensed by the department to either temporarily or permanently contain animals imported into the state that do not meet animal health importation requirements. These holding facilities provide industry with additional flexibility in meeting Washington state animal importation requirements. Use of these facilities is not mandatory and producers always have the option of meeting import requirements prior to entry without endangering the state's disease-free status. Although, a certificate of veterinary inspection is still required prior to entry. RCW 16.36.023 directs the department to establish fees for the establishment, inspection, and monitoring of these holding facilities that cover the cost of providing service.

In 2010, the department established in rule three categories of restricted holding facilities. These categories include:

Category 1 restricted holding facilities are where imported animals are held in quarantine until they meet animal health import requirements.

Category 2 restricted holding facilities are where imported cattle that are destined for slaughter are confined for feeding. Cattle in a Category 2 restricted holding facility must remain in slaughter channels and move only to a feder-

ally inspected slaughter plant or other restricted facilities of like status.

Category 3 restricted holding facilities are where animals are held under permanent quarantine.

The department is proposing to amend requirements regarding restricted holding facilities by:

Requiring additional oversight of Category 1 restricted holding facilities.

Removing the certificate of veterinary inspection exemption for out-of-state cattle entering a Category 2 restricted holding facility.

Requiring additional oversight of Category 3 restricted holding facilities.

Increasing notification and reporting requirements.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Number of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = 0.3% of Average Annual Revenue
112112	Cattle feedlots	22	\$7,041.94	Data not available
112111	Cattle ranching and farming	247	\$681.52	Data not available

* Data source: 2015 Quarterly Census of Employment and Wages (Bureau of Labor Statistics)

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

- Requiring additional oversight of Category 1 restricted holding facilities - *Compliance costs include increased fees charged by the department for additional audits (see Section 4 for additional detail). No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment.*
- Removing the certificate of veterinary inspection exemption for out-of-state cattle entering a Category 2 restricted holding facility - *Brings the rule into alignment with recently adopted state statute (chapter 281, Laws of 2018) (codified as RCW 16.36.140(1)) and federal regulations (9 C.F.R. Part 86). Consideration of the economic impact of adopting existing state and federal regulations is specifically exempted under RCW 19.85.025(3)/34.05.310 (4)(c).*
- Requiring additional oversight of Category 3 restricted holding facilities - *Compliance costs include increased fees charged by the department for additional audits (see Section 4 for additional detail). No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment. No current facilities affected by this change. Most likely only private citizens, not businesses.*
- Increasing notification and reporting requirements - *These notifications can be submitted to the department simply by mailing or emailing the required testing/vacci-*

Amending the definition of "official individual identification" to mean an official USDA approved individual identification tag.

Removing the restriction that a Category 2 restricted holding facility has to be a "dry" feed yard "with no provision for grazing."

Removing all references to "restricted feed lot."

Clarifying that Category 2 restricted holding facilities can have both in-state and out-of-state cattle.

Changing some references of "cattle" to "livestock."

Probable compliance costs include payment of fees to cover additional department oversight of Categories 1 and 3 restricted holding facilities and additional time of facility personnel to meet increased reporting and notification requirements.

nation records of the animal(s) being moved. The department anticipates the additional notification requirements will require approximately fifteen minutes/month (three hours per year) for affected businesses to comply with. RCW 19.85.020(2) defines "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. Since the additional notification requirement will take on average an additional three hours per year for industry, the department anticipates the cost will be less than one hundred dollars (3 x \$30/hour). Therefore, the costs for additional notification will be less than minor. No additional equipment, supplies, labor, or professional services; no anticipated loss of sales or revenue are associated with this amendment.

- Amending the definition of "official individual identification" to mean an official USDA approved individual identification tag - *The current definition implies that registered brands or tattoos are an acceptable form of individual identification if the department recognizes the brand inspection authority of another entity. Official USDA tags are currently the only form of individual identification accepted as "official." The department does not anticipate additional costs to be imposed on any restricted holding facility because the official individual identification tags are supplied free of charge by both the department and USDA and cattle imported directly from Canada already have individual identification. Depending on the class and age of an animal, this is already a federal requirement for the animal to cross a state line. No additional equipment, supplies, labor, professional services or administrative costs; no anticipated*

loss of sales or revenue are associated with this amendment.

- Removing the restriction that a Category 2 restricted holding facility has to be a "dry" feed yard "with no provision for grazing" - *The department has not found that there is any need to limit Category 2 restricted holding facilities to just dry feed yards with no areas for grazing. The licensee would still be required to segregate the animals, but there are no inherent risks with allowing restricted animals to graze on pasture. This gives the facility the ability to lower their feed costs by allowing the animals to graze naturally rather than providing one hundred percent of their nutrition from commercially purchased feed. No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment.*
- Removing all references to "restricted feed lot" - *WAC 16-30-025 currently defines a "restricted feedlot" as "a designated area that is isolated from all other nonrestricted areas within a feedlot." It also states, "A restricted feedlot is a Category 2 restricted holding facility and subject to all the requirements pertaining to Category 2 restricted holding facilities ..." The terms "restricted feedlot" and "Category 2 restricted holding facility" are used interchangeably. The program no longer uses the term "restricted feedlot" on its forms or licenses. The department is proposing to simplify the chapter by repealing WAC 16-30-025 Restricted feedlots and 16-30-030 Conditions of permit to operate a restricted feedlot, since these facilities are required to meet the requirements for Category 2 restricted holding facilities that are specified in WAC 16-30-035 through 16-30-040. All other references to "restricted feedlot" were also removed. Removing the term "restricted feedlot" mirrors current practice, eliminates the redundancy of having the same requirements listed for both "restricted feedlots" and "Category 2 restricted holding facilities" and simplifies the rule language. No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment.*
- Clarifying that Category 2 restricted holding facilities can have both in-state and out-of-state cattle - *The proposed amendment clarifies that Category 2 restricted holding facilities can contain both in-state and imported livestock. Since this is already an acceptable practice by industry, the only impact is to amend the rule to align with current industry practice. No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment.*
- Changing some references of "cattle" to "livestock" - *Currently, the rule only allows cattle (beef/dairy) to be contained at a Category 2 restricted holding facility. Categories 1 and 3 facilities are allowed by rule to contain "animals." The department is anticipating the need for additional types of livestock such as sheep, goats, pigs, etc. to be held in Category 2 restricted holding facilities and is therefore proposing to amend "cattle" to*

"livestock" in order to allow this. No additional equipment, supplies, labor, professional services or administrative costs; no anticipated loss of sales or revenue are associated with this amendment.

Probable compliance costs include payment of fees to cover additional department oversight of Categories 1 and 3 restricted holding facilities and additional time of facility personnel to meet increased reporting and notification requirements.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.

Although, Section 2 identifies two types of businesses and associated minor cost thresholds, these figures do not accurately reflect the businesses impacted by these rule changes. Restricted holding facilities are not considered either a "cattle feedlot" or "cattle ranching and farming." There is not an NAICS code specifically designated for this type of business. Instead of using either the \$7,041.94 or \$681.52 minor cost thresholds identified in Section 2, the department is using a minor cost threshold of \$100 as allowed under RCW 19.85.020(2). Based on this decision, the department anticipates that fees associated with additional oversight of Categories 1 and 3 restricted holding facilities will impose more-than-minor costs. All other components of the proposed rule change either have a positive impact on industry or will not impose more-than-minor costs on the regulated industry.

Category 1 Restricted Holding Facility Increased Oversight: RCW 16.36.010 mandates the prevention and suppression of infectious, contagious, communicable, and dangerous diseases affecting animals. Category 1 restricted holding facilities contain animals that are high risk because they have entered the state without meeting animal health entry requirements (testing/vaccination). Currently, Category 1 restricted holding facilities have limited department oversight - a single inspection is conducted when a facility applies for licensure and also as part of the annual license renewal process. The department is proposing to treat Category 1 restricted holding facilities the same as Category 2 facilities by conducting at least two and up to four unannounced onsite audits during each annual licensing period by the state veterinarian in order to ensure compliance with restricted holding facility requirements. Lack of containment of these animals until they meet health requirements poses an unacceptable risk to the animal industries of the state.

Increasing audits of Category 1 restricted holding facilities will help decrease the risk of a disease outbreak. The cost of containment of a disease outbreak is staggering and takes years for the industry to recover from. The department wants to ensure facilities are following applicable requirements before a problem occurs. Increasing oversight will aid with protecting Washington's healthy animal population.

RCW 16.36.025 mandates that "fees shall, as closely as practicable, cover the cost of the service provided." WAC 16-30-038 (3)(f) currently specifies that the state veterinarian will conduct at least two and up to four random, unannounced audits during each licensing period of a Category 2 restricted holding facility. The rates for the audit are specified in WAC 16-91-040.

Seven businesses are currently designated as both Categories 1 and 2 restricted holding facilities. This means that the business has an area that is designated as Category 1 and another area that is designated as Category 2. Since the department is already providing additional oversight because the business is designated as a Category 2 restricted holding facility, the department is able to audit the Category 1 facility during the same inspection trip which will minimize costs to the business. The department charges time (\$85.00 per hour) and mileage at the office of financial management (OFM) allowed rate for inspections. The department anticipates that it will take an additional thirty minutes to conduct each onsite audit of the Category 1 side of the facility. At \$85.00 per hour, this equates to \$42.50 per audit. There will be no additional travel and mileage costs. If the department conducts

four additional audits, then the cost of these additional audits would be an extra \$170.00 per year.

There are currently four businesses that are solely licensed as a Category 1 restricted holding facility. These businesses would incur additional time and mileage charges in order for the department to conduct the onsite audits. Each onsite audit is anticipated to take about thirty minutes. The department hopes to mitigate the charge for travel by combining the audit with other inspections taking place in the vicinity so that the charge for travel would be split between each of the entities visited during the trip. However, if the department is not able to do this, the following table outlines the anticipated charges for each of the four affected businesses:

Costs for Additional Oversight of Category 1 Restricted Holding Facilities							
Restricted Holding Facility	Business Location	Distance from Nearest State Veterinarian (miles)	Mileage Charge	Travel Time (hours)*	Audit Time (hours)	Total Hourly Charge	Total Charge for 4 Audits
1	Chewelah	300	\$163.50	6.00	0.5	\$552.50	\$2,864.00
2	Sunnyside	140	\$ 76.30	2.00	0.5	\$212.50	\$1,155.20
3	Othello	140	\$ 76.30	3.00	0.5	\$297.50	\$1,495.20
4	Quincy	106	\$ 57.77	1.75	0.5	\$191.25	\$ 996.08

* Travel time was determined using GPS navigation that accounts for varying speed limits on different roads.

Category 3 Restricted Holding Facility Increased Oversight: RCW 16.36.010 mandates the prevention and suppression of infectious, contagious, communicable, and dangerous diseases affecting animals. One way this is accomplished, is by euthanizing animals infected with an incurable disease. The establishment of a Category 3 restricted holding facility allows the owners of these infected animal(s) to keep the animal(s) under permanent quarantine rather than euthanize them. As the rule is currently written, Category 3 restricted holding facilities have limited department oversight - a single inspection is conducted when a facility is initially licensed and also as part of the annual license renewal process. This is problematic as these animals are considered high risk to other noninfected animals and the likelihood that they could cause a deadly disease outbreak is high. The department is proposing to treat Category 3 restricted holding facilities the same as Category 2 facilities by conducting at least two and up to four unannounced onsite audits during each annual licensing period by the state veterinarian in order to ensure compliance with restricted holding facility requirements and to ultimately ensure continued disease containment. Lack of containment of these diseased animals poses an unacceptable risk to the animal population of the state.

The department wants to ensure facilities are following applicable requirements before a problem occurs. Increasing oversight will aid with protecting Washington animals from high risk animals. Unapproved movement of quarantined animals, inadequate sanitation practices, and inadequate biosecurity protocols associated with these facilities poses an unacceptable risk to the animal population of the state.

RCW 16.36.025 mandates that "fees shall, as closely as practicable, cover the cost of the service provided." The rates

for the audit are specified in WAC 16-91-040. The cost of the oversight is charged at \$85.00 per hour plus mileage at the OFM allowed rate for inspection. The hourly charge also applies to travel time to and from the facility.

There are currently no licensed Category 3 restricted holding facilities in the state and haven't been for a number of years, therefore, there are no businesses currently impacted by this rule change or available to conduct an economic impact analysis on. Only one Category 3 restricted holding facility license has been issued since this rule was established. The department doesn't anticipate this category being utilized by a business as there would not be adequate revenue opportunities. A business would not normally want to incur the expense or risk of maintaining a quarantined animal for an extended period of time. The only Category 3 restricted holding facility license was issued to a private citizen that had illegally imported horses from another country that did not meet import requirements. All the imported horses tested positive to piroplasmiasis - a highly contagious disease transmitted by ticks which become infected when they ingest parasites in the blood of infected equine. In this case, the owner had a choice of euthanizing the animals or the animals being contained under permanent quarantine. The private owner chose to permanently quarantine the animals and obtained a Category 3 restricted holding facility license. Since the horses are now deceased and the private owner is no longer licensed as a Category 3 restricted holding facility, there are no Category 3 restricted holding facilities licensed by the department.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the

largest businesses required to comply with the proposed rule.

All four of the Category 1 restricted holding facilities identified in Section 4 are considered a small business under RCW 19.85.020(3) because they employ fifty or fewer employees. Therefore, the proposed additional oversight of Category 1 restricted holding facilities will have a disproportionate impact on small businesses within the Category 1 restricted holding facility industry. There are seven facilities that are licensed as both Categories 1 and 2 restricted holding facilities. Of these seven facilities, five are considered small businesses and two are considered large businesses. Since all seven of the businesses are required to comply with the same requirements, regardless of size, the additional oversight will have a disproportionate impact on the five small combination Categories 1 and 2 restricted holding facilities.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

The department intends to mitigate, when possible, the impact on Category 1 restricted holding facilities by combining the audits with other activities taking place nearby so that the charge for travel would be split between each of the businesses visited during the trip. The department intends to mitigate the impact on the combination Categories 1 and 2 restricted holding facilities by combining the audit of the Category 2 side of the business with the audit of the Category 1 side of the business.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements* - RCW 16.36.010 mandates the prevention and suppression of infectious, contagious, communicable, and dangerous diseases affecting animals within, in transit through and imported into the state. Reducing, modifying, or eliminating the proposed regulatory requirements would increase the risk of a disease outbreak within the healthy animal populations of the state. The department is proposing additional regulatory oversight in order to decrease the likelihood of a disease outbreak. The health of Washington state livestock is a reflection of the health of livestock nationwide. Any disease outbreak in Washington could affect foreign market access for the industry throughout the country, as we saw with the BSE outbreak in 2003. These facilities are designed to contain a potentially infected or exposed animal and prevent a widespread disease outbreak that would debilitate the industry resulting in severe economic consequences to Washington state and the U.S. In essence, a Category 1 restricted holding facility is already a mitigation measure. The purpose of a Category 1 restricted holding facility is to provide a temporary alternative when animal importation requirements are not met. Businesses have the responsibility of meeting animal importation requirements prior to entry. Since the department is imposing additional reporting, notification, and oversight requirements in order to more effectively protect the state's livestock industry, there is not an

option to reduce, modify, or eliminate substantive regulatory requirements.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements* - The proposed amendments to the reporting requirements only state that the restricted holding facilities need to notify the state veterinarian when the animals being held meet requirements to be moved. The department has simplified this notification requirement as much as possible by allowing the notification to be submitted via mail or email. The businesses do not have to wait for additional acknowledgement or approval from the department before moving the animal(s). Since the department is imposing additional reporting and notification requirements in order to more effectively protect the state's livestock industry, there is not an option to simply reduce, or eliminate recordkeeping or reporting requirements.

(c) *Reducing the frequency of inspections* - Currently, the department normally only performs two random audits of Category 2 restricted holding facilities. We anticipate that we will also perform only two audits of Categories 1 and 3 facilities. Performing additional audits will depend on the number and type of animals in the facility and any issues identified in prior audits. These audits, when possible, will be combined with other nearby activities performed by veterinary staff in order to reduce costs to these facilities. Since the department is imposing additional inspections (audits) in order to more effectively protect the state's livestock industry, there is not an option to reduce the frequency of inspections.

(d) *Delaying compliance timetables* - This is not an option due to the sensitivity of animal disease outbreak potential with these high-risk facilities.

(e) *Reducing or modifying fine schedules for noncompliance* - Chapter 16-90 WAC sets the penalty amount for violations of animal health laws and rules. The level of civil penalty is determined by the number of prior civil penalties the person has received in the past ten years excluding notices of correction. The rule allows the department to consider mitigating circumstances when determining the monetary amount of any penalty issued for noncompliance. The department also follows the Administrative Procedure Act (RCW 34.05.110 Violations of state law or agency rule by small businesses) when determining compliance actions against small businesses. For violations that do not pose a significant risk for the spread of animal disease, the department will issue a notice of correction for first time violations and allow the business time to come into compliance. The department hopes with the increased audits, that issues identified can be corrected early with technical assistance prior to pursuing the adjudicative or civil process.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

The department has discussed these changes and provided draft language to the Washington Cattle Feeders Association, who represents both small and large businesses. Rule notification has been sent to the Washington Farm Bureau, Washington Cattlemen's Association, Cattle Producers of Washington, Washington State Dairy Federation, and Washington State Veterinary Medical Association, all of whom represent both small and large businesses. An article was submitted for publication in the October edition of Ketch Pen (a

publication of the Washington Cattlemen's Association) and Trail Dust (a publication of the Cattle Producers of Washington), and sent to the department's animal services listserv.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The department does not anticipate there will be any jobs created or lost as a result of the proposed amendments.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Jodi Jones, 1111 Washington Street S.E., Olympia, WA 98504-2577, phone 360-902-1889, fax 360-902-2087, TTY 800-833-6388, email jjones@agr.wa.gov.

October 24, 2018
Dr. Brian E. Joseph
State Veterinarian

Chapter 16-30 WAC

~~((RESTRICTED FEEDLOTS AND))~~ RESTRICTED HOLDING FACILITIES

AMENDATORY SECTION (Amending WSR 10-20-091, filed 9/30/10, effective 10/31/10)

WAC 16-30-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Department" means the Washington state department of agriculture (WSDA).

"Designated surveillance area" means a disease surveillance area in the Greater Yellowstone Area within the states of Idaho, Montana, and Wyoming where brucellosis positive elk are known or suspected to exist. In these areas, commingling of elk and livestock, and livestock exposure to tissue containing *Brucella*, is possible.

"Director" means the director of the department of agriculture or the director's authorized representative.

"Official individual identification" means ~~((identifying an animal or group of animals using devices or methods including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of brand inspection from a brand inspection authority who is recognized by the director))~~ official United States Department of Agriculture (USDA) approved individual identification tag.

Note: Official USDA ear tags are imprinted with an individual identification number, bears the official U.S. shield, and are tamper proof.

"Restricted animals" means animals being held in a restricted holding facility ~~((or a restricted feedlot)).~~

AMENDATORY SECTION (Amending WSR 10-20-091, filed 9/30/10, effective 10/31/10)

WAC 16-30-035 Types of restricted holding facilities.

(1) Restricted holding facilities are isolated areas approved and licensed by the director, as advised by the state veterinarian. Fees associated with restricted holding facilities are referenced under chapter 16-91 WAC.

(2) There are three categories of restricted holding facilities.

(a) A category 1 restricted holding facility is a facility where imported animals are held in quarantine until they meet animal health import requirements prior to movement.

(b) A category 2 restricted holding facility is a ~~((dry feed yard with no provision for grazing where cattle that have been imported into the state and are))~~ feed yard where livestock are fed and destined for slaughter only. Livestock are confined for feeding((-Cattle)) as designated by a diagram of the restricted holding facility per WAC 16-30-039 (2)(c). Livestock in a category 2 restricted holding facility must remain in slaughter channels and move only to a federally inspected slaughter plant or other restricted facilities of like status.

(c) A category 3 restricted holding facility is a holding facility for permanently quarantined animals.

AMENDATORY SECTION (Amending WSR 10-20-091, filed 9/30/10, effective 10/31/10)

WAC 16-30-038 Conditions ~~((of permit))~~ to operate restricted holding facilities. (1) The following requirements are applicable to all categories of restricted holding facilities:

(a) The restricted holding facility area shall house restricted animals separate and apart from all other nonrestricted animals. There may be no contact between animals not also similarly restricted and no commingling between separate shipments of animals.

(b) The restricted holding facility will be maintained in a sanitary condition to mitigate disease risk.

(c) The ~~((department of agriculture))~~ state veterinarian will be notified immediately of any outbreak of any infectious or contagious disease or of any significant morbidity/mortality event.

(d) Milk from restricted animals may not be used for human consumption.

(e) Restricted holding facilities must be clearly identified as such by signs permanently affixed at all corners stating "restricted holding facility" in letters a minimum of six inches in height.

(f) The disposition of dead animals will be in accordance with the laws relating to the disposal of dead livestock and in accordance with chapter 16-25 WAC.

(g) Accurate records will be kept for six years to account for all animals entering and leaving the restricted holding facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's or state veterinarian's request.

(h) The state veterinarian has the authority to enter the restricted holding facility at any reasonable time to conduct tests, examinations, and inspections.

(2) **Additional requirements for a category ~~((1))~~ one restricted holding facility.** In addition to the requirements of subsection (1) of this section for all types of restricted holding facilities, the operator of a category ~~((1))~~ one restricted holding facility must abide by the following conditions:

(a) All animals entering a category ((+) one) restricted holding facility must have official individual identification listed on the certificate of veterinary inspection.

(b) No animals may be removed from the category ((+) one) restricted holding facility until they meet state and federal import regulations.

(c) The state veterinarian must be notified when animals in a category one restricted holding facility have met state and federal import regulations by submitting animal testing and vaccination records prior to movement of the animal.

(d) Animals may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent to a federally inspected slaughter (~~(establishment)~~) plant and have not commingled with any other animals not also similarly restricted. Category one restricted holding facilities must report to the state veterinarian the official individual identification of any animals that move out of the facility to a federally inspected slaughter plant or to a category two restricted holding facility prior to movement of the animals. Animals that have commingled with others not also similarly restricted will be quarantined and must be tested negative for disease as determined by the state veterinarian within thirty days before being released from the holding facility.

(e) Notifications of animal movement shall be submitted to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington St. S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: ahealth@agr.wa.gov

(f) The state veterinarian will conduct at least two and up to four random, unannounced audits during each licensing period. The rate for audits is established in WAC 16-91-040. The audits will consist of a physical inspection.

(g) Subsection (2)(f) of this section shall not limit the number of inspections necessary to investigate potential violations or limit the number of inspections to ensure compliance after a violation is found.

(3) Additional requirements for a category ((2)) two restricted holding facility. In addition to the requirements of subsection (1) of this section for all types of restricted holding facilities, the operator of a category ((2)) two restricted holding facility must abide by the following conditions:

(a) All livestock that enter Washington state destined to a category two restricted holding facility must enter with a certificate of veterinary inspection that includes the entry permit number.

(b) Cattle imported from Canada are required to have individual official identification and must be confined to the initial category two restricted holding facility until moved to a federally inspected slaughter plant.

(c) Category two restricted holding facilities may purchase and import cattle from a designated surveillance area if the cattle do not originate from a herd known to be exposed to brucellosis. Female cattle entering a category two restricted holding facility from a designated surveillance area must be:

(i) Officially brucellosis vaccinated; or

(ii) Brucellosis tested negative within thirty days prior to movement.

(d) All livestock in a category two restricted holding facility must remain in slaughter channels.

(e) There may be no contact between (~~(cattle)~~) livestock not also similarly restricted.

~~((b) Cattle)~~ (f) Livestock may be removed from the restricted holding facility without meeting state and federal import regulations if they are sent immediately to a federally inspected slaughter plant(~~(-~~

~~(-))~~ or moved to a facility of like status. Category two restricted holding facilities that move livestock to a facility of like status must report to the state veterinarian the number of livestock being moved, the official individual identification if applicable, the date the livestock will be moved, and the physical address of where the livestock will be moving to, prior to movement of the livestock.

(g) Notifications of animal movement shall be submitted to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington St. S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: ahealth@agr.wa.gov

(h) There must be a minimum of thirty feet between the restricted holding facility and other lots and facilities.

~~((+))~~ (i) No common fences and gates may be used.

~~((e) Cattle)~~ (j) Livestock in the restricted holding facility must not share water or feeding facilities accessible to other areas.

~~((+))~~ (k) The state veterinarian will conduct at least two and up to four random, unannounced audits during each licensing period. The audits will consist of a physical inspection. The licensee is also required to periodically confirm with the department (~~(cattle)~~) livestock shipments identified on state (~~(import)~~) entry permits and certificate of veterinary inspections as destined to the restricted holding facility by telephone or email. The rate for audits is established in WAC 16-91-040, but the total amount charged per licensed restricted holding facility shall not exceed one thousand five hundred dollars in a calendar year.

~~((g) (f) of this subsection)~~ (l) Subsection (3)(k) of this section shall not limit the number of inspections necessary to investigate potential violations or limit the number of inspections or total amount charged to ensure compliance after a violation is found. Category ((2)) two restricted holding facilities that have been found to be in violation of animal health or import regulations may be charged for audits and inspections in excess of the one thousand five hundred dollar limit in ((+)) (k) of this subsection. This section shall not limit the department from charging the time and mileage fee for inspecting livestock and related records during an investigation of a proven violation of ((section 3, chapter 66, Laws of 2010)) RCW 16.36.140.

(4) Additional requirements for category ((3)) three restricted holding facilities. In addition to the requirements of subsection (1) of this section for all types of restricted

holding facilities, the operator of a category ~~((3))~~ three restricted holding facility must abide by the following conditions:

(a) The operator of a category ~~((3))~~ three restricted holding facility must abide by quarantine conditions set forth by the state veterinarian.

(b) Accurate records will be kept accounting for all animals entering the category ~~((3))~~ three restricted holding facility for the length of the quarantine.

(c) An animal in a category ~~((3))~~ three restricted holding facility may be legally removed from the facility only upon the animal's death or if the animal is moved from the location by permit from the state veterinarian's office on a United States Department of Agriculture VS form 1-27 for the movement of restricted or quarantined animals to another category ~~((3))~~ three restricted holding facility.

(d) If an animal dies or is moribund in a category ~~((3))~~ three restricted holding facility, the operator of the holding facility will immediately notify the state veterinarian of the animal's condition. The state veterinarian may require inspection and testing of the animal before disposal.

(e) The state veterinarian will conduct at least two and up to four random, unannounced audits during each licensing period. The rate for audits is established in WAC 16-91-040. The audits will consist of a physical inspection.

(f) Subsection (4)(e) of this section shall not limit the number of inspections necessary to investigate potential violations or limit the number of inspections to ensure compliance after a violation is found.

AMENDATORY SECTION (Amending WSR 10-20-091, filed 9/30/10, effective 10/31/10)

WAC 16-30-039 Applications for a restricted ~~((feedlot or restricted))~~ holding facility. (1) Application forms to establish a ~~((restricted feedlot or))~~ restricted holding facility may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington St. S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
Phone: 360-902-1878((-))
Email: ahealth@agr.wa.gov

(2) Applicants for ~~((restricted feedlots and))~~ restricted holding facilities must provide the following information on the application form:

(a) Name and address of applicant;

(b) Location of the ~~((restricted feedlot or))~~ restricted holding facility; and

(c) ~~((Drawing of the layout))~~ Diagram of the ~~((restricted feedlot or))~~ restricted holding facility.

AMENDATORY SECTION (Amending WSR 10-20-091, filed 9/30/10, effective 10/31/10)

WAC 16-30-040 Expiration and revocation of ~~((restricted feedlot and))~~ restricted holding facility ~~((permits))~~ licenses. (1) All ~~((permits))~~ licenses for restricted

~~((feedlots and))~~ holding facilities expire on the 30th day of June of the year following the date of issue. Restricted ~~((feedlots and))~~ holding facilities must be inspected annually upon renewal and at any other time as determined by the director. Renewal of a restricted ~~((feedlot or a restricted))~~ holding facility license is contingent upon accurate recordkeeping.

(2) Any violation of chapter 16.36 RCW or any of the rules adopted under that chapter is sufficient cause for the suspension or revocation of any ~~((permit))~~ license to operate a ~~((restricted feedlot or))~~ restricted holding facility. In all proceedings for suspension or revocation of a ~~((restricted feedlot or))~~ restricted holding facility ~~((permit))~~ license, the owner or manager has the right to request a hearing before revocation is made permanent. Any action shall be taken under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 16-30-025 Restricted feedlots.

WAC 16-30-030 Conditions of permit to operate a restricted feedlot.

WSR 18-21-185

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 24, 2018, 8:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-18-105.

Title of Rule and Other Identifying Information: WAC 392-140-600 Special education safety net—Applicable provisions, 392-140-60105 Definition—High need student, 392-140-60110 Definition—Community impact, 392-140-60115 Definition—High need student served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails, 392-140-60120 Definition—Capacity for funding, 392-140-602 Special education safety net—Eligible applicants, 392-140-605 Special education safety net—Application types, certification, worksheets, 392-140-609 Special education safety net—Standards and criteria—IEPs, 392-140-616 Special education safety net—Standards—High need student applications, 392-140-617 Special education safety net—Standards—Community impact applications, 392-140-626 Special education safety net—Worksheet A—Demonstration of need, 392-140-630 Special education safety net—Special education program audit—Purpose, procedures, 392-140-635 Special education safety net—Special education program review—Purpose, procedures, 392-140-643 Special education safety net—Definition—State oversight committee—Procedures, 392-140-646 Special education safety net—State oversight committee actions, 392-140-650 Spe-

cial education safety net—Withdrawal of application, 392-140-656 Special education safety net—Request for review and reconsideration of an action, 392-140-660 Special education safety net—Approved application—Special education safety net reimbursement, and 392-140-675 Special education safety net—Adjustments to special education safety net reimbursement.

Hearing Location(s): On November 27, 2018, at 3:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 Washington Street S.E., Olympia, WA 98501. Those planning to comment at the hearing should arrive by 3:00 p.m. Hearing will be held in the Brouillet Room at OSPI.

Date of Intended Adoption: November 30, 2018.

Submit Written Comments to: Glenna Gallo, Assistant Superintendent, Special Education, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email Speced@k12.wa.us, fax 360-586-0247, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-754-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing amendments to WAC 392-140-600 through 392-140-685 regarding school district eligibility for state special education safety net funding for the purpose of adopting recommendations from the safety net legislative workgroup. The proposed rule making also involves the addition of new definitions, a section on purpose and procedures, and technical and house-keeping revisions.

Reasons Supporting Proposal: Safety net funding is available to local education agencies (i.e., school districts and charter schools) that demonstrate a need for special education funding in excess of state and federal funding available to the district. The Washington state legislature directed OSPI in 2017 and 2018 to review the current safety net process and make recommendations regarding possible adjustments to improve the safety net process and evaluate the appropriate funding level to meet the purpose of safety net. A safety net legislative workgroup was formed in fall 2017. The workgroup, after analyzing safety net trends, fiscal data, and soliciting public input, developed a set of finalized recommendations to address the legislative requests. OSPI, in turn, is required to submit recommendations to the governor and the legislature's education and operating budget committees by November 1, 2018, and review and revise rules and procedures necessary to administer the special education funding and safety net award process by December 1, 2018. OSPI consulted with the office of financial management and the fiscal committees of the legislature before filing this proposed rule.

Statutory Authority for Adoption: RCW 28A.155.090 and 28A.150.290.

Statute Being Implemented: RCW 28A.150.392.

Rule is necessary because of federal law, 20 U.S.C. § 1400 et seq., the Individuals with Disabilities Education Act.

Name of Agency Personnel Responsible for Drafting: Mary Ellen Parrish, OSPI Special Education, 360-725-6075; Implementation: Amber O'Donnell, OSPI Special Education,

360-725-6075; and Enforcement: Glenna Gallo, OSPI Special Education, 360-725-6075.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

October 23, 2018
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-600 Special education safety net—Applicable provisions. The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net (~~(awards of)~~) reimbursement of special education expenditures by state special education funds and Individuals with Disabilities Education Act (IDEA) federal funds for the 2012-13 school year and thereafter. Beginning with the (~~(2010-11)~~) 2018-19 school year award cycle, the office of the superintendent of public instruction shall make (~~(award)~~) reimbursement determinations for safety net funding in August of each year, except that the superintendent of public instruction shall make (~~(award)~~) reimbursement determinations for state safety net funding in July of each school year for the Washington state school for the blind and for the center for childhood deafness and hearing loss. Determinations on (~~(school district)~~) local education agency eligibility for state safety net (~~(awards)~~) reimbursement shall be based on analysis of actual expenditure data from the current school year.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-60105 Definition—High need student. For purposes of special education safety net (~~(awards)~~) reimbursement, high need student means a student eligible for special education services whose (~~(properly formulated)~~) Individualized Education Program (IEP) costs as calculated on worksheet C exceed a multiple of the statewide average per pupil expenditures (APPE) as defined in section (~~(9101)~~) 7801 of the (~~(Elementary and Secondary Education)~~) Every Student Succeeds Act of (~~(1965)~~) 2015.

(1) For federal special education safety net funding, the multiple of the statewide average per pupil expenditures shall be at least three times the statewide average; and

(2) For state special education funding, the multiple of the statewide average per pupil expenditure shall be the mul-

title of the statewide average per pupil amount established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-60110 Definition—Community impact. For the purpose of state special education safety net funding, community impact refers to ~~((school district or charter school))~~ local education agency identified and quantifiable factor(s) beyond the control of the ~~((district or charter school))~~ local education agency which justify disproportional and extraordinary costs associated with the provision of special education services ~~((in the district or charter school))~~ for an increased number of students with disabilities located within the local education agency based upon current attributes of that local education agency that are not related to local education agency philosophy, staffing decisions, or service delivery choices (i.e., demographic, environmental, sociological, or other facts that can be described and calculated in an application consistent with WAC 392-140-617). Local education agencies below the thirteen and one-half percent funding index are not eligible for community impact safety net funds.

NEW SECTION

WAC 392-140-60115 Definition—High need student served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails. For the purpose of state special education safety net reimbursement, high need student described in this section means a student eligible for special education services served in residential schools as defined in RCW 28A.190.020, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails whose individualized education program costs (as calculated on worksheet C) exceed the threshold established by the office of the superintendent of public instruction in consultation with the office of financial management and the fiscal committees of the legislature, and published in the annual *Safety Net Bulletin*.

NEW SECTION

WAC 392-140-60120 Definition—Capacity for funding. For the purpose of state special education safety net funding, potential capacity for funding exists when an applicant's net special education expenditures exceed total resources available demonstrating a fiscal capacity in excess of all available revenue to the applicant for special education services, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue. Local education agencies with demonstrated capacity and approved applications may access safety net reimbursement regardless of the percentage of the local education agency's enrollment of students with disabili-

ties. Beginning in 2019-2020, applicants must either submit verification of medicaid billing for each high need student application, if applicable, or receive a deduction calculated by office of the superintendent of public instruction to compensate for the local education agency's decision not to pursue medicaid reimbursement.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-602 Special education safety net—Eligible applicants. (1) An individual school district of the state of Washington is eligible to apply for special education safety net ~~((awards))~~ reimbursement on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net ~~((awards))~~ reimbursement. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net ~~((awards))~~ reimbursement individually.

(3) The Washington state center for childhood deafness and hearing loss and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

(4) Individual charter schools are eligible to apply for special education safety net ~~((awards))~~ reimbursement under WAC 392-140-616.

(5) Tribal compact schools are eligible to apply for special education safety net reimbursement under WAC 392-140-616.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-605 Special education safety net—Application types, certification, worksheets. Application for safety net ~~((awards))~~ reimbursement shall be made on Form SPI 1381 - Certification published by the office of the superintendent of public instruction. Applications will be considered and ~~((awards))~~ reimbursement made according to the schedule published in the annual *Safety Net Bulletin*.

(1) ~~((School districts and charter schools))~~ Local education agencies may make application for safety net ~~((awards in two categories--))~~ reimbursement in the following categories, except that the same students may not be submitted in more than one category:

(a) High need student(s) ~~((and/or))~~;

(b) High need student(s) served in residential schools, programs for juveniles under the department of corrections, and programs for juveniles operated under city and county jails; or

(c) Community impact factors.

~~(2)~~ The applicant for ~~((either or both categories))~~ any category of safety net ((awards)) reimbursement shall certify that:

(a) Differences in costs attributable to ~~((district or charter school))~~ local education agency philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net ~~((awards))~~ reimbursement;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 and 392-140-617;

(c) The application provides true, accurate, and complete information;

(d) The applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the ~~((award))~~ conditional decision letter, and certifies that federal medicaid has been billed for all services to eligible students consistent with RCW 28A.150.392 ~~((1)(e))~~ (2)(i) or consents to receive a deduction calculated by the office of the superintendent of public instruction to compensate for the local education agency's decision not to pursue medicaid reimbursement, if applicable;

(e) The applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding in an efficient manner;

~~((The applicant's special education program is operated in a reasonably efficient manner;~~

~~((g) Indirect costs included for purposes of determining safety net awards do not exceed the allowable federally restricted indirect rate plus one percent;~~

~~((h) Any))~~ All available state and federal funding is insufficient to address the request for additional funds;

~~((i))~~ (g) The costs of any supplemental contracts are not included for purposes of determining safety net ~~((awards))~~ reimbursement, with the exception of supplemental contracts which provide direct special education services to students per an individualized education program. Supplemental contracts are those contracts made pursuant to RCW 28A.400.-200(4) excluding extended school year contracts (ESY) required by an IEP; and

~~((j))~~ (h) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by ~~((a properly formulated IEP))~~ an individualized education program.

~~((2))~~ (3) Worksheet A shall be included with the application and must demonstrate the applicant's capacity for safety net ~~((awards))~~ reimbursement. Worksheet A is used to determine a maximum amount of safety net ~~((award))~~ reimbursement eligibility. ~~((Award))~~ Reimbursement amounts may be less than the maximum potential amount of safety net ~~((award))~~ reimbursement eligibility determined on worksheet A.

~~((3))~~ (4) All high need student applications shall include worksheets ~~(("A" and "C" and))~~ A and C, the Summary of Applications for High Need Individual Students form published in the safety net application, the individual-

ized education programs applicable during the application period, and certification of standards and criteria pursuant to WAC 392-140-616.

~~((4))~~ (5) All community impact applications shall include worksheet A, the community impact application, all supporting documentation, and certification of standards and criteria pursuant to WAC 392-140-617.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-609 Special education safety net—Standards and criteria—~~((Properly formulated))~~ IEPs. A sample of individualized education programs ((IEPs) which are properly formulated are those IEPs that at a minimum meet all of the following criteria:

(1) The IEPs comply with federal and state procedural requirements.

(2) The delivery of specially designed instruction identified on the IEP also complies with state and federal requirements consistent with WAC 392-172A-01155 or as amended.

(3) The provision of special education services is consistent with areas of need identified in the student's evaluation and/or reevaluation made pursuant to chapter 392-172A WAC or as amended)) will be reviewed for each applying local education agency (if the local education agency has not had individualized education programs reviewed through the Washington integrated system of monitoring (WISM) process within the last two years). Individualized education programs will be reviewed in areas to be determined by the office of superintendent of public instruction and published in the annual *Safety Net Bulletin*. Areas to be reviewed will be the same for all applications for the school year. Sample sizes will be determined based on data collected by the office of superintendent of public instruction demonstrating local education agency compliance history and statewide areas of needed improvement.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-616 Special education safety net—Standards—High need student applications. For applicants requesting safety net ~~((awards))~~ reimbursement to meet the needs of an eligible high need ~~((special education))~~ student, the applicant shall convincingly demonstrate to a majority of the state oversight committee members at a minimum that:

(1) ((The IEP for the eligible special education student is properly formulated consistent with WAC 392-14-609)) (a) The reviewed individualized education program demonstrates compliance with federal and state procedural requirements, in the office of superintendent of public instruction-selected applicable reviewed areas; or

(b) The local education agency has corrected any non-compliance identified through general supervision processes, including monitoring or during a review of a sample of individualized education programs; and

(2) Costs eligible for safety net consideration are associated with providing direct special education and related services identified in ((a properly formulated IEP)) implementa-

tion of an individualized education program and quantifiable by the committee on worksheet C; and

(3) In order to deliver appropriate special education and related services to the student, the applicant is providing services which incur costs exceeding:

(a) The annual threshold as established in WAC 392-140-60105 by the office of superintendent of public instruction for state safety net ~~((awards))~~ reimbursement.

(b) Threshold amounts shall be adjusted pro rata for eligible students not served by the applicant on all nine enrollment count dates (October through June). For example, for a student served six of the nine count dates, the threshold amount shall be reduced to two-thirds of the full amount.

(4) The state safety net oversight committee shall adapt the ~~((high need student application))~~ worksheet A for the Washington state school for the blind ~~((and))~~, the Washington state center for childhood deafness and hearing loss, and tribal compact schools.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-617 Special education safety net—Standards—Community impact applications. For applicants requesting state safety net ~~((awards))~~ reimbursement to meet the extraordinary costs associated with communities that draw a larger number of families with ~~((children))~~ students in need of special education services, the applicant must meet the standards of WAC 392-140-605 ~~((+))~~ (2)(a) through ~~((+))~~ (h) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the ~~((district's or charter school's))~~ local education agency's special education enrollment to be disproportional by ~~((category of disability or))~~ the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the applicant is not the result of ~~((district or charter school))~~ local education agency philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an adverse documentable fiscal impact upon the applicant's special education program.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-626 Special education safety net—Worksheet A—Demonstration of need. Applications for safety net funds shall demonstrate capacity for safety net ~~((awards))~~ reimbursement as follows:

(1) Application worksheet ~~(("A"))~~ A shall demonstrate a fiscal capacity in excess of all available revenue to the applicant for special education, including state and federal revenue, program income generated by such state and/or federally funded special education programs, and all carryover of state and federal special education revenue.

(2) ~~((Awards))~~ Reimbursement shall not exceed the potential capacity for safety net funding on the worksheet ~~(("A-"))~~ A.

(3) Beginning with the 2007-08 school year, worksheets submitted with safety net applications must reflect the full

cost method of accounting, pursuant to section 501 (1)(k), chapter 372, Laws of 2006.

(4) The safety net oversight committee may revise the applicant's worksheet ~~(("A"))~~ A as submitted for errors or omissions or more current information.

(5) The applicant shall provide clarifying information at the request of the state oversight committee. Any information specifically requested by the committee on a case-by-case basis during the initial review (and included with the office of superintendent of public instruction conditional reimbursement letter) and provided by the applicant within the requested timeline will be considered during final safety net application reviews. There is no obligation for the committee to request additional information and the presumption is on the applicant to submit a complete and accurate initial application.

(6) After the close of the school year, the applicant's worksheet ~~(("A-"))~~ A used to determine capacity for ~~((an award))~~ a reimbursement may be reviewed against the actual final school year enrollments, all available revenues, and legitimate expenditures reported by the applicant. Based upon the results of this review the safety net allocation for the school year may be adjusted or recovered if the ~~((awards))~~ reimbursement or a portion of the safety net ~~((awards))~~ reimbursement exceeded the demonstrated capacity for funding based upon consideration of all available revenues and legitimate expenditures.

(7) In accordance with the state of Washington *Accounting Manual for Public School Districts* and statutory federal language, potential capacity for safety net ~~((awards))~~ reimbursement shall not include legal fees, court costs, or other costs associated with a cause of action brought on behalf of a child to ensure a free appropriate public education.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-630 Special education safety net—Special education program audit—Purpose, procedures. Special education program audits by staff of the state auditor's office may be requested to assist the state safety net oversight committee. When reviewing an applicant's special education program, the auditors may review and verify any certifications and supporting information provided by the applicant in a safety net application. The auditors will provide the results of the review to the state oversight committee. The results of the auditor's review may be considered by the oversight committee in determining, adjusting, or recovering safety net ~~((awards))~~ reimbursement.

NEW SECTION

WAC 392-140-635 Special education safety net—Special education program review—Purpose, procedures. Special education program review reports (as per WAC 392-172A-07010) by staff of the office of superintendent of public instruction special education division may be reviewed by the state safety net oversight committee. The results of the program review may be considered by the oversight committee in determining, adjusting, or recovering safety net reimbursement.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-640 Special education safety net—State oversight committee—Membership, structure. Membership of the state oversight committee shall consist of: Staff of the office of the state auditor who shall be nonvoting, and one or more representatives from ~~((school districts or educational service districts))~~ local education agencies and educational service districts who are knowledgeable of special education programs and funding.

(1) The ~~((state director))~~ office of superintendent of public instruction assistant superintendent of special education shall serve as an ex officio, nonvoting committee member and act as the state oversight committee manager.

(2) The state oversight committee members will be appointed by the state oversight committee manager.

(3) Members of the state oversight committee will be appointed based on their knowledge of special education program service delivery and funding, geographical representation, size of ~~((district(s) served))~~ local education agency, and other demographic considerations which will ensure a representative state committee.

(4) The oversight committee manager may replace a portion of the committee each year in order to ensure a representative state committee.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures. (1) The state safety net oversight committee will review applications as deemed necessary by the office of superintendent of public instruction pursuant to WAC ~~((392-140-608))~~ 392-140-635.

(2) All applications received by the state safety net oversight committee no later than the dates published in the annual *Safety Net Bulletin* will be reviewed for completeness by the state safety net oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the annual bulletin published by the office of superintendent of public instruction. ~~((Incomplete applications will not be considered by the committee.))~~

(3) The state safety net oversight committee manager or designee will forward to the committee members electronic copies of the applications for review in a timely manner.

(4) ~~((The state safety net oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.~~

~~((5))~~ State safety net oversight committee members shall review and discuss the applicant's request for safety net ~~((awards))~~ reimbursement for completeness and accuracy during meetings as scheduled and published by the office of superintendent of public instruction in the annual *Safety Net Bulletin*.

~~((6))~~ (5) The state safety net oversight committee may require that an applicant provide clarifying information before making a final recommendation. There is no require-

ment for the committee to request clarifying or missing information, in the event it is not provided by the applicant.

~~((7))~~ (6) State safety net oversight committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

~~((8))~~ (7) A majority vote by the state safety net oversight committee members in attendance shall be sufficient to determine the committee action.

~~((9) The state safety net oversight committee manager will ensure that notes are taken which summarize the discussion related to each application.))~~

(8) A decision summary for each application will be provided to the applicant and shall include the amount of the initial request, funding adjustments applied by the committee, the amount of any ~~((award))~~ reimbursement to be made, and the reasons for the action taken by the state safety net oversight committee.

~~((10))~~ (9) Voting members of the state safety net oversight committee in attendance shall each sign the decision summary.

~~((11))~~ (10) The state safety net oversight committee manager, on behalf of the state safety net oversight committee, will notify the applicant in writing of the determination of the committee. The applicant will be provided a copy of the decision summary.

~~((12))~~ (11) All applications received by the state safety net oversight committee will be retained as per the Washington retention schedule by the office of the superintendent of public instruction for use in the evaluation of the safety net ~~((award))~~ reimbursement process and to provide the office of the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-646 Special education safety net—State oversight committee actions. The state oversight committee shall review all safety net applications.

(1) An application reviewed during an application cycle may be:

(a) Approved;

(b) Adjusted for fiscal corrections and approved; ~~((or))~~

(c) Adjusted for individualized education program non-compliance and approved, if evidence of noncompliance correction is provided;

(d) A combination of (b) and (c) of this subsection; or

(e) Disapproved.

(2) The amount approved shall not exceed the amount ~~((for which application was made or adjusted))~~ authorized by the state oversight committee.

(3) The state oversight committee may not approve an application if there are unresolved audit issues related to special education that are material to the application. For purposes of this section, "audit" means an examination of a sub-recipient to determine compliance with the state or federal laws and regulations governing the operation of a specific program and includes program audits, single audits, or any

special purpose audit consistent with chapter 392-115 WAC and WAC 392-140-630. "Unresolved" means that the sub-recipient has exhausted the audit resolution process described in chapter 392-115 WAC as amended.

(4) (~~(Awards)~~) Reimbursement approved by the state oversight committee are subject to recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-650 Special education safety net—Withdrawal of application. If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of the applicant charter school, tribal compact school, Washington state center for childhood deafness and hearing loss, and the Washington state school for the blind, must submit a letter requesting withdrawal to the state oversight committee manager.

AMENDATORY SECTION (Amending WSR 15-24-137, filed 12/2/15, effective 1/2/16)

WAC 392-140-656 Special education safety net—Request for review and reconsideration of an action. An applicant may request review and reconsideration of an action of the state oversight committee made pursuant to WAC 392-140-646.

(1) The applicant shall make the request in writing to the oversight committee manager within twenty calendar days of the date of the state oversight committee's written determination letter to the applicant pursuant to WAC 392-140-643(~~(1)~~) (10). All requests for review and reconsideration not received within twenty days of the written determination letter will not be accepted.

(2) (~~The applicant shall request reconsideration of the original submission of the state oversight committee.~~) The request for review and reconsideration of the committee's action must be based on one or more of the following grounds:

- (a) The action was outside the statutory authority of the committee;
- (b) The action failed to follow prescribed procedures;
- (c) The action erroneously interpreted or applied the law;
- (d) The action was not supported by substantial evidence; or
- (e) The action was inconsistent with the agency rules regarding safety net funding.

(3) If the office of the superintendent of public instruction finds grounds for reconsideration pursuant to subsection (2) of this section, OSPI shall request reconsideration of the action by the state oversight committee. OSPI shall state the grounds for reconsideration supported by the facts considered.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-660 Special education safety net—Approved application—Special education safety net (~~(awards)~~) reimbursement. (1) The special education safety net (~~(award)~~) reimbursement for an individual (~~(district)~~) applicant shall be the (~~(lesser of:~~

- (a) ~~The amount requested; or~~
- (b) ~~The~~) amount authorized by the state oversight committee.

(2) Special education safety net (~~(awards)~~) reimbursement for high need students under WAC 392-140-605(1) shall use federal and state funds appropriated by the legislature consistent with RCW 28A.150.392 (1)(a).

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-675 Special education safety net—Adjustments to special education safety net (~~(award)~~) reimbursement. Final safety net (~~(award)~~) reimbursement shall be adjusted based on(~~:~~

(1) ~~The percent of potential medicaid eligible students billed. Potential medicaid revenue will be estimated by the office of the superintendent of public instruction based on the applicant's percent of medicaid eligible students billed and the statewide average payment per student as determined in July of the school year for which the applicant is requesting safety net awards. The office of the superintendent of public instruction shall provide Form SPI 1679 for district and charter school reporting of medicaid eligible students and shall update the district's or charter school's special education medicaid eligibility count and finalize the count for the year based upon the applicant's most recent submission of Form SPI 1679; and~~

(2)) changes in factors for which additional or revised information becomes available after the awarding of the initial safety net (~~(award)~~) reimbursement.

(~~(a)~~) (1) High need (~~(award)~~) reimbursement and/or community impact (~~(award)~~) reimbursement will be reduced or nullified when the applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net (~~(award)~~) reimbursement was based.

(~~(b)~~) (2) An applicant's safety net (~~(award)~~) reimbursement may be recovered or adjusted based on the results of the review conducted by the state auditor's office pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-685 Special education safety net—Recovery of state and/or federal (~~(award)~~) reimbursement. High need student state and/or federal special education safety net (~~(award)~~) reimbursement and state community impact safety net (~~(award)~~) reimbursement shall be recovered or (~~(award)~~) reimbursement reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The ~~((award))~~ reimbursement is unexpended for the purpose allocated including, but not limited to, situations where the student leaves a school district, ~~((ceases attending a))~~ charter school, tribal compact school, Washington state center for childhood deafness and hearing loss, and the Washington state school for the blind, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school or tribal compact school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district ~~((or))~~, charter school or tribal compact school transfers the equipment to the other school district ~~((or))~~, charter school or tribal compact school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the ~~((award))~~ reimbursement was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the ~~((award))~~ reimbursement was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the ~~((award))~~ reimbursement was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

WSR 18-21-186

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 24, 2018, 8:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-183.

Title of Rule and Other Identifying Information: WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility.

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington Street, Olympia, WA 98501. Those planning to comment during the hearing should arrive by 10:00 a.m.

Date of Intended Adoption: November 30, 2018.

Submit Written Comments to: Steven Mueller, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email steven.mueller@k12.wa.us, fax 360-753-4201, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 20, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing amending WAC 392-140-973 to allow schools that partici-

pate in the school breakfast and national school lunch program's community eligibility provision (CEP) meal service option and have historically been challenging high-poverty schools (challenging schools) for purposes of the national board certified teacher (NBCT) bonus to continue to qualify as challenging schools for the duration of their CEP eligibility.

Reasons Supporting Proposal: The proposed WAC amendment impacts NBCTs who receive the national board challenging schools bonus in schools participating in the CEP grant. This rule change will allow fair and equal distribution of the NBCT bonus to those working in high poverty/low-income schools. For the purpose of the national board challenging school bonus, the minimum threshold percentage of students eligible for free and reduced priced lunch (FRLP) is seventy percent for elementary schools, sixty percent for middle schools, and fifty percent for high schools, as reported in CEDARS. Traditionally, data in CEDARS is reported via Free and Reduced Price Meal Applications that are collected by the district from families. CEP schools do not need to identify individual families for determining eligibility for free or reduced price meals, and consequently not all families complete the family income survey in place of meal applications. Fewer family income surveys being collected may result in CEDARS data that shows a decrease in the FRLP rate, and schools may no longer meet the challenging school FRLP. Therefore, NBCTs working in these schools are no longer eligible to receive the challenging school bonus. The amendment to this WAC proposes that OSPI have the option to use historical data for CEP schools going back two years prior to CEP participation. If the school met challenging school eligibility in either of the two years prior to CEP, it will be considered as such for this current year. While OSPI puts this rule in place, OSPI staff will engage with stakeholders both internally and externally for a broader communication plan about this issue. Challenging schools bonus is intended to attract and retain the state's most qualified teachers in the districts that may need them most.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.405.415.

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

Name of Agency Personnel Responsible for Drafting: Steven Mueller, OSPI, 600 Washington Street, P.O. Box 47200, Olympia, WA 98504, 360-725-6119; Implementation: T. J. Kelly, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6301; and Enforcement: Lisa Dawn-Fisher, OSPI, P.O. Box 47200, Olympia, WA 98504, 360-725-6292.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on

small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

October 23, 2018
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 18-14-103, filed 7/3/18, effective 8/3/18)

WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility. Staff that are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210;

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a);

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) Challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) 70 percent for elementary schools;

(ii) 60 percent for middle schools; or

(iii) 50 percent for high schools; as determined by the October 1st count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on March 31st of that prior year: Provided, That schools operating during the current school year as their first year may qualify as challenging, high poverty schools based upon current year data, as determined by the October 1st count on March 31st of the current year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the challenging, high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the challenging, high poverty schools bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of June 15th of the school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

(g) A school participating in the community eligibility provision as authorized by section 11 (a)(1) of the Richard B. Russell National School Lunch Act may be designated as a challenging, high poverty school if the school was a challenging, high poverty school based on the student headcount enrollment eligible for the federal free or reduced price lunch program in either of the two school years immediately prior to the school's participation in the community eligibility provision.

WSR 18-21-189

PROPOSED RULES

BELLEVUE COLLEGE

[Filed October 24, 2018, 9:30 a.m.]

Continuance of WSR 18-17-029.

Preproposal statement of inquiry was filed as WSR 18-13-067.

Title of Rule and Other Identifying Information: Revise chapter 132H-169 WAC.

Hearing Location(s): On November 28, 2018, at 1:30 p.m., at Bellevue College, Room B201A.

Date of Intended Adoption: January 9, 2019.

Submit Written Comments to: Kathi Hutchins, 3000 Landerholm Circle S.E., Bellevue, WA 98007, email Kathi.hutchins@bellevuecollege.edu, phone 425-564-2451, by November 28, 2018.

Assistance for Persons with Disabilities: Contact Kate-lynn Creeley, phone 425-564-4159, TTY 425-564-6189,

email Katelynn.creeley@bellevuecollege.edu, by November 28, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Bellevue College proposes amending chapter 132H-169 WAC to better conform with recent changes in the law concerning public records; model rules recommended by the attorney general's office, and proposed agency practices to include charging for electronic records.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 42.56.040, 42.56.070, 42.56.100, 42.56.120, and 42.56.520; and chapter 304, Laws of 2017.

Statute Being Implemented: Chapter 304, Laws of 2017.

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

Name of Proponent: [Bellevue College], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathi Hutchins, A140, 425-564-2451.

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

A cost-benefit analysis is not required under RCW 34.05.328. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

D. L. Sullivan
Executive Assistant
to the President

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-020 Purpose. The purpose of this chapter is to ((ensure compliance with the provisions of the Washington state public disclosure laws (RCW 42.17.250 ff.)

~~governing access to public records, while at the same time preserving the right to privacy for college students and employees and minimizing disruption to the operation of college programs and services)) provide access to existing, identifiable, nonexempt public records of Bellevue College in accordance with the Public Records Act, chapter 42.56 RCW.~~

NEW SECTION

WAC 132H-169-025 Description of college. (1) **Governance.** Bellevue College is a public institution of higher education established under chapter 28B.50 RCW as a community college, which offers associate and baccalaureate degrees. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **Main campus.** The main campus of the college is located at 3000 Landerholm Circle S.E., Bellevue, Washington. The college also offers educational programs online and at another campus located at 14673 N.E. 29th Place, Bellevue, Washington.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW, are adopted by the board of trustees and published in Title 132H of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in policies and procedures available on the college web site.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. The secretary of the college's board of trustees does maintain and publish on the college web site a documents index of the board's approved meeting minutes, motions, and resolutions. Inquiries may be directed to the secretary of the board in the office of the president.

(5) **College web site.** The college's official web site, available at <http://www.bellevuecollege.edu/> provides general information about the college and its board of trustees, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-030 Definitions. (1) "Public record," ((as defined by RCW 42.17.020(36)) means "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." All public records of Bellevue Community College, Community College District VIII, are considered to be available for public access except as exempted or limited by WAC 132H-169-070.

~~(2) "Writing" as defined by RCW 42.17.020(42) includes all means of recording any form of communication or representation, including documents, pictures, computer tapes or disks, and sound recordings.) The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.~~

~~(2) "Public Records Act." References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.~~

~~(3) Requestor. A "requestor" is any person or entity requesting public records of the college pursuant to the Public Records Act.~~

~~(4) College. The term "college" means Bellevue College.~~

NEW SECTION

WAC 132H-169-035 Public records officer. (1) Designation. A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) Duties. The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) Records office. Inquiries regarding public records of the college may be addressed to the public records officer at the following address:

Public Records Officer
Bellevue College
3000 Landerholm Circle S.E.
Bellevue, WA 98007
425-564-2451
recordsofficer@bellevuecollege.edu

(4) Office hours. The customary office hours of the public records office are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-040 Requests for ((access)) public records. ~~((Requests for access to and/or copies of public records maintained at Bellevue Community College shall be made in writing to the Vice President for Administrative Services, 3000 Landerholm Circle SE, Bellevue, Washington, 98007. Requesters should submit form BCC 010-072, "Request for Public Records," or write a letter to the vice president for administrative services which:~~

~~(1) Provides the requester's name, full mailing address, and telephone number;~~

~~(2) States whether the requester is representing him/herself or is representing an agency or company, and if so, gives the agency or company name;~~

~~(3) For records concerning a past or present Bellevue Community College student, provides the name, student identification number, and last date of attendance (if known) of that student;~~

~~(4) For records concerning a past or present Bellevue Community College employee, provides the name, job title or department, and last date of employment (if known) of that employee;~~

~~(5) Provides a specific and detailed description of the record being requested;~~

~~(6) States whether the requester wishes only to examine the record and will come to the college to do so or, instead, wishes to obtain a copy of the record;~~

~~(7) Certifies that the requester~~

~~(a) Will not use the information obtained through the request for public records for commercial purposes;~~

~~(b) Has read and understood chapter 132H-169 WAC; and~~

~~(c) Agrees to return the record in its original condition if the requester examines the record on campus or to pay the cost of having the copy made.)~~

(1) Written requests preferred. Request for public records of the college may be addressed to the public records officer at the address given in WAC 132H-169-035. The college encourages, but does not require, requestors to use the public records request form made available by the public records office or online at <https://www.bellevuecollege.edu/legal/publicrecords/>. Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer.

(2) Contents of records requests. A request for public records must include the following information:

(a) The name and contact information of the person requesting the records;

(b) The requestor's mailing address, which may be an electronic mail address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer to identify and locate the records; and

(e) A statement indicating whether the requestor wishes to inspect the records or to receive copies of the records in paper or electronic form.

(3) Lists of individuals for commercial purposes. State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request that the list will be used for a commercial purpose.

(4) Assistance in identifying records. The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the

request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records request.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-050 ((Response to)) Processing of records requests. ~~(((1) The vice president for administrative services or his/her designee will respond to the request within five business days after receiving it.~~

~~(2) Depending on the nature of the request and of the record concerned, the vice president for administrative services will respond in one of the following ways:~~

~~(a) Make the record available or provide a copy as requested;~~

~~(b) State that the record as described does not exist at Bellevue Community College at this time;~~

~~(c) Acknowledge the request and ask for additional descriptive information, in cases where the description provided is incomplete or unclear;~~

~~(d) Acknowledge the request and state a date by which the record(s) will be provided, for example in cases where the request is for large numbers of documents or records in out-of-the-ordinary formats, or when the request has been made at peak periods such as registration or the first week of instruction;~~

~~(e) Deny the request in whole or in part and indicate the specific reason for the denial:)) (1) Applicable law. Requests for public records will be processed in accordance with these rules and applicable provisions of Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.~~

(2) Prioritizing of requests. Public records requests generally will be processed in the order in which they are received by the records office and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) Clarification of requests. The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within thirty days of the request for clarification.

(4) Providing records by installment. If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records officer may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.

(5) Denial of bot requests. The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3) if the records officer reasonably believes the request was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-060 ((Appeal after request is denied-)) Review of denials of records request. ~~((If a request for access to public records is submitted according to WAC 132H-169-040 and is denied, the college is required to conduct an internal review of the denial and the requester has the right to appeal the decision to deny access. The requester should address his/her reason for appeal in writing to the college president who, after consulting with the vice president for administrative services, other college administrators, and legal counsel as appropriate, shall respond in writing within five business days after receiving the appeal. The president's decision is considered final:)) (1) Petition for internal administrative review. A requestor who objects to the denial, or partial denial, of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.~~

~~(2) Review by attorney general's office. A requestor who objects to the denial, or partial denial, of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to: Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.~~

~~(3) Judicial review. A requestor may petition the superior court for judicial review of the college's decision denying a public records request, whether in whole or in part, by following the procedures in RCW 42.56.550. The denial of a petition for internal administrative review under subsection (1) of this section shall constitute the final agency action subject to judicial review.~~

AMENDATORY SECTION (Amending WSR 99-10-045, filed 4/30/99, effective 5/31/99)

WAC 132H-169-070 ((Exemptions and limitations-)) Records exempt from inspection for copying. ~~(((1) Certain public records are exempt from public access according to RCW 42.17.310. Access to these records will not be granted unless the vice president for administrative services determines that disclosure would not affect any vital governmental interest. If the interest can be protected by deletion of personal references, access shall be granted following deletion of such material, and a reasonable time shall be allowed for deleting the material.~~

~~(2) Student educational records are available only in accordance with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232g), which establishes that the education records of students attending or having attended the college are confidential and can be released only with written permission of the student.~~

~~(3) Records concerning applicants to and employees of Bellevue Community College are available only to such fac-~~

~~ulty and staff members, including supervisory personnel, who must have access to certain records in order to carry out the business of the college. The only information contained in an individual's employee file which shall be available for public inspection shall be the name, status, salary, and teaching duties of the employee. The employee, however, shall have full access to his/her personnel file as provided by the pertinent bargaining unit agreement.)~~ (1) Public Records Act exemptions. The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspection or copying under the Public Records Act or other applicable law.

(2) Commonly applied exemptions. The public records officer maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer and will typically be provided by the records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) Determining applicable exemptions. The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

NEW SECTION

WAC 132H-169-085 Copying fees—Payments. (1) Fees and payment procedures. The following copying fees and payment procedures apply to requests to the college under chapter 42.56 RCW and received on or after the effective date of this section.

(2) Inspection of records. There is no fee for inspecting public records made available for inspection by the public records officer.

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

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

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

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

(4) Default fees adopted. The college will charge for copies or records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The college will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under

RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's web site at <https://www.bellevuecollege.edu/legal/publicrecords/>.

(5) Advance payment required - Fee waivers. Requestors are required to pay for copies in advance of receiving records or an installment of records. The records officer will notify the requestor when payment is due. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and consist of twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

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

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

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

NEW SECTION

WAC 132H-169-095 Court protection of public records. (1) Notifying interested persons. The college, as required or permitted by law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56.-540.

(2) Applying for court protection. The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in the chapter shall be construed as either requiring or prohibiting the college's application to the court for such an order.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-169-010	Title.
WAC 132H-169-080	Notification of affected persons.
WAC 132H-169-090	Protest concerning access.
WAC 132H-169-100	Requests for review only.
WAC 132H-169-110	Requests for copies.
WAC 132H-169-120	No obligation to create records.
WAC 132H-169-130	Sanctions.

WSR 18-21-190
PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed October 24, 2018, 9:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-15-100.

Title of Rule and Other Identifying Information: Chapter 16-157 WAC, Organic food standards and certification, the department is proposing to modify the existing fees for certification and the existing organic and transitional logos.

Hearing Location(s): On Wednesday, November 28, 2018, at 10:00 a.m., at the Washington State Department of Agriculture (WSDA), Natural Resources Building, 1111 Washington Street S.E., Room 259, Olympia, WA 98504-2560; and on Friday, November 30, 2018, at 1:00 p.m., at WSDA, 21 North 1st Avenue, #236, Room 238, Yakima, WA 98902.

Date of Intended Adoption: December 12, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-1809 [360-902-2902], by November 28, 2018.

Assistance for Persons with Disabilities: Contact Angela Starr, phone 360-902-1967, fax 360-902-2087, TTY 800-833-6388, email astarr@agr.wa.gov, by November 21, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WSDA is required by statute to set fees at levels that recover the full cost of providing organic and transitional certification services. RCW 15.86.070 states *"The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional products. The rules shall include a fee schedule that will provide for the recovery of the full cost of the program."* The structure of the fee schedule has not changed since the start of the WSDA organic program over thirty years ago. Only minor changes to fee rates have taken place since the adoption of the United States (U.S.) Department of Agriculture (USDA) organic regulations in 2002.

An increased demand for services, the need for more rigorous inspections and evaluations, and a rise in operating

costs has caused program expenses to exceed incoming fee revenue. After implementing numerous efficiencies and improvements within the certification process, WSDA is proposing to restructure the existing certification fees in chapter 16-157 WAC to ensure the cost of providing the certification services is recovered.

The proposal aims to simplify the fee reporting and evaluation process for businesses and ensure fees are charged based on the services provided and not based solely on the value of organic products sold.

1. The current fee structure relies on new applicants to estimate their income from organic products which is then reconciled at their second inspection. This complicated estimate/evaluation process has been removed and replaced with a simple flat rate fee.

2. Rather than having a separate renewal fee structure for each business type (producer, handler, processor), the renewal fees have been consolidated into a single unified fee structure. This will allow businesses more flexibility to expand their business models without being restricted by the current fee structure.

3. Under the current fee schedule handling businesses have a cap in place while producers and processors do not have a maximum fee. A maximum renewal fee has been set for all business types to ensure consistency across businesses and services.

4. A minimum fee has been set to ensure costs are recovered from complex businesses that are not actively selling organic products, but wish to remain certified and request WSDA services.

5. An inspection fee has been established at a flat rate based on scope rather than income. This fee is intended to spread out the cost of certification over the year and ensure a larger portion of core certification costs are recovered regardless of operation scale.

6. Additional fees for services beyond the annual core certification process have been restructured and flat rates established. These include fees for requesting the addition of new land, new facilities, or new products under an existing certification. Expedite[d] fees have also been better defined and established at a flat rate rather than an hourly charge.

To increase consumer awareness and improve the marketing of products, the proposed rule also updates the WSDA organic and transitional logos that may be displayed on products certified by the department. The use of the WSDA organic or transitional logos are optional and may be used with or instead of the optional USDA organic seal.

And finally, the proposed rule makes minor technical corrections to references to agricultural products to ensure alignment in terminology with 7 C.F.R. Part 205.

Reasons Supporting Proposal: The proposal will ensure WSDA organic program is compliant with chapter 15.86 RCW and is able to recover costs while offering high quality certification services to a variety of business types and scales. Without these changes in how fees are assessed, WSDA organic program will need to limit the services they are able to provide to organic farms and businesses.

Statutory Authority for Adoption: RCW 15.86.060, 15.86.070.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brenda Book, 1111 Washington Street S.E., Olympia, WA, 360-902-2090.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

History: WSDA organic program provides access to the organic market and ensures the integrity of the organic label. WSDA offers voluntary certification for any business that wishes to market their products with an organic claim. The program is the seventh largest USDA accredited certification agency in the U.S., currently serving over one thousand three hundred certified organic operations and nearly four hundred businesses manufacturing or distributing input materials for use in organic production. Organic farms or handlers are found in all but six counties in the state and represent a diversity of crops, sizes, and marketing options. Forages, vegetables, and tree fruit are the leading organic crop and product categories followed by grains, dry beans, small fruit, grapes, and nuts. Processed products include frozen vegetables, juice, roasted coffee, livestock feed, and multiingredient products such as bread. Approximately ninety percent of the organic businesses in Washington are certified by WSDA organic program, with the remainder working with several out-of-state private certifiers.

WSDA began offering organic certification services after the enactment of chapter 15.86 RCW in 1985. This statute set the stage for WSDA to establish the first state organic certification agency in the country. By 1987 WSDA's new organic program began inspecting and certifying farms under the authority of chapter 15.86 RCW and under the rules outlined in chapter 16-157 WAC. In 2002, the organic program shifted from oversight of a state standard to enforcing 7 C.F.R. Part 205, the USDA organic regulation. Chapter 16-157 WAC adopts 7 C.F.R. Part 205 in addition to outlining the fees for certification and establishing the logos that may be used on products certified by WSDA.

WSDA is required by statute to set fees at levels that recover the full cost of providing organic and transitional certification services. RCW 15.86.070 states *"The director may adopt rules establishing a program for certifying producers, processors, and handlers as meeting state, national, or international standards for organic or transitional products. The rules shall include a fee schedule that will provide for the recovery of the full cost of the program."* WSDA

established a fee schedule based on the gross annual income received by a certified operation for the production or handling of the organic products. The structure of the fee schedule has not changed since the start of the WSDA organic program over thirty years ago. Only minor changes to fee rates have taken place since the adoption of the USDA organic regulations in 2002.

As the organic industry in Washington state has grown, so has the need for services from the WSDA organic program. In 1988 WSDA certified sixty-eight farms and in July 2018, the program was working with a record one thousand three hundred thirteen producers, handlers, and processors of organic products. Currently certified businesses farm on more than two thousand six hundred certified sites (or more than one hundred twenty-four thousand certified acres) and handle or process more than eight thousand two hundred certified products. The WSDA organic program receives an average of one hundred twenty-five new applications for certification annually and each year, thirty to forty percent of the certified farms require additional evaluations to increase their certified acreage. Organic farms report gross farm gate sales for the previous year when they renew certification each winter. Total 2017 farm gate value increased to \$667 million from \$355 million in 2012. During this same five years WSDA certified operations nearly doubled.

In addition to an increase in organic production, new markets have emerged requiring additional services by WSDA organic program. The USDA organic regulation has evolved in response to the increased market demand and new expectations in place for WSDA services. For example: Multiple international trade requirements must be evaluated to ensure compliance with U.S. equivalency agreements; a more comprehensive look at a farm's impact on natural resources and biological diversity is required at each inspection; and there is an increase in the number and types of audits that must be conducted annually at each on-site inspection, regardless of scale and type of market. Today, organic inspection requirements are more rigorous and the evaluation process more complex than fifteen years ago. USDA continues to establish important guidance and instruction for the certification and inspection processes, which WSDA organic program must quickly implement to ensure market access for WSDA certified products.

As new instruction and guidance is developed by USDA there is an increased need for more technical assistance services to the growing number of businesses interested in the organic label. Over the last ten years WSDA organic program has found a need to strengthen and expand the outreach and education component of the organic certification services. This focus has proven critical to ensure the certification process continues to be accessible and attainable to Washington businesses, in addition to ensuring the organic label is valued and understood by their customers. WSDA organic program has looked for creative ways to support organic businesses and actively seeks grant funding when possible to support the costs of outreach and education activities.

Since 2008 the WSDA organic program has been in dialog with the state's organic advisory board (OAB) about the need to restructure the fee schedule to manage the rise in operating costs. Over the last five years WSDA has increased

staffing numbers in response to industry requests and the need for more rigorous inspections and evaluations. A rise in operating costs during this same time has caused expenses to exceed incoming fee revenue in fiscal years 2017 and 2018. After implementing numerous efficiencies and improvements within the certification process over the last ten years, WSDA is proposing to restructure the existing certification fees in chapter 16-157 WAC to ensure the cost of providing the certification services is recovered. To increase consumer awareness and improve the marketing of products, the proposed rule also updates the WSDA organic and transitional logos that may be displayed on products certified by the department.

Restructuring Certification Fees: The certification fees outlined in the proposed rule are not new fees. WSDA organic program is proposing to restructure the existing fee schedule to meet four goals:

1. **Simple and Transparent:** Both current and potential certified operations should be able to quickly and easily determine their certification costs.

- Fees have been simplified and consolidated into one schedule instead of the four different schedules that currently exist.
- Flat rates are used over hourly rates and calculations.
- Gross annual income is always reported on the previous calendar year removing confusion caused by variable reporting periods.

2. **Balanced:** The cost of providing certification must be recovered, while ensuring certification remains accessible and affordable for small or new organic businesses.

- The certification process does not change based on the scale of an operation. The current fee schedule is set up so that a larger business pays a larger certification fee, in part subsidizing the expense of providing certification to a small business or a business that has limited gross annual income from organic products.
 - Under the current fee schedule, one hundred seventy-six of the evaluated farms (twenty-four percent) report less than \$15,000 in gross annual income. With limited exception, such as the inclusion of the \$250.00 new application fee, these operations pay the minimum certification fee of \$220. Their fees represent 3.3 percent of the total producer fees (\$57,840.00).
 - Under the current fee schedule, thirty-seven of the evaluated handlers (twenty-seven percent) report less than \$50,000 in gross annual income. With limited exception, these operations pay \$200 in annual renewal fees, contributing less than 3.5 percent of the total handler fees (\$9,740.00).
- The proposed rule seeks to raise the minimum certification fee so that the program's costs of providing services are better recovered per business.
- For some businesses with less than fifty employees, the restructured fee schedule will result in a reduction of fees rather than an increase.

3. **Predictable:** Fees should not be based solely on the success of the business, but on the services provided by the program.

- Certification fees need to be predictable so program resources are secured proactively and services provided quickly. The proposed rule seeks to divide the cost of certification between a renewal fee based on the gross annual income received by a certified operation and an inspection fee based on a flat rate for the service provided.
- By reducing the number of fee steps in the current schedules, and eliminating the calculated fee for processors, operations will be able to better predict their certification fee and will experience less variability from minor changes in income.

4. **Effective:** WSDA organic program is a fee for service program. The cost of operating the program must be recovered in full by the fees charged for the services provided per chapter 15.86 RCW.

- The current fee structure does not accurately reflect the cost of providing certification services to several key groups: Exempt operations (defined as less than \$5,000 in organic gross annual income) and very small operations (defined as less than \$50,000 in organic gross annual income), handlers, and new tree fruit producers.
 - Exempt and very small operations: There is a core cost of providing organic certification services to any operation regardless of scale. 7 C.F.R. Part 205 allows an exempt operation to make limited organic claims without going through the certification process and without paying any certification fees. Exempt operations may voluntarily choose to seek certification. The increase in the minimum renewal fee and the inclusion of an inspection fee based on scope will help to cover the cost of services without relying solely on an evaluation of income to assess fees.
 - Handlers: The current fee structure has significantly reduced rates for operations that handle but do not process organic products, yet there is not a difference in the workload and certification process between the two types of handling operations. By raising the maximum certification fee from \$11,000 to \$25,000 and by combining the fee schedule for all scopes the program is able to better recover the costs necessary for providing handling certification services.
 - New tree fruit producers: The current fee schedule allows operations to define a twelve month reporting period to report gross annual income, this is often reported as a July to July year. This can result in a situation where a tree fruit operation will report no gross annual income for up to the first three years of their organic certification. By proposing a higher minimum fee and an inspection fee that is not based off of gross annual income the program will better recover the expense for providing certification; by expressly stating that the reporting period is the previous calendar year, and adjusting the renewal dead-

line to accommodate this, we can ensure that the scale of an operation is represented in a more timely manner.

Redesigning the Certification Logos: Chapter 16-157 WAC currently includes four different logos that may be used on products certified by the department. The use of the WSDA logos is optional and the USDA organic seal may be used instead of the WSDA logos. The WSDA logos have not changed in design since the establishment of the program and is not widely used on product labeling.

The proposed rule seeks to consolidate the producer, handler, and processor logos into one certified organic logo. The logos have been redesigned to provide both a black and white and a color version to aid in the marketing and branding of WSDA certified products. The proposed logos are also designed to meet the regulatory requirement that all packages include the name of the certification agency, eliminating the

need for some operations to print this statement separately if the logo is used.

Summary: The proposed rule does not set new fees but restructures the existing thirty year old fee schedule to better recover the cost of providing the services as required in chapter 15.86 RCW. The proposed rule also redesigns the WSDA organic and transitional logos to encourage increased use on WSDA certified products. The department does not anticipate any business will need to obtain any professional services in order to comply with the proposed fee restructure or redesigned logos. Any operation producing and handling organic products will be making its own business decisions about acquiring the knowledge and expertise necessary to successfully conduct that enterprise.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Revenue
1111	±Oilseed and grain farming	1068	\$469.22	Data not available
1112	±Vegetable and melon farming	380	\$4,310.84	Data not available
1113	±Fruit and tree nut farming	2424	\$4,506.75	Data not available
1119	±Other crop farming	629	\$3,398.57	Data not available
1121	±Cattle ranching and farming	590	\$2,748.67	Data not available
1122	±Hog and pig farming	3	\$1,351.91	Data not available
1123	±Poultry and egg production	47	\$5,459.70	Data not available
1124	±Sheep and goat farming	23	\$396.21	Data not available
3111	*Animal food manufacturing	38	\$6,396.05	\$41,270.05
3112	*Grain and oilseed milling	21	\$22,130.48	\$89,395.43
3113	*Sugar and confectionery product manufacturing	54	\$7,006.48	Data not available
3114	*Fruit and vegetable preserving and specialty food manufacturing	76	\$49,006.58	\$139,203.08
3115	*Dairy product manufacturing	29	\$21,667.59	Data not available
3116	*Animal slaughtering and processing	78	\$21,346.03	\$69,493.62
3118	*Bakeries and tortilla manufacturing	233	\$8,294.16	\$15,855.82
3119	*Other food manufacturing	133	\$9,549.47	\$41,089.35
3121	*Beverage manufacturing	347	Data not available	Data not available
4244	*Grocery and related product merchant wholesalers	1016	\$10,664.71	\$68,835.66
4245	*Farm product raw material merchant wholesalers	154	\$4,907.79	\$124,356.90
4451	*Grocery stores	2044	\$7,145.97	\$21,249.75
4452	*Specialty food stores	578	\$1,238.89	\$2,198.55
4931	*Warehousing and storage	352	\$18,185.80	\$5,832.98
7224	*Drinking places (alcoholic beverages)	836	\$1,361.04	\$1,568.24
7225	*Restaurants and other eating places	13047	\$2,244.87	\$2,193.64

*Data source: 2012 Economic Census of the United States.

±Data source: 2015 Quarterly Census of Employment and Wages (Bureau of Labor Statistics).

Organic certification is a voluntary certification program that is only required if operations wish to represent their crops and/or products as organic, typically at a premium over conventional prices. Certification services can be provided by any accredited certification agency, including both private and public institutions.

The types of businesses listed above represent the types of operations that have currently chosen to seek certification with WSDA. Most operations in these categories are not seeking organic certification and will not be impacted by the proposal.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

The proposed revisions to chapter 16-157 WAC do not result in an across the board increase in certification fees for certified businesses. An indepth analysis of the fees collected by the different types of operations allowed WSDA to develop a new structure that better recovers costs per operation. The result of the restructure is an increase in fees for some and a reduction in fees for others. Operations with fees that do not currently recover the cost of certification services requested include: Exempt and very small operations, handlers and processors of organic products, and new applicants for certification or existing operations wishing to expand their certification.

The probable cost of compliance will be dependent primarily on the scope and scale of the operation. The table

below provides an overview of how certified operations will be impacted based on the proposed rule.

- Data provided below is based off of income reported with 2017 organic certification renewals for operations that were certified organic in both 2017 and 2018.
- The business scope correlates to the type of certifications provided by the program. Businesses below are classified based on the primary scope of their existing certification.
- The business scale is based off of USDA's classification of farms: *Very large* (greater than \$500,000.00 income annually); *large* (between \$250,000.00 and \$500,000.00 income annually) and *small* (less than \$250,000.00 income annually).
- To better assess the impact on the affected operations two additional scales were created: *Very small* (between \$5,000.00 and \$50,000.00 income annually) and *exempt* (less than \$5,000.00 income annually). *Small* was revised to accommodate this change (between \$50,000.00 and \$250,000.00 income annually).
- Operations identified as exempt, very small, or small likely have fifty employees or less and would meet the definition of a small business under chapter 19.85 RCW.
- Operations identified as exempt in the table are reporting less than \$5,000.00 in gross annual organic income and are typically exempt from organic certification pursuant to 7 C.F.R. 205.101(a). Exempt operations can make limited organic claims without going through the certification process and without paying any certification fees. An exempt operation may not have any cost associated with making organic claims if they choose not to be certified.

Business Scope	Business Scale	Number of Businesses	Average Reported Organic Income	Average Current Fee	Average Proposed Fee	Average Change as Percent of Reported Income
Crop producer	Exempt	118	\$1,038.85	\$325.85	\$688.18	34.88%
Crop producer	Very small	161	\$21,523.16	\$389.54	\$671.85	1.31%
Crop producer	Small	143	\$130,396.20	\$1,292.53	\$1,228.51	-0.05%
Crop producer	Large	65	\$376,471.51	\$2,442.62	\$2,234.19	-0.06%
Crop producer	Very large	187	\$2,872,957.73	\$5,559.43	\$5,705.88	0.01%
Handler	Exempt	26	\$476.23	\$703.08	\$927.88	47.20%
Handler	Very small	11	\$22,208.59	\$416.36	\$865.00	2.02%
Handler	Small	31	\$141,145.33	\$688.39	\$1,465.08	0.55%
Handler	Large	12	\$357,250.31	\$995.83	\$2,348.54	0.38%
Handler	Very large	60	\$9,701,256.33	\$4,176.50	\$7,959.69	0.04%
Livestock producer	Exempt	3	\$650.00	\$233.33	\$795.83	86.54%
Livestock producer	Very small	15	\$21,149.79	\$384.33	\$1,087.67	3.33%
Livestock producer	Small	13	\$110,580.35	\$1,194.23	\$1,498.08	0.27%
Livestock producer	Large	8	\$402,175.93	\$2,581.67	\$2,650.00	0.02%
Livestock producer	Very large	42	\$2,178,955.48	\$4,832.92	\$5,382.92	0.03%

Business Scope	Business Scale	Number of Businesses	Average Reported Organic Income	Average Current Fee	Average Proposed Fee	Average Change as Percent of Reported Income
Processor	Exempt	35	\$323.38	\$377.82	\$817.86	136.08%
Processor	Very small	24	\$20,541.01	\$422.27	\$827.60	1.97%
Processor	Small	28	\$117,982.22	\$702.20	\$1,356.52	0.55%
Processor	Large	26	\$383,129.87	\$1,576.61	\$2,481.83	0.24%
Processor	Very large	64	\$3,894,348.27	\$6,650.60	\$7,462.98	0.02%
Producer-Processor (Crops)	Exempt	1	\$4,535.00	\$320.00	\$935.00	13.56%
Producer-Processor (Crops)	Very small	8	\$20,803.64	\$393.75	\$1,065.63	3.23%
Producer-Processor (Crops)	Small	8	\$123,794.23	\$1,220.00	\$1,465.63	0.20%
Producer-Processor (Crops)	Large	4	\$381,837.77	\$2,740.00	\$2,941.25	0.05%
Producer-Processor (Crops)	Very large	3	\$5,418,927.26	\$8,500.82	\$10,345.02	0.03%
Producer-Processor (Livestock)	Exempt	2	\$3,240.61	\$1,345.00	\$2,028.75	21.10%
Producer-Processor (Livestock)	Very small	3	\$37,904.33	\$568.33	\$1,293.33	1.91%
Producer-Processor (Livestock)	Small	2	\$181,019.72	\$1,490.00	\$1,925.00	0.24%
Producer-Processor (Livestock)	Large	2	\$467,227.43	\$2,760.00	\$3,337.50	0.12%
Producer-Processor (Livestock)	Very large	3	\$1,455,134.24	\$4,264.13	\$5,321.25	0.07%
Retailer	Very large	14	\$4,885,847.24	\$2,142.14	\$2,014.29	0.00%

The proposed revision to chapter 16-157 WAC, Organic food standards and certification, is not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. Compliance with the proposed rule will not likely cause businesses to lose sales or revenue and may result in a savings in certification fees for some small businesses with less than fifty employees.

While the proposed revision aims to restructure the existing fee schedule for organic certification, it does not rely on any additional recordkeeping or administrative actions beyond those currently present in the existing rule.

SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.

NAICS does not differentiate between organic and non-organic production and handling activities. As such the values from the Economic Census of the U.S. and the U.S. Department of Labor's Quarterly Census of Employment and Wages (QCEW), identified in Section 2 above, are not an ideal comparison for evaluating the impact on businesses in the organic industry.

WSDA organic program compiled information from our database systems, including gross annual income from organic crops, and used this information to calculate the cost

of fees under the current fee structure and as well as the theoretical cost under the proposed fee structure for each operation that was certified organic by WSDA in 2017 and remained in the program in 2018¹. WSDA organic program used comparisons between these two sets of data to analyze the impact of the proposed rule on currently certified operations. The analyses indicated a majority of the current WSDA certified operations will not be significantly impacted by the changes to the fees in the proposed rule. A significant impact is determined to be an increase in fees that exceeds 0.3 percent of reported gross annual income from organic crops or services.

¹ Since some factors of the current and proposed fee structures are not readily available for previous years, only operations that were certified in 2017 and remain certified in 2018 were included in the evaluation.

When comparing organic production and handling as a single commodity the average reported gross annual income from the one thousand one hundred twenty-three evaluated operations was \$1,449,301.28. The average current effective fee would have been \$2,295.47 and the average effective proposed fee would have been \$2,853.95. The resulting increase in fees from the proposal would represent 0.0385 percent of gross annual income from organic crops and products. Since

many of the evaluated operations have income from both organic and nonorganic activities; this value should serve as a conservative analog to an organic industry wide minor cost threshold (0.3 percent average annual revenue).

In order to better analyze the impact of this proposed revision, the evaluation was extended to evaluate the impact of the proposal on each scope and scale of operation, see the table in Section 3, the proposal is projected to be more than a minor business expense for the following types of businesses:

- Businesses reporting less than \$5,000 in gross annual income
 - While these businesses can expect a significant impact from the proposed fee restructuring, businesses that are reporting less than \$5,000 in gross annual income are typically exempt from organic certification pursuant to 7 C.F.R. 205.101(a). Exempt operations can make limited organic claims without going through the certification process.
- Businesses reporting between \$5,000 and \$50,000 in gross annual income
 - Businesses of this scale can expect an increase of around three percent of their reported organic income to their fees. The revenue from fees for businesses of this scale under the current fee structure has not been sufficient to cover the costs of providing organic certification services. The inclusion of the inspection fee, where this increase primarily comes from, was specifically proposed to help cover the core cost of providing certification services regardless of scale.
- Handlers reporting between \$50,000 and \$500,000 in gross annual income
 - Handlers in this income range can expect an increase of around 0.5 percent of their reported organic income to their fees. While the increase exceeds the 0.3 percent minor cost threshold it is important to note that most handling operations handle both organic and conventional products, with organic handling typically being the minority. If data on the total average annual revenue for these operations was available, it is likely that this cost would fall under the minor cost threshold. Under the current fee structure handlers do not pay enough in fees to recover the program's costs of providing organic certification services.
- Processors reporting between \$50,000 and \$250,000 in gross annual income
 - Processors that are reporting between \$50,000 and \$250,000 should expect an increase of around 0.5 percent of their reported organic income to their fees. While the increase exceeds the 0.3 percent minor cost threshold it is important to note that many organic processors process both organic and conventional products, which would result in a lower effective increase.

WSDA organic program also evaluated the fee structures of six other organic certifiers that were similar to WSDA in either business structure, size, or location in order to ensure that any changes to our fee structure were consistent with the

industry. The effective proposed fee was consistently lower than that of other certifiers, with the reduction in fees being most pronounced for smaller operations.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.

Organic certification is a relatively unique service in that it is a voluntary certification program for businesses wanting to make an organic claim on agriculture based products. Businesses are not required to be certified organic in order to operate. Choosing organic certification and the use of the organic label benefits a business with increased market access and the ability to receive a higher premium for a certified product.

For those operations that choose to be certified by WSDA organic program the impact of this proposed rule will be more significant for the exempt or very small businesses when compared to the largest ten percent of businesses seeking certification. This is largely by design, as under the current fee structure the revenue generated from small businesses does not cover the cost of providing certification services. This cost is largely subsidized by the very large operations.

- The inspection fee included in the proposed restructuring is a flat rate based on scope rather than income (ranging from \$375 for crop producers to \$500 for handlers or processors). This fee is intended to ensure a larger portion of core certification costs are recovered regardless of operation scale, without being overly burdensome. Since this is a flat rate it will have a larger relative effect on smaller operations than it will on larger operations.
- The new application fee will have a disproportionate impact on small businesses within the industry because the fee is a flat rate regardless of the operation's scale. However, when renewing, the renewal fee is based on the gross annual income received by the operation. The larger the business the higher the renewal application fee assessment.

The fees for services outside of the new, renewal, and inspection fee will impact a larger business more than a smaller operation. These flat rates replace the existing hourly rate that may be charged and are targeted at those operations that are expanding or seeking services outside of the annual core certification process.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

(a) *Reducing, modifying, or eliminating substantive regulatory requirements* - The proposal does not include any substantive regulatory requirements. The use of the WSDA organic or transitional logos is optional.

(b) *Simplifying, reducing, or eliminating recordkeeping and reporting requirements* - The proposal aims to simplify the fee reporting and evaluation process and consolidate the optional logos into one consistent design. Rather than having a separate fee structure for each business type, they have been consolidated into a single unified fee structure. This will allow small businesses more flexibility to expand their business models without being restricted by the current fee structure. Additionally the current fee structure relies on new applicants to estimate their income from organic products which is then reconciled at their second inspection. This causes a large number of invoices, credit statements, and general confusion since most new operations will not be able to accurately estimate their income. This complicated estimate/evaluation process has been removed and replaced with a simple flat rate fee (\$375).

(c) *Reducing the frequency of inspections* - The inspection schedule is outlined in the USDA organic regulations, which are outside the scope of this rule change. While the number of inspections will remain consistent across all operations the simplifications that have been made to the rule should reduce the amount of time needed at inspection to verify or explain fees.

(d) *Delaying compliance timetables* - The use of the redesigned logos will be effective for new product labels with the effective date of the changes to chapter 16-157 WAC. However, WSDA organic program will allow the continued use of the existing logo on packages and marketing information while an operation's supplies last. No changes will be required until the time a business needs to reprint an existing label with a current WSDA organic or transitional logo.

(e) *Reducing or modifying fine schedules for noncompliance* - The current fee structure requires operations to pay for the cost of performing additional inspections if needed to evaluate compliance. This cost is outlined as \$40 per hour plus associated travel costs. Under the proposed revision additional inspections are conducted at the same rate as annual inspections (a flat rate depending on scope). This will ensure businesses can expect consistent and predictable costs.

Additional Steps Taken to Reduce the Cost of Certification: The following additional measures exist or are being implemented to reduce the cost of certification, these changes have a more significant impact on smaller operations:

- The proposal includes a discount for businesses with both the producer and handler or processor scope that have less than \$250,000.00 in gross annual income. The intent of this discount is to offset the cost of evaluating a second scope for a small operation that is processing primarily their own crops.
- The following fees are waived for new applicants to reduce reporting requirements and offset the cost of starting a business: New site application fee, land assessment fee, and new product fee.
- USDA funds a cost share reimbursement program. This program reimburses organic operations seventy-five percent of their organic certification fees up to \$750 per scope. WSDA organic program will continue to advertise and administer this program to ensure that it is available to all interested businesses. This reimbursement

would have a significant impact on reducing the cost of certification for small operations.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

WSDA's OAB was established in 1987 to advise WSDA concerning the implementation of the organic program. OAB consists of organic farmers, processors, handlers and other interested parties that meet three to four times a year to discuss the organic program services and provide feedback on how the program can improve the certification process. A fee restructure has been discussed with the WSDA OAB several times over the last decade. This ongoing work with stakeholders helped inform the design of the new logos and established four goals for the revised fee structure outlined in Section 1.

From January to October 2018 WSDA organic program management worked on the development of the proposed rule. This effort included individual meetings with each OAB member as well as with other key stakeholder organizations that represent small businesses with less than fifty employees. The following businesses and organizations provided direct input and support for the proposed rules:

- Washington State Tree Fruit Association*
- Northwest Horticulture Council*
- Tilth Alliance*
- Washington Farmers Market Association*
- Washington State University*
- Zirkle Fruit Company
- GS Long Company Inc.*
- Challenger Farm
- Skagit Flats Farm*
- Empey Orchards
- Wesen Dairy*
- Oyster Bay Farm*
- Middleton Orchards*
- PCC Natural Markets
- Skagit River Ranch*

* Business with less than fifty employees or organizations that represent businesses with less than fifty employees.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The proposed fee structure is simpler and more succinct than the current rule; however it is unlikely that it will have any appreciable effect on the results of compliance and should not result in the loss or creation of any jobs.

A copy of the statement may be obtained by contacting Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1809, fax 360-902-1809 [360-902-2902], TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

October 24, 2018

Steve Fuller, Assistant Director
Food Safety Consumer Services

AMENDATORY SECTION (Amending WSR 06-23-108, filed 11/17/06, effective 12/18/06)

WAC 16-157-010 Purpose. This chapter is adopted under RCW 15.86.060 wherein the director is authorized to adopt rules for the proper administration of the Organic Food Products Act, and under RCW 15.86.070 wherein the director is authorized to adopt rules establishing a certification program for producers, processors, and handlers of organic and transitional (~~(food)~~) products.

AMENDATORY SECTION (Amending WSR 18-03-154, filed 1/23/18, effective 2/23/18)

WAC 16-157-020 Adoption of the National Organic Program. The Washington state department of agriculture adopts the standards of the National Organic Program, 7 C.F.R. Part 205, effective August 7, 2017, for the production and handling of organic crops, livestock, and processed (~~(food)~~) agricultural products. The National Organic Program rules may be obtained from the department by emailing the organic program at organic@agr.wa.gov, by phone at 360-902-1805 or accessing the National Organic Program's web site at <https://www.ams.usda.gov/rules-regulations/organic>.

AMENDATORY SECTION (Amending WSR 06-23-108, filed 11/17/06, effective 12/18/06)

WAC 16-157-030 Definitions. As used in this chapter:

"Department" means the Washington state department of agriculture.

"Director" means the director of the department of agriculture or his or her duly authorized representative.

"Facility" includes, but is not limited to, any premises, plant, establishment, facility and associated appurtenances where organic (~~(food is)~~) products are prepared, handled, or processed in any manner for resale or distribution to retail outlets, restaurants, and any other such facility selling or distributing to consumers.

"Gross annual income" means the total monetary value received during (~~(a twelve month period of time. The twelve month period of time may be a fiscal year or a)~~) the previous calendar year.

"Handler" means any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production.

"Handling operation" means any operation or portion of an operation that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

"New applicant" means any person who applies for organic certification for the first time, or any person who has surrendered an organic certification or had an organic certification suspended or revoked.

"Person" means any individual, partnership, limited liability company, association, cooperative, or other entity.

"Processor" means any handler engaged in the canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, slaughtering or otherwise processing organic (~~(food)~~) products.

"Producer" means a person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

"Production operation" means a farm, ranch, or other business that grows, gathers, or raises crops, wild crops, or livestock.

"Renewal applicant" means any person that has received organic certification from the department in the previous year.

"Retailer" means any handler that sells organic food products directly to consumers.

"Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

"Site" means a contiguous defined field, orchard, block, pasture, paddock, garden, circle, plot or other designated area under the same management practices (e.g., organic, transitional).

"Transitional product" means any agricultural product that (a) is marketed using the term transitional in its labeling and advertising and (b) satisfies all of the requirements of organic except that it has had no applications of prohibited substances within one year prior to the harvest of the crop.

AMENDATORY SECTION (Amending WSR 06-23-108, filed 11/17/06, effective 12/18/06)

WAC 16-157-215 General requirements for certification. (1) Except for operations exempt or excluded in the National Organic Program (7 C.F.R. 205.101), each production or handling operation or specified portion of a production or handling operation must be certified if it produces or handles crops, livestock, livestock products, or other agricultural products intended to be sold, labeled, or represented as "one hundred percent organic," "organic," or "made with organic (specified ingredients or food group(s))."

(a) If you have an operation that meets the definition of "production operation," you must be certified as a producer.

(b) If you have an operation that meets the definition of "handling operation," you must be certified as a handler or processor unless you are a certified producer who cleans, washes, grades, dries, packages, transports, or does similar preparation of your own production.

(c) If you are a certified producer who changes crops, wild crops, or livestock products of your own production into new distinct products by physically, chemically, or otherwise changing the original product, you must also be certified as a processor.

(2) If you are seeking to receive or maintain organic certification, you must submit an application on forms approved by the department.

(a) Application forms must be (~~(signed)~~) submitted by an authorized representative of the business operation and must be accompanied by the appropriate fees in order to be considered.

(b) Application forms are available upon request from the department.

(3) If you are a new applicant, you must include a complete organic system plan with your application.

(4) If you are a certified operation, you must submit an update to your organic system plan on an annual basis. Certified operations may be required by the department to submit a new complete organic system plan whenever there are significant changes to the operation.

(5) Applications for certification must include a list of all organic products produced and/or handled, including site information, sample labels, and complete product profiles for each distinctly labeled organic product.

(a) Certified operations must not use an organic label or make organic claims for any product not included in the operation's organic system plan.

(b) Certified operations may request the addition of new production sites to their organic or transitional certification by submitting maps and complete site applications to the department.

(c) Certified operations may ~~((add))~~ request the addition of new products to their organic certification by submitting sample labels and complete product profiles to the department where applicable.

~~((e))~~ (d) Product profiles must include a complete list of ingredients in the product and processing aids used in manufacturing the product.

(6) Certified operations that do not submit a renewal application and fees to continue certification or do not comply annually with 7 C.F.R. 205.406 may have their certification suspended.

(7)(a) The director shall make one or more inspections per year of each new and renewal applicant to determine compliance with this chapter and chapter 15.86 RCW.

(b) Each separate primary location or facility must receive an annual on-site inspection. The annual on-site inspection includes an audit of required records, examination of production sites, facilities and storage areas, and inspection of any other information deemed necessary by the requirements of this chapter or the National Organic Program, 7 C.F.R. Part 205.

NEW SECTION

WAC 16-157-251 Certification fee schedule. (1) Producers and handlers of organic products must submit an application packet and fees to the department each year to receive or maintain certification.

(a) **New applicant fee:** A new application fee of three hundred seventy-five dollars must be submitted with each new application.

(b) **Renewal fee:** A renewal fee must be submitted annually by March 1st with each renewal application. Renewal fees for producers, handlers, and processors are assessed based on the gross annual income received by the operation for the production or handling of organically certified products. The renewal fee is based on the following fee schedule:

GROSS ANNUAL INCOME RECEIVED FROM ORGANIC PRODUCTS IN PREVIOUS CALENDAR YEAR	RENEWAL FEE DUE ANNUALLY ON MARCH 1st
\$ 0 - \$25,000	\$137.50
\$25,001 - \$50,000	\$275.00

GROSS ANNUAL INCOME RECEIVED FROM ORGANIC PRODUCTS IN PREVIOUS CALENDAR YEAR	RENEWAL FEE DUE ANNUALLY ON MARCH 1st
\$50,001 - \$75,000	\$412.50
\$75,001 - \$100,000	\$550.00
\$100,001 - \$150,000	\$825.00
\$150,001 - \$200,000	\$1,100.00
\$200,001 - \$250,000	\$1,375.00
\$250,001 - \$300,000	\$1,512.50
\$300,001 - \$400,000	\$1,787.50
\$400,001 - \$500,000	\$2,062.50
\$500,001 - \$750,000	\$2,406.25
\$750,001 - \$1,000,000	\$2,750.00
\$1,000,001 - \$1,500,000	\$3,437.50
\$1,500,001 - \$2,000,000	\$4,125.00
\$2,000,001 - \$3,000,000	\$5,500.00
\$3,000,001 - \$4,000,000	\$6,875.00
\$4,000,001 - \$5,000,000	\$8,250.00
\$5,000,001 - and up	\$8,250 plus 0.1375% of income over \$5,000,000

(i) The maximum renewal fee shall not exceed twenty-five thousand dollars per primary facility or location.

(ii) The minimum renewal fee is four hundred twelve dollars and fifty cents for operations with more than: Twenty-five acres in production (excluding fallow, pasture, hay, haylage, and silage), or more than five production sites, or more than fifteen products.

(iii) Operations certified to the retailer scope are exempt from the gross annual income assessment and are charged a one thousand five hundred dollar renewal fee per retail location or facility.

(iv) Renewal applications and fees submitted after March 1st must include a late fee in addition to the renewal fee.

If a renewal application is submitted after March 1st but before:	The late fee is:
April 1st	\$100.00
May 1st	\$200.00
June 1st	\$300.00
July 1st	\$400.00
August 1st	\$500.00
September 1st	\$600.00

(c) **Inspection fee:** An inspection fee must be submitted after each annual and announced additional inspection conducted by the department. The inspection fee is the sum of the fees associated with the scopes of the inspection. Inspection fees are based on the following fee schedule:

INSPECTION SCOPE	INSPECTION FEE
Crop producer	- \$375
Livestock producer	- \$250
Wild crop producer	- \$100
Handler, processor, or retailer	- \$500

(i) Operations with a producer scope plus either the handler or processor scope and less than two hundred fifty thousand dollars in gross annual income qualify for a three hundred dollar reduction in their inspection fee.

(ii) Each primary location or facility must receive an annual on-site inspection. In the event more than one primary location or facility is included under one certification, the operation will be charged an inspection fee per primary location or facility.

(iii) Additional announced inspections, if necessary to determine compliance or requested by the operation, will be charged to the new applicant or certified operation per the inspection fee table. Unannounced inspections conducted by the department are not charged an inspection fee.

(iv) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged five hundred dollars plus associated travel costs in addition to the inspection fee.

(2) New and renewal applicants may request additional evaluations throughout the year. A fee is charged to the operation based on the service requested.

(a) **New scope:** The request to add a new scope of certification will be charged to the certified operation at a rate of one hundred dollars per new organic system plan submitted.

(b) **New site application:** Each new site application submitted by a renewal applicant after March 1st will be charged forty dollars per application.

(c) **Land assessment:** A fee of one hundred dollars per inspection will be charged to a renewal applicant when an evaluation of one or more production sites is part of an inspection. The land assessment fee does not apply to the annual examination of a renewal applicant's existing certified sites.

(d) **New product application:** A rate of forty dollars per handled or single ingredient processed product and a rate of sixty dollars per multi-ingredient processed product is charged to evaluate a new handled or processed product for certification. Product fees are not required when products are submitted with a new application packet.

(e) **New facility:** Certified operations are charged a fee of one hundred dollars per request to evaluate an additional facility.

(f) **Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient staff is available to expedite the work.

(i) Expedited services that do not require an inspection are charged a rate of five hundred dollars to receive an evaluation and certification decision within five business days from the acceptance of the request.

(ii) Expedited services requiring an inspection prior to a certification decision are charged a rate of seven hundred

fifty dollars to receive an inspection on an expedited and agreed upon timeline that takes the crop harvest or anticipated production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection. The expedite fee is in addition to the inspection fee outlined under the certification fee schedule.

(g) **Mediation fee:** A five hundred dollar fee plus the cost of a formal mediator, if applicable, will be charged to a new or renewal applicant when mediation is accepted by the department.

AMENDATORY SECTION (Amending WSR 06-23-108, filed 11/17/06, effective 12/18/06)

WAC 16-157-260 Organic and transitional (~~producer~~) certification and the use of logos. (1) The director must review the application, inspection report, and results of any samples collected to determine if a producer, handler, processor, or retailer has complied with the conditions for organic or transitional certification. A certificate will be issued when the director determines that the (~~producer~~) operation has complied with the conditions for initial or continued organic or transitional (~~producer~~) certification.

(2) Organic producers, handlers, processors, and retailers certified under this chapter may use the organic (~~producer~~) logo, found in WAC 16-157-275, and the USDA organic seal as outlined in 7 C.F.R. Part 205 to identify (~~organic~~) organically certified products.

(3) Transitional products certified under this chapter may use the transitional (~~producer~~) logo, found in WAC 16-157-275, to identify transitional products.

(4) The logos found in WAC 16-157-275 may be printed in black and white as displayed in this chapter. Alternatively, a color version with green leaves may be used. Electronic copies of the logos are available by request from the department.

AMENDATORY SECTION (Amending WSR 02-10-090, filed 4/29/02, effective 5/30/02)

WAC 16-157-275 Organic and transitional certification logos.

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AMENDATORY SECTION (Amending WSR 06-23-108, filed 11/17/06, effective 12/18/06)

WAC 16-157-290 Export and transaction certificates. (1) Organic export and transaction certificates are issued to verify that a specific shipment of organic ~~((food))~~ agricultural products has been produced, processed, and handled in accordance with the National Organic Program, 7 C.F.R. Part 205, or a foreign organic standard.

(2) Applications for export and transaction certificates must be submitted on forms furnished by the department. The applicant must furnish all information requested on the appli-

cation. A separate application must be made for each export and transaction certificate.

(3) The fee for export and transaction certificates is forty dollars per application.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-157-220 Producer fee schedule.
- WAC 16-157-230 Processor fee schedule.
- WAC 16-157-240 Handler fee schedule.
- WAC 16-157-245 Retailer fee schedule.
- WAC 16-157-250 Inspections.
- WAC 16-157-270 Organic food processor and handler certification and use of logos.

**WSR 18-21-194
PROPOSED RULES
HEALTH CARE AUTHORITY**

[Filed October 24, 2018, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-13-086.

Title of Rule and Other Identifying Information: WAC 182-553-500 Home infusion therapy and parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement.

Hearing Location(s): On November 27, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Pear 107, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than November 28, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by November 27, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email amber.lougheed@hca.wa.gov, by November 23, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency revised WAC 182-553-500 to:

(1) Allow for coverage of continuous glucose monitoring for adults and pregnant women who meet certain criteria.

(2) Clarify language on home infusion coverage for clients:

- (a) Residing in a state-owned facility;
- (b) Residing in a nursing facility; or
- (c) Electing to receive the agency's hospice benefit.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Vance Taylor, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Nancy Hite, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1611.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The revisions to this rule do not impose additional compliance costs or requirements on providers.

October 24, 2018

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-14-063, filed 6/26/15, effective 7/27/15)

WAC 182-553-500 Home infusion therapy and parenteral nutrition program—Coverage, services, limitations, prior authorization, and reimbursement. (1) The home infusion therapy and parenteral nutrition program covers the following for eligible clients, subject to the limitations and restrictions listed:

(a) A one-month supply of home infusion (~~((supplies, limited to one month's supply))~~), per client, per calendar month.

(b) A one-month supply of parenteral nutrition solution (~~((s, limited to one month's supply))~~), per client, per calendar month.

(c) One type of infusion pump, one type of parenteral pump, and one type of insulin pump per client, per calendar month and as follows:

(i) All rent-to-purchase infusion, parenteral, and insulin pumps must be new equipment at the beginning of the rental period.

(ii) The agency covers the rental payment for each type of infusion, parenteral, or insulin pump for up to twelve months. The agency considers a pump purchased after twelve months of rental payments.

(iii) The agency covers only one purchased infusion pump or parenteral pump per client in a five-year period.

(iv) The agency covers only one purchased insulin pump per client in a four-year period.

(2) Covered supplies and equipment that are within the described limitations listed in subsection (1) of this section do not require prior authorization for reimbursement.

(3) The agency pays for FDA-approved continuous glucose monitoring systems and related monitoring equipment

and supplies (~~((with))~~) using the expedited prior authorization (~~((for a client who:~~

~~(a) Either has had one or more severe episodes of hypoglycemia or is enrolled in a trial approved by an institutional review board;~~

~~(b) Is age eighteen and younger;~~

~~(e) Has a diagnosis of insulin dependent diabetes mellitus; and~~

~~(d) Is followed by an endocrinologist))~~ process when the client meets the following criteria:

(a) Is age eighteen and younger;

(b) Is age nineteen and older with Type 1 diabetes;

(c) Is age nineteen and older with Type 2 diabetes who

is:

(i) Unable to achieve target HbA1C despite adherence to an appropriate glycemic management plan after six months of intensive insulin therapy and testing blood glucose four or more times per day;

(ii) Suffering from one or more severe episodes of hypoglycemia despite adherence to an appropriate glycemic management plan; or

(iii) Unable to recognize, or communicate about, symptoms of hypoglycemia.

(d) Is pregnant with:

(i) Type 1 diabetes; or

(ii) Type 2 diabetes and on insulin prior to pregnancy;

(iii) Type 2 diabetes and whose blood glucose does not remain well controlled on diet or oral medication during pregnancy and requires insulin; or

(iv) Gestational diabetes with blood glucose that is not well controlled (HbA1C above target or experiencing episodes of hyperglycemia or hypoglycemia) and requires insulin.

(4) Requests for supplies or equipment that exceed the limitations or restrictions listed in this section require prior authorization and are evaluated on ~~((an individual basis according to the provisions of))~~ a case-by-case basis under WAC 182-501-0165 and 182-501-0169.

(5) The agency may adopt policies, procedure codes, and rates inconsistent with those set by medicare.

(6) Agency reimbursement for equipment rentals and purchases includes the following:

(a) Instructions to a client, a caregiver, or both, on the safe and proper use of equipment provided;

(b) Full service warranty;

(c) Delivery and pickup; and

(d) Setup, fitting, and adjustments.

(7) ~~((The agency does not pay separately for home infusion supplies and equipment or parenteral nutrition solutions, except:~~

~~(a) When a client resides in a state-owned facility (e.g., state school, a developmental disabilities facility, a mental health facility, Western State Hospital, or Eastern State Hospital);~~

~~(b) When a client has elected and is eligible to receive the agency's hospice benefit, unless:~~

~~(i) The client has a preexisting diagnosis that requires parenteral support; and~~

~~(ii) The preexisting diagnosis is not related to the diagnosis that qualifies the client for hospice.~~

~~(8) The agency pays separately for a client's infusion pump, parenteral nutrition pump, insulin pump, solutions, and insulin infusion supplies when the client:~~

~~(a) Resides in a nursing facility; and~~

~~(b) Meets the criteria in WAC 182-553-300.) For clients residing in a state-owned facility (i.e., state school, developmental disabilities facility, mental health facility, Western State Hospital, and Eastern State Hospital) payment for home infusion supplies, equipment, and parenteral nutrition solutions are the responsibility of the state-owned facility to provide.~~

(8) For clients who are eligible for and have elected to receive the agency's hospice benefit, the agency pays for home infusion or parenteral nutrition supplies and equipment separately from the hospice per diem rate when:

(a) The client has a preexisting diagnosis that requires parenteral support; and

(b) The preexisting diagnosis is not related to the diagnosis that qualifies the client for hospice.

(9) For clients residing in a nursing facility, infusion pumps, parenteral nutrition pumps, insulin pumps, solutions, and insulin infusion supplies are not included in the nursing facility per diem rate. The agency pays for these items separately.