

## WSR 24-24-008

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed November 21, 2024, 12:17 p.m.]

Supplemental Notice to WSR 24-13-077.

Preproposal statement of inquiry was filed as WSR 24-10-036.

Title of Rule and Other Identifying Information: WAC 182-513-1100 Definitions related to long-term services and supports (LTSS), 182-513-1367 Hardship waivers, 182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution, 182-513-1530 Maximum guardianship fee and related cost deductions allowed from a client's participation or room and board on or after June 1, 2018, 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility, and 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility.

Hearing Location(s): On January 7, 2025, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_dw\\_904j\\_SVe0DvQz\\_IP6NA](https://us02web.zoom.us/webinar/register/WN_dw_904j_SVe0DvQz_IP6NA).

If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 8, 2025.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning November 22, 2024, 8:00 a.m., by January 7, 2025, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending various sections of chapters 182-513 and 182-515 WAC so that they use "guardian," "guardianship," "conservator," and "conservatorship" as those terms are defined and used in chapter 11.130 RCW. HCA originally proposed amending WAC 182-513-1530 under WSR 24-13-077 and held a public hearing on July 25, 2024. Due to public comments, HCA is proposing additional amended rules and holding a second public hearing.

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: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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.

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 rule proposal amends various rules to use both "guardian" and "conservator" as those terms are used in state law at chapter 11.130 RCW. The rule proposal does not impose compliance costs on small businesses and thus does not affect small businesses for the purposes of the Regulatory Fairness Act.

Scope of exemption for rule proposal:

Is fully exempt.

November 21, 2024

Wendy Barcus

Rules Coordinator

## OTS-5976.1

AMENDATORY SECTION (Amending WSR 24-02-036, filed 12/27/23, effective 1/27/24)

**WAC 182-513-1100 Definitions related to long-term services and supports (LTSS).** This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community-based services (HCBS) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCBS waiver, and other services such as medic-aid personal care (MPC), community first choice (CFC), PACE, and hospice in the community.

- See chapter 182-516 WAC for definitions related to trusts, annuities, life estates, and promissory notes.
- See chapter 388-106 WAC for long-term care services definitions.
- See WAC 182-513-1405 for long-term care partnership definitions.
- See chapter 182-500 WAC for additional apple health eligibility definitions.

**"Adequate consideration"** means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

**"Administrative costs"** or **"costs"** means necessary costs paid by the guardian or conservator including attorney fees.

**"Aging and long-term support administration (ALTSA)"** means the administration within the Washington state department of social and health services (DSHS).

**"Alternate living facility (ALF)"** is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

- (a) Adult family home (AFH) licensed under chapter 70.128 RCW.
- (b) Adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) Assisted living facility (AL) licensed under chapter 18.20 RCW.

(d) Behavioral health adult residential treatment facility (RTF) licensed under chapter 246-337 WAC.

(e) Intensive behavioral health treatment facility (IBHTF) is an RTF licensed under chapter 246-337 WAC.

(f) Developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(g) Enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(h) Enhanced service facility (ESF) licensed under chapter 70.97 RCW.

(i) Facility for children and youth 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

(j) Group care facility for medically complex children licensed under chapter 74.15 RCW.

(k) Staffed residential facility licensed under chapter 74.15 RCW.

**"Assets"** means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

**"Authorization date"** means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

**"Clothing and personal incidentals (CPI)"** means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

**"Community first choice (CFC)"** means a medicaid state plan home and community-based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

**"Community options program entry system (COPES)"** means a medicaid home and community-based services (HCBS) waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

**"Community spouse (CS)"** means the spouse of an institutionalized spouse.

**"Community spouse resource allocation (CSRA)"** means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

**"Community spouse resource evaluation"** means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

**"Comprehensive assessment reporting evaluation (CARE) assessment"** means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

**"Conservator"** has the same meaning given in RCW 11.130.010.

**"Conservatorship"** means the process outlined in chapter 11.130 RCW for appointing a conservator and a conservator's carrying out of any duties pursuant to an order entered under RCW 11.130.360 through 11.130.575.

**"Conservatorship fees" or "fees"** means necessary fees charged by a conservator for services rendered on behalf of a client.

**"Continuing care contract"** means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

**"Continuing care retirement community"** means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Dependent"** means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

**"Developmental disabilities administration (DDA)"** means an administration within the Washington state department of social and health services (DSHS).

**"Developmental disabilities administration (DDA) home and community-based services (HCBS) waiver"** means a medicaid HCBS waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCBS waivers:

- (a) Basic Plus;
- (b) Core;
- (c) Community protection;
- (d) Children's intensive in-home behavioral support (CIIBS); and
- (e) Individual and family services (IFS).

**"Equity"** means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

**"Fair market value (FMV)"** means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

**"Guardian"** has the same meaning given in RCW 11.130.010.

**"Guardianship"** means the process outlined in chapter 11.130 RCW for appointing a guardian and a guardian's carrying out of any duties pursuant to an order entered under RCW 11.130.265 through 11.130.355.

**"Guardianship fees" or "fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

**"Home and community-based services (HCBS) waiver programs authorized by home and community services (HCS)"** means medicaid HCBS waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCBS waivers: Community options program entry system

(COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

**"Home and community-based services (HCBS)"** means LTSS provided in the home or a residential setting to persons assessed by the department.

**"Institutional services"** means services paid for by Washington apple health, and provided:

- (a) In a medical institution;
- (b) Through an HCBS waiver; or
- (c) Through programs based on HCBS waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

**"Institutionalized individual"** means a person who has attained institutional status under WAC 182-513-1320.

**"Institutionalized spouse"** means a person who, regardless of legal or physical separation:

- (a) Has attained institutional status under WAC 182-513-1320; and
- (b) Is legally married to a person who is not in a medical institution.

**"Life care community"** see continuing care community.

**"Likely to reside"** means the agency or its designee reasonably expects a person will remain in a medical institution for 30 consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

**"Long-term care services"** see "Institutional services."

**"Long-term services and supports (LTSS)"** includes institutional and noninstitutional services authorized by the department.

**"Medicaid alternative care (MAC)"** is a Washington apple health benefit authorized under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver an array of person-centered long-term services and supports (LTSS) to unpaid caregivers caring for a medicaid-eligible person who meets nursing facility level of care under WAC 388-106-0355 and 182-513-1605.

**"Medicaid personal care (MPC)"** means a medicaid state plan home and community-based service under chapter 388-106 WAC.

**"Most recent continuous period of institutionalization (MRCPI)"** means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

**"Noninstitutional medicaid"** means any apple health program not based on HCBS waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for 30 days or more under chapter 182-513 WAC.

**"Nursing facility level of care (NFLOC)"** is described in WAC 388-106-0355.

**"Participation"** means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

**"Penalty period"** or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

**"Personal needs allowance (PNA)"** means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

**"Presumptive eligibility (PE)"** for long-term services and supports is described in WAC 182-513-1110.

**"Program of all-inclusive care for the elderly (PACE)"** provides long-term services and supports (LTSS), medical, mental health, and substance use disorder (SUD) treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

**"Roads to community living (RCL)"** is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

**"Room and board"** means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

**"Short stay"** means residing in a medical institution for a period of 29 days or fewer.

**"Significant financial duress"** means, but is not limited to, threatened loss of, or financial burden from, basic shelter, food, or medically necessary health care. It means that a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

**"Special income level (SIL)"** means the monthly income standard that is 300 percent of the supplemental security income (SSI) federal benefit rate.

**"Spousal impoverishment protections"** means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCBS waivers authorized under 1915(c) of the Social Security Act, and through September 30, 2027, services authorized under 1115 and 1915(k) of the Social Security Act.

**"Spousal impoverishment protections community (SIPC) spouse"** means the spouse of a SIPI spouse.

**"Spousal impoverishment protections institutionalized (SIPI) spouse"** means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

**"State spousal resource standard"** means the minimum CSRA standard for a CS or SIPC spouse.

**"Tailored supports for older adults (TSOA)"** is a federally funded program approved under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver person-centered long-term services and supports (LTSS).

**"Third-party resource (TPR)"** means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

**"Transfer"** means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

- (a) An intentional act that changes ownership or title; or

(b) A failure to act that results in a change of ownership or title.

**"Uncompensated value"** means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

**"Undue hardship"** means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

**WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care in a medical institution.** This rule describes how the agency or the agency's designee allocates income and excess resources when determining participation in the cost of care in a medical institution.

(1) The agency or the agency's designee defines which income and resources must be used in this process under WAC 182-513-1315.

(2) The agency or the agency's designee allocates nonexcluded income in the following order, and the combined total of (a), (b), (c), and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) under WAC 182-513-1105.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program under WAC 182-512-0050(1); and

(ii) Receives the wages as part of an agency-approved or department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction, employment expenses are not deducted.

(d) Guardianship fees, conservatorship fees, and administrative costs, including any attorney fees paid by the guardian or conservator, as allowed under chapter 388-79A WAC.

(3) The agency or the agency's designee allocates nonexcluded income after deducting amounts under subsection (2) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is:

(i) For the current month;

(ii) For the time period covered by the PNA; and

(iii) Not counted as the dependent member's income when determining the dependent allocation amount under WAC 182-513-1385.

(b) A monthly maintenance needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income up to the PNA.

(c) A dependent allowance for each dependent of the institutionalized client or the client's spouse, as determined using the calculation under WAC 182-513-1385.

(d) Medical expenses incurred by the institutionalized individual and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to 100 percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client or couple is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income deduction.

(4) A client may have to pay third-party resources as defined under WAC 182-513-1100 in addition to the participation.

(5) A client is responsible to pay only up to the state rate for the cost of care. If long-term care insurance pays a portion of the state rate cost of care, a client pays only the difference up to the state rate cost of care.

(6) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has in a month.

(7) Standards under this section for long-term care are found at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources).

## OTS-5977.1

AMENDATORY SECTION (Amending WSR 18-04-037, filed 1/30/18, effective 3/2/18)

**WAC 182-513-1367 Hardship waivers.** (1) This section defines undue hardship for long-term services and supports (LTSS) and specifies the request, approval, denial, and other processes for hardship waivers.

(2) Undue hardship.

(a) Undue hardship exists when, without LTSS benefits, the client is unable to obtain:

(i) Medical care to the extent that health or life is endangered; or

(ii) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship does not exist when:

(i) The denial or termination of LTSS inconveniences the client or restricts the client's lifestyle but does not seriously deprive the client of the items described under (a) of this subsection;

(ii) The denial or termination of LTSS is because of a period of ineligibility under WAC 182-513-1363, and the asset was transferred by a person or entity handling the financial affairs of the client denied or terminated from LTSS, unless the department has found evidence of financial exploitation; or

(iii) The client's situation meets undue hardship under (a) of this subsection because of restrictions placed in a trust by that client, either personally or through a spouse, guardian, conservator,



court, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact).

(3) A hardship waiver may be requested when a client is denied or terminated from LTSS under the following scenarios:

(a) A period of ineligibility under WAC 182-513-1363 was established for a client, and that client, who transferred the assets, or on whose behalf the assets were transferred, either personally or through a spouse, guardian, conservator, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or the value of the transferred assets that caused the period of ineligibility;

(b) A client was denied or terminated from LTSS due to exceeding the home equity standard under WAC 182-513-1350, and the client cannot legally access the excess equity; or

(c) The client was denied or terminated from LTSS due to the application of rules regarding trusts under chapter 182-516 WAC, except that if the application of rules regarding trusts under chapter 182-516 WAC results in a period of ineligibility under WAC 182-513-1363, then (a) of this subsection applies instead of (c) of this subsection.

(4) Process to request a hardship waiver.

(a) A hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative; or

(iv) With the consent of the client, a representative of the medical institution in which the client resides.

(b) The hardship waiver request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address, and telephone number. If the request is being made on behalf of a client, then that client's name, address, and telephone number must be included;

(iv) Be made within (~~thirty~~) 30 days of the date of denial or termination of LTSS; and

(v) Returned to the originating address on the denial or termination letter.

(c) If additional information is needed to determine whether or not to approve a hardship waiver, then, within (~~fifteen~~) 15 days of receipt of the request for the hardship waiver, the agency or the agency's designee sends the client a written notice requesting additional information under WAC 182-503-0050.

(5) Standards to approve a hardship waiver request.

(a) Period of ineligibility: If a client was denied or terminated from LTSS under WAC 182-513-1363 (the scenario described in subsection (3)(a) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(b) Excess home equity: If a client was denied or terminated from LTSS under WAC 182-513-1350 (the scenario described in subsection (3)(b) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(c) Trusts.

(i) The client's home is in a revocable trust: If a client was denied or terminated from LTSS under chapter 182-516 WAC (the scenario described in subsection (3)(c) of this section), then the agency or the agency's designee approves a hardship waiver for up to ~~((ninety))~~ 90 days if the following conditions are met:

(A) The client is an institutionalized individual;

(B) The home would otherwise meet the exclusion criteria in WAC 182-512-0350 (1)(b), but it is in a revocable trust; and

(C) The client must submit in writing to the agency or the agency's designee that, in order to exclude the home under WAC 182-512-0350 (1)(b), the home will be retitled out of the revocable trust to the client, the client's spouse, or both, within ~~((ninety))~~ 90 days.

(ii) All other denials or terminations of LTSS due to trusts: If a client was denied or terminated from LTSS under subsection (3)(c) of this section, and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(6) If the hardship is approved:

(a) The agency or the agency's designee sends a notice within ~~((fifteen))~~ 15 days of receiving all information needed to approve the hardship waiver. The hardship waiver approval notice specifies a time period for which the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship waiver must be reported to the agency or the agency's designee within ~~((thirty))~~ 30 days of the change per WAC 182-504-0110.

(c) If the hardship waiver is approved under subsection (5)(c)(i) of this section, the client must provide verification by the ~~((ninetieth))~~ 90th day after the hardship waiver approval that the home has been retitled out of the revocable trust to the client, the client's spouse, or both.

(7) If the hardship waiver is denied:

(a) The agency or the agency's designee sends a denial notice within ~~((fifteen))~~ 15 days of receiving the hardship waiver request or the request for additional information. The notice will state the reason why the hardship waiver was not approved.

(b) The denial notice has instructions on how to request an administrative hearing. The agency or the agency's designee must receive an administrative hearing request within ~~((ninety))~~ 90 days of the date of the adverse action.

(8) The agency or the agency's designee may revoke approval of an undue hardship waiver if any of the following occur:

(a) A client, or the client's authorized representative, fails to provide timely information or resource verifications as it applies to the hardship waiver when requested by the agency or the agency's designee per WAC 182-503-0050 and 182-504-0105;

(b) The lien or legal impediment that restricted access to home equity in excess of the home equity limit is removed; or

(c) Circumstances for which the undue hardship was approved have changed.

(9) If there is a conflict between this section and chapter 182-526 WAC, this section prevails.

## OTS-5237.2

AMENDATORY SECTION (Amending WSR 18-10-024, filed 4/24/18, effective 6/1/18)

**WAC 182-513-1530 Maximum guardianship or conservatorship fee and related cost deductions allowed from a client's participation or room and board on or after June 1, 2018.** (1) General information.

(a) This section sets the maximum guardianship or conservatorship fee and related cost deductions when:

(i) A court order was entered on or after June 1, 2018; or

(ii) The client under guardianship or conservatorship began receiving medicaid-funded long-term services and supports on or after June 1, 2018.

(b) This section only applies to a client who is:

(i) Eligible for and receives institutional services under this chapter (~~(182-513 WAC)~~) or home and community-based waiver services under chapter 182-515 WAC, and who is required to pay participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Eligible for long-term services and supports under this chapter (~~(182-513)~~) or chapter 182-515 WAC, and who is required to pay only room and board.

(c) All requirements of this section remain in full force whether or not the agency appears at a guardianship or conservatorship proceeding.

(d) In this section, the agency does not delegate any authority in determining eligibility or post-eligibility for medicaid clients.

(i) Under the authority granted by chapter 11.130 RCW (~~(11.92.180)~~), the agency does not deduct more than the amounts allowed by this section from participation or room and board.

(ii) The eligibility rules under Title 182 WAC remain in full force and effect.

(e) The agency does not reduce a client's participation or room and board under this section for guardianship or conservatorship fees or related costs accumulated during any month that a client was not required to pay:

(i) Participation under WAC 182-513-1380, 182-515-1509, or 182-515-1514; or

(ii) Room and board under this chapter (~~(182-513)~~) or chapter 182-515 WAC.

(f) If the client has another fiduciary, payee, or other principal-agency relationship and the agent is allowed compensation, any monthly guardianship or conservatorship fee approved under this section is reduced by the agent's compensation.

(2) Maximum guardianship or conservatorship fee and related cost deductions.

(a) The maximum guardianship or conservatorship fee and related cost deductions under this section include all guardianship or conservatorship services provided to the client, regardless of the number of guardians or conservators appointed to a client during a period of time, or whether the client has multiple guardians or conservators appointed at the same time.

(b) Maximum guardianship or conservatorship fees and related cost deductions are as follows:

(i) The total deduction for costs directly related to establishing a guardianship or conservatorship for a client cannot exceed \$1,850;

(ii) The total deduction for all guardianship and conservatorship-related costs cannot exceed \$1,200 during any three-year period; and

(iii) The amount of the monthly deduction for all guardianship and conservatorship fees cannot exceed \$235 per month.

(3) For people under subsection (1)(b)(i) of this section - Participation deductions.

(a) After receiving the court order, the agency or its designee adjusts the client's current participation to reflect the deductions under WAC 182-513-1380, 182-515-1509, or 182-515-1514.

(b) The amounts of the participation deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

(c) For clients who pay room and board in addition to participation, if the client's amount of participation is insufficient to allow for the amounts under subsection (2) of this section, then, regardless of any provision of this chapter (~~182-513~~) or chapter 182-515 WAC, the client's room and board will be adjusted to allow the amounts under subsection (2) of this section.

(4) For people under subsection (1)(b)(ii) of this section - Room and board deductions.

(a) The agency adjusts the client's room and board after receiving the court order, regardless of any provision of this chapter (~~182-513~~) or chapter 182-515 WAC.

(b) The amounts of the room and board deductions are the amounts under subsection (2) of this section, or the court order, whichever are less.

## OTS-5978.1

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

**WAC 182-515-1509 Home and community based (HCB) waiver services authorized by home and community services (HCS)—Client financial responsibility.** (1) A client eligible for home and community based

(HCB) waiver services authorized by home and community services (HCS) under WAC 182-515-1508 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS when living in their own home:

(a) A single client who lives in their own home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to 300% of the federal benefit rate (FBR) for the supplemental security income (SSI) cash grant program and must pay the remaining available income toward cost of care after allowable deductions described in subsection

(4) of this section. The Washington apple health income and resource standards chart identifies 300% of the FBR as the medical special income level (SIL).

(b) A married client who lives with the client's spouse in their own home (as defined in WAC 388-106-0010) keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of the client's available income toward cost of care after allowable deductions under subsection (4) of this section.

(c) A married client who lives in their own home and apart from the client's spouse keeps a PNA of up to the SIL but must pay the remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living in their own home where each client receives HCB waiver services is each allowed to keep a PNA of up to the SIL but must pay remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(e) A married couple living in their own home where each client receives HCB waiver services, one spouse authorized by the developmental disabilities administration (DDA) and the other authorized by HCS, is allowed the following:

(i) The client authorized by DDA pays toward the cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The client authorized by HCS retains the SIL and pays the remainder of the available income toward cost of care after allowable deductions under subsection (4) of this section.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by HCS and room and board when living in a department contracted alternate living facility (ALF) defined under WAC 182-513-1100. A client:

(a) Keeps a PNA of under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by deductions in the following order:

(a) An earned income deduction of the first \$65 plus one-half of the remaining earned income;

(b) Guardianship fees, conservatorship fees, and administrative costs including any attorney fees paid by the guardian or conservator only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined under WAC 182-513-1385. If the community spouse is also receiving long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA, as calculated under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385;

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the special income level (SIL) defined under WAC 182-513-1100:

(a) The PNA allowed in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees, conservatorship fees, and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, and the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources).

AMENDATORY SECTION (Amending WSR 23-04-034, filed 1/25/23, effective 2/25/23)

**WAC 182-515-1514 Home and community based (HCB) services authorized by the developmental disabilities administration (DDA)—Client financial responsibility.** (1) A client eligible for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) under WAC 182-515-1513 must pay toward the cost of care and room and board under this section.

(a) Post-eligibility treatment of income, participation, and participate are all terms that refer to a client's responsibility towards cost of care.

(b) Room and board is a term that refers to a client's responsibility toward food and shelter in an alternate living facility (ALF).

(2) The agency determines how much a client must pay toward the cost of care for home and community based (HCB) waiver services authorized by the DDA when the client is living at home, as follows:

(a) A single client who lives at home (as defined in WAC 388-106-0010) keeps a personal needs allowance (PNA) of up to the special income level (SIL) defined under WAC 182-513-1100.

(b) A single client who lives at home on the roads to community living program authorized by DDA keeps a PNA up to the SIL but must pay any remaining available income toward cost of care after allowable deductions described in subsection (4) of this section.

(c) A married client who lives with the client's spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL but must pay any remaining available income toward cost of care after allowable deductions under subsection (4) of this section.

(d) A married couple living at home where each client receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The client authorized by DDA keeps a PNA of up to the SIL but must pay any remaining available income toward the client's cost of care after allowable deductions in subsection (4) of this section; and

(ii) The client authorized by HCS pays toward the cost of care under WAC 182-515-1507 or 182-515-1509.

(3) The agency determines how much a client must pay toward the cost of care for HCB waiver services authorized by DDA and room and board when the client is living in a department-contracted ALF defined under WAC 182-513-1100. A client:

(a) Keeps a PNA under WAC 182-513-1105;

(b) Pays room and board up to the room and board standard under WAC 182-513-1105; and

(c) Pays the remainder of available income toward the cost of care after allowable deductions under subsection (4) of this section.

(4) If income remains after the PNA and room and board liability under subsection (2) or (3) of this section, the remaining available income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) An earned income deduction of the first \$65, plus one-half of the remaining earned income;

(b) Guardianship fees, conservatorship fees, and administrative costs including any attorney fees paid by the guardian or conservator only as allowed under chapter 388-79A WAC;

(c) Current or back child support garnished or withheld from the client's income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse under WAC 182-513-1385. If the community spouse is on long-term care services, the allocation is limited to an amount that brings the community spouse's income to the community spouse's PNA;

(e) A monthly maintenance-needs allowance for each dependent of the institutionalized client, or the client's spouse, as calculated under WAC 182-513-1385; and

(f) Incurred medical expenses which have not been used to reduce excess resources. Allowable medical expenses are under WAC 182-513-1350.

(5) The total of the following deductions cannot exceed the SIL defined under WAC 182-513-1100:

(a) The PNA described in subsection (2) or (3) of this section, including room and board;

(b) The earned income deduction in subsection (4)(a) of this section; and

(c) The guardianship fees, conservatorship fees, and administrative costs in subsection (4)(b) of this section.

(6) A client may have to pay third-party resources defined under WAC 182-513-1100 in addition to the room and board and participation.

(7) A client must pay the client's provider the sum of the room and board amount, the cost of care after all allowable deductions, and any third-party resources defined under WAC 182-513-1100.

(8) A client on HCB waiver services does not pay more than the state rate for cost of care.

(9) When a client lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services the client has received in a month.

(10) Standards described in this section are found at [www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources](http://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources).



## WSR 24-24-015

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 22, 2024, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-058.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements; and amending WAC 388-76-10780 Toilets and bathing facilities.

Hearing Location(s): On January 7, 2025, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than January 8, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on December 4, 2024, by 5:00 p.m. on January 7, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal restores the flexibility of previous rules and adds clarity that will help adult family homes (AFH) with compliance while maintaining safety and well-being of residents in AFHs. The anticipated effect is a reduced financial and regulatory burden for new AFHs.

Reasons Supporting Proposal: This proposal reduces barriers to the AFH market, allowing new AFHs flexibility in how they meet licensing requirements for bathrooms. Residents' health and safety is maintained. This proposal was requested by a member of the community and supports the DSHS mission of collaborating with the community.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: RCW 70.128.007.

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: Colleen Jensen, 4500 10th Avenue S.E., Lacey, WA 98503, 564-999-3182.

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 Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email [colleen.jensen1@dshs.wa.gov](mailto:colleen.jensen1@dshs.wa.gov).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 purpose of this chapter is to implement

chapter 70.128 RCW to promote the safety and well-being of AFH or residents, to specify standards for AFH, and to further establish requirements for operating an AFH. The proposed amendments to this chapter will:

- Remove the requirement that there be two toilets available to each resident in AFHs licensed after August 1, 2023, for more than five residents and clarify there must be at least one toilet meeting WAC requirements for every five people living in the AFH.
- Clarify toilets and bathing facilities not used by residents do not have to meet WAC requirements but must be inaccessible to residents.

DSHS provided notice of the proposed rule making to interested parties, which includes AFHs. DSHS held two interested parties "workgroup" meetings to solicit input and feedback during the rule-making process. The workgroup included representatives from the Adult Family Home Council (AFHC), the Washington state long-term care ombuds program, architects, and AFH consultants. No AFH providers accepted the invitation to participate. DSHS sought input from the state building code council and the state fire marshal, who reviewed and commented on the draft rules. DSHS used the comments from the workgroup to make updates to the draft rules.

DSHS consulted with the exclusive representative of AFH licensees, the AFHC, for input on how the rules may impact costs for the small businesses they represent.

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ 50 or fewer people and are independently owned and operated. These proposed rules impact AFHs licensed by DSHS.

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

Under chapter 19.85 RCW, DSHS has considered annual costs to small businesses that are \$50.00 or more per client served, per affected AFH. The proposed rule amendments will not impose more-than-minor costs on small businesses. The preparation of a comprehensive SBEIS is not required.

The proposed rules include the following significant changes:

- Requirements for the number of toilets available for resident use.
- Requirements to make unlicensed toilets and bathing facilities inaccessible to residents.

DSHS identified no costs associated with the proposed rule. Some AFHs will have a cost savings because they will not have to add or modify a bathroom under the proposed rule.

AFHs will not have to add or modify a bathroom when they have enough toilets to meet the 1:5 ratio in the proposed rule. This will save AFHs money and will reduce barriers to licensure. Defining "accessible" will provide clarity, which will help AFHs comply with the rule. Residents will still have access to a sufficient number of toilets in the AFH to maintain comfort and dignity and AFHs have flexibility in how they meet the requirement. For the requirement to make unlicensed toilets and bathing facilities inaccessible, there will be less likelihood of residents accessing facilities that don't meet the WAC requirements, which supports resident safety.

A copy of the detailed cost calculations may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email colleen.jensen1@dshs.wa.gov.

November 21, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5062.1

AMENDATORY SECTION (Amending WSR 23-12-075, filed 6/6/23, effective 8/1/23)

**WAC 388-76-10780 Toilets and bathing facilities.** (1) All adult family homes must ensure the home has toilets and bathing facilities that provide each resident with privacy and include at least:

(a) One accessible indoor flush toilet that meets WAC 51-51-0330 for each five persons including residents and household members who live in the home; and

(b) Sinks with hot and cold running water.

(2) For the purposes of this section, "accessible" means available and licensed for resident use.

~~((2))~~ (3) Homes licensed after July 1, 2007, must also ensure each resident has access to a toilet, and bathing facilities without going through another person's room.

~~((3) Homes licensed after August 1, 2023, that have a licensed capacity of more than five residents must have at least two indoor flush toilets available and accessible for resident use without requiring any resident to go through another person's room.)~~

(4) Homes licensed after August 1, 2023, must have a sufficient number of toilets to maintain a ratio of one accessible toilet to five persons, without having to go through another person's room to use a toilet.

(5) Toilets and bathing facilities not used by residents do not need to meet requirements of WAC 51-51-0330 and must not be accessible to residents.

## WSR 24-24-016

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 22, 2024, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-097.

Title of Rule and Other Identifying Information: This proposal updates chapter 388-76 WAC, Adult family home minimum licensing requirements; amending WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure, 388-76-10225 Reporting requirement, and 388-76-10530 Resident rights—Notice of rights and services.

Hearing Location(s): On January 7, 2025, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than January 8, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on December 4, 2024, by 5:00 p.m. on January 7, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal modifies language in WAC 388-76-10031 that conflicts with DSHS's interpretation of RCW 70.128.066 related to automatic sprinkler systems in seven and eight bed adult family homes (AFH) that serve only residents who are independent with evacuation. This rule making also implements ESHB 2015, chapter 147, Laws of 2024, that gives DSHS the ability to temporarily prioritize licensing inspections of AFHs requesting to increase licensed capacity to seven or eight beds when the home has met all other requirements. The anticipated effect is a reduction of regulatory burden for some existing AFHs, enabling expansion. This will provide more available options for residents choosing to live in an AFH.

Reasons Supporting Proposal: This rule making is necessary to incorporate ESHB 2015, chapter 147, Laws of 2024, into the rules. This and other changes fit with the aging and long-term support administration's goal of supports that increase access, choice, and integration. By removing barriers to expansion for some AFHs, there will be more options for residents choosing an AFH setting.

Statutory Authority for Adoption: RCW 70.128.040 and 70.128.066.

Statute Being Implemented: RCW 70.128.066.

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: Colleen Jensen, 4500 10th Avenue S.E., Lacey, WA 98503, 564-999-3182.

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 Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email colleen.jensen1@dshs.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 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.

Explanation of exemptions: The proposed rule allows DSHS to, temporarily, complete one or two inspections of an AFH upon submission of an application to increase capacity to seven or eight beds if the AFH has otherwise met the requirements of the statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 388-76-10031, adoption of statute without material change, RCW 34.05.310 (4) (c).

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 purpose of this chapter is to implement chapter 70.128 RCW, to promote the safety and well-being of AFH or residents, to specify standards for AFH, and to further establish requirements for operating an AFH. The proposed rules will meet this purpose by aligning AFH rules with DSHS's interpretation of RCW. The rules implement statutory changes adopted by the 2024 legislature under HB 2015. The legislation establishes requirements that allow DSHS to prioritize inspections of some AFHs who wish to increase licensed capacity to seven or eight beds. In addition, the rules will:

- Remove the regulatory requirement for some AFHs to have an automatic sprinkler system to be able to expand capacity to seven or eight beds.
- Require seven and eight bed AFHs that do not have a sprinkler system to include in their policies notification that residents who become unable to evacuate the AFH independently will be required to discharge.
- Require seven and eight bed AFHs that do not have a sprinkler system to report to DSHS when a resident's status changes to require assistance with evacuation.

DSHS provided notice of the proposed rule making to interested parties, which includes AFHs. Concerning the changes that address sprinklers, DSHS held two interested parties "workgroup" meetings to solicit input and feedback during the rule-making process. The workgroup included representatives from the Adult Family Home Council (AFHC), the Washington state long-term care ombuds program, architects, and AFH consultants. No AFH providers accepted the invitation to participate. DSHS sought input from the state building code council and the state fire marshal who reviewed and commented on the draft rules.

Concerning the changes that implement HB 2015, the rules will adopt by reference without material change Washington state statutes. This law passed after the workgroup meetings had concluded. DSHS updated the most recent draft to include the amended language and sent to the workgroup for review and comment. There were no comments concerning the added rule text.

DSHS consulted with the exclusive representative of AFH licensees, the AFHC, for input on how the rules may impact costs for the small businesses they represent.

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ 50 or fewer people and are independently owned and operated. These proposed rules impact AFHs licensed by DSHS.

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

DSHS considered annual costs to small businesses that are \$50.00 or more per client served, per affected AFH. The proposed rule amendments will not impose more-than-minor costs on small businesses. The preparation of a comprehensive SBEIS is not required.

The proposed rules include the following significant changes to:

- Licensing requirements for AFHs wishing to expand licensed capacity to seven or eight beds.
- Reporting requirements.
- Notice requirements for AFHs.

If adopted, the proposed rules will benefit AFHs and likely save some AFHs money. Some AFHs will not have to add costly sprinkler systems. Residents will benefit from being able to make an informed choice about living in an AFH where they will be required to move should they become unable to self-evacuate. Residents who become unable to self-evacuate will be better supported when AFHs must notify DSHS of the resident's change in status.

A copy of the detailed cost calculations may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email colleen.jensen1@dshs.wa.gov.

November 21, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5063.1

AMENDATORY SECTION (Amending WSR 23-12-075, filed 6/6/23, effective 8/1/23)

**WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure.** (1) An adult family home submitting an application to increase the licensed capacity of a currently licensed adult family home to seven or eight residents must:

(a) Be able to demonstrate to the department the applicant's history of financial solvency and successful management experience as an adult family home provider;

(b) Maintain the initial license for the adult family home identified on the capacity increase application for a period of no less than 24 months prior to application;

(c) Maintain a licensed capacity for six residents for at least the 12 months immediately prior to application;

(d) Demonstrate to the department the ability to comply with the emergency evacuation standards in WAC 388-76-10865; and

~~((d))~~ (e) Receive at least two full inspections prior to application, with no enforcement action taken against the home during the time period starting with the older of the two most recent inspections and ending at the time the capacity increase is approved(, and)). Between June 6, 2024, and January 1, 2026, for adult family homes applying to increase bed capacity under RCW 70.128.066, the department may:

~~((e) Demonstrate to the department the ability to comply with the emergency evacuation standards in WAC 388-76-10865.))~~

(i) Complete the first inspection upon receipt of an application to increase bed capacity if the home has otherwise met the requirements of RCW 70.128.066.

(ii) Complete a second inspection upon receipt of an application to increase bed capacity if at least six months have passed since the first inspection.

(2) The adult family home must provide the following items to the department with the application:

(a) Documentation verifying the installation of an automatic sprinkler system that meets the requirements of chapter 51-54A WAC if the home serves residents who require assistance during an evacuation;

(b) Any outstanding fees associated with licensure or additional inspections;

(c) A written plan to mitigate the potential impact of vehicular traffic related to the increased capacity; and

(d) An attestation signed by the provider that states an increase in the number of beds will not adversely affect the provider's ability to meet the health, safety, rights, or quality of life needs of the current and prospective residents in the home.

(3) At the time of application for a license capacity increase to seven or eight residents, the adult family home must provide a written notice to all residents and the residents' representatives that the home has applied for a license capacity increase. This notice must:

(a) Be provided at least 60 days prior to admitting a seventh or eighth resident;

(b) Be written in a manner or language that is understood by the residents and the residents' representatives;

(c) Inform residents and resident representatives that the department will consider their comments regarding the quality of care and quality of life offered by the home and their views regarding the addition of one or two more residents; and

(d) Provide contact information for the regional residential care services licensing office where the resident or their representative can share their comments.

(4) An adult family home licensed for seven or eight beds that does not have an automatic sprinkler system must not serve residents that require assistance during evacuation as defined by WAC 388-76-10870 and will have a limit placed on their license by the department.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

- WAC 388-76-10225 Reporting requirement.** (1) The adult family home must ensure all staff:
- (a) Report suspected abuse, neglect, exploitation, or abandonment of a resident:
    - (i) As required by chapter 74.34 RCW;
    - (ii) To the department by calling the complaint toll-free hotline number or completing an online report; and
    - (iii) To the local law enforcement agency when required by RCW 74.34.035.
  - (b) Report the following to the department by calling the complaint toll-free hotline number or completing an online report:
    - (i) Any actual or potential event requiring any resident to be evacuated;
    - (ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and
    - (iii) A missing resident.
- (2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:
- (a) The resident's family;
  - (b) The resident's representative, if one exists;
  - (c) The resident's health care provider;
  - (d) Other appropriate professionals working with the resident;
  - (e) Persons identified in the negotiated care plan; and
  - (f) The resident's case manager if the resident is a department client.
- (3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:
- (a) The local public health officer; and
  - (b) The department's complaint toll-free hotline number or online reporting system.
- (4) The adult family home must notify the department's case management office within (~~twenty-four~~) 24 hours whenever a resident, whose stay is paid for by the department is discharged for more than (~~twenty-four~~) 24 hours on medical leave to a nursing home or hospital.
- (5) The adult family home licensed for seven or eight beds that does not have an automatic fire sprinkler system must notify the department's complaint toll-free hotline number or complete an online report when any resident in the home requires assistance with evacuation as defined in WAC 388-76-10870.

AMENDATORY SECTION (Amending WSR 21-11-074, filed 5/17/21, effective 8/1/21)

- WAC 388-76-10530 Resident rights—Notice of rights and services.**
- (1) The adult family home must provide each resident written notice of the resident's rights and services provided in the home in a language the resident understands and before the resident is admitted to the home. The notice must be reviewed at least once every (~~twenty-four~~)



24 months from the date of the resident's admission and must include the following:

(a) Information regarding resident rights, including rights under chapter 70.129 RCW;

(b) A complete description of the services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

(c) A complete description of the charges for those services, items, and activities, including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs;

(d) The monthly or per diem rate charged to private pay residents to live in the home;

(e) Rules of the home, which must not violate resident rights in chapter 70.129 RCW;

(f) How the resident can file a complaint concerning alleged abandonment, abuse, neglect, or financial exploitation with the state hotline; ~~((and))~~

(g) If the home will be managing the resident's funds, a description of how the home will protect the resident's funds ~~((-))~~; and

(h) If the home does not serve residents who require assistance with evacuation due to a limit on their license, notice that residents living in the home whose status changes to require assistance will be discharged from the facility.

(2) Upon receiving the notice of rights and services at admission and at least every ~~((twenty-four))~~ 24 months, the home must ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the notice of rights and services as outlined in this section. The home must retain a signed and dated copy of both the notice of rights and services and the acknowledgement in the resident's record.

## WSR 24-24-020

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 22, 2024, 12:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-041.

Title of Rule and Other Identifying Information: WAC 388-76-10490  
Medication disposal—Written policy—Required.

Hearing Location(s): On January 7, 2025, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than January 8, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon December 4, 2024, by 5:00 p.m. on January 7, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule supports and protects residents by adding time frames to existing WAC requirements and adding clarifying language. The proposed rule does this by requiring adult family homes (AFHs) to dispose of expired and discontinued medications within a specific time frame and developing a policy to address the transfer of medications when residents permanently leave the home. Residents are less likely to receive expired or unused medications and those who leave the AFH will receive support to ensure they take their medications with them.

Reasons Supporting Proposal: This rule making is supported by a petition from a member of the pharmacy community to address waste that occurs when prescriptions are filled for residents after they leave an AFH. Developing medication disposal and transfer time frames and documentation requirements will help AFH providers comply with the rule and promote safety of residents in AFHs.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: RCW 70.128.007.

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: Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, 564-999-3182.

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 Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email [colleen.jensen1@dshs.wa.gov](mailto:colleen.jensen1@dshs.wa.gov).

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

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 purpose of this chapter is to implement chapter 70.128 RCW, to promote the safety and well-being of AFH (or home) residents, to specify standards for AFH providers, and to further establish requirements for operating an AFH.

The proposed amendments address a process gap that occurs when residents transfer or discharge from AFHs and prescription medications for those residents continue to be filled by pharmacies. These filled prescriptions cannot be returned to the pharmacy and are subject to diversion and misuse by others. This issue was brought to the attention of the department by a member of the pharmacy community.

Proposed amendments to the chapter:

(1) Add a definition of "discontinued" medications for this section only.

(2) Add a time frame for disposal of expired and discontinued medications for residents who reside in the AFH and for disposal of medications for residents who have permanently left the AFH.

(3) Add a requirement to include in the facility's policy assistance with transfer of the resident's medications to a resident's new setting, when needed.

(4) Add a requirement for the facility to include in their policy a method to stop delivery or fulfillment of the prescription medications to the AFH for residents who have permanently left the home.

(5) Add a requirement for documentation when medication disposal occurs.

The proposed rules promote the safety and well-being of residents who live in AFHs by requiring homes to dispose of expired and discontinued medications within a specific time frame and developing a policy to address the transfer of medications when residents permanently leave the home.

DSHS provided notice of the proposed rule making to interested parties, which includes AFH providers. The Adult Family Home Council (AFHC), the exclusive representative of AFH licensees, was involved in the rule making. Other interested parties included the Washington state long-term care ombudsman program and the pharmacy commission. DSHS initiated communication with interested parties and elicited feedback through a series of emails during the rule development process.

DSHS consulted with the AFHC for input on how the rules may impact costs for the small businesses they represent. DSHS also worked with an AFH consultant who was part of the interested party group for additional cost estimates.

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ 50 or fewer people and are independently owned and operated. These proposed rules impact AFHs licensed by DSHS.

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

DSHS considered annual costs to small businesses that are \$50.00 or more per client served, per affected AFH. The proposed rule amendments will not impose more-than-minor costs on small businesses. The preparation of a comprehensive SBEIS is not required.

The proposed rules include the following significant changes:

- Updated AFH policies to address medications of residents who permanently leave the AFH.
- Added time frame and documentation requirements for disposal of discontinued and expired resident medications. The proposed rules provide a clear time frame for transfer and disposal of resident medications and a requirement to document disposal. This clarity will assist AFHs in complying with the rule. Timely disposal will reduce the likelihood residents will receive discontinued or expired medications by mistake. Residents permanently leaving the AFH will be more likely to transition with their medications, which promotes their safety and well-being. Stopping fulfillment of medications for residents who permanently leave an AFH will reduce waste and cost of disposal for both pharmacies (which includes small businesses) and AFHs. DSHS expects there will be less opportunity for misappropriation of medication, benefiting the public as a whole.

A copy of the detailed cost calculations may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email [colleen.jensen1@dshs.wa.gov](mailto:colleen.jensen1@dshs.wa.gov).

November 21, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5060.2

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

### **WAC 388-76-10490 Medication disposal—Written policy—Required.**

(1) For the purposes of this section, "discontinued" means medication that is no longer prescribed or being used to treat a condition, as directed by the resident's physician or health care professional with prescriptive authority.

(2) The adult family home must ((have)) develop and implement a written policy addressing the safe disposal of ((unused or expired)) resident medications that have been discontinued or have expired. The policy must: ((Unused and expired medication must be disposed of in a safe manner for:

- ~~(1) Current residents living in the adult family home; and~~
- ~~(2) Residents who have left the home.)~~

(a) Comply with all federal and state laws and regulations regarding medication disposal;

(b) Address the safe disposal of medications for current residents, deceased residents, and residents who have discharged from the facility; and

(i) For current residents the facility must safely dispose of discontinued medications and expired medications within 30 calendar days of discontinuation or expiration;

(ii) For deceased residents the facility must safely dispose of all medications within 30 calendar days of the resident's death; and

(iii) For discharged residents the facility must:

(A) Assist with the transfer of the resident's medications to the resident's new setting, when needed;

(B) End fulfillment, delivery, and receipt of prescription medications within 10 calendar days; and

(C) Safely dispose of any medications left at the adult family home after 90 calendar days.

(c) Require that the safe disposal of the medication is recorded in a document that includes:

(i) Name of resident;

(ii) Name of medication;

(iii) Amount of medication;

(iv) Date of disposal or transfer; and

(v) Name of individual completing the task.

## WSR 24-24-028

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Pharmacy Quality Assurance Commission)

[Filed November 22, 2024, 4:55 p.m.]

Supplemental Notice to WSR 24-14-140.

Preproposal statement of inquiry was filed as WSR 23-21-010.

Title of Rule and Other Identifying Information: Dialysate and dialysis device manufacturers and wholesalers in home dialysis programs. The pharmacy quality assurance commission (commission) is proposing to amend WAC 246-945-090, 246-945-091, 246-945-092, and 246-945-093 to include manufacturers and wholesalers of dialysis devices and approved legend drugs, including dialysate, in home dialysis program rules under the commission's jurisdiction. This supplemental [notice] further amends WAC 246-945-090 to add the word "may" and list the dialysis devices manufacturers and wholesalers may sell, deliver, possess, or dispense to home dialysis patients; and to amend WAC 246-945-091, 246-945-092, and 246-945-093 to conform to the list of dialysis devices.

Hearing Location(s): On February 6, 2025, at 9:30 a.m., at the Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501; or virtual via Zoom <https://us02web.zoom.us/j/86309299195> or <https://zoom.us/join>, and use the Webinar ID 863 0929 9195. The access options include one tap mobile +12532158782,,86309299195# US (Tacoma), +12532050468,,86309299195# US; or telephone +1 253-215-8782 US (Tacoma), +1 253-205-0468 US. Attendees are welcome to attend either in person at the physical location or virtual via Zoom.

Date of Intended Adoption: February 6, 2025.

Submit Written Comments to: Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, fax 360-236-2260, <https://fortress.wa.gov/doh/policyreview/>, beginning the date and time of this filing, by January 23, 2025, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Julia Katz, phone 360-236-4946, fax 360-236-2260, TTY 711, email [PharmacyRules@doh.wa.gov](mailto:PharmacyRules@doh.wa.gov), by January 23, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to allow manufacturers and wholesalers to sell, deliver, possess, and dispense prescribed approved legend drugs, including commercially available dialysate, and dialysis devices directly to home dialysis patients. Conforming amendments to WAC 246-945-091, 246-945-092, and 246-945-093 intend to ensure dialysis devices are considered in consultation, record keeping, and quality assurance practices. RCW 18.64.257 and 69.41.032, amended by SHB 1675, direct the commission to adopt rules to implement the statutes.

Following the public rules hearing held on August 22, 2024, the commission determined that the proposed rule language required two amendments to WAC 246-945-090. The first amendment is to reinstate the term "may." The second amendment is to add a list of approved dialysis devices that manufacturers and wholesalers may sell, deliver, possess, and dispense to home dialysis patients. Amendments were needed to WAC 246-945-091, 246-945-092, and 246-945-093 in association with the WAC 246-945-090 amendments.

Reasons Supporting Proposal: The amended rules are needed to implement SHB 1675, which amended RCW 18.64.257 and 69.41.032 to ensure manufacturers and wholesalers may distribute approved legend drugs and

dialysis devices directly to dialysis patients and granted the commission authority to adopt rules. Additionally, the proposed rules establish important quality assurance measures for wholesalers and manufacturers dispensing approved legend drugs and dialysis devices directly to home dialysis patients.

The commission determined during the August 22, 2024, public rules hearing that "may," the list of approved dialysis devices, and conforming revisions regarding the list of dialysis devices were missing from WAC 246-945-090, 246-945-091, 246-945-092, and 246-945-091 [246-945-093]. It was decided that adding the word "may" corrects a typographical error and clarifies intent, and that SHB 1675 directs the commission to adopt rules to implement the statutes, including a list of approved dialysis devices.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.257, and 69.41.032.

Statute Being Implemented: RCW 18.64.257 and 69.41.032.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julia Katz, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4946; Enforcement: Marlee B. O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-9108.

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 Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4946, fax 360-236-2260, email PharmacyRules@doh.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

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 costs of the proposed rule (\$1,669) are **less than** the minor cost threshold (\$10,305.83).

The minor cost analysis demonstrated that the estimated cost to manufacturers and wholesalers choosing to dispense approved legend drugs and dialysis devices to patient homes is \$1,669. Using the governor's office for regulatory innovation and assistance's minor cost threshold calculator with North American Industry Classification System (NAICS) Code Title, 424210 Drugs and Druggists' Sundries Merchant Wholesalers, the minor cost threshold is not met per RCW 19.85.020. A full small business economic impact statement (SBEIS) may not be required since the minor cost threshold is not met.

It was further determined that the proposed amendments to WAC 246-945-090 to add "may" and the list of dialysis devices would not affect existing cost estimates. Excerpts of the SBEIS are provided herein.

**The following is a brief description of the proposed rule including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A 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:** The commission is proposing rule amendments to increase access to dialysis devices and approved legend drugs, including dialysate,

for patients undergoing kidney dialysis treatment at home by allowing manufacturers and wholesalers to dispense lawfully prescribed dialysis devices and approved legend drugs to patients' homes.

The proposed rule is necessary to implement SHB 1675 (chapter 23, Laws of 2022), as well as establish important quality assurance measures for wholesalers and manufacturers dispensing approved legend drugs, and dialysis devices directly to home dialysis patients. SHB 1675 amended RCW 18.64.257 and 69.41.032 to ensure manufacturers and wholesalers may distribute approved medications and devices directly to dialysis patients.

Prior to the passage of SHB 1675, manufacturers and wholesalers would need either a pharmacy or nonresident pharmacy license to dispense directly to patients. Pharmacy licenses are issued to facilities located in Washington that dispense prescriptions to patients. Nonresident pharmacy licenses are issued to facilities located outside of Washington that dispense prescriptions to patients. Both the pharmacy and nonresident pharmacy licenses require annual renewal applications and an application fee of \$575. Current statute does not require pharmacy and nonresident pharmacy licensees dispensing legend drugs to patients to have an agreement with a pharmacist to provide consultation on shipment and delivery of prescriptions, develop a quality assurance program for shipment and delivery of prescriptions, nor maintain a record of shipment and delivery errors. WAC 246-945-016 does require pharmacy and nonresident pharmacy licensees dispensing legend drugs to patients to affix labels to prescription containers. Since the passage of SHB 1675, manufacturers and wholesalers in compliance with quality assurance measures may distribute approved medications and devices directly to patients without a pharmacy or nonresident pharmacy license.

In October 2022, the commission filed a policy statement under WSR 22-21-062 to clarify the commission's position on this subject until rule making can be completed. Per the policy statement, the commission will not take enforcement action against a manufacturer or wholesaler acting in compliance with the minimum requirements of SHB 1675 and WAC 246-945-090 through 246-945-093.

Small manufacturers and wholesalers that choose to distribute prescriptions to home dialysis patients must secure and utilize a pharmacist consultant. Distributing manufacturers and wholesalers must also develop and implement protocol for shipments, deliveries, and error documentation. Finally, these manufacturers and wholesalers must also provide quality assurance measures to protect medications from diversion or tampering in line with their own security policies and procedures.

At the August 2024 business meeting, the commission considered feedback from interested parties at a rule hearing on this topic and voted to approve filing a supplemental CR-102. The commission's approved revisions to the proposed rule language are applicable to small-scale manufacturers and wholesalers; however, no additional costs are anticipated as their intent is to provide clarification. The commission determined that the proposed rule needed to be further amended and required two amendments to WAC 246-945-090. The first amendment is to reinstate the term "may." The second amendment is to add a list of approved dialysis devices that manufacturers and wholesalers may sell, deliver, possess, and dispense to home dialysis patients. Amendments are also needed to WAC 246-945-091, 246-945-092, and 246-945-093 in association with the WAC 246-945-090 amendments.



**SBEIS Table 1 identifies and summarizes of which businesses are required to comply with the proposed rule using NAICS:**

**SBEIS Table 1. Summary of Businesses Required to Comply to the Proposed Rule**

NAICS Code (4, 5, or 6 Digit)	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold
424210	Drugs and Druggists' Sundries Merchant Wholesalers	121	\$10,305.83

The following is an analysis of probable costs of businesses in the industry to comply to the proposed rule and includes the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:

**WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs.**

**Description:** The current rule allows a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program to sell, deliver, or dispense directly to its home dialysis patients specified legend drugs. The proposed rule allows manufacturers and wholesalers to sell, deliver, possess, or dispense approved legend drugs used in home dialysis programs directly to patients, provided that the treatment was prescribed by a practitioner acting within the scope of their practice. Manufacturers and wholesalers that ship and deliver approved legend drugs and dialysis devices directly to patients will not be required to retain a pharmacy or nonresident pharmacy license to do so.

The language proposed as part of the supplemental [notice] clarifies that a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program, a manufacturer or a wholesaler may sell, deliver, or dispense directly to its home dialysis patients specified legend drugs. The proposed rule also list the dialysis devices that may be sold, delivered, or dispensed directly to patients.

**Cost(s):** \$187 Total probable cost per participating manufacturer or wholesaler for 90 minutes of staff time to prepare and deliver training to employees. This probable cost assumes an average health service manufacturer or wholesaler employing 200 employees has a shipping and receiving team of 10 production workers and one manager.<sup>1,2,3</sup> Commission staff estimate that the training will require 60 minutes of the manager's time (\$62/hour) to prepare and deliver the training on patient home deliveries and 30 minutes of each production worker's time (\$25/hour) to receive the training.<sup>4,5</sup> There are no anticipated costs associated with adding the list of devices that may be sold, delivered, or dispensed. The list provides clarification but does not require the devices to be sold.

**WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant.**

**Description:** The current rule requires home dialysis programs involved in the distribution of legend drugs to have an agreement with a pharmacist that provides consultation as necessary. The proposed rule requires manufacturers and wholesalers that ship and deliver approved legend drugs and dialysis devices to patients to also establish an agreement with a pharmacist for consultation on an as needed basis. This is not currently required by statute. The shipment and delivery

content of the agreement may be in addition to or stand alone to an existing pharmacist consultant agreement.

The language proposed as part of the supplemental [notice] clarifies that the agreement shall include advice on both the drug and device shipment and delivery process.

**Cost(s):** It is estimated that there will be a \$426 ongoing probable cost to manufacturers and wholesalers for six hours of a pharmacist's time (\$71/hour) for consultation annually.<sup>6</sup> Commission staff estimate that approximately six hours, one hour every other month of a year, will be necessary for a wholesaler or manufacturer to discuss shipment and delivery protocol with a pharmacist in order to deliver and dispense dialysis devices and approved legend drugs safely to patients. The clarification provided as part of the supplemental [notice] is not anticipated to add any additional time or costs.

**WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records.**

**Description:** The current rule outlines what is required to be on the record of shipment and attached to the prescriber's order. The proposed rule requires manufacturers and wholesalers that ship and deliver approved legend drugs and dialysis devices directly to home patients to attach a record of shipment to each practitioner's order that includes additional information than currently required of manufacturers and wholesalers with pharmacy or nonresident pharmacy licenses by WAC 246-945-016. The record of shipment needs to include the name of the patient, strengths and quantities of drugs, manufacturers' names, date of shipment, names of people who selected, assembled and packaged the shipment, and the name of the pharmacist or designated person responsible for the shipment. The language proposed as part of the supplemental clarifies that the record shall also include information on devices if applicable.

**Cost(s):** It is estimated that a manufacturer or wholesaler will incur a \$300 one-time probable cost for a printer and a \$304 ongoing probable cost for toner and paper for printing records of shipment.<sup>7</sup> These probable costs are based on an assumption of 10,000 shipments annually requiring printed records.<sup>8</sup> The clarification provided as part of the supplemental [notice] is not anticipated to add any additional time or costs.

**WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance.**

**Description:** The current rule requires home dialysis programs involved in the distribution of legend drugs to develop a quality assurance program for drug distribution and to maintain records of drug distribution errors and other problems, including loss due to damage or theft. The proposed rule will require manufacturers and wholesalers who ship and deliver approved legend drugs and dialysis devices directly to patients, to develop quality assurance programs for shipment and delivery and maintain a record of shipment and delivery errors. The current statute does not require manufacturers and wholesalers to maintain quality assurance programs for shipment and delivery, nor records of shipment and delivery errors. The shipment and delivery quality assurance plan and error record may be supplemental to an existing quality assurance program.<sup>9</sup> The language proposed as part of the supplemental clarifies that the quality assurance program requirements apply to devices if applicable.

**Cost(s):** It is estimated that a manufacturer or wholesaler will incur a \$328 one-time probable cost for three hours of a production

manager's time (\$62/hour) and two hours of a pharmacist consultant's time (\$71/hour) to fulfill the quality assurance program requirements.<sup>10,11</sup> In addition, there are \$124 of estimated ongoing probable costs for two hours of a production manager's time (\$62/hour) to maintain a record of shipment and delivery errors. The clarification provided as part of the supplemental [notice] is not anticipated to add any additional time or costs.

**Summary of all Cost(s):**

**SBEIS Table 2. Summary of Probable Cost(s)**

WAC Section and Title	Probable Cost(s)
WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs	\$187 one-time for employee training
WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant	\$426 ongoing for pharmacist consultations
WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records	\$300 one-time for a printer for records of shipment \$304 ongoing for toner and paper for records of shipment
WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance	\$328 one-time for quality assurance program development \$124 ongoing for quality assurance program improvement
<b>Total</b>	\$1,669.00

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated:** The costs of the proposed rule (\$1,669) are less than the minor cost threshold (\$10,305.83).

**Summary of how the costs were calculated:** The probable costs were calculated for participating manufacturers and wholesalers to comply with the proposed rule. Probable costs affiliated with compliance primarily pertain to staff time. Average staff wages in Washington state were sourced from data produced by the United States Bureau of Labor and Statistics. Additional resources were used to estimate employee quantities. Commission staff, including a pharmacist consultant, determined the estimated time requirements.

1 What is compliance training, and why is it important? What is compliance training, and why is it important? (powerdms.com). (Accessed March 26, 2024)

2 43.5 percent of manufacturing workers in establishments with 250 or more workers in March 2018. 43.5 percent of manufacturing workers in establishments with 250 or more workers in March 2018 : The Economics Daily: U.S. Bureau of Labor Statistics (bls.gov). (Accessed March 25, 2024)

3 The Ideal Manager to Employee Ratio: How Many Managers Do You Need? The Ideal Manager to Employee Ratio: How Many Managers Do You Need? - Don Romans (Accessed March 25, 2024)

4 Occupational Employment and Wages, May 2023. Transportation, Storage, and Distribution Managers (bls.gov) (Accessed March 25, 2024)

5 Occupational Employment and Wages, May 2023. Production Workers, All Other (bls.gov) (Accessed March 25, 2024)

6 Occupational Employment and Wages, May 2023 - 29-1051 Pharmacists. Pharmacists (bls.gov) (Accessed March 25, 2024)

7 Staples. Staples® Official Online Store (Accessed April 22, 2024)

8 National ESRD Census Data. National ESRD Census Data (esrdnetworks.org) (Accessed April 9, 2024)

9 Manufacturing and Quality Assurance: A Comprehensive Guide. Manufacturing Quality Assurance: A Comprehensive Guide (cashflowinventory.com) (Accessed March 25, 2024)

10 See footnote 4

11 See footnote 8

A copy of the detailed cost calculations may be obtained by contacting Julia Katz, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4946, fax 360-236-2260, TTY 711, email PharmacyRules@doh.wa.gov.

November 22, 2024  
 Hawkins DeFrance, PharmD, Chair  
 Pharmacy Quality Assurance Commission

OTS-5459.2

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-090 Home dialysis programs, manufacturers, and wholesalers—Legend drugs and dialysis devices.** Pursuant to RCW 18.64.257 and 69.41.032, a medicare-approved dialysis center ((~~or~~)), a facility operating a medicare-approved home dialysis program ((~~may~~)), a manufacturer, or a wholesaler may sell, deliver, possess, or dispense directly to its home dialysis patients, in case((s)) or full shelf ((~~package~~)) lots, and if prescribed by a ((~~physician~~)) practitioner, the following:

(1) Legend drugs:

- ((1)) (a) Sterile heparin, 1000 u/mL, in vials;
- ((2)) (b) Sterile potassium chloride, 2 mEq/mL, for injection;
- ((3)) (c) Commercially available dialysate; and
- ((4)) (d) Sterile sodium chloride, 0.9%, for injection in containers of not less than 150 mL.

(2) Dialysis devices:

- (a) Class II medical devices that are manufactured and marketed in compliance with the Federal Food, Drug, and Cosmetic Act and indicated for acute and chronic dialysis therapy in the home; and
- (b) Related supplies and accessories of the dialysis device.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-091 Home dialysis programs, manufacturers, and wholesalers—Pharmacist consultant.** ((Home dialysis programs involved in the distribution of legend drugs as)) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032((~~r~~)) shall have an agreement with a pharmacist which provides for consultation as necessary. This agreement shall include advice on the drug ((~~distribution~~)) and device shipment and delivery process to home dialysis patients and on the location used for storage and ((~~distribution~~)) shipment of the authorized drugs and devices, which shall be reasonably separated from other activities and shall be secure.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-092 Home dialysis programs, manufacturers, and wholesalers—Records.** (1) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032 shall attach a record

of shipment (~~(shall be attached)~~) to the (~~(prescriber's)~~) practitioner's order (and). The record of shipment shall include:

- (a) The name of the patient;
- (b) Strengths and quantities of drugs, if applicable;
- (c) Device name, if applicable;
- (d) The name of the drug manufacturer(s' names), if applicable;
- ~~((d))~~ (e) The name of the device manufacturer, if applicable;
- (f) Date of shipment;
- ~~((e))~~ (g) Names of persons who selected, assembled and packaged for shipment; and
- ~~((f))~~ (h) The name of the pharmacist or designated individual responsible for the (~~(distribution)~~) shipment.

(2) Prescription records, and drug (~~(distribution)~~) and device shipment records shall be maintained in accordance with WAC 246-945-020.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-093 Home dialysis programs, manufacturers, and wholesalers—Quality assurance.** (~~(Home dialysis programs involved in the distribution of legend drugs as)~~) A medicare-approved dialysis center, a facility operating a medicare-approved home dialysis program, a manufacturer, or a wholesaler who sells, delivers, possesses, or dispenses dialysis devices and legend drugs directly to its home dialysis patients permitted by RCW 18.64.257 and 69.41.032(~~(r)~~) shall develop a quality assurance program for drug (~~(distribution)~~) and device shipment and delivery, and shall maintain records of drug (~~(distribution)~~) and device shipment and delivery errors and other problems, including loss due to damage or theft.

**WSR 24-24-040**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 25, 2024, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-040.

Title of Rule and Other Identifying Information: WAC 392-194-002  
Fee for processing initial educator certificate applications and subsequent actions.

Hearing Location(s): On January 7, 2025, at 10:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page [Ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity](https://ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity). For participation questions, please email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us).

Date of Intended Adoption: January 9, 2025.

Submit Written Comments to: Timothy York, OSPI, P.O. Box 47200, Olympia, WA 98504, email [timothy.york@k12.wa.us](mailto:timothy.york@k12.wa.us), beginning December 18, 2024, 8:00 a.m., by January 7, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email [sirena.wu@k12.wa.us](mailto:sirena.wu@k12.wa.us), by December 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In an effort to improve the current processing system for educator certification applications in Washington state, OSPI is working with the professional educator standards board to implement a new application deadline system that requires renewal certification applications to be submitted six months in advance of the certification expiration date. To enforce this change, OSPI is proposing rule making to make effective starting in the 2030 renewal cycle a late fee for educators who submit applications after their respective certification application deadlines have passed.

Reasons Supporting Proposal: Requiring a late fee for educators who apply after their application deadline date would allow OSPI to enforce the new application deadline system, which is intended to ensure that all educators seeking to renew their certificates before the start of school are able to do so in a timely manner.

Statutory Authority for Adoption: RCW 28A.410.062.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Timothy York, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

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

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

Is exempt under RCW 19.85.025(4).

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).

Scope of exemption for rule proposal:  
Is fully exempt.

November 25, 2024  
Chris P.S. Reykdal  
State Superintendent of Public Instruction

## OTS-5997.1

AMENDATORY SECTION (Amending WSR 21-24-103, filed 12/1/21, effective 1/1/22)

**WAC 392-194-002 Fee for processing initial educator certificate applications and subsequent actions.** The superintendent of public instruction will charge a nonrefundable fee of \$51 for processing any certificate application or requests for administrative action which results in the issuance, renewal, or reissuance of a permit or certificate in accordance with chapters 28A.410 and 28A.413 RCW.

(1) Educator certificates issued under chapter 181-79A WAC will be charged a fee of \$51 for processing educator certificates and subsequent actions. As of January 2, 2030, the superintendent of public instruction will charge a late fee of \$35 for any renewal application or request for administrative action submitted after the applicant's renewal application submission deadline. Applicants applying to reinstate a certificate will not be charged a late fee.

(2) Paraeducator certificates issued under Title 179 WAC will be charged a fee of \$39 for processing paraeducator certificates and subsequent actions.

## WSR 24-24-052

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed November 26, 2024, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-16-124.

Title of Rule and Other Identifying Information: WAC 182-51-0900  
Data confidentiality.

Hearing Location(s): On January 7, 2025, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_dw\\_904j\\_SVe0DvQz\\_IP6NA](https://us02web.zoom.us/webinar/register/WN_dw_904j_SVe0DvQz_IP6NA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than January 8, 2025.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, beginning November 27, 2024, 8:00 a.m., by January 7, 2025, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [Johanna.Larson@hca.wa.gov](mailto:Johanna.Larson@hca.wa.gov), by December 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules allow the prescription drug affordability board and the health care cost transparency board to access data collected by the drug price transparency program related to prescription drug costs. This amendment aligns with RCW 70.390.050 (as revised under ESHB 1508, section 2 (2)(a), chapter 80, Laws of 2024).

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, 70.390.050 (ESHB 1508, section 2 (2)(a), chapter 80, Laws of 2024).

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Julie Colacurcio, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9585.

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.

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.

Scope of exemption for rule proposal:

Is fully exempt.

November 26, 2024

Wendy Barcus

Rules Coordinator



OTS-5960.2

AMENDATORY SECTION (Amending WSR 21-10-008, filed 4/22/21, effective 5/23/21)

**WAC 182-51-0900 Data confidentiality.** (1) For the purpose of reviewing drug prices and conducting affordability reviews, the following boards may access all data collected under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority:

(a) The prescription drug affordability board, as established in chapter 70.405 RCW; and

(b) The health care cost transparency board, as established in chapter 70.390 RCW.

(2) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

~~((2))~~ (3) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 43.71C RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information when it is no longer needed to perform authorized activities; and

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under RCW 43.71C.100.

~~((3))~~ (4) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-51-0100, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 43.17C RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the ethics in public service act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

**WSR 24-24-055**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Filed November 26, 2024, 4:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-083.

Title of Rule and Other Identifying Information: Update to geothermal lease rates on department of natural resources (DNR)-managed properties (WAC 332-22-200 through 332-22-230).

Hearing Location(s): On January 14, 2025, at 9-11 a.m., at the Natural Resource Building, Room 432, 1111 Washington Street, Olympia, WA.

Date of Intended Adoption: February 17, 2025.

Submit Written Comments to: Kelsay Stanton, Mining and Minerals Program, 1111 Washington Street, Olympia, WA 98504, email Kelsay.stanton@dnr.wa.gov, fax 360-902-1789, beginning December 18, 2024, 8 a.m., by January 17, 2025, 5 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB [ESSB] 6039 required DNR to update its geothermal resources lease rates for DNR-managed properties so that the lease rates are competitive with geothermal resource lease rates adopted by the federal government and other western states, while also maintaining obligations to trusts and not adversely impacting federally reserved tribal rights. The rule-making process changes WAC 332-22-200 through 332-22-230. The updated rules propose new lease rates as well as propose language to improve clarity of the DNR's geothermal resources lease process. This process does not address any other regulations on geothermal resources and only affects DNR and DNR-managed properties.

Reasons Supporting Proposal: The following provides justification for the proposed new rules:

WAC 332-22-200: The rule update is mandated to ensure that lease rates are competitive with other western states and the federal government (RCW 79.13.530). Some western states have rental rates documented in code/rules while others note the rate is set by a state lands board, often determined by fair market value or negotiation. While the DNR has higher rental rates than Montana, California, and Nevada, it has lower rental rates than the BLM. Additionally, discussion with state trust land managers for Idaho and Utah, which have rates determined by the board, indicates DNR has lower or comparable rental rates to those states. The proposed rule will lower the minimum rental fee to \$1.00 per acre for years one through five and \$2.00 per acre for years six through 10, while maintaining the current lowest total rent amounts (\$250 and \$500, respectively). This will make DNR competitive with other western states and the BLM with regard to the minimum rental fee, although actual rental fees may be higher depending on fair market value and contract negotiation. The lowest possible total rent amounts remain the same to ensure trust-lands are generating some value to beneficiaries. The proposed rule also includes language indicating that the lessee is required to obtain necessary local, state, or federal permits. This is standard practice with DNR contracts and is included in the WAC to ensure prospective lessees understand their obligations. The proposed rule also adds language addressing production facilities associated with the geothermal resource, noting that those will require a commercial lease and be sub-

ject to the commercial lease process. This is to ensure that trusts receive full and appropriate value for commercial sites.

WAC 332-22-210: DNR's production royalty is higher than some western states and the BLM, while similar to other western states. There are several western states that base their production royalty rates on fair market value. The proposed rule will change the DNR's production royalty for gross sales and products utilized but not sold to a range of two to 20 percent, and will reduce the royalty on gross proceeds of byproducts to five percent. This makes the byproduct royalty the same as DNR's royalty on minerals sold through mining contracts. The proposed rule includes clarification that the production royalty may be different for different products sold, such as electricity, heat, steam, etc. The proposed rule will make DNR competitive on some aspects with other states, such as Idaho and Utah, as well as the BLM, while setting the byproduct royalty at the same royalty for minerals sold through mining contracts, thus preventing potential confusion. Additionally, the proposed rule makes it easier for DNR to set different rates for different geothermal resource products sold or utilized, thus potentially improving DNR's competitiveness with other states and the federal government while also maintaining best value for trust beneficiaries.

WAC 332-22-220: While only one other state specifically notes a minimum royalty requirement in their code (California), discussion with Idaho and Utah state trust land managers indicate they include a minimum royalty in their leases. Idaho's minimum royalty is a set rate that increases with time. Utah has a rate of \$5 per acre for the minimum royalty. Because the DNR's minimum royalty replaces the annual rent starting year 11, the proposed rule will lower the lowest minimum royalty to \$2.00 per acre. The lowest possible total minimum royalty remains at \$2,000 to ensure some value to trust-beneficiaries. The proposed rule includes clarification that the minimum royalty calculation will be based off the total leased acreage, so as not to be confused with leased acreage within a production unit only. The ability to reassess the minimum rate through time will be maintained.

WAC 332-22-230: The proposed rule adds language WAC 332-22-230 to clarify that if a proposed consolidation with other entities includes plans for production facilities on state lands, that acreage will be removed from the original lease and will require a commercial lease. This ensures best value for commercial real estate for trust beneficiaries. There are no other changes to this rule, as it already notes that if leaseholds that are only partially included in a unit plan with other entities, then those portions shall be segregated into separate leases with the annual rent and minimum royalty paid independently from other lease areas. Additionally, it already notes that an appropriate accounting system will be used to ensure DNR receives the correct royalties.

Alternatives: The proposed rules aim to make DNR more competitive with most western states and the federal government while still giving DNR the opportunity to negotiate rates to benefit trust beneficiaries. There are many potential combinations of annual rental fees, minimum annual royalties, and production royalties. One alternative would require all rates/royalties to be determined by fair market value alone. However, this could introduce complications to the timeliness and cost of executing a lease by requiring DNR to obtain a fair market value assessment. Additionally, the proposed rule still allows for adjustment of rates and royalties with time, and only sets a minimum or

range, giving DNR flexibility to be competitive, provide the best opportunity for trust beneficiaries, and still reflect market values.

Statutory Authority for Adoption: This rule making is mandated by an amendment to RCW 79.13.590 and section 465, chapter 334, Laws of 2003, through section 2 of SB 6039.

Statute Being Implemented: RCW 79.13.590 and section 465, chapter 334, Laws of 2003.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Please see above for justification for the proposed rule update to WAC 332-22-200 through 332-22-230. For more information about the research into other western states and federal government rates for geothermal resources, please contact Kelsay Stanton, Kelsay.stanton@dnr.wa.gov.

The proposed updates only apply to geothermal resources leases on DNR-managed lands. The implementation and enforcement of these rules are through normal DNR leasing processes and will not affect other agencies or their processes because DNR is the only agency managing leases on DNR-managed properties. The proposed updates do not change any rules or regulations associated with geothermal well permitting and per existing permitting rules, there will be a SEPA environmental review with opportunity for public comment prior to any geothermal well drilling or development. Revenue resulting from the lease of DNR-managed trust lands for geothermal resources or exploration will revert to the trust beneficiary for that specific trust land involved in the lease. Trust beneficiaries for DNR-managed land include public schools and universities.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kelsay Stanton, Natural Resource Building, 360-790-8179.

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 Kelsay Stanton, Mining and Minerals Program, Mailstop 47014, 1111 Washington Street, Olympia, WA 98504, phone 360-790-8179, fax 360-902-1789, email Kelsay.stanton@dnr.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

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 small business economic impact statement (SBEIS) calculator provides a method to determine the potential impact to small business by the rule change. If the rule will impose more-than-minor costs, then an SBEIS is required. The geothermal lease rate rule update will change annual rental rates and royalties to make DNR more competitive with western states and the federal government, with the aim to attract interest in geothermal resource leases with DNR. This should benefit small businesses within the geothermal resource industry and should not affect small businesses outside of the geothermal resource industry. The rule update does not impose additional fees to what already existed and makes the lease rates more competitive with other western states. The calculator indicated that a full SBEIS is not required for this rule update.

A copy of the detailed cost calculations may be obtained by contacting Kelsay Stanton, Mining and Minerals Program, 1111 Washington Street, Olympia, WA 98504, phone 360-790-8179, fax 360-902-1789, email Kelsay.stanton@dnr.wa.gov.

November 26, 2024

Michael Kearney

Product Sales and Leasing Division Manager

## OTS-5987.1

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

**WAC 332-22-200 Geothermal resources lease—Annual rental and obtaining required permits.** The annual rental shall be set by the board of natural resources, but for years one through five the annual rental shall be not less than (~~(\$1.25)~~) \$1.00 per acre or \$250 whichever is greater, and for years six through (~~(ten)~~) 10, shall be not less than (~~(\$2.50)~~) \$2.00 per acre or \$500 whichever is greater. Production facilities, except for transmission infrastructure, shall be a separate lease, subject to commercial lease procedures. Lessee shall obtain all necessary permits for exploration or development purposes.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

### **WAC 332-22-210 Geothermal resources lease—Production royalty.**

(1) Production royalty payments on geothermal resources leases shall be payable to the department for geothermal resources produced from the lease premises. The schedule of production royalty payments and method of calculating fair market value at either the well or point of shipment shall be detailed in the lease and plan of development: Provided, That production royalty rates shall be (~~(not less than)~~) based on negotiation to ensure trust beneficiaries receive fair market value and shall be the cumulative amount of(~~(r)~~):

(a) (~~(Ten)~~) No less than two percent and no more than 20 percent of the gross proceeds received from the sale of such geothermal resources which are derived, generated or manufactured from the premises sufficient for commercial sales, including electricity; and

(b) (~~(Ten)~~) No less than two percent and no more than 20 percent of the fair market value thereof of products utilized but not sold(~~(r)~~); and

(c) (~~(Ten)~~) Five percent of the gross proceeds for all by-products derived from the leasehold estate.

(2) The department reserves the right to assign different production royalty rates for different geothermal resources produced from the lease premises, such as electricity, heat, steam, and other products as defined by state law as geothermal resources. The department reserves the right to reassess the production royalty rate at year (~~(twenty)~~) 20 of the lease and every (~~(ten)~~) 10 years thereafter, and

adjust the rate to the then fair market value, however in no case shall the adjusted production royalty be less than the ~~((10 percent))~~ lowest rate specified in this section.

(3) Lessee shall have the right to commingle, for the purpose of utilizing, selling or processing the products produced from the leasehold estate with products produced from other land, provided that the lessee shall efficiently meter or gauge the production from the leasehold estate in a manner approved by the state, in order to compute royalty payable on the products or by-products produced from the leasehold estate. The lessee shall furnish a sworn statement showing production for accounting periods required by the department and pay any royalties due.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

**WAC 332-22-220 Geothermal resources lease—Minimum annual royalty.** At the beginning of lease year ~~((eleven))~~ 11, or at the beginning of the year in which production starts, whichever occurs first, a minimum annual royalty of not less than ~~((ten))~~ two dollars per acre per year, or \$2,000, whichever is greater, shall be paid to the department, and shall replace the annual rental. Minimum annual royalty calculation shall be based off total leased acreage. Minimum annual royalty payments shall be credited against production royalties for that year. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

The department reserves the right to reassess the minimum annual royalty rate at year ~~((twenty))~~ 20 of the lease and every ~~((ten))~~ 10 years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted minimum annual royalty be less than the ~~((ten))~~ two dollars per acre, or \$2,000 specified in this section.

AMENDATORY SECTION (Amending WSR 92-06-003, filed 2/20/92, effective 3/22/92)

**WAC 332-22-230 Geothermal resources lease—Unit plans.** (1) The holder(s) of any geothermal resources lease may apply to the department to consolidate their leaseholding for geothermal resources with other entities, including lands not owned by the state, to collectively adopt and operate as a unit under a unit plan. Such consolidation will not serve to extend the term of the lease and all participants must agree to continue payment of royalties provided in the lease through the life of the unit and any extensions of the plan.

(2) When separate geothermal resource rights under lease cannot be developed and operated independently in accordance with an approved well-spacing or well-development program, the commissioner or the commissioner's delegate may require lessees to enter into a unit plan or drilling agreement with other entities when it is in the best interest of the state.

(3) As a condition for authorization to be part of a unit plan, the commissioner or the commissioner's delegate may alter the terms

and conditions of the lease(s) so involved when it is in the best interest of the state to do so, and such authorization may be further conditioned upon, but not limited to the following:

(a) Department access to reports and documents it deems necessary, at the sole discretion of the department, to determine if consolidation of the proposed unit plan is in the best interest of the state.

(b) Leaseholds which are only partially included in the unit shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum annual royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(c) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system, and the department shall have the right to audit such system to protect the interests of the state.

(d) None of the rights of the state as landholder shall be limited or subordinated.

(4) If an application for consolidation includes plans for adding production facilities to state lands, except for transmission infrastructure, that acreage shall require a commercial lease and shall be removed from the original lease for geothermal resources.

**WSR 24-24-078**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed December 2, 2024, 10:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-116.

Title of Rule and Other Identifying Information: The department of social and health services (department) is proposing to amend WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through 388-71-05640, 388-106-0010 What definitions apply to this chapter?, 388-106-0060 Who must perform the assessment?, and 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client?

WAC 388-106-0010 was filed as a part of a CR-101 on June 17, 2024, with WSR 24-13-075. That rule making will be placed on hold for this rule making to proceed. The department may amend other related rules as required. The department is allowed to contract with a federally recognized Indian tribe to determine eligibility including assessments and reassessments, authorize and reauthorize services, and perform case management functions for medicaid long-term services and supports clients within the tribe's authority.

Hearing Location(s): On January 22, 2025, at 10:00 a.m., virtually via Teams or call in. See the department website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than January 23, 2025.

Submit Written Comments to: Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on December 4, 2024, by 5:00 p.m. on January 22, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov), by 5:00 p.m. on January 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend WAC to implement SB 5866, an act relating to medicaid long-term services and supports eligibility determinations being completed by federally recognized Indian tribes. SB 5866 amended RCW 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Reasons Supporting Proposal: The passage of SB 5866, (chapter 255, Laws of 2022).

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Statute Being Implemented: RCW 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

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

Name of Proponent: Tribal governments and department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dru Aubert, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2524.



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 rules 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 19.85.025(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 statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 19.85.025(4).

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

Explanation of exemptions: These amendments do not impact small businesses. They only impact department customers and federally recognized Indian tribes.

Scope of exemption for rule proposal:

Is fully exempt.

November 26, 2024  
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 [25-01](#) issue of the Register.

## WSR 24-24-082

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed December 2, 2024, 1:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-082.

Title of Rule and Other Identifying Information: Hospital licensing regulations (construction standards only); aligning with nationally recognized industry standards. The department of health (department) is proposing amendments to WAC 246-320-500, 246-320-505, and 246-320-600 to align hospital licensing construction standards with the 2022 editions of the *Guidelines for Design and Construction of Hospitals* and the *Guidelines for Design and Construction of Outpatient Facilities* (2022 Guidelines), developed and published by the Facilities Guidelines Institute (FGI). Additionally, the department is proposing to increase the construction cost threshold for projects that require a presubmission conference with the department from \$250,000 to \$500,000. For clarity and readability, the department is proposing to reformat WAC 246-320-600 by adopting the 2022 Guidelines by reference and publishing a separate document outlining Washington's amendments to the 2022 Guidelines.

Hearing Location(s): On January 22, 2025, at 10:00 a.m., via Zoom. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_ZAeGV64oSlGxM2zZlZ4ltQ](https://us02web.zoom.us/webinar/register/WN_ZAeGV64oSlGxM2zZlZ4ltQ). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: January 29, 2025.

Submit Written Comments to: Susan Upton, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, beginning date and time of this filing, by January 22, 2025, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Susan Upton, phone 360-236-2948, TTY 711, email [susan.upton@doh.wa.gov](mailto:susan.upton@doh.wa.gov), by January 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to align the hospital licensing construction regulations of chapter 246-320 WAC with current national construction standards. The proposed amendment to WAC 246-320-500 adopts the 2022 Guidelines developed and published by the FGI. Adopting the 2022 Guidelines aligns Washington state's hospital construction standards with nationally recognized industry standards.

The proposed amendment to WAC 246-320-505 increases the cost threshold for projects that require a presubmission conference with the department which should result in fewer delays in getting department approval and completion of the construction project.

For clarity and readability purposes, the department is proposing in WAC 246-320-600 to adopt the 2022 Guidelines by reference and create a separate publication outlining Washington state's amendments to the 2022 Guidelines, providing that the department will only make updates to the department's publication through the rule-making process.

Reasons Supporting Proposal: The proposed amendments would adopt the most current nationally recognized industry standards for hospitals which will provide for the public's safety and well-being. In order for the department to utilize the 2022 Guidelines, the 2022 edition of the FGI's guidelines must be incorporated into the construction standards sections of the hospital licensing rules. Adopting cur-

rent standards ensures facilities take advantage of newer construction methods. Washington state's amendments to the 2022 Guidelines enhance patient safety and better meet Washington state's needs while providing the opportunity to be consistent with nationally recognized industry standards that are vital to the health and safety of hospital patients and staff. Finally, by increasing the construction cost threshold for projects that require a presubmission conference for department approval will reduce delays in completion of hospital construction projects.

Statutory Authority for Adoption: RCW 70.41.030.

Statute Being Implemented: RCW 70.41.030.

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, Implementation, and Enforcement: Susan Upton, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2948.

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 Susan Upton, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2948, TTY 711, email susan.upton@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(4).

Explanation of exemptions: The businesses affected by the proposed amendments do not meet the definition of small business as defined in RCW 19.85.020.

Scope of exemption for rule proposal:

Is fully exempt.

December 2, 2024  
 Todd Mountin, PMP  
 Deputy Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary of Health

#### OTS-5794.4

AMENDATORY SECTION (Amending WSR 15-14-001, filed 6/17/15, effective 7/18/15)

**WAC 246-320-500 Applicability of WAC 246-320-500 through 246-320-600.** The purpose of construction regulations is to provide for a safe and effective patient care environment. These rules are not retroactive and are intended to be applied as outlined below.

- (1) These regulations apply to hospitals including:
  - (a) New buildings to be licensed as a hospital;
  - (b) Conversion of an existing building or portion of an existing building for use as a hospital;
  - (c) Additions to an existing hospital;
  - (d) Alterations to an existing hospital; and

(e) Buildings or portions of buildings licensed as a hospital and used for hospital services;

(f) Excluding nonpatient care buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application and fee are submitted to the department, and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) ~~The ((following chapters of the 2014))~~ 2022 edition of the Guidelines for Design and Construction of Hospitals and the 2022 edition of the Guidelines for Design and Construction of Outpatient Facilities as developed and published 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)), 9750 Fall Ridge Trail, St. Louis, MO 63127, as amended in WAC 246-320-600:

- ~~((i)) 1.1 Introduction~~
- ~~(ii) 1.2 Planning, Design, Construction, and Commissioning~~
- ~~(iii) 1.3 Site~~
- ~~(iv) 1.4 Equipment~~
- ~~(v) 2.1 Common Elements for Hospitals~~
- ~~(vi) 2.2 Specific Requirements for General Hospitals~~
- ~~(vii) 2.3 Specific Requirements for Freestanding Emergency Departments~~
- ~~(viii) 2.4 Specific Requirements for Critical Access Hospitals~~
- ~~(ix) 2.5 Specific Requirements for Psychiatric Hospitals~~
- ~~(x) 2.6 Specific Requirements for Rehabilitation Hospitals and Other Facilities~~
- ~~(xi) 2.7 Specific Requirements for Children's Hospitals~~
- ~~(xii) 3.1 Common Elements for Outpatient Facilities~~
- ~~(xiii) 3.2 Specific Requirements for Primary Care Facilities~~
- ~~(xiv) 3.3 Specific Requirements for Freestanding Outpatient Diagnostic and Treatment Facilities~~
- ~~(xv) 3.4 Specific Requirements for Freestanding Birth Centers~~
- ~~(xvi) 3.5 Specific Requirements for Freestanding Urgent Care Facilities~~
- ~~(xvii) 3.6 Specific Requirements for Freestanding Cancer Treatment Facilities~~
- ~~(xviii) 3.7 Specific Requirements for Outpatient Surgical Facilities~~
- ~~(xix) 3.8 Specific Requirements for Office Based Procedure and Operating Rooms~~
- ~~(xx) 3.9 Specific Requirements for Endoscopy Facilities~~
- ~~(xxi) 3.10 Specific Requirements for Renal Dialysis Centers~~
- ~~(xxii) 3.11 Specific Requirements for Outpatient Psychiatric Centers~~
- ~~(xxiii) 3.12 Specific Requirements for Outpatient Rehabilitation Therapy Facilities~~
- ~~(xxiv) 3.13 Mobile, Transportable, and Relocatable Units~~
- ~~(xxv) 3.14 Specific Requirements for Dental Facilities~~
- ~~(xxvi) Part 4: Ventilation of Health Care Facilities))~~

(b) *The National Fire Protection Association, Life Safety Code, NFPA 101*, as adopted by the centers for medicaid and medicare services.

(c) *The State Building Code* as adopted by the state building code council under the authority of chapter 19.27 RCW.

(d) Accepted procedure and practice in cross-contamination control, *Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association.*

(e) *The National Fire Protection Association, Health Care Facilities Code, NFPA 99*, as adopted by the centers for medicaid and medicare services.

AMENDATORY SECTION (Amending WSR 15-14-001, filed 6/17/15, effective 7/18/15)

**WAC 246-320-505 Design, construction review, and approval of plans.** (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW may be used for the various branches of work where appropriate. The services of a registered engineer may be used in lieu of the services of an architect if the scope of work is primarily engineering in nature.

(2) A hospital will meet the following requirements:

(a) Preconstruction. Request and attend a presubmission conference for projects with a construction value of (~~two hundred fifty thousand dollars~~) \$500,000 or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than (~~fifty~~) 50 percent complete.

(b) Construction document review. Submit construction documents for proposed new construction to the department for review within (~~ten~~) 10 days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

The construction documents must include:

(i) A written program containing, but not limited to, the following:

(A) Information concerning services to be provided and operational methods to be used;

(B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes;

(C) 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.

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

(iii) Floor plan of the existing building showing the alterations and additions, and indicating location of any service or support areas; and

(iv) Required paths of exit serving the alterations or additions; and

(v) Verification that the capacities and loads of infrastructure systems will accommodate planned load.

(c) Resubmittals. The hospital will respond in writing when the department requests additional or corrected construction documents;

(d) Construction. Comply with the following requirements during the construction phase.

(i) The hospital will not begin construction until all of the following items are complete:

(A) The department has approved construction documents or granted authorization to begin construction; and

(B) The local jurisdictions have issued a building permit; and

(C) The hospital has notified the department in writing when construction will commence.

(ii) The department will issue an "authorization to begin construction" when the construction documents have been conditionally approved or when all of the following items have been reviewed and approved:

(A) A signed form acknowledging the risks if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

(I) Architect; and

(II) Hospital CEO, COO, or designee; and

(III) Hospital facilities director.

(B) The infection control risk assessment;

(C) The interim life safety plan;

(D) A presubmission conference has occurred.

(iii) Submit to the department for review any addenda or modifications to the construction documents;

(iv) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

(v) The hospital will allow any necessary inspections for the verification of compliance with the construction documents, addenda, and modifications.

(e) Project closeout. The hospital will not use any new or remodeled areas until:

(i) The department has approved construction documents; and

(ii) The local jurisdictions have completed all required inspections and approvals, when applicable or given approval to occupy; and

(iii) The facility notifies the department in writing when construction is completed and includes a copy of the local jurisdiction's approval for occupancy.

AMENDATORY SECTION (Amending WSR 15-14-001, filed 6/17/15, effective 7/18/15)

**WAC 246-320-600 Washington state amendments.** ((This section contains the Washington state amendments to the 2014 edition of the *Guidelines for Design and Construction of Hospitals and Outpatient Facilities* as developed by the Facilities Guideline Institute and published by the American Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606. The language below will replace the corresponding language of the 2014 edition of the Guidelines in its entirety. Subsections with an aster-

isk (\*) preceding a paragraph number indicates that explanatory or educational material can be found in an appendix item located in the 2014 Guidelines.

**CHAPTER 1.1 INTRODUCTION**

~~1.1-6.3 Deviations~~

Authorities adopting these standards as codes may approve plans and specifications that contain deviations if it is determined that the applicable intent or objective has been met.

~~1.1-8 Referenced Codes and Standards~~

Washington State Building Code (<http://www.sbec.wa.gov/>)

**CHAPTER 1.2 PLANNING, DESIGN, AND IMPLEMENTATION PROCESS**

~~1.2-3.8.2.1 Design Features~~

Appendix note:

The security portion of the safety risk assessment should consider the placement of emergency call devices in public and staff toilets.

~~Table A1.2~~

Add footnote to this table:

The security specialist shall review portions of the infection control component, specifically: Construction and demolition related risk such as planned utility shutdowns, relocations, and pathway disruptions.

**CHAPTER 2.1 COMMON ELEMENTS FOR HOSPITALS**

~~2.1-2.6.5 Handwashing Station~~

~~2.1-2.6.5.3 Additional Requirements for Handwashing Stations that Serve Multiple Patient Care Stations~~

(1) At least one handwashing station shall be provided for every four patient care stations or fewer and for each major fraction thereof.

(2) Based on the arrangement of the patient care stations, handwashing stations shall be evenly distributed and provide uniform distance from the two patient care stations farthest from a handwashing station.

(3) Post anesthesia care unit (PACU) handwashing stations. At least one handwashing station with hands-free or wrist-blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

~~2.1-2.6.7 Nourishment Area or Room~~

~~2.1-2.1.6.7.4 Nourishment function may be combined with a clean utility without duplication of sinks and work counters.~~

~~2.1-2.6.12 Environmental Services Room~~

~~2.1-2.6.12.3 Environmental services and soiled rooms may be combined.~~

~~2.1-4.3 Food and Nutrition Services~~

~~2.1-4.3.1.3 Regulations. Construction, equipment, and installation of food and nutrition service facilities in a hospital shall comply with the requirements of:~~

~~(1) U.S. Food and Drug Administration (FDA).~~

~~(2) U.S. Department of Agriculture (USDA).~~

~~(3) Underwriters Laboratories, Inc. (UL).~~

~~(4) NSF International.~~

~~(5) Chapter 246-215 WAC, the Washington state food code.~~

**2.1-7.2.2.1 Corridor Width**

~~2.1-7.2.2.1 Corridor width. For corridor width requirements, see applicable building codes. In addition to building code requirements, in areas typically used for stretcher transport a minimum corridor or aisle width of 6 feet shall be provided.~~

**2.1-7.2.2.10 Handrails**

~~(1) Unless the safety risk assessment determines that handrails are not needed, handrails shall be installed on one side of patient use corridors.~~

~~(2) Handrails shall comply with local, state, and federal requirements referenced in Section 1.1-4.1 (Designs Standards for the Disabled) as amended in this section.~~

~~(3) Rail ends shall return to the wall or floor.~~

~~(4) Handrails, including fasteners, shall be smooth and have a nontextured surface free of rough edges.~~

~~(5) Handrails shall have eased edges and corners.~~

~~(6) Handrail finishes shall be cleanable.~~

**2.1-7.2.3 Surfaces**

~~2.1-7.2.3.1 Flooring and wall bases.~~

~~2.1-7.2.3.1(6) The following rooms shall have floor and wall base assemblies that are monolithic and have an integral coved wall base that is carried up the wall a minimum of 6 inches (150 mm) and is tightly sealed to the wall:~~

~~(a) Operating rooms;~~

~~(b) Interventional imaging rooms, including cardiac catheterization labs;~~

~~(c) Cesarean delivery rooms;~~

~~(d) Cystoscopy, urology, and minor surgical procedure rooms;~~

~~(e) Endoscopy procedure rooms;~~

~~(f) Endoscopy instrument processing rooms;~~

~~(g) IV and chemotherapy preparation rooms;~~

~~(h) Airborne infection isolation (AII) rooms;~~

~~(i) Protective environment (PE) rooms;~~

~~(j) Anterooms to AII and PE rooms, where provided;~~

~~(k) Sterile processing rooms;~~

~~(l) Central processing rooms.~~

**2.1-8.3.4.3(7) Lighting for Specific Locations in the Hospital**

~~2.1-8.3.4.3(7) When installed in patient care areas, upright fixtures or troughs that create ledges which collect dust shall be provided with a lens on the top of the fixture to facilitate cleaning.~~

**2.1-8.3.7 Call Systems****2.1-8.3.7.3 Bath Stations**

~~Appendix Language:~~

~~A2.1-8.3.7.3 Where new construction or renovation work is undertaken, hospitals should make every effort to install assistance systems in all public and staff toilets.~~

**2.1-8.4.3 Plumbing Fixtures**

~~2.1-8.4.3.1 General~~

~~(1) Materials. The material used for plumbing fixtures shall be nonabsorptive and acid-resistant.~~

~~(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:~~

~~(a) avoid contaminating utensils and the contents of carafes, etc.~~



~~(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.~~

~~Appendix Language:~~

~~A2.1-8.4.3.2(3) Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.~~

~~**Table 2.1-2 Locations for Nurse Call Devices in Hospitals**~~

~~Modify table as follows:~~

Section	Location	Duty station
<del>2.1-2.7.1</del>	<del>Staff lounge</del>	<del>Optional</del>

~~CHAPTER 2.2 SPECIFIC REQUIREMENTS FOR GENERAL HOSPITALS~~

~~**2.2-2.2 Medical/Surgical Nursing Unit**~~

~~2.2-2.2.2 Patient Room~~

~~2.2-2.2.2.1 Capacity~~

~~(1) In new construction, the maximum number of beds per room shall be two.~~

~~(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.~~

~~**2.2-3.3.3.3 Control Room**~~

~~2.2-3.3.3.3(2) The room shall be physically separated from the hybrid operating room with walls and a door. A door is not required when the control is built, maintained, and controlled exactly the same as the operating room.~~

~~**2.2-3.3.4.2 Preoperative Patient Care Area**~~

~~2.2-3.3.4.2 (2) (b) (ii) Where bays are used, an aisle with a minimum clearance of 6 feet (1.83 meters) independent of the foot clearance between patient stations or other fixed objects shall be provided.~~

~~**2.2-3.3.4.3 Phase I Postanesthesia Care Unit (PACU)**~~

~~2.2-3.3.4.3(b) PACU size. A minimum of 1.5 postanesthesia patient care stations or as determined by the functional program per operating room shall be provided.~~

~~**2.2-3.4.2.1 CT Scanner Room**~~

~~2.2-3.4.2.1 (1) (b) CT scanner room(s) shall be sized to allow a minimum clearance of 4 feet (122 centimeters) on the patient transfer and foot side of the table and 3 feet (91 centimeters) on nontransfer side of the table.~~

~~**2.2-3.4.4 Magnetic Resonance Imaging (MRI) Facilities**~~

~~2.2-3.4.4.2(2) The MRI scanner room(s) shall have a minimum clearance of 4 feet (122 centimeters) on the patient transfer side and foot of the table and 3 feet (91 centimeters) on nontransfer side of the table. The door swing shall not interfere with the patient transfer.~~

~~**2.2-3.5.2 Interventional Imaging Procedure Room**~~

~~2.2-3.5.2.2 Ceilings. Ceilings in interventional imaging procedure rooms shall be designed as semirestricted, see 2.1-7.2.3.3(3) for finishes.~~

~~**2.2-4.2 Pharmacy Service**~~

~~2.2-4.2.1 General: Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services.~~

~~CHAPTER 2.4 CRITICAL ACCESS HOSPITALS~~

~~2.4-1.1 Application~~

~~2.4-1.1 Application. Chapter 2.4 contains specific requirements for small rural hospitals. The functional program for these facilities must clearly describe a scope of services that is appropriate for chapter 2.4. For facilities with services that are not appropriately addressed in chapter 2.4, the appropriate portions of chapters 2.2, 2.3, 2.5, 2.6 and 2.7 will apply.~~

~~CHAPTER 3.1 OUTPATIENT FACILITIES~~

~~\*3.1-3.2.2 General Purpose Examination/Observation Room~~

~~3.1-3.2.2.2 Space requirements~~

~~(3) Existing general purpose examination rooms under review for addition to a hospital license shall be no less than 80 gross square feet and provide a minimum 2'-6" clearance around the examination table.~~

~~3.1-3.2.3 Special Purpose Examination Room~~

~~3.1-3.2.3.2(c) A room arrangement in which an examination table, recliner, bed or chair is placed at an angle, closer to one wall than another or against a wall to accommodate the type of patient being served shall be permitted.~~

~~3.1-7.2.2 Architectural Details~~

~~3.1-7.2.2.2 Ceiling Height~~

~~3.1-7.2.2.2(2)~~

~~This subsection is not adopted.~~

~~3.1-7.2.3.1 Flooring and Wall Bases~~

~~3.1-7.2.3.1(5) The following rooms shall have floor and wall base assemblies that are monolithic and have an integral coved wall base that is carried up the wall a minimum of 6 inches (150 mm) and is tightly sealed to the wall:~~

- ~~(a) Operating rooms;~~
- ~~(b) Interventional imaging rooms, including cardiac catheterization labs;~~
- ~~(c) Cystoscopy, urology and minor surgical procedure rooms;~~
- ~~(d) Endoscopy procedure rooms;~~
- ~~(e) Endoscopy instrument processing rooms;~~
- ~~(f) IV and chemotherapy preparation rooms;~~
- ~~(g) Airborne infection isolation (AII) rooms;~~
- ~~(h) Anterooms to AII and PE rooms, where provided;~~
- ~~(i) Sterile processing rooms.~~

~~3.1-8.4.3 Plumbing Fixtures~~

~~3.1-8.4.3.1 General~~

~~(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:~~

~~(a) avoid contaminating utensils and the contents of carafes, etc.~~

~~(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.~~

~~Appendix Language:~~

~~A3.1-8.4.3 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.~~

~~CHAPTER 3.2 SPECIFIC REQUIREMENTS FOR PRIMARY CARE OUTPATIENT CENTERS~~

~~3.2-1.3 Site~~

~~3.2-1.3.2 Parking~~

~~This section is not adopted.~~

~~CHAPTER 3.5 SPECIFIC REQUIREMENTS FOR FREESTANDING URGENT CARE FACILITIES~~

~~3.5-1.1 Application~~

~~3.5-1.1 Application. This chapter applies to facilities that provide urgent care to the public but are not freestanding emergency departments. The functional program for the facilities must clearly describe a scope of services that are appropriate for urgent care, as determined by the department.~~

~~CHAPTER 3.7 SPECIFIC REQUIREMENTS FOR OUTPATIENT SURGICAL FACILITIES~~

~~3.7-1.3 Site~~

~~3.7-1.3.2 Parking~~

~~This section is not adopted.~~

~~3.7-3.6.13.1(2) Location~~

~~3.7-3.6.13.1(2) Location. The sterile processing room shall be designed to provide a one-way traffic pattern of contaminated materials/instruments to clean materials/instruments to the sterilizer equipment. Two remotely located doors shall be provided as follows:~~

~~(a) Entrance to the contaminated side of the sterile processing room shall be from the semirestricted area.~~

~~(b) Exit from the clean side of the sterile processing room to the semirestricted area or to an operating room shall be permitted.~~

~~3.7-5.1.2 On-Site Sterilization Facilities~~

~~3.7-5.1.2 On-Site Sterilization Facilities. When sterilization occurs on-site, one of the following conditions shall apply:~~

~~(1) Outpatient surgical facilities with three or fewer operating rooms where immediate use sterilization occurs on-site shall meet the requirements in Section 3.7-3.6.13 (Sterile Processing Room) or shall meet the requirements of Section 2.1-5.1.~~

~~(2) Outpatient surgical facilities with four or more operating rooms, or facilities that do not use immediate use sterilization, shall meet the requirements of Section 2.1-5.1.~~

~~CHAPTER 3.9 SPECIFIC REQUIREMENTS FOR ENDOSCOPY FACILITIES~~

~~3.9-3.3.2.2 Space Requirements~~

~~3.9-3.3.2.2 (2) (b) Where bays are used, an aisle with a minimum clearance of 6 feet (1.83 meters) independent of the foot clearance between patient stations or other fixed objects shall be provided.~~

~~CHAPTER 3.11 SPECIFIC REQUIREMENTS FOR PSYCHIATRIC OUTPATIENT CENTERS~~

~~3.11-1.3 Site~~

~~3.11-1.3.1 Parking~~

~~This section is not adopted.~~

~~CHAPTER 3.13 MOBILE, TRANSPORTABLE, AND RELOCATABLE UNITS~~

~~3.13-1.1 Application~~

~~3.13-1.1.1 Unit Types~~

~~This section applies to mobile, transportable, and modular structures as defined below. These units can increase public access to needed services.~~

~~Mobile mammography units do not require review by the Department of Health, Construction Review Services.~~

## Appendix Language:

~~A3.13-1.1.1 The facility providing services, including mobile mammography, should review these requirements in consideration of the service offering and the delivery of care model.~~

**~~3.13-8.6 Safety and Security Systems~~****~~3.13-8.6.1 Fire Alarm System~~**

~~Fire alarm notification shall be provided to the facility while the unit is on-site.~~

~~3.13-8.6.1.2 Each mobile unit shall provide fire alarm notification by one of the following methods:~~

- ~~(1) Via an auto-dialer connected to the unit's smoke detectors.~~
- ~~(2) An audible device located on the outside of the unit.~~
- ~~(3) Connection to the building fire alarm system.~~

**~~Part 4~~****~~ANSI/ASHRAE/ASHE Standard 170-2013: Ventilation of Health Care Facilities~~****~~Section 7.2 Additional Room Specific Requirements~~****~~7.2.3 Combination Airborne Infectious Isolation/Protective Environment (AII/PE) Room~~**~~7.2.3 (e)(2)~~

~~This section is not adopted.~~

**~~7.4 Surgery Rooms~~**

~~7.4.4 Sterile Processing Room. Where a sterile processing room is provided, it shall meet the following requirements:~~

~~(a) The airflow design shall provide a "clean to dirty" airflow within the space with supply air provided over the clean area and exhaust provided from the soiled area.~~

~~(b) This room shall be positive to adjacent spaces with the exception of operating rooms or positively pressurized procedure rooms.~~

~~(c) A minimum of two outside air changes and six total air changes shall be provided.~~

~~(d) Two filter banks shall be required: The primary filter shall be MERV 7, the final filter shall be MERV 14.~~

~~(e) Room air shall be exhausted to the exterior.) (1) The definition in this subsection applies throughout this section unless the context clearly requires otherwise:~~

~~"Washington hospital licensing construction standard guidelines" or "guidelines" means the publication of Washington state's amendments to the 2022 edition of the *Guidelines for Design and Construction of Hospitals* and the *Guidelines for Design and Construction of Outpatient Facilities*.~~

~~(2) Revisions to the guidelines will align with WAC 246-320-500(3).~~

~~(3) Copies of the Washington hospital licensing construction standard guidelines may be obtained on the department's construction review services website <https://doh.wa.gov/licenses-permits-and-certificates/facilities-z/construction-review-services-crs> or by contacting the department.~~

## WSR 24-24-100

## PROPOSED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed December 3, 2024, 3:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-130.

Title of Rule and Other Identifying Information: New chapter 468-90 WAC, Speed safety camera systems in state highway work zones; new WAC 468-90-010 Worker presence.

Hearing Location(s): On January 7, 2025, at 1:00 p.m., virtual hearing in Microsoft Teams <https://bit.ly/WAC-468-90-Jan-7-2025>; or dial in by phone +1 206-531-0324,,174485875# for United States, Seattle. You can use this link to find a local number <https://dialin.teams.microsoft.com/039e7852-bef4-4986-949b-6b82f4e2095f?id=174485875>, phone conference ID 174 485 875#. For further details about joining a Microsoft Teams meeting, you can visit this web page <https://aka.ms/JoinTeamsMeeting?omkt=en-US>.

Date of Intended Adoption: January 7, 2025.

Submit Written Comments to: Kyle Miller, Speed Safety Camera System Project Manager, P.O. Box 47344, 310 Maple Park Avenue S.E., Olympia, WA 98504-7344, email [kyle.miller@wsdot.wa.gov](mailto:kyle.miller@wsdot.wa.gov), beginning December 4, 2024, 12:00 p.m., by January 6, 2025, by 4:00 p.m.

Assistance for Persons with Disabilities: Contact Washington state department of transportation (WSDOT) ADA office, phone toll-free 855-362-4ADA(4232), TTY 711, email [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov), by December 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections 1-3, chapter 17, Laws of 2023, per ESSB 5272 (now RCW 46.63.200); WSDOT is responsible for all actions related to the operation and administration of speed safety camera systems in state highway work zones including, but not limited to, the procurement and administration of contracts necessary for the implementation of speed safety camera systems and the mailing of notices of infraction. This rule is intended to define worker presence to align with the RCW 46.63.200 requirements.

Reasons Supporting Proposal: RCW 46.63.200 references that workers must be present. This new WAC is intended to clearly define what worker presence means.

Statutory Authority for Adoption: RCW 46.63.200.

Statute Being Implemented: RCW 46.63.200.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kyle Miller, Olympia, Washington, 360-705-7946.

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 is not required because WSDOT is not subject to RCW 34.05.328

(5)(a)(i) and has not made RCW 34.05.328 applicable to this rule.

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: This rule does not impose any costs.  
It defines what worker presence is.

Scope of exemption for rule proposal:  
Is fully exempt.

December 3, 2024  
Sam Wilson, Director  
Business Support Services

OTS-6000.1

**Chapter 468-90 WAC**  
**SPEED SAFETY CAMERA SYSTEMS IN STATE HIGHWAY WORK ZONES**

NEW SECTION

**WAC 468-90-010 Worker presence.** For the purposes of RCW 46.63.200 (4) (b), a worker is present in a state highway work zone when at least one state employee, contractor, or agent of the state, or any other individual authorized by the department of transportation, is within the state highway work zone for the purpose of performing construction, maintenance, utility work, or to respond to an incident.

**WSR 24-24-103**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
[Filed December 4, 2024, 7:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-19-071.

Title of Rule and Other Identifying Information: Information system database fee increase for payday lenders.

Hearing Location(s): On January 15, 2025, at 10:00 a.m. Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501. Teams option available. Information will be posted on DFI's rule making docket web page at <https://dfi.wa.gov/agency-rulemaking>.

Date of Intended Adoption: January 16, 2025.

Submit Written Comments to: Rochelle Henderson, P.O. Box 41200, Olympia, WA 98504-1200, email [Rochelle.Henderson@dfi.wa.gov](mailto:Rochelle.Henderson@dfi.wa.gov), beginning December 4, 2024, by January 14, 2025.

Assistance for Persons with Disabilities: Contact Rochelle Henderson, phone 360-701-0581, TTY 1-800-833-6384, email [Rochelle.Henderson@dfi.wa.gov](mailto:Rochelle.Henderson@dfi.wa.gov), by January 15, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rule increases the information system database fee from \$1.00 to \$2.00.

Reasons Supporting Proposal: Payday lender licensees are required to verify a borrower's eligibility to receive a small loan through a real-time information system database. Through the information system database, payday lenders may determine whether a consumer has an outstanding loan, the number of outstanding small loans, whether the borrower is eligible for a loan subject to RCW 31.45.073, whether the borrower is in an installment plan, and any other information. DFI is required to set the fees licensees shall pay to the information system database vendor, RCW 31.45.093(5). The information system database fee has not been updated since 2010.

Statutory Authority for Adoption: RCW 43.320.040 and 31.45.093(5).

Statute Being Implemented: Chapter 31.45 RCW.

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

Name of Proponent: DFI, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jeanju Choi, 150 Israel Road S.W., Tumwater, WA 98501, 360-725-7821.

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. DFI is not one of the agencies listed in RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

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

Small Business Economic Impact Statement (SBEIS)

**Section 1: Description of the proposed rule:** DFI, division of consumer services (division), has prepared this SBEIS in support of

the proposal of an amendment to WAC 208-630-556, pertaining to the information system database transaction fee. The proposed amendment would increase the information system database fee from \$1.00 to \$2.00. The \$1.00 information system database fee is no longer economically viable for the information system database vendor. Further, the information system database fee has not been updated since its original implementation on January 1, 2010. See WSR 09-24-089.

Small loans (more commonly known as "payday loans") are regulated under the Check Cashers and Sellers Act, chapter 31.45 RCW. A payday loan is a short-term loan that is no more than \$700 or 30 percent of a borrower's gross monthly income, whichever is lower. RCW 31.45.073(2). Any person making a small loan must obtain and maintain a check casher or seller license with a small loan endorsement (more commonly known as "payday lenders").

Before making a payday loan, payday lenders must first verify a borrower's eligibility to receive a payday loan through a real-time information system database as set forth in RCW 31.45.093. Through the information system database, payday lenders may determine whether a consumer has an outstanding loan, the number of outstanding small loans, whether the borrower is eligible for a loan subject to RCW 31.45.073, whether the borrower is on an installment plan, and any other related information. RCW 31.45.093(1). If the information system database states that a borrower is eligible to receive a small loan, the payday lender must submit all required borrower information necessary to register the transaction in the information system database. WAC 208-630-556(7). The information system database transaction fee is \$1.00 per small loan registered. WAC 208-630-556(13). If a borrower is found to be ineligible for a small loan, the information system database provides a printable message with a reason for the determination. WAC 208-630-556(8).

Prior to preparing this SBEIS in support of the rule amendment, the division met with industry members that would be affected by this rule amendment. Following discussion with industry members, The division is proposing to amend WAC 208-620-556 to increase the information system database fee from \$1.00 to \$2.00.

**Section 2: Identify which businesses must comply with the proposed rule using the North American Industry Classification System (NAICS) codes and the minor cost thresholds:** In accordance with the Check Cashers and Sellers Act, any person making a small loan must first obtain and maintain a check casher or seller license with a small loan endorsement (more commonly known as "payday lenders") and will be required to comply with the proposed rules.

The NAICS code for payday lenders is 52239. The minor cost threshold that applies to this rule making under the Regulatory Fairness Act, chapter 19.85 RCW, is a cost per business of less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

**Section 3: Analyze the probable cost of compliance:** In drafting the proposed rule, the division attempted to balance the purpose of the information system database with the financial impact on payday lender licensees. As set forth in WAC 208-630-555, the purpose of the information system database is to prevent predatory or prohibited practices including, but not limited to, the practice of refinancing a small loan with another small loan or ensure that small loan due dates are set in accordance with the requirements of Check Cashers and Sellers Act. Additionally, the information system database is designed to prevent licensees from making more than eight loans to any one borrow-



er in any 12-month period, making a loan to a borrower who already has an outstanding small loan principal balance or making a loan to a borrower who is in default on a small loan or in an installment plan, or multiple licensees from making simultaneous loans to individual borrowers so that the total principal balance exceeds \$700 or 30 percent of the borrower's gross income.

RCW 19.85.040 states that the small business economic impact statement must include a brief description of the reporting, record-keeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with the amended rule. The division does not anticipate changes related to reporting, recordkeeping, or use of professional services necessary to comply with the amended rule as the rule amendment is limited to increasing the transaction fee for the statutory required information system database that is already in use.

RCW 19.85.040 also states that the small business economic impact statement must analyze the costs of compliance for businesses required to comply with the proposed rule, including costs of equipment, supplies, labor, professional services, and increased administrative costs. Further, the small business economic impact statement must include whether compliance with the proposed rule will cause businesses to lose sales or revenue. The division does not anticipate additional or new costs of equipment, supplies, labor, or professional services. However, the proposed rule would cause an increase in administrative costs.

Based on the annual assessment and report, and consolidated annual report, in 2023 there were 298,705 small loan transactions. The information system database fee is a flat fee of \$1.00 per registered loan. As such, the total fee amount in 2023 that payday lenders paid is \$298,705. As set forth in the proposed rule, increasing the information system database fee from \$1.00 to \$2.00 would result in a 100 percent fee increase. To avoid confusion, the total fee amount at \$2.00 the payday lenders would pay equals \$597,410.

The information system database fee is a cost to payday lenders. As an increase in cost would not impact sales or revenue, strictly speaking, the proposed rule would not cause businesses to lose sales or revenue. However, the division notes that the information system database fee is a cost that payday lenders are statutorily required to pay. RCW 31.45.093(5) provides that DFI must adopt rules to set fees "licensees shall pay to the vendor or service provider for the operation and administration of the system." Pursuant to the statute, licensees are not permitted to charge borrowers an additional sum to recover the fee. Accordingly, the information system database fee is a direct cost to payday lenders and would ultimately lead to a decrease in income.

**Section 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry:** RCW 19.85.030 provides that an agency must prepare a small business economic impact statement if the agency proposes rules that would impose more-than-minor costs on the businesses in an industry. RCW 19.85.020 defines a "minor cost" as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whatever is greater; or one percent of annual payroll.

The division has determined, based on annual assessment and report and consolidated annual report information filed by payday lender licensees, that the rule amendment would impose more-than-minor costs

because such costs are more than three-tenths of one percent of our licensees' annual revenue or income or exceed \$100.

**Section 5: Determine whether the proposed rule may have a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Also consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue:** RCW 19.85.040 requires that the division determine whether compliance with the rule amendment would have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules. "Small business" is defined as any business entity that is owned and operated independently from all other businesses, and that has 50 or fewer employees. RCW 19.85.020(3).

Currently, there are 11 payday lender licensees in Washington. Based on the information provided by licensees in their annual assessment and report and consolidated annual report filings, two licensees do not meet the definition of "small business" as they reported having more than 50 employees. Due to the small number of industry participants, the division categorized the two largest licensees as the "10 percent of businesses that are the largest businesses."

Based on the information provided by licensees in the 2023 annual assessment and report and consolidated annual report, the two licensees that have been categorized as the 10 percent of businesses that are the largest businesses, make 80 percent of the small loans in Washington. In terms of total small loan volume, the same two licensees account for approximately 78 percent of small loans made to Washington borrowers. It appears that the proposed rule would disproportionately impact small businesses due to the current composition of industry players.

RCW 19.85.040 requires that the division determine whether the proposed rule will have a disproportionate impact on small businesses by comparing the cost of compliance for small businesses and the 10 percent of businesses that are the largest businesses required to comply with the proposed rule. Basis for comparing costs includes cost per employee, cost per hour of labor, or cost per \$100 of sales.

As the proposed rule is related to an actual cost, the division believes that reviewing the impact of the cost on income would be a more appropriate basis for comparison to determine whether the proposed rule will have a disproportionate impact on small businesses.

Based on the information reported in DFI's annual payday lending report, the overall number of small loans made has declined since 2010. Revenue for payday lenders is, in part, dependent on the fees received from making small loans. Separate from this proposed rule, licensees are likely to experience a general decline in revenue.

Using the best information available to the division at this time and assuming similar information provided by licensees in the 2023 annual assessment and report and consolidated annual report, the proposed rule would result in an estimated average decrease of 8.6 percent in income for the largest 10 percent of businesses, and 43 percent estimated average decrease in income for small businesses.

**Section 6: If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses:** In drafting the proposed rule, the division took into consideration the legal requirements set forth in the Check Cashers and Sellers Act, the purpose of the infor-

mation system database, and the financial impact on payday lender licensees. DFI is statutorily required to set and implement the information system database fee. As set forth in the Check Cashers and Sellers Act, DFI is statutorily required to "adopt rules to set the fees licensees shall pay to the vendor or service provider for the operation and administration of the system." RCW 31.45.093(5).

As described in Section 7 below, and as a result of discussions and input received from affected businesses, the division reduced the information system database fee as detailed below. The division outlines additional mitigation steps we intend to take to reduce the burden of compliance. The division does not believe that it can reduce the cost of the information system database further and still accomplish the consumer protections contemplated by the Check Cashers and Sellers Act.

**Reducing, modifying, or eliminating substantive regulatory requirements:** The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

**Simplifying, reducing, or eliminating recordkeeping and reporting requirements:** The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

**Reducing the frequency of inspections:** The division does not believe that removing the requirement to verify whether borrowers are eligible for a small loan would be in the interest of the public. As set forth in WAC 208-630-555, the information system database serves as a mechanism to prevent borrowers from debt traps, while also acting as a tool for payday lenders to ensure they are in compliance with the Check Cashers and Sellers Act.

**Delaying compliance timetables:** The division does not believe that removing the requirement to report small loan transactions would be in the interest of the public.

**Modifying fine schedules for noncompliance:** There are no fines directly associated with a licensee's failure to pay the information system database fee. However, the information system database vendor will lock out any person that does not pay the database fee.

**Any other mitigation techniques including those suggested by small businesses or small business advocates:** The division considered whether there were other ways to mitigate the impact of this cost. However, RCW 31.45.093(5) requires that licensees pay the vendor or service provider for the operation and administration of the information system database.

The division originally contemplated incrementally increasing the fee from \$1.00 to \$3.00 over a period of two years. The division initially received a proposal to increase the fee beginning fall of 2024. The division met with members of the industry to discuss the potential fee increase. Upon discussion and receiving input from industry members, the division reduced the proposed fee increase from \$3.00 to \$2.00.

The division will further consider any comments received on the CR-102 that address how to reduce costs or suggest any additional mitigation techniques.

**Section 7: Describe how small businesses were involved in the development of the proposed rule:** Throughout the rule-making process, the division has involved the payday lender licensees. Most of the payday lender licensees are small businesses with fewer than 50 employees.

On August 28, 2024, the division met with payday lender licensees to discuss the need to increase the information system database. Licensees were also informed of the division's plan to initiate the rule-making process. During and following the meeting, the division received feedback from licensees. In particular, input related to a small increase of the fee.

The division filed a CR-101 preproposal statement of inquiry with the code reviser's office on September 16, 2024, stating that the division was considering amending WAC 208-630-556. On September 26, 2024, the division electronically notified the payday lender distribution list of the CR-101 filing and provided a link to DFI's rulemaking docket website. The division did not receive any comments on the CR-101.

The division intends to proceed with the rule making by formally proposing the amended rule in this CR-102 filing with the code reviser. The division will distribute the CR-102 to the payday lender licensees. The payday lenders and all interested members of the public will have the opportunity to submit comments on the proposed rule and participate in the rule-making hearing.

**Section 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** Based on a review of the financial condition of each licensee, and in conjunction with a declining market, the proposed rule may result in a loss of jobs.

**Section 9: Summarize the results of the analysis, including the determination if costs are disproportionate:** As discussed in Section 5 above, the proposed rule may impose disproportionate costs on small businesses as compared to the largest 10 percent of businesses required to comply with the rules. To mitigate this, the division revised its draft rule to lower the fee increase as detailed in Section 6.

While the proposed rule increases costs to licensees, the division believes the purpose the information system database serves in protecting borrowers outweighs the concerns regarding cost increases.

A copy of the statement may be obtained by contacting Jeanju Choi, P.O. Box 41200, Olympia, WA 98504-1200, phone 360-725-7821, TTY 1-800-833-6384, email [jeanju.choi@dfi.wa.gov](mailto:jeanju.choi@dfi.wa.gov).

December 3, 2024  
Charlie Clark  
Director

## OTS-5983.1

AMENDATORY SECTION (Amending WSR 16-10-046, filed 4/29/16, effective 6/1/16)

**WAC 208-630-556 How do I use the database system for small loan transactions?** (1) Beginning January 1, 2010, each small loan transaction must be registered with the database system and receive a database system-generated transaction authorization number. The transaction authorization number demonstrates that the transaction has been

recorded in the database prior to you making the small loan to the borrower.

(2) **Do I have to buy any equipment, hardware, or software to use the database system?** You must have a computer with access to the internet and Microsoft Internet Explorer 6 or higher. Dial-up capacity of at least 56 kps is sufficient. DSL or broadband access will provide faster access and response. It is also possible to interface directly with the database system; the database vendor can provide you with information about that process.

(3) **How and when may I access the database system?**

(a) The database system is the means by which real-time access to the data is made available to you through your internet connection.

(b) You must use a computer and the internet to access the database system.

(c) The database system will be accessible (~~(twenty-four)~~) 24 hours a day every day of the year, except for routine scheduled system maintenance and upgrades performed by the database vendor.

(4) **What must I do to maintain confidentiality of the borrower's information provided to the database?** In order to maintain the confidentiality and security of the borrower's information, you must not transmit information to the database system using publicly accessible computers, computers that are not under your control, unsecured wireless connections, or other connections that are not secure. Maintaining a secure connection includes, but is not limited to, installing and regularly updating antivirus and antispyware software and a firewall.

(5) **How do I use the database system to determine a borrower's eligibility for a small loan?** You must:

(a) Access the database system using the assigned user identification and password provided by the security administrator of your company;

(b) Enter the borrower's Social Security number, individual tax identification number (ITIN), or alien identification number, and the borrower's gross monthly income into the system.

(6) **What information will the database system give me when an eligibility search is conducted?** The database system will state a borrower's eligibility or ineligibility for a small loan and will give a reason for the eligibility determination. If the borrower is eligible for a small loan, the database system will provide the dollar amount the borrower is eligible to receive.

(7) **What must I do once the initial search determines that the borrower is eligible for a small loan?**

(a) If you receive an initial indication from the database vendor that the borrower is eligible for a small loan, you must then submit all of the required borrower information necessary to register the transaction in the database, as prescribed by the database vendor.

(b) When the required information has been submitted to the database, the database system will confirm the initial borrower search. If the borrower's eligibility is confirmed, the small loan transaction will be recorded as open and assigned a transaction authorization number evidencing that the transaction has been authorized by the database system. You must place the transaction authorization number on the small loan agreement.

(8) **What must I do if the borrower is determined to be ineligible for a small loan?** If the borrower is deemed ineligible you will be provided with a printable message with a reason for the determination. The message will also include the name, address, and toll-free support

number of the database vendor. You must provide a copy of the printable message to the borrower.

(9) **If I make a mistake entering data and must void the transaction, what do I do?** Follow the database vendor's instructions to administratively void the transaction.

(10) **If the database system is inaccessible via the internet, how do I access the database?**

(a) You will be given at least (~~twenty-four~~) 24 hours notice for scheduled maintenance or system upgrades. The notice will be by electronic mail to the designated security administrator, or by a broadcast message on the database vendor's website.

(b) In the event the database system is unavailable, you must adhere to the following procedures:

(i) Confirm that the database system remains unavailable by attempting to access the database system with every borrower seeking a new small loan transaction. You need not comply with this procedure if you have been notified via electronic mail by the database vendor of an expected period of time necessary to correct whatever problem is causing the database system to remain unavailable;

(ii) Contact the database vendor's toll-free help desk or voice response system to obtain a temporary transaction authorization number directly from the database vendor; and

(iii) Enter the remaining transactional data into the database system within (~~twenty-four~~) 24 hours of obtaining the temporary transaction authorization number from the database vendor.

(c) In the event that either the department of financial institutions or the database vendor notifies you that the database system is unavailable and that all alternative methods for registering a transaction and receiving a transaction authorization number are also unavailable:

(i) You are authorized to conduct transactions during the specific period of unavailability, after receiving written authorization, via electronic mail or facsimile from either the department of financial institutions or the database vendor with the department of financial institutions' consent.

(ii) Copies of the written authorization for any transactions conducted during an unavailability period must be attached to the small loan agreement for those transactions. One copy of the authorization must be provided to the borrower and another copy must be kept as an audit record.

(d) Transactions created during a period of authorized unavailability must be registered with the database within (~~twenty-four~~) 24 hours of notification that the database system is available; provided, however, that if the database system is unavailable for more than (~~twenty-four~~) 24 hours, then the period for registration shall be extended by (~~twenty-four~~) 24 hours for each additional (~~twenty-four~~) 24-hour period of unavailability.

(e) Once the transaction has been registered with the database, the transaction number assigned to that transaction must be placed on the licensee's record copy of the small loan agreement signed by the borrower for that transaction. If the borrower requests that transaction number at any time, the licensee must provide it to the borrower.

(11) **Once a loan is made, how can it be canceled or rescinded as authorized under RCW 31.45.086?** A borrower may rescind a small loan agreement before the close of business on the next day of business after the date of the transaction without incurring a transaction fee. If a borrower elects to cancel a small loan agreement you must close

the transaction on the database as soon as practicable after the borrower rescinds the small loan transaction. A loan that has been rescinded does not count toward the eight loan limit; nor will you incur a ((~~one~~)) two dollar transaction fee on that loan. For the purpose of rescinding a loan, the date of the transaction is the date the borrower actually receives the proceeds either in person or by direct deposit or other electronic transfer of funds into the borrower's bank account.

**(12) When must I update information on the database system?**

(a) When a borrower's small loan is paid (date of cash received, check deposited, or ACH authorization initiated), you must update open transactions on the database system as soon as practicable to ensure that all identifying information regarding both the borrower and the transaction are accurate, including any comments on the transaction which you deem relevant. You must input the date and time a transaction closes, as well as the payment method, unless you previously entered the payment method.

(b) When a small loan that was in default is paid, it is considered paid when the loaned amount and default fee is paid.

(c) When a loan is in default, you must mark the loan in the database as in default as soon as practicable after the default as follows:

(i) A small loan is in default if not paid on the date and by the time indicated in the small loan agreement. If no time is indicated the small loan is in default the first day after the due date.

(ii) A small loan in an installment plan is in default if unpaid on the 11th day after the due date, with the due date being day zero. If the due date for an installment plan payment is January 1st and is not paid, the loan is considered in default and the database must be updated on January 11th.

(d) When you receive formal notice that a small loan has been discharged in bankruptcy you must close the loan as having been paid, leaving a comment in the comment box about the bankruptcy. Do not administratively close the loan. The loan must continue to count toward the borrower's eight loan limit.

**(13) How much will each database transaction cost me?** The database vendor's transaction fee is ((~~one-dollar~~)) two dollars per loan registered. The database vendor will assess this fee for each transaction that has been registered on the database.

**(14) What happens if I do not pay the database fees to the database vendor?** The database vendor will lock you out of the database system.

**(15) What happens if I do not receive training and become certified in using the database?** If you or another designated person in the company do not receive training and certification to use the database, you will not be given an access number for the database.

## WSR 24-24-105

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed December 4, 2024, 9:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-17-075.

Title of Rule and Other Identifying Information: Amending WAC 192-500-090 Health care provider, 192-510-031 What are reportable wages for self-employed persons electing coverage?, 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?, 192-610-040 Can an employee backdate an application or a weekly claim for benefits?, 192-620-020 What information will the department request from an employee when filing for weekly benefits?, 192-620-035 When will a weekly benefit amount be prorated?, and 192-800-150 Can an employee designate a representative to act on their behalf?

Repealing WAC 192-500-200 Pandemic leave assistance, 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?, and 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?

Hearing Location(s): On January 8, 2025, at 9:00 a.m., via Microsoft Teams, link available at [paidleave.wa.gov/rulemaking](https://paidleave.wa.gov/rulemaking); or join by phone 564-999-2000, PIN 189 729 140#.

Date of Intended Adoption: On or after January 15, 2025.

Submit Written Comments to: Janette Benham, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), by January 8, 2025, 5:00 p.m.

Assistance for Persons with Disabilities: Teresa Eckstein, State EO Office, phone 360-480-5708, email [teckstein@esd.wa.gov](mailto:teckstein@esd.wa.gov), by December 31, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 192-500-090 Health care provider, to include naturopathic physicians based in Washington who are licensed under chapter 18.36A RCW to sign medical certifications.

Repeal rules related to the pandemic leave assistance program, which is no longer available.

Amend WAC 192-800-150 Can an employee designate a representative to act on their behalf?, to include "information as required by the department," or similar language in addition to written documentation. This will give the department the flexibility to develop processes that would allow for verbal authorization in some cases.

Employees on leave are required to report hours worked in self-employment on a weekly claim even if they have not opted in to self-employment coverage. This requirement is consistent with RCW 50A.15.060 (1)(d). However, our current rules only refer to hours worked for remuneration or wages, which would not include profits earned in self-employment.

Change gender-specific pronouns to gender-neutral pronouns.

WAC 192-610-040 requires employees to submit their initial application for benefits within seven days of the expiration of a factor that constitutes good cause prevented them from applying. The department is considering aligning this timeline with the standard 30-day timeline for backdating.

Set prevailing interest at one percent for damages.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 50A.05.060.



Statute Being Implemented: RCW 50A.15.060

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: April Amundson, Olympia, Washington, 360-485-2816.

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. Please see significance analysis at [paidleave.wa.gov/rulemaking](http://paidleave.wa.gov/rulemaking).

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 rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions:

	<b>Proposed WAC Sections and Title</b>	<b>This proposed rule section is exempt. Provide RCW to support this exemption.</b>
1.	WAC 192-500-090 Health care provider.	RCW 19.85.025(4) - There is no evidence to suggest that employees of small businesses would be more likely to seek care from a naturopathic physician than employees of large businesses.
2.	WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?	RCW 19.85.025(4) - This change is intended to replace gender-specific pronouns with gender-neutral pronouns and has no impact on businesses.
3.	WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?	RCW 34.05.310 (4)(b) - This rule gives direction to department staff when calculating the interest rate on late payments related to damages as required by RCW 50A.40.030(5).
4.	WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?	RCW 34.05.310 (4)(b) - Aligning "good cause" backdating language with standard operational policy.
5.	WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?	RCW 34.05.310 (4)(e) - 50A.15.060 (1)(d) requires all work done "for remuneration or profit" be included in the proration formula for benefit payments.
6.	WAC 192-620-035 When will a weekly benefit amount be prorated?	RCW 34.05.310 (4)(e) - 50A.15.060 (1)(d) requires all work done "for remuneration or profit" be included in the proration formula for benefit payments.
7.	WAC 192-800-150 Can an employee designate a representative to act on their behalf?	RCW 34.05.310 (4)(b) - This will allow the department flexibility in determining what, if any documentation is required for an employee to designate an authorized representative to interact with the department on their behalf.
8.	WAC 192-500-200 Pandemic leave assistance.	RCW 34.05.310 (4)(e) - The authorizing statute has elapsed.
9.	WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?	RCW 34.05.310 (4)(e) - The authorizing statute has elapsed.
10.	WAC 192-610-100 What is the attestation required for an employee claiming pandemic leave assistance?	RCW 34.05.310 (4)(e) - The authorizing statute has elapsed.

Scope of exemption for rule proposal:

Is fully exempt.

December 4, 2024  
 April Amundson  
 Policy and Rules Manager

**OTS-6013.1**

AMENDATORY SECTION (Amending WSR 19-08-016, filed 3/22/19, effective 4/22/19)

**WAC 192-500-090 Health care provider.** "Health care provider" means:

(1) A physician or an osteopathic physician who is licensed to practice medicine or surgery, as appropriate, by the state in which the physician practices;

(2) Nurse practitioners, nurse-midwives, midwives, clinical social workers, physician assistants, podiatrists, dentists, clinical psychologists, optometrists, and physical therapists licensed to practice under state law and who are performing within the scope of their practice as defined under state law by the state in which they practice;

(3) Naturopathic physicians licensed under chapter 18.36A RCW;

(4) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the health care provider's practice as defined under such law; or

~~((4))~~ (5) Any other provider permitted to certify the existence of a serious health condition under the federal Family and Medical Leave Act of 1993 (Act Feb. 5, 1993, P.L. 103-3, 107 Stat. 6, as it existed on October 19, 2017).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-500-200 Pandemic leave assistance.

**OTS-6014.1**

AMENDATORY SECTION (Amending WSR 21-04-067, filed 1/29/21, effective 3/1/21)

**WAC 192-510-031 What are reportable wages for self-employed persons electing coverage?** Each quarter, a self-employed individual who has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010, paid to the self-employed individual from the self-employed individual's business entity.

**Example 1:** A sole-proprietor selling crafts online earns \$3,000 in a quarter and incurred \$2,000 in business-related expenses. The individual would report \$1,000 to the department for that quarter.

**Example 2:** A member of a limited liability company (~~pays her-self~~) draws a salary in the amount of \$10,000 in a quarter. (~~She~~) They also take(~~s~~) a draw from (~~her~~) their company in the amount of \$5,000. (~~She~~) They would report \$15,000 to the department for that quarter.

### OTS-6015.1

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-530-100 Are voluntary plans required to pay pandemic leave assistance benefits?

### OTS-6016.1

AMENDATORY SECTION (Amending WSR 20-20-074, filed 10/2/20, effective 11/2/20)

**WAC 192-570-050 How are damages and liquidated damages assessed by the department, awarded, and paid?** (1) If the department finds the employer has violated RCW 50A.40.010, the department will assess monetary damages referenced in RCW 50A.40.030 plus any interest accrued on the assessed damages.

(2) If the department finds that the employer has committed a violation of RCW 50A.40.010 that is willful as defined in RCW 50A.40.030(4), additional liquidated damages will be added equal to the sum of the assessed damages.

(3) Damages and liquidated damages must be paid by the employer directly to the employee.

(4) If liquidated damages are assessed, the employer must pay all damages owed directly to the employee within (~~thirty~~) 30 calendar days from the day the determination is issued, unless the employer files an appeal under chapter 50A.50 RCW.

(5) The department is not responsible for collection action against an employer that defaults on the payment of all damages awarded. A collection action may be initiated by the employee against the employer by filing a warrant with the clerk of any county within the state.

(6) If damages are not paid to the employee on the date on which they are due and payable as prescribed by the commissioner, the whole

or part thereof remaining unpaid shall bear interest at the rate of one percent per month or fraction thereof from and after such date until payment plus accrued interest is received by the employee.

### OTS-6017.1

AMENDATORY SECTION (Amending WSR 21-18-082, filed 8/30/21, effective 9/30/21)

**WAC 192-610-040 Can an employee backdate an application or a weekly claim for benefits?** (1) Generally, paid family or medical leave benefits are payable on or after the date the employee applies for benefits. An application or weekly claim may be backdated for good cause or for the convenience of the department.

(2) For the purpose of this section:

(a) (i) "Good cause" means factors beyond the employee's control that reasonably prevented an employee from applying for benefits at the time of need for paid leave. These factors include, but are not limited to, a serious health condition, a period of incapacity, or a natural disaster.

(ii) The burden is on the employee to establish that good cause exists. The employee must provide all pertinent information and documentation which demonstrates that the factors prevented the employee from applying for benefits when the qualifying event occurred. This may include, but is not limited to, certification from a health care provider, evidence of a natural disaster, or other information required by the department.

(b) "For the convenience of the department" means for the purpose of program administration or situations when accepting timely applications or weekly claims was difficult or impossible. These include, but are not limited to, equipment breakdown or lack of available staff.

(3) An employee who wants to backdate an application or weekly claim must file for benefits during the first (~~seven~~) 30 days after the date that the factors that constitute good cause no longer exist.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-610-100	What is the attestation required for an employee claiming pandemic leave assistance?
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### OTS-6018.1

AMENDATORY SECTION (Amending WSR 21-11-009, filed 5/7/21, effective 6/7/21)

**WAC 192-620-020 What information will the department request from an employee when filing for weekly benefits?** (1) The department must determine if an employee qualifies for benefits when the employee files a weekly claim for the payment of benefits. For the week that the employee is claiming, the department will ask if the employee:

(a) Worked in self-employment or for wages during the week, and for the hours associated with that work;

(b) Received any paid leave such as vacation leave, sick leave, or other paid time off that was not considered a supplemental benefit payment provided by the employer, and the hours associated with that leave;

(c) Received any benefit that may disqualify the employee for paid family or medical leave, such as unemployment insurance; and

(d) Experienced a change in the qualifying event that affects the eligibility for, or duration of, paid family or medical leave benefits.

(2) The employee may be asked to provide additional information.

AMENDATORY SECTION (Amending WSR 22-10-031, filed 4/26/22, effective 6/9/22)

**WAC 192-620-035 When will a weekly benefit amount be prorated?**

(1) For an employee on paid family or medical leave, a weekly benefit amount is prorated when:

(a) The employee reports hours worked for wages or hours worked in self-employment;

(b) The employee reports hours for paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in WAC 192-500-180; or

(c) The employee files a weekly application for benefits that contains a day or days for which the employee was not approved for paid family or medical leave.

(2) If an employee reports hours under subsection (1)(a) or (b) of this section, proration will be calculated as specified by RCW 50A.15.020(2).

(3) This section does not apply to a week that is claimed to satisfy an employee's waiting period.

(4) If an employee is approved for leave for part of a week under subsection (1)(c) of this section, proration for that week will occur as follows:

(a) The employee's typical workweek hours are multiplied by the number of days approved for leave, then divided by seven. The result is rounded down to the nearest whole hour. This amount is the employee's adjusted typical workweek hours.

(b) Any hours worked or taken as paid time off as reported by the employee are then subtracted from the employee's adjusted typical workweek hours. This amount will be the number of hours of paid family or medical leave claimed for that week.

(c) The number of hours claimed for that week are then divided by the employee's typical workweek hours to produce a percentage.

(d) The resulting percentage is then multiplied by the employee's normal weekly benefit amount. The resulting amount, rounded down to

the nearest whole dollar, is the employee's benefit payment for that week.

**Example 1:** An employee has already served a waiting period in the claim year and files a claim for a week of paid medical leave. The employee typically works 40 hours a week at eight hours per day. In the week for which the employee is claiming, the employee claimed one day of paid medical leave and worked the other four days. This employee's weekly benefit is usually \$800. The weekly benefit would then be prorated by the hours on paid medical leave (eight hours) relative to the typical workweek hours (40 hours). Eight hours is 20 percent of 40 hours. The employee's weekly benefit would be prorated to 20 percent for a total of \$160.

**Example 2:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports no hours of work or paid time off for that week. The resulting number of hours claimed for that week are 28.

(c) The number of hours claimed for that week (28) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 70 percent.

(d) The percentage (70) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$700.

**Example 3:** An employee with typical workweek hours of 40 and a weekly benefit amount of \$1,000 is approved for leave through Thursday. The employee is not approved for leave Friday or Saturday. For this week only, the following proration will occur:

(a) The employee's typical workweek hours (40) are multiplied by the number of approved days of leave for that week (five) and then divided by seven and rounded down. The result is an adjusted typical workweek hours of 28.

(b) The employee reports eight hours of work and eight hours of paid time for that week. The adjusted workweek hours are reduced to reflect 16 hours of work and paid time. The resulting number of hours claimed for that week are 12.

(c) The number of hours claimed for that week (12) are then divided by the employee's normal typical workweek hours (40). This results in a percentage of 30 percent.

(d) The percentage (30) is then multiplied by the employee's weekly benefit amount (\$1,000). For that week, the employee will receive \$300.

**OTS-6019.1**

AMENDATORY SECTION (Amending WSR 23-11-083, filed 5/17/23, effective 7/1/23)

**WAC 192-800-150 Can an employee designate a representative to act on their behalf?** (1) The department may authorize another individual to act on the employee's behalf for the purposes of paid family and medical leave benefits if:

(a) An employee designates an authorized representative by submitting written documentation or other information as required by the department;

(b) A court-appointed legal guardian with authority to make decisions on a person's behalf submits documentation as required by the department;

(c) An individual designated as an attorney-in-fact under a power of attorney submits documentation satisfactory to the department to act on the employee's behalf; or

(d) If an employee is unable to designate an authorized representative due to a serious health condition, an individual may represent the employee by submitting a complete and signed authorized representative designation form made available by the department, which must include:

(i) Documentation from the employee's health care provider certifying that the employee is incapable of completing the administrative requirements necessary for receiving paid family and medical leave benefits and is unable to designate an authorized representative to act on the employee's behalf; and

(ii) An affidavit or declaration authorized by chapter 5.50 RCW attesting to the responsibility to act in the employee's best interest.

(2) A person meeting the requirements under subsection (1) of this section may file an initial application and weekly claims up to and including the week in which the employee died subject to WAC 192-620-010.

(3) If an employee has been approved for benefit payments and the employee dies, an estate executor or administrator may file weekly claims for any weeks in which the employee was unable to file a weekly claim up to and including the week in which they died, subject to WAC 192-620-010.

(4) The department will terminate the authority given to the authorized representative:

(a) When the employee or authorized representative notifies the department verbally or in writing; or

(b) At the department's discretion.

(5) For the purposes of paid family and medical leave the term employee is used for both employee and authorized representative.

## WSR 24-24-107

## PROPOSED RULES

## FOREST PRACTICES BOARD

[Filed December 4, 2024, 9:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-24-072.

Title of Rule and Other Identifying Information: Permanent water typing system.

Hearing Location(s): On January 14, 2025, at 4 p.m., in Burlington, Comfort Suites, 500 East George Hopper Road; on January 23, 2025, at 4 p.m., in Kelso, Red Lion Hotel Kelso, 510 Kelso Drive; on January 28, 2025, at 4 p.m., in Spokane, Courtyard Spokane Downtown, 401 North Riverpoint Boulevard; on January 29, 2025, at 4 p.m., in Ellensburg, Best Western Plus, 211 West Umptanum Road; and on February 11, 2025, at 4 p.m., in Olympia, Natural Resources Building, Room 172.

Date of Intended Adoption: May 14, 2025.

Submit Written Comments to: Patricia Anderson, P.O. Box 47012, Olympia, WA 98504-7012, email forest.practicesboard@dnr.wa.gov, beginning 8 a.m. on December 4, 2024, by 5 p.m. on February 12, 2025.

Assistance for Persons with Disabilities: Contact forest practices division, phone 360-902-1400, TTY 360-902-1125, by January 2, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to codify the permanent water typing system rule to accurately determine the extent of fish habitat and to inform the appropriate application of riparian protections needed while undertaking forest practice activities. The rule will replace the interim water typing system and includes a fish habitat assessment methodology for establishing the break between fish and nonfish bearing waters; a description of off-channel habitat for fish use; and direction on when to use a default physical criteria for fish use.

Reasons Supporting Proposal: The new rule will clarify the water typing system creating ease for landowner compliance and implementable for enforcement by the department of natural resources (DNR).

Statutory Authority for Adoption: RCW 76.09.040, 76.09.370.

Statute Being Implemented: RCW 76.09.370.

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

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen Zirkle, 1111 Washington Street, Olympia, 564-200-4702; Implementation: John McEntyre, 1111 Washington Street, Olympia, 360-280-2712; and Enforcement: Saboor Jawad, 1111 Washington Street, Olympia, 360-742-7130.

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 Patricia Anderson, P.O. Box 47012, Olympia, WA 98504-7012, phone 360-890-0277, email forest.practicesboard@dnr.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act Requirements:

Is not exempt.

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 is not anticipated to result



in probable costs to small businesses to which the rule applies. This is because the rule is unlikely to significantly change how small businesses establish water types relative to current practice and is unlikely to change the outcomes of any water type surveys. Therefore, DNR does not anticipate an increase in costs associated with surveys or other cost increases associated with rule compliance. For additional information regarding DNR's determination, see the preliminary cost-benefit analysis for the proposed water typing system rule.

December 3, 2024  
Leonard S. Young  
Chair

### OTS-5923.1

AMENDATORY SECTION (Amending WSR 23-17-127, filed 8/21/23, effective 1/1/24)

**WAC 222-12-090 \*Forest practices board manual.** When approved by the board the manual serves as an advisory technical supplement to these forest practices rules. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

- (1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.
- (2) Standards for identifying channel migration zones and bank-full channel features.
- (3) **Guidelines** for forest roads.
- (4) **Guidelines** for clearing slash and debris from Type Np and Ns Waters.
- (5) **Guidelines** for forest practices hydraulic projects.
- (6) **Guidelines** for determining acceptable stocking levels.
- (7) **Guidelines** for riparian management zones.
- (8) **Guidelines** for wetland delineation.
- (9) **Guidelines** for wetland replacement or substitution.
- (10) A list of nonnative wetland plant species.
- (11) The standard methodology for conducting watershed analysis shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The methodology shall also include a cultural resource module that shall specify the quantitative and qualitative methods, indices of resource conditions, and guidelines for developing voluntary management strategies for cultural resources. Except for cultural resources, the department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.
- (12) **Guidelines** for forest chemicals.

(a) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(b) Guidelines for aerial applications of pesticides and other forest chemicals under chapter 222-38 WAC.

(13) (~~Guidelines for determining fish use for the purpose of typing waters under WAC 222-16-031.~~) Reserved.

(14) **Survey protocol for marbled murrelets.** The most current Pacific Seabird Group terrestrial survey protocol shall be used when surveying for marbled murrelets in a stand. Surveys are valid if they were conducted in compliance with the board-recognized Pacific Seabird Group survey protocols in effect at the beginning of the season in which the surveys were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop:

(a) **Platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(i) A sampling method to determine platforms per acre in the field;

(ii) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(iii) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

(b) Guidance for applications classified by the department under WAC 222-16-080 (1)(h)(v) to be Class IV-Special forest practices for lands designated as critical habitat (state) for marbled murrelet (*Brachyramphus marmoratus*) for the following two forest practices activities:

(i) Harvesting within a 150-foot no-cut inner zone buffer of a 300-foot managed buffer zone adjacent to an occupied marbled murrelet site.

(ii) Harvesting within a 150-foot outer zone managed buffer of a 300-foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand relative density of 35 for Douglas-fir or red alder dominant species group or a residual stand relative density of 50 for Western hemlock dominant species group.

(16) **Guidelines** for evaluating potentially unstable slopes and landforms.

(17) **Guidelines** for the small forest landowner forestry riparian easement program.

(18) **Guidelines** for rivers and habitat open space program.

(19) **Guidelines** for hardwood conversion.

(20) **Guidelines** for financial assurances.

(21) **Guidelines** for alternate plans.

(22) **Guidelines** for adaptive management program.

(23) **Guidelines** for field protocol to locate mapped divisions between stream types and perennial stream identification.

(24) **Guidelines** for interim modification of bull trout habitat overlay.

(25) **Guidelines** for bull trout presence survey protocol.

(26) **Guidelines** for placement strategy for woody debris in streams.

## OTS-5924.3

AMENDATORY SECTION (Amending WSR 06-23-096, filed 11/15/06, effective 12/16/06)

**WAC 222-16-030 Water typing system.** ((Until the fish habitat water type maps described below are adopted by the board, the Interim Water Typing System established in WAC 222-16-031 will continue to be used.)) The objective of the water typing system is to correctly classify waters to inform the appropriate application of riparian protections and to accurately determine the extent of fish habitat at the landscape scale. This section identifies the criteria to classify waters. The requirements for determining fish use are described in WAC 222-16-0301.

The department classifies streams, lakes, and ponds on state and private forest lands of Washington state in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes ((will classify streams, lakes and ponds. The department will)). To assist applicants in determining water type classifications, the department shall prepare and update water type maps showing the location of Type S, F, and N (Np and Ns) Waters within the forested areas of the state. ((The maps will be based on a multiparameter, field-verified geographic information system (GIS) logistic regression model. The multiparameter model will be designed to identify fish habitat by using geomorphic parameters such as basin size, gradient, elevation and other indicators. The modeling process shall be designed to achieve a level of statistical accuracy of 95% in separating fish habitat streams and nonfish habitat streams. Furthermore, the demarcation of fish and nonfish habitat waters shall be equally likely to over and under estimate the presence of fish habitat. These maps shall be referred to as "fish habitat water typing maps" and shall, when completed, be available for public inspection at region offices of the department.

Fish habitat water type maps will be updated every five years where necessary to better reflect observed, in-field conditions. Except for these periodic revisions of the maps, on-the-ground observations of fish or habitat characteristics will generally not be used to adjust mapped water types. However, if an on-site interdisciplinary team using nonlethal methods identifies fish, or finds that habitat is not accessible due to naturally occurring conditions and no fish reside above the blockage, then the water type will be immediately changed to reflect the findings of the interdisciplinary team. The finding will be documented on a water type update form provided by the department and the fish habitat water type map will be updated as soon as practicable. If a dispute arises concerning a water type the department shall make available informal conferences, as established in WAC 222-46-020 which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types.

The waters will be)) All Type S Waters, and department concurred Type F and N Water breaks and Type Np and Ns Water breaks shown on the water type map are official and may be relied upon by landowners.

The water type maps and instructions for use are available for public review from the department. All water breaks concurred by the department are regulatory water type classifications; all other mapped, and unknown Type F and N Water breaks or Type Np and Ns Water

breaks must be determined, in the field, by forest landowners or their representative. The water type break can be determined per this section or, for fish use, WAC 222-16-0301. Small forest landowners can contact the department for technical assistance and/or interdisciplinary teams to determine water typing breaks.

The department may convene an interdisciplinary team, as defined in WAC 222-16-010, to consider proposed modifications to the department's water type map; to address observed in-field conditions, including observations of fish; to address naturally occurring stream conditions or blockages making habitat inaccessible to fish; or, if a dispute arises concerning a water type classification in accordance with WAC 222-46-020.

Waters are classified using the following criteria:

\* (1) **"Type S Water"** means all waters, within their bankfull width, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW including periodically inundated areas of (~~their~~) associated wetlands.

\* (2) **"Type F Water"** means segments of natural waters (~~other than Type S Waters, which are within the bankfull widths of defined channels and~~) including periodically inundated areas of their associated wetlands, (~~or within lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water and~~) not classified as Type S Waters, which have a fish, wildlife, or human use; which in any case contain fish habitat or are described by one of the following (~~four~~) seven categories:

(a) Waters (~~, which are~~) within lakes, ponds, or impoundments having a surface of 0.5 acre or greater at seasonal low water;

(b) Stream segments having a defined channel 20 feet or greater within the bankfull width and having a gradient of less than four percent;

(c) Waters which are off-channel habitat. These are areas important for rearing and survival of fish and include riverine ponds, wall-based channels, and stream associated wetlands. The area must be connected to Type F or Type S Water and accessible to fish during some portion of the year.

(i) For channelized streams, the edge of off-channel habitat is determined based on the outer edge of inundation of the stream at the bankfull elevation flow.

(ii) For nonchannelized streams, including stream associated wetlands, off-channel habitat is the outer edge of the area periodically inundated at the ordinary high water line.

(d) Waters used by fish. The department has prepared water type maps showing the location of Type F Waters. All department concurred Type F and N Water breaks shown on the water type map are official. Where fish use has not been determined:

(i) Waters having any of the following characteristics are presumed to have fish use:

(A) Stream segments having a defined channel of two feet or greater within the bankfull width in western Washington; or three feet or greater in width in eastern Washington; and having a gradient of 16 percent or less;

(B) Stream segments having a defined channel of two feet or greater within the bankfull width in western Washington; or three feet or greater within the bankfull width in eastern Washington, and having a gradient greater than 16 percent and less than or equal to 20 percent, and having greater than 50 acres in contributing basin size in

western Washington or greater than 175 acres contributing basin size in eastern Washington, based on hydrographic boundaries;

(C) Ponds or impoundments having a surface area of less than one acre at seasonal low water and having an outlet to a fish stream;

(D) Ponds of impoundments having a surface area of 0.5 acre or greater at seasonal low water;

(E) Waters within the anadromous fish floor, see WAC 222-16-0301.

(ii) The department shall waive or modify the characteristics in (d)(i) of this subsection where:

(A) Waters have confirmed, long term, naturally occurring water quality parameters incapable of supporting fish;

(B) Snowmelt streams with short flow cycles that do not support successful life history phases of fish. These streams typically have no flow in the winter months and discontinue flow by June 1st; or

(C) Sufficient information about a geomorphic region is available to support a departure from the characteristics in (d)(i) of this subsection, as determined in consultation with the department of fish and wildlife, department of ecology, affected tribes, and interested parties.

(e) Waters diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where ((such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such)) the department determines the diversion is a valid appropriation of water. These waters shall be considered ((to be)) Type F Water upstream from the point of ((such)) diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

((b)) (f) Waters((, which are)) diverted for use by a federal, state, tribal or private fish ((hatcheries. Such)) hatchery. These waters shall be considered Type F Water upstream from the point of diversion for 1,500 feet, including tributaries if highly significant for protection of downstream water quality. The department may allow additional harvest beyond the requirements of Type F Water ((designation provided)) classification if the department determines after a landowner-requested ((on-site assessment by the department of fish and wildlife, department of ecology, the affected tribes and interested parties)) interdisciplinary team assessment that:

(i) The management practices proposed by the landowner will adequately protect water quality for the fish hatchery; and

(ii) ((Such)) The additional harvest within the riparian management zone meets the requirements of the water type ((designation)) classification that would apply in the absence of the hatchery;

((e)) (g) Waters((, which are)) within a federal, state, local governmental entity, or private campground having more than 10 camping units((: Provided, That the water shall not be considered to enter a campground until it reaches)). These are waters that enter a campground at the boundary of the park lands available for public use and come((s)) within 100 feet of a camping unit, trail or other park improvement;

((d) Riverine ponds, wall-based channels, and other channel features that are used by fish for off-channel habitat. These areas are critical to the maintenance of optimum survival of fish. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a fish habitat stream and accessible during some period of the year; and

(ii) The off-channel water must be accessible to fish.))

(3) **"Type Np Water"** means all segments of natural waters within the bankfull width of (~~defined channels that are~~) perennial nonfish habitat streams. Perennial streams are flowing waters that do not go dry any time of a year of normal rainfall and include the intermittent dry portions of the perennial channel below the uppermost point of perennial flow.

(4) **"Type Ns Water"** means all segments of natural waters within the bankfull width of the defined channels that are not Type S, F, or Np Waters. These are seasonal, nonfish habitat streams in which surface flow is not present for at least some portion of a year of normal rainfall and are not located downstream from (~~any stream reach that is~~) a Type Np Water. Type Ns Waters must be physically connected by an above-ground channel system to Type S, F, or Np Waters.

\* (5) For purposes of this section:

(a) "Residential unit" means a home, apartment, (~~residential~~) condominium unit or mobile home, serving as the principal place of residence.

(b) "Camping unit" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) "Public accommodation facility" means a business establishment (~~open to and~~) licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(d) "Natural waters" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(e) "Seasonal low (~~flow~~ and ~~seasonal low~~) water" means the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(f) (~~"Channel width and gradient"~~) "Bankfull width" for defined channels means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. (~~Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps~~) See board manual section 23(~~+~~).

(g) "Intermittent (~~streams~~)" means those segments of streams that normally go dry.

(~~(h) "Fish habitat" means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat.~~)

#### NEW SECTION

**WAC 222-16-0301 Verification of fish habitat and the break between Type F and Type N Water.** To assist applicants in determining the water type classification, the department prepares water type maps showing the location of Type S, F, and N (Np and Ns) Waters within the forested areas of the state. The mapping tool and instructions for viewing water type maps is available on the department's website.

For the purposes of forest practices, landowners are required to verify the water type break between Type F and N Waters where fish use has not previously been determined. Department concurred breaks between Type F and N Waters are shown on the water type map. These breaks are official and can be used by the landowner. All other mapped stream breaks, and the establishment of the Type F and N Water break on streams not shown on the map, need to have the Type F and N Water break established through the application of the default physical characteristics, per WAC 222-16-030 (2)(d)(i); or, through the application of the fish habitat assessment method (FHAM) described in subsection (1) of this section.

The application of FHAM is intended to establish the line of demarcation between fish and nonfish habitat waters. No application of default physical characteristics or FHAM to determine the Type F and N Water break is allowed within the anadromous fish floor (AFF), unless a landowner requests an interdisciplinary team, as defined in WAC 222-16-010. The AFF is delineated on waters connected to saltwater by measurable physical stream characteristics, within which anadromous fish habitat is presumed, and upstream of which the default physical characteristics or a protocol fish survey under FHAM may be applied to establish the Type F and N Water type break. Board manual section 23 provides guidance on how to delineate the AFF.

\* (1) **Fish habitat assessment methodology (FHAM)**. The FHAM is a series of steps used to delineate the upper extent of fish habitat coincident with the regulatory water type break between Type F and Type N Waters. Proposals to change the department water type map must include documentation of the use of the FHAM on a form designated by the department. FHAM shall be applied in waters situated upstream from the anadromous fish floor or known fish use. Board manual section 23 provides additional technical guidance for conducting the FHAM.

The FHAM requires the identification of geomorphic features meeting the definition of a potential habitat break (PHB) as described in subsection (2) of this section.

(2) **"Potential habitat break"** means a permanent, distinct, and measurable change to in-stream physical characteristics. PHBs are typically associated with underlying geomorphic conditions and may consist of natural obstacles that physically limit fish access to upstream reaches or a distinct measurable change in channel gradient, bankfull width, or a combination of the two. Natural, nondeformable obstacle PHB includes vertical drops, steep cascades, bedrock sheets and bedrock chutes. Guidance on how to identify PHB is contained in board manual section 23.

(3) The steps to conduct FHAM are:

Step 1	Locate the upstream extent of the AFF or other upstream most point of known fish use, whichever is furthest upstream. The process and sources used to determine known presence or fish habitat must be documented. Proponents are encouraged to contact the department of fish and wildlife and/or affected Indian tribes to assist in determining areas of known fish use.
Step 2	Locate the first PHB situated upstream of the stream segment with known fish use point, determined in Step 1. See the PHB criteria in subsection (2) of this section and associated guidance in board manual section 23.
Step 3	Begin the fish habitat assessment directly upstream of the PHB identified in Step 2.  If a fish is observed in the stream segment upstream from the first PHB, stop the electrofishing survey and proceed upstream to the next PHB. Repeat this process until no fish are observed upstream of a PHB.

Step 4	When fish are not observed in the stream segment directly above a PHB, continue protocol surveying of all available habitats for 1/4 mile upstream of the PHB. If no fish are observed, this point becomes the end of fish habitat for the stream segment and the proposed water type break between Type F and Type N Waters. Document this location as the proposed habitat break.
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REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 222-16-031 Interim water typing system.

**OTS-5925.2**

AMENDATORY SECTION (Amending WSR 13-21-032, filed 10/8/13, effective 12/30/13)

**WAC 222-24-040 \*Water crossing structures for all typed waters.**

(1) When a department approved water type change causes the location of the break between Type F and Type N Water to be upstream beyond an existing water crossing structure, it must be replaced with a fish passable structure. Replacement is not required if the existing structure is fish passable per WAC 222-24-041, or the structure is functioning with little risk to public resources and has been installed under a forest practices hydraulic project in an approved forest practices application or a hydraulic project approval by the department of fish and wildlife.

(2) Bridges are required for new crossings and reconstructed crossings of any typed waters regularly used for recreational boating.

~~((2))~~ (3) Structures containing concrete must be sufficiently cured prior to contact with water.

~~((3))~~ (4) One end of each new or reconstructed permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within ~~((ten))~~ 10 vertical feet of the 100-year flood level.

~~((4))~~ (5) Alterations or disturbance of the stream bed, bank or bank vegetation must be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in board manual section 5. This requirement may be modified or waived by the department, in consultation with the department of fish and wildlife, if precluded by engineering or safety factors.

~~((5))~~ (6) When earthen materials are used for bridge surfacing, only clean sorted gravel may be used, a geotextile lining must be installed and curbs of sufficient size shall be installed to a height above the surface material to prevent surface material from falling into the stream bed.

~~((6))~~ (7) Wood removed from the upstream end of culverts and bridges will be placed at the downstream end of such culverts and bridges in such a way as to minimize obstruction of fish passage and



to the extent practical, while avoiding significant disturbance of sediment in connection with maintenance activities.

~~((7))~~ (8) Fords.

(a) New ford construction requires a forest practices application.

(b) The entry and exit points of a new ford must not be within ~~((one hundred))~~ 100 feet upstream or downstream of another ford.

(c) The following activities associated with established fords require a forest practices application:

(i) Ford repair with equipment or construction work waterward of the ordinary high water line;

(ii) Driving a vehicle or operating equipment on or across wetted stream beds at areas other than established fords.

(d) Driving a vehicle or operating equipment on or across an established ford does not require a forest practices application. "Established ford" means a crossing place in a watercourse that was in existence and annually used prior to 1986 or subsequently permitted by the department of fish and wildlife or the department, and has identifiable approaches on the banks.

#### OTS-5926.1

AMENDATORY SECTION (Amending WSR 13-21-032, filed 10/8/13, effective 12/30/13)

#### **WAC 222-30-021 \*Western Washington riparian management zones.**

These rules apply to all typed waters on forest land in western Washington, except as provided in WAC 222-30-023. RMZs are measured horizontally from the outer edge of the bankfull width or channel migration zone, whichever is greater, and extend to the limits as described in this section. See board manual section 7 for riparian design and layout guidelines.

\* (1) **Western Washington RMZs for Type S and F Waters** have three zones: The core zone is nearest to the water, the inner zone is the middle zone, and the outer zone is furthest from the water. (See definitions in WAC 222-16-010.) RMZ dimensions vary depending on the site class of the land, the management harvest option, and the bankfull width of the stream. See tables for management options 1 and 2 below.

None of the limitations on harvest in each of the three zones listed below will preclude or limit the construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050, or the creation and use of yarding corridors in WAC 222-30-060(1).

The shade requirements in WAC 222-30-040 must be met regardless of harvest opportunities provided in the inner zone RMZ rules. See board manual section 1.

(a) **Core zones.** No timber harvest or construction is allowed in the core zone except operations related to forest roads as detailed in subsection (1) of this section. Any trees cut for or damaged by yarding corridors in the core zone must be left on the site. Any trees cut as a result of road construction to cross a stream may be removed from the site, unless used as part of a large woody debris placement strategy or as needed to reach stand requirements.

(b) **Inner zones.** Forest practices in the inner zone must be conducted in such a way as to meet or exceed stand requirements to achieve the goal in WAC 222-30-010(2). The width of the inner zone is determined by site class, bankfull width, and management option. Timber harvest in this zone must be consistent with the stand requirements in order to reach the desired future condition targets.

"**Stand requirement**" means a number of trees per acre, the basal area and the proportion of conifer in the combined inner zone and adjacent core zone so that the growth of the trees would meet desired future conditions. The following table defines basal area targets when the stand is (~~one hundred forty~~) 140 years old.

Site Class	Desired future condition target basal area per acre (at 140 years)
I	325 sq. ft.
II	325 sq. ft.
III	325 sq. ft.
IV	325 sq. ft.
V	325 sq. ft.

Growth modeling is necessary to calculate whether a particular stand meets stand requirement and is on a trajectory towards these desired future condition basal area target. The appropriate growth model will be based on stand characteristics and will include at a minimum, the following components: The number of trees by diameter class, the percent of conifer and hardwood, and the age of the stand. See board manual section 7.

(i) **Hardwood conversion in the inner zone.** When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone, except in connection with hardwood conversion.

The landowner may elect to convert hardwood-dominated stands in the **inner zone** to conifer-dominated stands. Harvesting and replanting shall be in accordance with the following limits:

(A) Conversion activities in the **inner zone** of any harvest unit are only allowed where all of the following are present:

- Existing stands in the combined core and inner zone do not meet stand requirements (WAC 222-30-021 (1)(b));
- There are fewer than (~~fifty-seven~~) 57 conifer trees per acre eight inches or larger dbh in the conversion area;
- There are fewer than (~~one hundred~~) 100 conifer trees per acre larger than four inches dbh in the conversion area;
- There is evidence (such as conifer stumps, historical photos, or a conifer understory) that the conversion area can be successfully reforested with conifer and support the development of conifer stands;
- The landowner owns (~~five hundred~~) 500 feet upstream and (~~five hundred~~) 500 feet downstream of the harvest unit;
- The core and inner zones contain no stream adjacent parallel roads;
- Riparian areas contiguous to the proposed harvest unit are owned by the landowner proposing to conduct the conversion activities, and meet shade requirements of WAC 222-30-040 or have a (~~seventy-five~~) 75 foot buffer with trees at least (~~forty~~) 40 feet tall on both sides of the stream for (~~five hundred~~) 500 feet upstream and (~~five hundred~~) 500 feet downstream of the proposed harvest unit (or the length of the stream, if less);

- If the landowner has previously converted hardwood-dominated stands, then postharvest treatments must have been performed to the satisfaction of the department.

(B) In addition to the conditions set forth above, permitted conversion activities in the **inner zone** of any harvest unit are limited by the following:

- Each continuous conversion area is not more than (~~(five hundred)~~) 500 feet in length; two conversion areas will be considered "continuous" unless the no-harvest area separating the two conversion areas is at least half the length of the larger of the two conversion areas.

- Type S and F (~~(Type 1, 2, or 3)~~) Water: Up to (~~(fifty)~~) 50 percent of the inner zone area of the harvest unit on one side of the stream may be converted provided that:

- ◆ The landowner owns the opposite side of the stream and the landowner's riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a (~~(seventy-five)~~) 75 foot buffer of trees at least (~~(forty)~~) 40 feet tall or:

- ◆ The landowner does not own land on the opposite side of the stream but the riparian area on the opposite bank meets the shade requirements of WAC 222-30-040 or has a (~~(seventy-five)~~) 75 foot buffer of trees at least (~~(forty)~~) 40 feet tall.

- Not more than (~~(twenty-five)~~) 25 percent of the inner zone of the harvest unit on both sides of a Type S or F Water may be converted if the landowner owns both sides.

(C) Where conversion is allowed in the **inner zone**, trees within the conversion area may be harvested except that:

- Conifer trees larger than (~~(twenty)~~) 20 inches dbh shall not be harvested;

- Not more than (~~(ten)~~) 10 percent of the conifer stems greater than eight inches dbh, exclusive of the conifer noted above, within the conversion area may be harvested; and

- The landowner must exercise reasonable care in the conduct of harvest activities to minimize damage to all residual conifer trees within the conversion area including conifer trees less than eight inches dbh.

(D) Following harvest in conversion areas, the landowner must:

- Reforest the conversion area with **conifer** tree species suitable to the site in accordance with the requirements of WAC 222-34-010; and

- Conduct postharvest treatment of the site until the conifer trees necessary to meet acceptable stocking levels in WAC 222-34-010(2) have crowns above the brush or until the conversion area contains a minimum of (~~(one hundred fifty)~~) 150 conifer trees greater than eight inches dbh per acre.

- Notify the department in writing within three years of the approval of the forest practices application for hardwood conversion, if the hardwood conversion has been completed.

(E) **Tracking hardwood conversion.** The purpose of tracking hardwood conversion is to determine if hardwood conversion is resulting in adequate enhancement of riparian functions toward the desired future condition while minimizing the short term impacts on functions. The department will use existing or updated databases developed in cooperation with the Washington Hardwoods Commission to identify watershed administrative units (WAUs) with a high percentage of hardwood-dominated riparian areas and, thus have the potential for excessive hardwood conversion under these rules. The department will track the rate of conversion of hardwoods in the riparian zone: (1) Through the applica-

tion process on an annual basis; and (2) at a WAU scale on a biennial basis as per WAC 222-30-120 through the adaptive management process which will develop thresholds of impact for hardwood conversion at the watershed scale.

(ii) **Harvest options.**

(A) No inner zone management. When the existing stands in the combined core and inner zone do not meet stand requirements, no harvest is permitted in the inner zone. When no harvest is permitted in the inner zone or the landowner chooses not to enter the inner zone, the width of core, inner and outer zones are as provided in the following table:

**No inner zone management RMZ widths for western Washington**

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(B) Inner zone management. If trees can be harvested and removed from the inner zone because of surplus basal area consistent with the stand requirement, the harvest and removal of the trees must be undertaken consistent with one of two options:

(I) **Option 1. Thinning from below.** The objective of thinning is to distribute stand requirement trees in such a way as to shorten the time required to meet large wood, fish habitat and water quality needs. This is achieved by increasing the potential for leave trees to grow larger than they otherwise would without thinning. Thinning harvest under option 1 must comply with the following:

- Residual trees left in the combined core and inner zones must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for guidelines.

- Thinning must be from below, meaning the smallest dbh trees are selected for harvest first, then progressing to successively larger diameters.

- Thinning cannot decrease the proportion of conifer in the stand.

- Shade retention to meet the shade rule must be confirmed by the landowner for any harvest inside of (~~seventy-five~~) 75 feet from the outer edge of bankfull width or outer edge of CMZ, whichever is greater.

- The number of residual conifer trees per acre in the inner zone will equal or exceed (~~fifty-seven~~) 57.

**Option 1. Thinning from below.**

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
I	200'	50'	83'	100'	67'	50'

Site class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width (measured from outer edge of core zone)		Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width >10'	stream width ≤10'	stream width >10'
II	170'	50'	63'	78'	57'	42'
III	140'	50'	43'	55'	47'	35'
IV	110'	50'	23'	33'	37'	27'
V	90'	50'	10'	18'	30'	22'

(II) **Option 2. Leaving trees closest to the water.** Management option 2 applies only to riparian management zones for site class I, II, and III on streams that are less than or equal to ~~(ten)~~ 10 feet wide and RMZs in site class I and II for streams greater than ~~(ten)~~ 10 feet wide. Harvest must comply with the following:

- Harvest is not permitted within ~~(thirty)~~ 30 feet of the core zone for streams less than or equal to ~~(ten)~~ 10 feet wide and harvest is not permitted within ~~(fifty)~~ 50 feet of the core zone for streams greater than ~~(ten)~~ 10 feet wide;
- Residual leave trees in the combined core and inner zone must meet stand requirements necessary to be on a trajectory to desired future condition. See board manual section 7 for calculating stand requirements;
- A minimum of ~~(twenty)~~ 20 conifers per acre, with a minimum ~~(twelve)~~ 12 inch dbh, will be retained in any portion of the inner zone where even-age harvest occurs. These riparian leave trees will be counted towards meeting applicable stand requirements. The number of riparian leave trees cannot be reduced below ~~(twenty)~~ 20 for any reason.
- Trees are selected for harvest starting from the outer most portion of the inner zone first then progressively closer to the stream.
- If (b) (ii) (B) (II) of this subsection results in surplus basal area per the stand requirement, the landowner may take credit for the surplus by harvesting additional riparian leave trees required to be left in the adjacent outer zone on a basal area-for-basal area basis. The number of leave trees in the outer zone can be reduced only to a minimum of ~~(ten)~~ 10 trees per acre.

**Option 2. Leaving trees closest to water.**

Site Class	RMZ width	Core zone width (measured from outer edge of bankfull width or outer edge of CMZ of water)	Inner zone width				Outer zone width (measured from outer edge of inner zone)	
			stream width ≤10'	stream width ≤10'	stream width >10'	stream width >10'	stream width ≤10'	stream width >10'
				minimum floor distance		minimum floor distance		
			(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)	(measured from outer edge of core zone)		
I	200'	50'	84'	30'	84'	50'	66'	66'
II	170'	50'	64'	30'	70'	50'	56'	50'
III	140'	50'	44'	30'	**	**	46'	**

\*\* Option 2 for site class III on streams >10' is not permitted because of the minimum floor (100') constraint.

(iii) **Where the basal area components of the stand requirement cannot be met** within the sum of the areas in the inner and core zone due to the presence of a stream-adjacent parallel road in the inner or core zone, a determination must be made of the approximate basal area that would have been present in the inner and core zones if the road was not occupying space in the core or inner zone and the shortfall in the basal area component of the stand requirement. See definition of "stream-adjacent parallel road" in WAC 222-16-010.

(A) Trees containing basal area equal to the amount determined in (b) (iii) of this subsection will be left elsewhere in the inner or outer zone, or if the zones contain insufficient riparian leave trees, substitute riparian leave trees will be left within the RMZ width of other Type S or F Waters in the same unit or along Type Np or Ns Waters in the same unit in addition to all other RMZ requirements on those same Type S, F, Np or Ns Waters.

(B) When the stream-adjacent road basal area calculated in (b) (iii) of this subsection results in an excess in basal area (above stand requirement) then the landowner may receive credit for such excess which can be applied on a basal area-by-basal area basis against the landowner's obligation to leave trees in the outer zone of the RMZ of such stream or other waters within the same unit, provided that the number of trees per acre in the outer zone is not reduced to less than ~~((ten))~~ 10 trees per acre.

(C) When the basal area requirement cannot be met, as explained in (b) (iii) of this subsection, the shortfall may be reduced through the implementation of an acceptable large woody debris placement plan. See board manual section 26 for guidelines.

(iv) If a harvest operation includes both yarding and harvest activities within the RMZ, all calculations of basal area for stand requirements will be determined as if the yarding corridors were constructed prior to any other harvest activities. If trees cut or damaged by yarding are taken from excess basal area, these trees may be removed from the inner zone. Trees cut or damaged by yarding in a unit which does not meet the basal area target of the stand requirements cannot be removed from the inner zone. Any trees cut or damaged by yarding in the core zone may not be removed.

(c) **Outer zones.** Timber harvest in the outer zone must leave ~~((twenty))~~ 20 riparian leave trees per acre after harvest. "**Outer zone riparian leave trees**" are trees that must be left after harvest in the outer zone in western Washington. Riparian leave trees must be left uncut throughout all future harvests:

**Outer zone riparian leave tree requirements**

Application	Leave tree spacing	Tree species	Minimum dbh required
Outer zone	Dispersed	Conifer	12" dbh or greater
Outer zone	Clumped	Conifer	12" dbh or greater
Protection of sensitive features	Clumped	Trees representative of the overstory including both hardwood and conifer	8" dbh or greater

The ~~((twenty))~~ 20 riparian leave trees to be left can be reduced in number under the circumstances delineated in (c) (iv) of this subsection. The riparian leave trees must be left on the landscape ac-

ording to one of the following two strategies. A third strategy is available to landowners who agree to a LWD placement plan.

(i) **Dispersal strategy.** Riparian leave trees, which means conifer species with a diameter measured at breast height (dbh) of (~~twelve~~) 12 inches or greater, must be left dispersed approximately evenly throughout the outer zone. If riparian leave trees of (~~twelve~~) 12 inches dbh or greater are not available, then the next largest conifers must be left. If conifers are not present, riparian leave trees must be left according to the clumping strategy in (c)(ii) of this subsection.

(ii) **Clumping strategy.** Riparian leave trees must be left clumped in the following way:

(A) Clump trees in or around one or more of the following **sensitive features** to the extent available within the outer zone. When clumping around sensitive features, riparian leave trees must be eight inches dbh or greater and representative of the overstory canopy trees in or around the sensitive feature and may include both hardwood and conifer species. Sensitive features are:

(I) Seeps and springs;

(II) Forested wetlands;

(III) Topographic locations (and orientation) from which leave trees currently on the site will be delivered to the water;

(IV) Areas where riparian leave trees may provide windthrow protection;

(V) Small unstable, or potentially unstable, slopes not of sufficient area to be detected by other site evaluations. See WAC 222-16-050 (1)(d).

(VI) Archaeological sites or historic archaeological resources as defined in RCW 27.53.030;

(VII) Historic sites eligible for listing on the National Register of Historic Places or the Washington Heritage Register as determined by the Washington state department of archaeology and historic preservation. See WAC 222-16-050 (1)(f); or

(VIII) Sites containing evidence of Native American cairns, graves or glyptic records as provided for in chapters 27.44 and 27.53 RCW. See WAC 222-16-050 (1)(f).

(B) If sensitive features are not present, then clumps must be well distributed throughout the outer zone and the leave trees must be of conifer species with a dbh of (~~twelve~~) 12 inches or greater. When placing clumps, the applicant will consider operational and biological concerns. Tree counts must be satisfied regardless of the presence of stream-adjacent parallel roads in the outer zone.

(iii) **Large woody debris in-channel placement strategy.**

(A) In order to reduce the number of required outer zone trees, a landowner may design a LWD placement plan for department approval consistent with guidelines in board manual sections 5 and 26. Landowners are encouraged to consult with the department and the department of fish and wildlife while designing the plan and prior to submitting a forest practices application.

(B) Reduction of trees in the outer zone must not go below a minimum of (~~ten~~) 10 trees per acre.

(C) If this strategy is chosen, a complete forest practices application must include the LWD placement plan.

(iv) **Twenty riparian leave trees must be left after harvest** with the exception of the following:

(A) If a landowner agrees to implement a placement strategy, see (iii) of this subsection.

(B) If trees are left in an associated channel migration zone, the landowner may reduce the number of trees required to be left according to the following:

(I) Offsets will be measured on a basal area-for-basal area basis.

(II) Conifer in a CMZ equal to or greater than six inches dbh will offset conifer in the outer zone at a one-to-one ratio.

(III) Hardwood in a CMZ equal to or greater than ~~((ten))~~ 10 inches dbh will offset hardwood in the outer zone at a one-to-one ratio.

(IV) Hardwood in a CMZ equal to or greater than ~~((ten))~~ 10 inches dbh will offset conifer in the outer zone at a three-to-one ratio.

**\* (2) Western Washington protection for Type Np and Ns Waters.**

(a) An **equipment limitation zone** is a ~~((thirty))~~ 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water where equipment use and other forest practices that are specifically limited by these rules. It applies to all perennial and seasonal streams.

(i) On-site mitigation is required if any of the following activities exposes the soil on more than ~~((ten))~~ 10 percent of the surface area of the zone:

- (A) Ground based equipment;
- (B) Skid trails;
- (C) Stream crossings (other than existing roads); or
- (D) Cabled logs that are partially suspended.

(ii) Mitigation must be designed to replace the equivalent of lost functions especially prevention of sediment delivery. Examples include water bars, grass seeding, mulching, etc.

(iii) Nothing in this subsection (2) reduces or eliminates the department's authority to prevent actual or potential material damage to public resources under WAC 222-46-030 or 222-46-040 or any related authority to condition forest practices notifications or applications.

(b) **Sensitive site and RMZs protection along Type Np Waters.** Forest practices must be conducted to protect Type Np RMZs and sensitive sites as detailed below:

(i) A ~~((fifty))~~ 50-foot, no-harvest buffer, measured horizontally from the outer edge of bankfull width, will be established along each side of the Type Np Water as follows:

**Required no-harvest, 50-foot buffers on Type Np Waters.**

Length of Type Np Water from the confluence of Type S or F Water	Length of 50' buffer required on Type Np Water (starting at the confluence of the Type Np and connecting water)
Greater than 1000'	500'
Greater than 300' but less than 1000'	Distance of the greater of 300' or 50% of the entire length of the Type Np Water
Less than or equal to 300'	The entire length of Type Np Water

(ii) No timber harvest is permitted in an area within ~~((fifty))~~ 50 feet of the outer perimeter of a soil zone perennially saturated from a headwall seep.



(iii) No timber harvest is permitted in an area within ~~((fifty))~~ 50 feet of the outer perimeter of a soil zone perennially saturated from a side-slope seep.

(iv) No timber harvest is permitted within a ~~((fifty-six))~~ 56 foot radius buffer patch centered on the point of intersection of two or more Type Np Waters.

(v) No timber harvest is permitted within a ~~((fifty-six))~~ 56 foot radius buffer patch centered on a headwater spring or, in the absence of a headwater spring, on a point at the upper most extent of a Type Np Water as defined in WAC 222-16-030(3) ~~((and 222-16-031))~~.

(vi) No timber harvest is permitted within an alluvial fan.

(vii) At least ~~((fifty))~~ 50 percent of a Type Np Waters' length must be protected by buffers on both sides of the stream ~~((2))~~ two-sided buffers). Buffered segments must be a minimum of ~~((one hundred))~~ 100 feet in length. If an operating area is located more than ~~((five hundred))~~ 500 feet upstream from the confluence of a Type S or F Water and the Type Np Water is more than ~~((one thousand))~~ 1,000 feet in length, then buffer the Type Np Water according to the following table. If the percentage is not met by protecting sensitive sites listed in (b) (i) through (vii) of this subsection, then additional buffers are required on the Type Np Water to meet the requirements listed in the table.

**Minimum percent of length of Type Np Waters to be buffered when more than 500 feet upstream from the confluence of a Type S or F Water**

Total length of a Type Np Water upstream from the confluence of a Type S or F Water	Percent of length of Type Np Water that must be protected with a 50 foot no harvest buffer more than 500 feet upstream from the confluence of a Type S or F Water
1000 feet or less	Refer to table in this subsection (i) above
1001 - 1300 feet	19%
1301 - 1600 feet	27%
1601 - 2000 feet	33%
2001 - 2500 feet	38%
2501 - 3500 feet	42%
3501 - 5000 feet	44%
Greater than 5000 feet	45%

The landowner must select the necessary priority areas for additional two-sided buffers according to the following priorities:

- (A) Low gradient areas;
- (B) Perennial water reaches of nonsedimentary rock with gradients greater than ~~((twenty))~~ 20 percent in the tailed frog habitat range;
- (C) Hyporheic and groundwater influence zones; and
- (D) Areas downstream from other buffered areas.

Except for the construction and maintenance of road crossings and the creation and use of yarding corridors, no timber harvest will be allowed in the designated priority areas. Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a designated priority area buffer.

(c) None of the limitations on harvest in or around Type Np Water RMZs or sensitive sites listed in (b) of this subsection will preclude or limit:

(i) The construction and maintenance of roads for the purpose of crossing streams in WAC 222-24-030 and 222-24-050.

(ii) The creation and use of yarding corridors in WAC 222-30-060(1).

To the extent reasonably practical, the operation will both avoid creating yarding corridors or road crossings through Type Np Water RMZ or sensitive sites and associated buffers, and avoid management activities which would result in soil compaction, the loss of protective vegetation or sedimentation in perennially moist areas.

Where yarding corridors or road crossings through Type Np Water RMZs or sensitive sites and their buffers cannot reasonably be avoided, the buffer area must be expanded to protect the sensitive site by an area equivalent to the disturbed area or by providing comparable functions through other management initiated efforts.

Landowners must leave additional acres equal to the number of acres (including partial acres) occupied by an existing stream-adjacent parallel road within a Type Np Water RMZs or sensitive site buffer.

**WSR 24-24-111**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 24-14—Filed December 4, 2024, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-092.

Title of Rule and Other Identifying Information: Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales.

Hearing Location(s): On January 10, 2025, 8:00 a.m., webinar and/or conference call. The public may participate in the meeting. Visit our website at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join and/or comment at the meeting.

Date of Intended Adoption: February 14, 2025.

Submit Written Comments to: Julie Watson, P.O. Box 43200, Olympia, WA 98504-3200, email [2024SRKWCR102@publicinput.com](mailto:2024SRKWCR102@publicinput.com), fax 360-902-2946 Attn: Julie Watson, phone 855-925-2801 project code 10914, comment submission form available on <https://publicinput.com/2024srkwcr102>, beginning December 4, 2024, by 5:00 p.m. on January 13, 2025.

Assistance for Persons with Disabilities: Washington department of fish and wildlife (WDFW) ADA manager, phone 360-902-2349, fax 360-902-2946 Attn: Julie Watson, TTY 833-885-1012 or 711, email [CivilRightsTeam@dfw.wa.gov](mailto:CivilRightsTeam@dfw.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2021, WDFW adopted a suite of rules to reduce the daily and cumulative impacts of commercial whale watching on southern resident orcas and consider the economic viability of license holders. That rule-making process created and populated new chapter 220-460 WAC that defined commercial whale watching licensing processes and rules for holders of commercial whale watching licenses. In 2023, the Washington state legislature adopted SB 5371 that modified the vessel setback from southern resident orcas and codified some requirements for commercial whale watching in statute. Specifically, the revised statute that takes effect January 1, 2025, will change the vessel setback from southern resident orcas to 1,000 yards. The changes to the statute require an update to chapter 220-460 WAC to align with the language in the statute and to remove sections that no longer provide a functional benefit to southern resident orcas or to the economic viability of license holders. This proposal clarifies the requirements for commercial whale watching and paddle tour license holders as authorized under RCW 77.65.620.

Reasons Supporting Proposal: This proposal is founded on five years of work that began with the initial rule making to establish chapter 220-460 WAC in 2020-2021. WDFW conducted an adaptive management process that included intergovernmental, stakeholder, and public engagement in 2022, leading to many of the recommended changes in this proposal. The 2024 adaptive management process included the development and recommendation of this proposed rule change. The proposal defines important administrative aspects of the commercial whale watching licensing program created in RCW 77.65.615. In addition, per the mandate in RCW 77.65.620, the proposal is designed using best available science to reduce the daily and cumulative impacts of commercial

whale watching on southern resident orca whales and also considers the economic viability of license holders.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, RCW 77.15.160, 77.04.012, 77.04.55, 77.15.740.

Statute Being Implemented: RCW 77.65.615; RCW 77.65.620.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Watson, 1111 Washington Street S.E., Olympia, WA 98501, 360-790-4528; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not subject to RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), the only WDFW rules subject to RCW 34.05.328 are "legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW" (i.e., "construction projects in state waters"). WDFW is not voluntarily making this proposal subject to RCW 34.05.328, as contemplated under RCW 34.05.328 (5)(a)(ii).

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.

Explanation of exemptions: As described above, in 2023, the Washington state legislature adopted SB 5371 that modified the vessel setback from southern resident orcas and codified some requirements for commercial whale watching in statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: See explanations above about legislative amendments and below describing other proposed changes to the rules to increase clarity and improve internal agency administration.

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. Besides changes proposed to align the rules with statutory amendments, the other proposed changes are designed to provide greater clarity for requirements already included in the regulations, and to make administrative changes to the commercial whale watch license program. None of the proposed amendments would impose more-than-minor costs for small businesses

December 3, 2024  
Scott Bird  
Rules Coordinator

**OTS-6001.2**

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-010 Definitions.** For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a motorized or sailing vessel to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching business.**

"Commercial whale watching business" means a business that engages in the activity of commercial whale watching.

(3) **Commercial whale watching operator.**

"Commercial whale watching operator" means a person who operates a motorized or sailing vessel engaged in the business of whale watching.

(4) **Paddle tour.**

"Paddle tour" means the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson that involves viewing marine mammals in their natural habitat for a fee.

(5) **Paddle tour business.**

"Paddle tour business" means a business that conducts paddle tours.

(6) **Paddle guide.**

"Paddle guide" means a person who conducts guided tours on behalf of a paddle tour business. The term paddle guide includes anyone who directs the movement or positioning of any nonmotorized commercial whale watching vessel(s) involved in a tour.

(7) **Commercial whale watching license.**

"Commercial whale watching license" means a commercial whale watching business license or a commercial whale watching operator license as defined in this section.

(a) "Commercial whale watching business license" means a department-issued license to operate a commercial whale watching business.

(b) "Commercial whale watching operator license" means a department-issued license to operate a commercial motorized or sailing vessel on behalf of a commercial whale watching business.

(8) **Paddle tour license.**

"Paddle tour license" means a paddle tour business license or a paddle guide license as defined in this section.

(a) "Paddle tour business license" means a department-issued license to operate a business that conducts paddle tours.

(b) "Paddle guide license" means a department-issued license to conduct commercial guided paddle tours on behalf of a paddle tour business.

(9) **Vessel.**

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

(a) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

(b) "Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of

whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

(c) "Nonmotorized vessel" or "paddle tour vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in a paddle tour. This definition includes human-powered watercraft such as kayaks and paddleboards.

(10) **Group of southern resident ((killer whales)) orcas.**

"Group of southern resident ((killer whales)) orcas" is defined as a single southern resident ((killer whale)) orca or an assemblage of southern resident ((killer whales)) orcas wherein each member is within one nautical mile of at least one other southern resident ((killer whale)) orca. Any individual(s) farther than one nautical mile constitutes a separate group.

(11) **Vicinity.**

"Vicinity" is defined as ((one-half nautical mile)) 1,000 yards from all southern resident ((killer whales)) orcas in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident ((killer whale)) orca closer than the statutorily defined distances in RCW 77.15.740.

(12) **((Vicinity instance)) Encounter.** Each time any commercial whale watching vessel or nonmotorized vessel operating under a license identifies and/or enters within ((one-half nautical mile)) 1,000 yards of a southern resident ((killer whale)) orca will count as one ((vicinity instance)) encounter associated with that license.

(13) **Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

(14) **Inland waters of Washington.**

"Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

NEW SECTION

**WAC 220-460-025 Fee waiver for nonprofit educational whale watching and paddle tours.** (1) In order to qualify for a fee waiver, an organization's relevant commercial whale watching or marine paddle tour activities must be solely for bona fide nonprofit educational purposes.

(2) In order to receive a fee waiver, the organization must submit documentation to the department:

(a) Demonstrating the organization's nonprofit status; and

(b) Explaining the relevant whale watching or paddle tour activities and the educational purpose of the activities.

(3) Each year after the initial application, when applying for an annual commercial whale watching and/or paddle tour business license, the organization must:

(a) Affirm that all relevant activities are for nonprofit educational purposes; and

(b) Ensure that all documentation remains up-to-date, and submit revised documentation if needed.

(4) Individuals that solely operate on behalf of an organization that qualifies for a fee waiver are eligible for a fee waiver for their operator or paddle guide license.

(a) Operator or paddle guide licenses issued under a nonprofit educational fee waiver may not be used by the individual to conduct for-profit activities. The license will be limited to nonprofit educational activities.

(b) In order to engage in for-profit whale watching or paddle tour activities, any operator or paddle guide operating under a license obtained by fee waiver must forfeit their license and apply and pay the relevant fees for a new operator or paddle guide license.

(5) In order to obtain a fee waiver for an operator or paddle guide license, the applicant must:

(a) Be designated as an operator or paddle guide on the qualifying organization's business license; and

(b) Not be designated as an operator or paddle guide for any for-profit commercial whale watching or paddle tour business.

(6) The applicant must indicate at the time of their application that they intend to apply for a fee waiver.

(7) Fee waivers may be issued in the form of reimbursements.

(8) Organizations and individuals who conduct commercial whale watching or paddle tour activities solely for nonprofit educational purposes are required to follow all laws and rules that apply to for-profit commercial whale watching and paddle tour licensees, including the requirements outlined in this chapter.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-050 Whale watching vessel designation requirements and required operator and paddle guide documentation.** (1) RCW

77.65.615 requires commercial whale watching businesses to designate the motorized vessel(s) that will be used for commercial whale watching. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching motorized, including sailing, vessels to be used;

(b) The department has issued a commercial license to the licensee showing the motorized vessel so designated; and

(c) The person conducting commercial whale watching activities on behalf of the business has the appropriate documentation in physical possession.

The operator of a motorized or sailing vessel must have both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the commercial whale watching business licensee must provide applicable documentation numbers such as a hull identification number (HIN), current United States Coast Guard or Transport Canada certification inspection documentation, and/or a vessel registration number.

(4) It is unlawful to engage in paddle tour activities unless the person conducting paddle tour activities on behalf of the business has the appropriate documentation in physical possession.

The guide of a commercial paddle tour must have both their individual paddle guide license ~~((in physical possession and must have either the commercial whale watching))~~ and the paddle tour business license for the current calendar year, or a printed or digital scan thereof, in physical possession.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-070 Whale watching operator and paddle guide license requirements.** (1) A person may operate a motorized or sailing vessel ~~((designated on the))~~ engaging in commercial whale watching ~~((business license))~~ only if:

(a) The person holds a valid commercial whale watching operator license issued from the department;

(b) The vessel is designated in a valid commercial whale watching business license issued from the department;

(c) The operator is designated on the underlying commercial whale watching business license; and

~~((e))~~ (d) The person has both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) A person may lead a guided paddle tour on behalf of ~~((the commercial whale watching))~~ a paddle tour business only if:

(a) The person holds a valid paddle guide license issued from the department;

(b) The paddle tour business has a valid paddle tour business license;

(c) The paddle guide is designated on the underlying paddle tour business license; and

~~((e))~~ (d) The person has both their individual paddle guide license ~~((in physical possession and must have either))~~ and the paddle tour business license for the current calendar year, or a printed or digital scan thereof, in physical possession.

(3) Only an individual at least 16 years of age may hold an operator license or paddle guide license.

(4) An individual may hold only one commercial whale watching operator license. Holders of an operator license may be designated on an unlimited number of commercial whale watching business licenses.

(5) An individual may hold only one paddle guide license. Holders of a paddle guide license may be designated on an unlimited number of paddle tour business licenses.



AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-090 Commercial whale watching of southern resident ((killer whales)) orcas and paddle tours operating near southern resident ((killer whales)) orcas—General.** (1) It is unlawful for a commercial whale watching operator or paddle guide to violate any of the restrictions in RCW 77.15.740.

(2) Licenses issued by the department under this chapter are not an exemption under RCW 77.15.740 (2) (c).

(3) The rules and requirements outlined in this chapter regarding southern resident ((killer whales)) orcas apply to commercial whale watching and paddle tour activity in the inland waters of Washington.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-130 Nonmotorized paddle tour vessels.** (1) Tours involving any nonmotorized watercraft used for the purposes of paddle tours, such as kayaks, are subject to these requirements. Such watercraft constitute paddle tour vessels and are referred to as "vessels" in this chapter. Regardless of the type of nonmotorized watercraft involved, the person operating on behalf of the business to conduct the tour is referred to as a "paddle guide" in this chapter.

(2) Paddle guides must prevent all vessels in their tour group from disturbing southern resident ((killer whales)) orcas. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident ((killer whales)) orcas are within ((one-half nautical mile)) 1,000 yards of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident ((killer whale)) orca. If a southern resident ((killer whale)) orca is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If ((a vessel or)) vessels inadvertently encounter a southern resident ((killer whale)) orca, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all ((killer whales)) orcas have moved to at least 400 yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping. Once any orcas are moving away from the vessel(s) and are at least 400 yards away, all paddlers must either remain rafted/secured until the whales are at least 1,000 yards away or must paddle in the opposite direction of travel from the orcas until all vessels are 1,000 yards away from the orcas.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-140 Commercial whale watching and paddle tour compliance and reporting.** (1) An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watching vessels.

The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is conveying passengers for a fee.

(2) All commercial whale watching and paddle tour license holders must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident ((killer whale)) orca-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful to operate a commercial whale watching vessel or guide a tour of nonmotorized vessels without completing the training for the current calendar year.

~~((c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to participate in the annual training.))~~

(3) All commercial whale watching and paddle tour license holders ((shall)) are strongly encouraged to maintain accurate logs on each instance a vessel operating under a license ~~((enters within one-half nautical mile vicinity of))~~ encounters southern resident ((killer whales)) orcas and submit copies of the logs to the department within 24 hours of the encounter.

(4) Content of southern resident orca encounter logs:

(a) Logs ((must)) should, at minimum, include the business ((license holder)) name; vessel operator or paddle guide name; ~~((other staff names and roles;))~~ vessel name; ~~((port(s) of departure; departure time(s); return time(s); number of passengers;))~~ the location(s) ~~((Lat/Long))~~ of southern resident ((killer whales)) orcas encountered; ~~((time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within 400 yards of southern resident killer whales))~~ and the time and duration of the encounter.

(b) If applicable, license holders are encouraged to log details regarding encounters within 1,000 yards of southern resident orcas, including time and duration within 1,000 yards vicinity of southern resident orcas; time and duration within 400 yards of southern resident orcas; and measures taken to determine whether the whales were southern resident orcas.

(c) License holders are also encouraged to log qualitative details of southern resident ((killer whale)) orca encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

~~((b) Information from the logs shall be submitted to the department on the following schedule:~~

~~(i) All vicinity instances in July must be reported by August 15th.~~

~~(ii) All vicinity instances in August must be reported by September 15th.~~

~~(iii) All vicinity instances in September must be reported by October 15th.~~

~~(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within 24 hours.~~

~~(v) Paddle guides must report vicinity instances that happen October through June within one week.~~

~~(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.~~

~~(d) Logs must be provided for inspection on request of department law enforcement.~~

~~(4))~~ (5) All motorized commercial whale watching license holders must ~~((log))~~ report accurate, complete sighting information to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea, immediately upon ~~((entering within one-half nautical mile of a southern resident killer whale))~~ encountering a southern resident orca.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-150 Penalties.** (1) Commercial whale watching or paddle tour license holders in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Commercial whale watching or paddle tour license holders out of compliance with WAC 220-460-100, ~~((220-460-110, 220-460-120,))~~ 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-460-110	Limits on number of vessels in the vicinity of southern resident killer whales at once.
WAC 220-460-120	Time limitations on watching southern resident killer whales.

WSR 24-24-112  
PROPOSED RULESWASHINGTON STATE PATROL  
[Filed December 4, 2024, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-18-108.

Hearing Location(s): On January 7, 2025, at 9:00 a.m., via Teams virtual, Call in 1-323-694-9686, Phone Conference ID 208 605 285#.

Date of Intended Adoption: January 7, 2025.

Submit Written Comments to: Kimberly Mathis, Agency Rules Coordinator, 106 11th Street S.E., Olympia, WA 98507, email wsprules@wsp.wa.gov, beginning December 4, 2024, 12:00 p.m., by January 6, 2025, by 4:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections 1-3, chapter 17, Laws of 2023 (ESSB 5272), and sections 1-4, chapter 308, Laws of 2024 (SSB 6115), require the Washington state patrol to adopt rules related to the enforcement and adjudication of speed violations including, but not limited to, notice of infraction verification and issuance authorization, and determining which types of emergency vehicles are exempt from being issued notices of infraction under the law.

Reasons Supporting Proposal: Updates are to ensure consistency and clarity with statutory changes.

Statutory Authority for Adoption: RCW 46.63.200.

Statute Being Implemented: RCW 46.63.200.

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

Name of Proponent: Washington state patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, Olympia, Washington, 360-596-4017; Implementation and Enforcement: Washington State Patrol, Olympia, Washington, 360-596-4017.

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; rule content is explicitly and specifically dictated by statute; 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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

December 4, 2024  
John R. Batiste  
Chief

OTS-5998.4

**Chapter 446-105 WAC**  
**Work Zone Speed Safety Camera Program**

NEW SECTION

**WAC 446-105-010 Application of this chapter.** This chapter applies to all adjudicative proceedings under the jurisdiction of the Washington state patrol for state highway work zone speed safety camera system infractions issued under RCW 46.63.200.

NEW SECTION

**WAC 446-105-020 Adoption of model rules of procedure.** Except as they may be inconsistent with RCW 46.63.075, 46.63.200, or the rules in this chapter, the Washington state patrol adopts the model rules of procedure as set forth in chapter 10-08 WAC. Where the rules of this chapter conflict with those of chapter 10-08 WAC, the rules of this chapter govern.

NEW SECTION

**WAC 446-105-030 Definitions.** The following definitions shall apply throughout this chapter.

- (1) "DOL" means the Washington state department of licensing.
- (2) "Hearing packet" means the documentary evidence that will be transmitted by the WSDOT to the OAH for each administrative hearing, including, but not limited to:
  - (a) The notice of infraction;
  - (b) The vehicle license plate images associated with the notice of infraction;
  - (c) The radar/lidar calibration certificate;
  - (d) The vehicle registration information;
  - (e) The petitioner's hearing request;
  - (f) Documents establishing worker presence; and
  - (g) The work zone speed safety camera deployment log.
- (3) "Notice of infraction" means the document issued under RCW 46.63.030 and 46.63.200 notifying the registered owner of a work zone speed safety camera system violation.
- (4) "OAH" means the Washington state office of administrative hearings.
- (5) "Patrol" means the Washington state patrol.
- (6) "Penalty" means the penalty assessed for a work zone speed safety camera system violation, as described in RCW 46.63.200(5).
- (7) "Petitioner" means a person or business cited for a work zone speed safety camera system violation who requests a hearing in response to a notice of infraction.
- (8) "WSDOT" means the Washington state department of transportation or its work zone speed safety camera system vendor.

NEW SECTION

**WAC 446-105-040 Brief adjudicative proceedings.** (1) Adoption of brief adjudicative proceedings. Under RCW 34.05.410 (1) (a), the patrol hereby adopts the use of brief adjudicative proceedings for the following matters:

(a) Mitigation hearings in which the petitioner has admitted to the violation, under WAC 446-105-130;

(b) Payment plan hearings in which the petitioner has admitted to the violation, under WAC 446-105-140; and

(c) Contested hearings in which the only issue being raised is a denial of responsibility under RCW 46.63.075.

(2) Conversion to a formal adjudicative proceeding. The administrative law judge may, in their sole discretion, convert a brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to resolve the case.

(a) When a brief adjudicative proceeding is converted to a formal adjudicative proceeding, the OAH shall issue a new notice of hearing for a date not less than 15 calendar days from the date of the notice; and

(b) The OAH shall serve the petitioner and the patrol with the new notice of hearing.

(3) Procedure for brief adjudicative proceedings. The following procedure applies to brief adjudicative proceedings:

(a) An administrative law judge with the OAH will conduct the brief adjudicative proceeding.

(b) Not less than 14 calendar days before the date of the hearing, the OAH shall serve notice on the petitioner that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) The date of the brief adjudicative proceeding;

(ii) Notice that the petitioner may submit additional relevant documentary evidence and sworn statements, if desired, along with a date by which these submissions must be made and instructions for doing so;

(iii) Notice that the administrative law judge's decision will be based on the written materials unless, within 10 calendar days of receiving the notice of hearing, the petitioner requests in writing to appear telephonically to submit sworn oral testimony.

(c) The administrative law judge, in their sole discretion, may send a written request for additional evidence to the petitioner or the patrol. The request will contain instructions for how to submit the additional evidence and the date by which additional evidence must be submitted.

(d) The administrative law judge's review will be limited to the record identified in subsection (4) of this section.

(e) If the petitioner has submitted a written request to appear telephonically, the administrative law judge will entertain oral testimony from the petitioner at a time and place designated by the administrative law judge.

(f) No witnesses, other than the petitioner, may offer oral testimony.

(g) Formal discovery, including depositions and interrogatories, is not allowed.

(h) The administrative law judge will issue an initial order within 15 calendar days of the date for final submission of written materials or oral testimony, if any.

(4) Record for brief adjudicative proceedings. The record for brief adjudicative proceedings will consist of the following:

(a) The hearing packet;

(b) Any additional records, sworn declarations, or oral testimony submitted by the petitioner; and

(c) Any additional evidence submitted by the parties at the written request of the administrative law judge.

(5) Effectiveness of orders on brief adjudicative proceedings. Initial orders on brief adjudicative proceedings shall become final 21 calendar days after mailing of the initial order unless the petitioner files a written petition for review.

(a) The petition for review must:

(i) Be filed with the OAH in accordance with WAC 10-08-110 within 21 calendar days of mailing of the initial order; and

(ii) Contain a concise statement of the issue(s) to be reviewed.

(b) The reviewing officer will be an administrative law judge with the OAH.

(c) The reviewing officer will issue a written final order that must include a brief statement of the reason(s) for the decision, and must be entered within 20 calendar days after the petition for review is filed with the OAH.

#### NEW SECTION

**WAC 446-105-050 Formal adjudicative proceedings.** The OAH will conduct formal adjudicative proceedings for all work zone speed safety camera system infraction hearings other than those identified in WAC 446-105-040(1). At the conclusion of a formal adjudicative proceeding, the administrative law judge shall enter a final order.

#### NEW SECTION

**WAC 446-105-060 What information must be included on a notice of infraction?** The notice of infraction shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the person or business named in the notice, and that the determination shall be final unless contested as provided in RCW 46.63.200 and this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction, and that the infraction may result in nonrenewal of the vehicle registration if any monetary penalty is not timely paid;

(3) A statement of the penalty established for the infraction;

(4) If the penalty is \$0, a statement of the amount of the monetary penalty for second and subsequent infractions;

(5) A statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options;

(6) A statement that, at any hearing to contest the determination, the patrol has the burden of proving, by a preponderance of the evidence, that the infraction was committed;

(7) A statement that, at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction or for requesting a payment plan only, the person or business will be deemed to have committed the infraction;

(8) A statement that the person or business must respond to the notice of infraction within 30 days of receipt; and

(9) A statement that failure to appear at a hearing requested for the purpose of contesting the infraction, explaining mitigating circumstances, or seeking a payment plan may result in the refusal of the DOL to renew the vehicle registration if any penalties imposed under RCW 46.63.200 or this chapter have not been satisfied.

#### NEW SECTION

**WAC 446-105-070 Are any vehicles exempt from work zone speed safety camera system infractions?** The following vehicles are exempt from receiving an infraction for a work zone speed safety camera system violation:

(1) Any vehicle registered to a fire department;

(2) Any vehicle registered to a general authority law enforcement agency for use by a general authority Washington police officer, as defined in RCW 10.93.020;

(3) Any vehicle registered to a sovereign tribal government for use by a tribal police officer, as defined in RCW 10.92.010;

(4) Any vehicle registered to a federal law enforcement agency for use by a federal police officer, as defined in RCW 10.93.020;

(5) Any aid vehicle registered to an aid service, as defined in RCW 18.73.030, equipped with emergency lights and sirens;

(6) Any ambulance registered to a public or private ambulance service, as defined in RCW 18.73.030, equipped with emergency lights and sirens;

(7) Any organ transplant vehicle registered to an organ transplant service, as defined in RCW 18.73.030, equipped with emergency lights and sirens; and

(8) Any vehicle with valid diplomatic license plates.

#### NEW SECTION

**WAC 446-105-080 What can I do if I received a work zone speed safety camera system infraction but my vehicle is exempt under WAC 446-105-070?** Any person or business who receives a work zone speed safety camera system infraction for a vehicle that is exempt under WAC 446-105-070, may request a contested hearing to challenge the infraction.

(1) At the contested hearing, the person or business may be required to submit documentary proof that the vehicle meets the requirements for any of the exemptions listed in WAC 446-105-070.

(2) If the recipient of a notice of infraction fails to contest the infraction, the recipient will be liable for any penalty amount.



NEW SECTION

**WAC 446-105-090 How long do I have to request a hearing or pay a penalty?** Any person or business that receives a notice of infraction must remit payment for any penalty or request a hearing within 30 calendar days of receiving the notice of infraction. For purposes of determining the date of receipt, a notice of infraction shall be deemed received upon the third day following the day upon which the notice of infraction is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event the notice of infraction shall be deemed received on the first day other than a Saturday, Sunday, or legal holiday, following the third day.

NEW SECTION

**WAC 446-105-100 What can I do if I receive a notice of infraction with a \$0 penalty?** Any person or business that receives a notice of infraction with a \$0 penalty may:

- (1) Admit the violation; or
- (2) Request a hearing to contest the infraction.

NEW SECTION

**WAC 446-105-110 What can I do if I receive a notice of infraction with a \$248 penalty?** Any person or business that receives a notice of infraction with a \$248 penalty may:

- (1) Admit the violation and pay the penalty;
- (2) Admit the violation and request a hearing to mitigate the penalty and/or to establish a payment plan; or
- (3) Request a hearing to contest the infraction.

NEW SECTION

**WAC 446-105-120 How can I pay a work zone speed safety camera system infraction penalty?** (1) Work zone speed safety camera infraction penalties may be paid by credit/debit card, check, or money order.

- (2) Payments may be made:
  - (a) By mail, using the payment coupon mailed with the notice of infraction;
  - (b) By telephone, as described on the instructions contained in the notice of infraction; and
  - (c) Online, by following the instructions for online payments contained in the notice of infraction.
- (3) All payments must be made in full, unless a payment plan has been approved under WAC 446-105-140.
  - (a) Partial payments will not be accepted.
  - (b) If a payment plan has not been approved and a partial payment is received by mail, the payment will be returned to the sender.

NEW SECTION

**WAC 446-105-130 What is a hearing to mitigate the penalty and who can request one?** (1) The purpose of a mitigation hearing is to allow the petitioner to offer evidence to explain why they believe the monetary penalty should be reduced.

(2) Any person or business who receives a work zone speed safety camera system notice of infraction with a \$248 penalty may request a mitigation hearing after first admitting to the violation.

(3) A mitigation hearing is not available for a work zone speed safety camera system notice of infraction with a \$0 penalty.

NEW SECTION

**WAC 446-105-140 Who can request a hearing to establish a payment plan?** (1) Any person who receives a work zone speed safety camera system notice of infraction with a \$248 penalty may request a hearing to establish a payment plan.

(2) A hearing to establish a payment plan is not available for a work zone speed safety camera system notice of infraction with a \$0 penalty.

(3) A person or business may request a hearing for the sole purpose of establishing a payment plan after first admitting to the violation.

(4) If liability is established at a hearing to contest the infraction, the petitioner may still seek a payment plan during that hearing.

NEW SECTION

**WAC 446-105-150 Who can request a hearing to contest an infraction and what issues will be addressed at the hearing?** (1) Any person or business who receives a work zone speed safety camera system notice of infraction may request a hearing to contest the infraction.

(2) At the time a contested hearing is requested, the petitioner will be asked to identify the issues that they intend to raise at the hearing. The petitioner must identify all issues they intend to raise at the hearing when they make the hearing request.

(3) The petitioner may choose any of the following general issues at a hearing to contest the infraction:

(a) General denial. The petitioner does not believe they should be found liable for the infraction;

(b) Radar/Lidar. Challenges the proper operation of the radar/lidar equipment, including calibration;

(c) Worker presence. Challenges workers being present in the state highway work zone at the time of the violation, as defined in WAC 468-90-010;

(d) Nonresponsibility. The petitioner denies responsibility per RCW 46.63.075 because the vehicle was stolen, or the petitioner was not the person in control of the vehicle at the time of the violation;

(e) Exempt vehicle. The vehicle is exempt from the issuance of work zone speed safety camera infractions under WAC 446-105-070; and

(f) Other. Issues other than those identified in (a) through (e) of this subsection. The petitioner must describe in detail any other issues they intend to raise at the hearing.

(4) The issues the petitioner has identified will be reflected on the hearing notice that will be mailed. If no objection to the issues identified in the hearing notice is filed with the OAH within 10 calendar days after the date such notice is mailed, the notice will control the subsequent course of the proceeding unless modified for good cause by subsequent order.

#### NEW SECTION

**WAC 446-105-160 How can I request a hearing?** All hearing requests may be made by mail, by telephone, or online at <https://usview.cite-web.com/> by following the instructions contained in the notice of infraction.

#### NEW SECTION

**WAC 446-105-170 What will happen if I do not respond to a work zone speed safety camera system notice of infraction within 30 days of receipt?** (1) A notice of infraction represents a determination that the infraction has been committed, and the determination will be final unless it is contested.

(2) A person or business who receives a work zone speed safety camera system notice of infraction has 30 days from receipt, as defined in WAC 446-105-090, to respond as directed in the notice of infraction.

(3) The recipient must respond to all notices of infraction, whether the penalty is \$0 or \$248.

(4) If, within 30 days of receipt of the notice of infraction, the recipient does not respond by either admitting to the violation and paying any assessed penalty, or by requesting a hearing, a notification will be mailed finding the infraction committed and imposing the penalty identified in the notice of infraction.

#### NEW SECTION

**WAC 446-105-180 What will happen if I request a hearing to seek mitigation, to request a payment plan, or to contest the infraction solely on the basis that I was not in control of the vehicle at the time of the violation?** (1) Timely submitted hearing requests will proceed to a brief adjudicative proceeding as described in WAC 446-105-040.

(2) Once a hearing request has been received, a hearing notice will be mailed to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner at the time the hearing was requested.

(3) If a petitioner has submitted a request to appear telephonically, the hearing notice will contain the date and time of the hearing, and instructions for participating.

(a) A petitioner who has requested to appear telephonically must attend the hearing.

(b) If the petitioner cannot attend a scheduled hearing, the petitioner is responsible for contacting the OAH at the phone number provided on the hearing notice to request a new hearing date.

#### NEW SECTION

**WAC 446-105-190 What will happen if I request a formal adjudicative hearing to contest the infraction?** (1) Timely submitted hearing requests will proceed to a formal adjudicative hearing consistent with the Administrative Procedure Act and the provisions of this chapter.

(2) Once a request for a formal adjudicative hearing has been received, the OAH will mail a hearing notice to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner at the time the hearing was requested.

(3) The hearing notice will contain the date and time of the hearing, and instructions for participating.

(4) Formal adjudicative proceedings will be held telephonically unless, within 10 calendar days of receiving the hearing notice, one or both parties request in writing to appear by videoconference.

(a) The request to appear by videoconference must be accompanied by a statement of the reason(s) for the request.

(b) The administrative law judge, in their sole discretion, will decide whether the formal adjudicative hearing shall be held by telephone or videoconference.

(5) The parties must attend the scheduled hearing. If the parties cannot attend a scheduled hearing, they are responsible for contacting the OAH in advance of the hearing to request a new hearing date.

#### NEW SECTION

**WAC 446-105-200 Who can appear in a representative capacity at a work zone speed safety camera system infraction hearing?** The following persons may appear in a representative capacity at a hearing:

(1) An individual representing themselves;

(2) An attorney at law duly qualified and entitled to practice before the supreme court of the state of Washington;

(3) A legal intern admitted to limited practice under Rule 9 of the Washington state supreme court's admission and practice rules. No legal intern, however, may appear without the presence of a supervising lawyer unless the administrative law judge approves the intern's sole appearance in advance; and

(4) A bona fide officer, partner, or owner of a business, association, partnership, or corporation who appears on behalf of such business, association, partnership, or corporation.

#### NEW SECTION

**WAC 446-105-210 What discovery is allowed in a formal adjudicative proceeding?** The parties should informally exchange information

and documents relating to the case prior to the adjudicative proceeding. Formal discovery will be available only as follows:

(1) Methods and scope. Written discovery may be permitted at the discretion of the administrative law judge and to the extent authorized by CR 26(b). In permitting discovery, reference must be made to the civil rules applicable in court proceedings for guidance. The administrative law judge has the power to control the nature and frequency of discovery permitted, and to order discovery conferences to discuss discovery issues.

(2) Limitation on discovery. In addition to limitations on discovery set forth in any other applicable law, regulation, or rule, discovery does not include:

(a) Depositions; or

(b) Information or documents relating to work zone speed safety camera infractions issued to any person or entity other than the petitioner.

#### NEW SECTION

**WAC 446-105-220 What information about my infraction is available to me prior to my administrative hearing?** The documents contained in the hearing packet, which is defined in WAC 446-105-030(2), will be available to a petitioner prior to the administrative hearing. The hearing packet can be downloaded from <https://usview.cite-web.com/> within 48 hours after a hearing request has been received. A petitioner may also obtain a copy of the hearing packet by calling the customer service center, toll free, at 1-833-576-0318.

#### NEW SECTION

**WAC 446-105-230 What evidence will be available to the administrative law judge at a formal adjudicative proceeding to contest the infraction?** (1) Hearing packet. Upon receipt of a request for a hearing, the hearing packet will be transmitted by the WSDOT to the OAH for consideration by the administrative law judge.

(2) Other evidence. During the hearing, any other documentary evidence or oral testimony may be admitted and considered by the administrative law judge.

(3) The administrative law judge may exclude evidence that is irrelevant, immaterial, or repetitious.

#### NEW SECTION

**WAC 446-105-240 How will I be notified of the administrative law judge's decision?** An administrative law judge with the OAH will enter a final order stating whether the petitioner is liable for any penalty. Orders issued as a result of a hearing will be provided to the petitioner and the patrol electronically or by mail. Orders that are mailed to the petitioner will be mailed to the address at which the vehicle is registered, unless the mailing address was updated by the petitioner.

NEW SECTION

**WAC 446-105-250 When is payment due if I am found liable for an infraction with a monetary penalty?** If a petitioner is found liable for a work zone speed safety camera system infraction with a monetary penalty after an administrative hearing, or due to a failure to respond to the notice of infraction as required by RCW 46.63.200, unless otherwise specified in the order, payment is due within 30 days of the date of the final order. If the petitioner does not pay the amount due within the time allotted, a hold will be placed on the vehicle registration.

NEW SECTION

**WAC 446-105-260 What happens if I disagree with the outcome of a hearing?** A petitioner can appeal a final order to superior court as specified in chapter 34.05 RCW.

NEW SECTION

**WAC 446-105-270 How do I release a hold on my vehicle registration renewal?** A person or business can contact the DOL to find out if there is a hold on their vehicle registration renewal. To release a hold, the person or business must remit full payment for any unpaid work zone speed safety camera system infraction penalties. Payment may be initiated by calling the customer service center, toll free, at 1-833-576-0318.