

**WSR 16-15-066**  
**PROPOSED RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**  
 [Filed July 18, 2016, 2:59 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations, Regulation 6 - Required Permits, Rule 6.3 Asbestos.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on September 14, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orcaa.org, fax (360) 491-6308, by September 9, 2016.

Assistance for Persons with Disabilities: Contact Dan Nelson by September 2, 2016, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to revise the entire Asbestos Rule 6.3. This revision will better align our rule with rules of other state and local agencies. This will ease some of the frustration of companies that operate within differing jurisdictions. Significant changes include moving from a permit system to a notification system; the notification period will be ten days for most asbestos projects; change the size of an asbestos project to forty-eight square feet to align with other agencies; require an asbestos survey for all structures being demolished that are greater than one hundred twenty square feet; and, renovations would require an asbestos survey when the surface area is forty-eight square feet or more.

Reasons Supporting Proposal: The asbestos abatement contractors have expressed concern of differing requirements in different jurisdictions.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Franca L. McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

July 18, 2016  
 Franca L. McNair  
 Executive Director

AMENDATORY SECTION

**RULE 6.3 ASBESTOS**

~~((The Board of Directors of the Olympic Region Clean Air Agency has found that the use, production, and emission of air contaminants into the atmosphere in the ORCAA region poses a threat to the public health, safety, and welfare of the citizens of the region and causes degradation of the environment. Therefore the Board, in order to control the emission of toxic air pollutants and to provide uniform enforcement of air pollution control in its jurisdiction and to carry out the mandates and purposes of the Washington Clean Air Act, the Federal Clean Air Act, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) (40 CFR Part 61), declares the necessity of the adoption of these rules pertaining to air contaminants.))~~

The Board of Directors of the Olympic Region Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect public health. In addition, the Board has adopted these regulations to coordinate with the EPA asbestos NESHAP, the OSHA asbestos regulation, the Washington Department of Labor and Industries asbestos regulations, the Washington Department of Ecology Dangerous Waste regulation, and the solid waste regulations of Clallam, Grays Harbor, Jefferson, Mason, Pacific and Thurston counties.

AMENDATORY SECTION

**Rule 6.3.1 Definitions**

When used in this Rule the following definitions shall apply:

~~("Adequately Wet" means sufficiently mixed, saturated, penetrated, or coated with a continuous fine mist of water or an aqueous solution to prevent visible emissions.~~

~~"AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E.I.B.3) and whose certification is current.~~

~~"Asbestos" means the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.~~

~~"Asbestos Containing Material (ACM)" means any material containing at least one percent (1%) asbestos as determined by polarized light microscopy using the Interim Method of the Determination of Asbestos in Bulk Samples contained in Appendix A of Subpart E in 40 CFR Part 763. Asbestos containing waste material includes asbestos containing material that has been disturbed or deteriorated in a way that is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project,~~

asbestos containing material collected for disposal, asbestos contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos containing waste material does not include samples of asbestos containing material taken for testing or enforcement purposes. This term does not include asbestos containing roofing material, regardless of asbestos content, when all of the following conditions are met:

(a) The asbestos containing roofing material is in good condition and is not peeling, cracking, or crumbling; and

(b) The binder is petroleum based, the asbestos fibers are suspended in that base, and the individual fibers are still encapsulated; and

(c) The binder still exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing it; and

(d) The building, vessel, or structure containing the asbestos containing roofing material will not be demolished by burning or mechanical renovation/demolition methods that may release asbestos fibers.

**"Asbestos Encapsulation"** means the application of an encapsulant to the asbestos materials to control the release of asbestos fibers into the air.

**"Asbestos Project"** means the disturbance, destruction, salvage, or disposal of any asbestos material. This term includes the removal and disposal of asbestos containing waste material from manufacturing operations that combine asbestos containing material with any other material(s) to produce a product and the removal and disposal of stored asbestos containing material or asbestos containing waste material. This term does not include the removal of less than 10 linear feet or 11 square feet of asbestos containing material. Nor does it include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other nonasbestos materials to seal or fill exposed areas where asbestos fibers may be released.

**"Asbestos Survey"** means an inspection using the procedures contained in 40 CFR 763.86 and 40 CFR 763.87, or an alternate method that has received prior written approval from the Control Officer, or designee, to determine whether materials or structures to be worked on, removed, disturbed, or demolished, contain asbestos. In residential dwellings, asbestos samples may be taken by the resident owner of the dwelling.

**"Certified Asbestos Worker/Supervisor"** means a person who is certified as required by the Washington State Department of Labor and Industries under WAC 296-65-010, WAC 296-65-012, and WAC 296-65-030 to undertake an asbestos project or, for federal employees working in a federal facility, trained in an equally effective program approved by the United States Environmental Protection Agency.

**"Collected for Disposal"** means asbestos containing material properly sealed in a leak tight, labeled container while adequately wet.

**"Component"** means any equipment, pipe, structural member, or other item covered, coated, or manufactured from asbestos containing material.

**"Controlled Area"** means an area to which only certified asbestos workers, or other persons authorized by the Washington Industrial Safety and Health Act, have access.

For residential dwellings, the controlled area is the interior of the dwelling, garage, or fenced area that is secured, and where warning signs are posted accordingly.

**"Demolition"** means the wrecking, dismantling, fire department training, or removal of any load supporting structural member that makes that portion of the structure unusable. Dismantling an owner occupied residential dwelling, or portion thereof, by hand does not constitute a demolition.

**"Emergency"** means a renovation operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by nonroutine failures of equipment.

**"Facility"** means any institutional, commercial, public, industrial, or residential structure, installation, building, (including any building containing condominiums or individual dwelling units operated as a residential cooperative) any vessel; ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling, is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use of function.

**"Fugitive Source"** means any sources of emissions not controlled by an air pollution control device.

**"HEPA Filter"** means a High Efficiency Particulate Air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.97% efficiency.

**"Leak Tight Container"** means a dust tight container, at least 6 mil thick, that encloses the asbestos containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and polyethylene plastic.

**"Local Exhaust Ventilation and Collection System"** means a system as described in Appendix J of EPA 560/565-024 (Guidance for Controlling Asbestos Containing Materials in Buildings);

**"Owner or Operator"** means any person who owns, leases, operates, controls, or is responsible for activities at an asbestos project site, or an asbestos project operation, or both.

**"Owner Occupied Residential Dwelling"** means any single family housing unit which is permanently or seasonally occupied by the owner of the unit both prior to and after renovation or demolition. This term includes houses, mobile homes, trailers, houseboats, and houses with a 'mother in law apartment' or 'guest rooms.' This term does not include structures that are to be demolished or renovated as part of a commercial or public project. Nor does this term include any mixed-use building, structure, or installation that contains a residential unit, or any building that is leased, used as a rental, or for commercial purposes.

**"Renovation"** means the altering of a structure in a way that removes structural supports and/or other framing, but does not render the building uninhabitable.

**"Visible Asbestos Emissions"** means any asbestos containing materials that are visually detectable without the aid of instruments.

**"Waste Generator"** means any owner or operator of a source whose act or process produces asbestos containing waste material.

**"Waste Shipment Record"** means the shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos containing waste material.

**"Work Day"** means Monday through Friday and includes holidays that fall on any of the days Monday through Friday-))

**Asbestos** - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

**Asbestos-containing Materials (ACM)** - Any material containing more than one percent (1%) asbestos as determined using the method specified in EPA *Method for the Determination of Asbestos in Building Materials* EPA/600/R-93/116, July 1993, or more effective method as approved or required by EPA. This definition includes all loose vermiculite used as insulation.

**Asbestos-containing Waste Material** - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

**Asbestos Hazard Emergency Response Act (AHERA) Building Inspector** - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan (40 CFR Part 763, Appendix C to Subpart E.I.B.3) and whose certification is current.

**Asbestos Hazard Emergency Response Act (AHERA) Project Designer** - A person who has successfully completed the training requirements for an abatement project designer established by EPA regulations (40 CFR 763.90(g)) and whose certification is current.

**Asbestos Project** - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing materials, or any other action that disturbs or is likely to disturb any asbestos-containing materials. It includes the removal and disposal of stored asbestos-containing materials or asbestos-containing waste material. This term does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

**Asbestos Survey** - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86 and 40 CFR 763.87), or an alternate method that has received prior written approval from the Control Officer, or designee, to determine whether materials or struc-

tures to be worked on, removed, disturbed, or demolished, contain asbestos.

**Component** - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing materials.

**Demolition** - Wrecking, razing, dismantling, burning via fire protection agency training, or removal of any load supporting structural member of a structure, including any related handling operations, making all or part of the structure permanently uninhabitable or unusable.

**Friable Asbestos-containing Materials** - Asbestos-containing materials that when dry can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the materials in the course of demolition, renovation or disposal.

**HEPA Filter** - A High Efficiency Particulate Air filter found in respirators and vacuum systems capable of filtering 0.3 micrometer mean aerodynamic diameter particles with 99.97% efficiency.

**Leak-Tight Container** - A dust-tight and liquid-tight container that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

**Liquid Wetting Agent** - Water in which a surfactant (detergent) has been added.

**Non-friable Asbestos-containing Materials** - Asbestos-containing materials that when dry cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the materials in the course of demolition, renovation, or disposal.

**Renovation** - To make changes or repairs, other than demolition, to a structure.

**Single-Family Residence** - Any structure containing space for use such as living, sleeping, food preparation and eating. This term includes houses, mobile homes, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include multiple-family units (i.e. apartment, duplex, condominium, etc.), nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

**Surfacing Material** - Material that is sprayed or troweled on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

**Suspect Material** - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (except 3-tab composite roofing), fire barriers, gaskets, flooring material, and cement or concrete siding.

**Thermal System Insulation** - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

**Visible Asbestos Emissions** - Any asbestos containing materials that are visually detectable without the aid of instruments.

**Waste Generator** - Any owner or operator of a facility whose act or process produces asbestos-containing waste material.

*Waste Shipment Record* - The shipping document required to be originated and signed by the owner or operator, used to track and substantiate the disposition of asbestos-containing waste material.

#### AMENDATORY SECTION

##### ~~((Rule 6.3.2 Notification Requirement~~

~~(a) Application Requirements—Applicability. It shall be unlawful for any person to cause or allow work on an asbestos or demolition project unless the owner or operator has obtained written approval from the Control Officer, or designee, as follows:~~

~~(1) A written "Asbestos Permit" or a "Demolition Permit" shall be submitted on Agency provided forms by the owner or operator for approval by the Control Officer, or designee, before any work on an asbestos project or demolition begins. It shall be unlawful for any person to cause or allow any false or misrepresenting information on either form.~~

~~(2) The written permit for asbestos removal and/or demolition shall be accompanied by the appropriate fee, found in Rule 3.5.~~

~~(3) The written permit for a demolition shall also include a certification that there is no known asbestos containing material remaining in the area of the demolition.~~

~~(4) The duration of an asbestos project or demolition shall have a starting and completion date that is commensurate with the amount of work involved and shall not exceed one (1) year beyond the original submission date.~~

~~(5) A copy of the approved permit and asbestos survey and all subsequent amendments shall be available for inspection at the asbestos project or demolition site.~~

~~(6) Submission of an "Asbestos Permit" shall be prima facie evidence that the asbestos project involves asbestos containing material.~~

~~(7) Permits for multiple asbestos projects may be filed on one form, if the following criteria are met:~~

~~(i) The work will be performed continuously by the same contractor; and~~

~~(ii) The structures are in a contiguous group and the property owner has the same original post office box or mailing address; and~~

~~(iii) All asbestos, renovation or demolition projects are bid as a group under the same contract; and~~

~~(iv) The project specifications regarding location and dates are provided in detail in the form of a work plan. The work plan submitted must include:~~

~~(A) a map of the structures involved in the project;~~

~~(B) the site address for each structure;~~

~~(C) the amount and type of asbestos containing material in each structure (for structures with ACM);~~

~~(D) the schedule for performing asbestos project and demolition work;~~

~~(E) a copy of the asbestos survey for all structures that do not contain asbestos containing materials; and~~

~~(F) any other information requested.~~

~~(b) Permit Requirements—Advance Notification Period. Any permits required by Rule 6.3.2(a) shall be considered incomplete until all the information required by Rule 6.3.2(a) is received by the Control Officer, or designee, and accompa-~~

~~nied by the appropriate, nonrefundable fee. The appropriate fee shall be determined by Rule 3.5:~~

~~(c) The notification for either an asbestos or demolition project shall be 10 working days, unless the project falls into a category below:~~

~~(1) The project is deemed an emergency.~~

~~(2) Prior Notification is required for removal and disposal of the following nonfriable asbestos containing materials: caulking, window glazing, or roofing (being removed by mechanical means). All other asbestos project and demolition requirements remain in effect.~~

~~(3) Prior Notification is required for asbestos removal or demolitions involving owner occupied, single family residences.~~

~~(d) Annual Permits. In addition to the permit requirement of Rule 6.3.2(a) and 6.3.2(b), the owner or operator of a facility may file for approval by the Control Officer, or designee, an annual written permit to conduct asbestos projects on one or more buildings, vessels, or structures at the facility during each calendar year for the purpose of scheduled maintenance or emergency repairs. The requirements of Rule 6.3.2 (a)(1) through 6.3.2 (a)(4), 6.3.2 (a)(6), and 6.3.2(b) shall not apply to asbestos projects undertaken during the calendar year at the applicable facility if all of the following conditions are met:~~

~~(1) Annual Permit—Restrictions.~~

~~(i) The annual written permit shall be filed for approval by the Control Officer, or designee, before commencing work on any asbestos project to be specified in an annual permit.~~

~~(ii) The total amount of asbestos containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this rule shall be limited to less than 260 linear feet on pipe and 160 square feet on other components.~~

~~(iii) The permit requirements of Rules 6.3.2(a) and 6.3.2 (b) shall apply to any asbestos project involving at least 260 linear feet on pipes or 160 square feet on other components for each building, vessel, or structure at the facility, including residential dwellings.~~

~~(iv) A copy of the written annual permit shall be available for inspection at the property owner or operator's office until the end of the calendar year.~~

~~(v) Asbestos containing waste material generated from asbestos projects filed under an annual permit may be stored for disposal at the facility if all of the following conditions are met:~~

~~(A) All asbestos containing waste material shall be treated in accordance with Rules 6.3.4 (a)(1), 6.3.4 (a)(2), and 6.3.4 (a)(3);~~

~~(B) Accumulated asbestos containing waste material collected during each calendar quarter shall be kept in a controlled storage area posted with one (1) or more asbestos warning signs and accessible only to authorized persons; and~~

~~(C) All stored asbestos containing waste material shall be deposited at a waste disposal site within ninety (90) calendar days after collection for disposal unless the asbestos containing waste is handled as dangerous waste in accordance with chapter 173-303 WAC. The waste disposal site shall be operated in accordance with the provisions of 40 CFR 61.154~~

or 61.155 and approved by the appropriate health department within the Agency's jurisdiction:

~~(2) Annual Permit—Reporting Requirements and Fees. Annual written permit required by Rule 6.3.2(e) shall be submitted by the facility owner or operator on forms provided by the Agency and filed for approval by the Control Officer, or designee, accompanied by the annual fee stated in Rule 3.5.~~

~~(3) Annual Permit—Quarterly Reporting Requirements. In addition to the written annual permit requirements of Rule 6.3.2(e), the facility owner or operator shall submit quarterly written reports to the Control Officer, or designee, within fifteen (15) days after the end of each calendar quarter.~~

~~(4) Work Done Without Notification—Any work on an asbestos project, renovation, or demolition, for which notification is required, and is commenced or performed prior to obtaining approval from the Control Officer, or designee, constitutes a violation of this Rule.~~

~~(e) Permit Requirements—Amendments. It shall be unlawful for any person to cause or allow any deviation from information contained in a written permit unless an amended permit has been received and approved by the Control Officer, or designee. Amended permits required by this rule shall be filed by the original applicant, received by the Control Officer, or designee, no later than the last filed completion date, and are limited to the following revisions:~~

~~(1) A change in the job size category because of additional asbestos-containing material. In this case, the fee shall be increased accordingly and the fee shall be equal to, but not exceed, the fee amount provided for each size category specified in Rule 3.5;~~

~~(2) The asbestos project, renovation, or demolition starting or completion date, provided that the total duration of the work does not exceed one (1) calendar year beyond the original submission date. If the appropriate waiting period has passed, further waiting is not required. If a waiting period is required, it shall be based on the original submission date.~~

~~(3) Name, mailing address, and telephone number of the owner or operator of the asbestos project site or operation;~~

~~(4) Waste disposal site, provided the revised waste disposal site is operated in accordance with the provisions of 40 CFR 61.154 or 40 CFR 61.155 and approved by the appropriate health department within the Agency's jurisdiction; and~~

~~(5) Any other information requested by the Control Officer, or designee.~~

~~(f) Opportunity for Amendment—In no case shall an amendment be accepted and approved by the Agency if it is filed after the last completion date on record. In the case of additional work to be performed after the last completion date on record, a new permit shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Rule 3.5~~

~~(g) Advance Notification Period—Exemptions (Emergency). The Control Officer, or designee, may waive the required ten working day advance notification period in Rule 6.3.2 for an asbestos project or demolition if the facility owner demonstrates to the Control Officer, or designee, that there is an emergency as follows:~~

~~(1) There was a sudden, unexpected event that resulted in a public health or safety hazard; or~~

~~(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage; or~~

~~(3) Asbestos-containing materials encountered that were not identified during the asbestos survey; or~~

~~(4) The project must proceed to avoid imposing an unreasonable financial burden to the property owner.~~

The request for an Emergency Project must meet the requirements below:

~~(5) Emergency Asbestos Project. The owner of a facility may submit a signed written request to waive the required ten (10) working day advance notification period for an asbestos project. The request shall be submitted for approval by the Control Officer, or designee, and be accompanied by the required permit and appropriate fee as required by Rules 3.5, 6.3.2(a), and 6.3.2(b). Any request for approval of an emergency asbestos project shall include, at a minimum:~~

~~(i) The complete name, mailing address, and telephone number of the facility owner or operator, including city and zip code;~~

~~(ii) The complete street address or location of the asbestos project site, including the city and zip code;~~

~~(iii) A description of the sudden and unexpected event including the date the emergency occurred; and~~

~~(iv) An explanation of how the sudden and unexpected event has caused an emergency condition.~~

~~(6) Government Ordered Demolition. The owner of a facility may submit a signed written request to waive the required ten (10) working day advance notification period for a demolition if the request is accompanied by a copy of an order from a federal, state, or local government agency that requires demolition before the ten (10) working day advance notification period has elapsed. The request and copy of the order shall be submitted for approval by the Control Officer, or designee, and be accompanied by the required permits and appropriate fee as required by Rules 3.5, 6.3.2(a) and 6.3.2(b). Any request for approval of an emergency demolition shall include, at a minimum:~~

~~(i) The complete name, mailing address, and telephone number of the owner or operator of the facility and the asbestos/demolition project including the city and zip code;~~

~~(ii) The complete street address or location of the demolition site, including the city and zip code;~~

~~(iii) The name, title, and authority of the government representative who has ordered the demolition;~~

~~(iv) The reason why the demolition was ordered; and~~

~~(v) The dates on which the order was received and the demolition was ordered to begin.))~~

### Rule 6.3.2 Asbestos Survey Requirements

(a) Renovation. An asbestos survey is required for any renovation involving 48 square feet, or more, of suspect asbestos material. The property owner or the owner's agent shall determine whether there are suspect asbestos-containing materials (ACM) in the work area and obtain an asbestos survey by an Asbestos Hazard Emergency Response Act (AHERA) building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of a single-family residence. In lieu of a survey, the owner of the residence may collect samples to have analyzed

by a National Voluntary Laboratory Accreditation Program (NVLAP) certified lab per 40 CFR 763.87.

(1) A summary of the results of the asbestos survey shall be available at the work site and communicated to all persons who may come into contact with the material.

(2) If there are no suspect materials in the work area, this determination shall be available at the work site and communicated to all persons involved in the renovation.

(3) It is not required that an AHERA building inspector sample any material presumed to be ACM.

(b) Demolition. It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey, by an AHERA building inspector, of the structure.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be ACM.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall be available at the work site and communicated to all persons who may come into contact with the material.

#### AMENDATORY SECTION

##### *((Rule 6.3.3 Procedures for Asbestos Emission Control*

(a) Asbestos Project – Requirements. It shall be unlawful for any person to cause or allow work on an asbestos project unless the following procedures are employed:

(1) Any work on an asbestos project shall be performed by certified asbestos workers under the direct, onsite supervision of a certified asbestos supervisor. This certification requirement shall not apply to asbestos projects conducted in an owner-occupied, single family residence performed by the resident owner of the dwelling in accordance with Rule 6.3.3(b).

(2) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or temporarily off site).

(3) All asbestos containing material shall be kept adequately wet while being removed from any structure, building, vessel, or component.

(4) All asbestos containing material that has been removed or may have fallen off components during the course of an asbestos project shall be:

(i) Kept adequately wet until collected for disposal; and  
(ii) Collected for disposal at the end of each working day; and

(iii) Contained in a controlled area at all times until transported to a waste disposal site; and

(iv) Carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise handled in such a manner that may risk further damage to them; or

(v) Transported to the to the ground via dust tight chutes or containers if they have been removed or stripped more than 50 feet above ground level and were not removed as a unit or in sections.

(5) The exterior of each leak tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

(6) No visible emissions shall result from an asbestos project.

(7) Mechanical assemblies or components covered, coated, or manufactured from asbestos containing material, removed as a unit or in sections, shall be contained in a leak tight wrapping after wetting and labeled in accordance with Rule 6.3.4 (a)(1)(iii).

(i) For large components such as boilers, steam generators, and large tanks, the asbestos containing material is not required to be removed or stripped if the components can be removed, stored, transported, and deposited at a waste disposal site or reused without disturbing or damaging the asbestos.

(ii) Metal components such as valves, fire doors, and reactor vessels that have internal asbestos containing material may avoid wetting and leak tight wrapping if:

(A) All access to the asbestos containing material is welded shut; or

(B) The component has mechanical seals in place that separate the asbestos containing material from the environment and these seals cannot be removed by hand; and

(C) The components are labeled in accordance with Rule 6.3.4 (a)(1)(iii).

(8) Local exhaust ventilation and collection systems used on an asbestos project shall:

(i) Be maintained to ensure the integrity of the system; and

(ii) When feasible, have one or more transparent plastic or glass viewing ports installed on the walls of the enclosure in such a manner that will allow for viewing of all components inside the enclosure. When available, existing windows may be utilized for viewing ports.

(9) Local exhaust ventilation and collection systems, control devices, and vacuum systems, used on an asbestos project shall be equipped with a HEPA exhaust filter, maintained in good working order, and exhibit no visible emissions.

(10) It shall be unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of asbestos containing material (e.g., not removing all asbestos containing material in a structure scheduled for demolition or partially removing asbestos containing material and leaving remaining asbestos containing material in a state that makes it more susceptible to being disturbed, or leaving it on the ground, outside and open to the environment.

(b) Asbestos Project – Exemptions for Residential Dwellings. The requirements of 6.3.3 (a)(1) shall not apply to the removal of asbestos on furnace interiors and direct applied mudded asbestos insulation on hot water heating systems. This work must be done by asbestos certified individuals in accordance with Washington State Labor and Industries or Occupational Safety Health Administration standards.

~~(e) Renovation—Requirements. It shall be unlawful for any person to cause or allow any renovation unless prior to renovation, the property owner or the owner's agent obtains an asbestos survey, or can otherwise competently declare the material being removed as not containing asbestos and file appropriate permits.~~

~~(d) Demolition—Requirements. It shall be unlawful for any person to cause or allow the demolition of any building, vessel, structure, or portion thereof, unless all asbestos containing materials have been removed from the area to be demolished. It shall be unlawful for any person to cause or allow any demolition that would disturb asbestos containing material or prevent access to the asbestos containing material for removal and disposal.~~

~~(e) Demolition—Asbestos Removal Exemptions. Asbestos containing material need not be removed before the demolition of any building, vessel, structure, or portion thereof if:~~

~~(1) The asbestos containing material is on a component that is encased in concrete or other material determined by the Control Officer, or designee, to be equally effective in controlling asbestos emissions. In this case, the permit requirements of Rule 6.3.2 shall apply and these materials shall be kept adequately wet whenever exposed during demolition until disposed of in accordance with Rule 6.3.4 (a)(2); or~~

~~(2) The asbestos containing material could not be removed prior to demolition because it is not accessible until after demolition begins. In this case, the permit requirements of Rule 6.3.2 shall apply and the exposed asbestos containing material and asbestos contaminated debris shall be kept adequately wet at all times until disposed of in accordance with Rule 6.3.4 (a)(2); or~~

~~(3) The material was not accessible for removal because of hazardous conditions. Such conditions may include environments that are contaminated by toxic substances, structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. Under such conditions, the facility owner or operator may submit a signed written request for conditional approval by the Control Officer, or designee, to waive the requirements of Rule 6.3.3(e). In this case, the permit requirements of Rule 6.3.2 shall apply and the exposed asbestos containing material and asbestos contaminated debris shall be kept adequately wet at all times until disposed of in accordance with Rule 6.3.4 (a)(2). Evidence of the hazardous condition, as documented by a state or local government agency, or other competent person, shall accompany the written request in addition to the permit and appropriate fee as required by Rule 6.3.2. The request for exemption from Rule 6.3.3(e) shall include, at the minimum:~~

~~(i) The complete name, mailing address, and telephone number of the owner or operator of the facility, including the city and zip code;~~

~~(ii) The complete street address or location of the demolition site, including the city and zip code;~~

~~(iii) The name, title, and authority of the person who has determined the hazardous condition;~~

~~(iv) A description of the hazardous condition that prevents the removal of asbestos containing material prior to~~

~~demolition, including the amount, type, and specific location(s) within the structure of such materials; and~~

~~(v) The procedures that will be used to prevent the release of asbestos fibers into the ambient air.~~

~~(f) Alternative Control Measures. The owner or operator of an asbestos project may submit a signed written request to use an alternative control measure that is equally effective in controlling asbestos emissions, for approval by the Control Officer, or designee. The written request shall include, at a minimum:~~

~~(1) The complete name, mailing address, and telephone number of the owner or operator of the asbestos project, including the city and zip code;~~

~~(2) The complete street address or location of the site, including the city and zip code;~~

~~(3) A description of the material, including the type and percentage of asbestos in the material, total amount of material involved, and the specific location(s) of the material on the site; and~~

~~(4) The reason why an alternative control measure is required and a description of the proposed alternative control measure to be employed, including the procedures that will be used to prevent the release of asbestos fibers into the ambient air.)~~

### Rule 6.3.3 Controlled and Regulated Substances

(a) No person shall cause or allow visible asbestos emissions, including emissions from asbestos waste materials:

(1) On public or private lands, on developed or undeveloped properties and on any open uncontrolled and non-designated disposal sites;

(2) During the collection, processing, handling, packaging, transporting, storage and disposal of any asbestos-containing waste material; or

(3) From any fugitive source.

### AMENDATORY SECTION

((Rule 6.3.4 Disposal of Asbestos Containing Waste Material

(a) Disposal Requirements. It shall be unlawful for any person to cause or allow work on an asbestos project unless the following procedures are employed during the collection, processing, packaging, transporting, or deposition of any asbestos containing material:

(1) Treat all asbestos containing waste material as follows:

(i) Adequately wet all asbestos containing waste material and mix asbestos waste from control devices, vacuum systems, or local ventilation and collection systems with water to form a slurry;

(ii) After wetting, seal all asbestos containing waste material in leak tight containers or wrapping to ensure that they remain adequately wet when deposited at a waste disposal site;

(iii) Permanently label wrapped materials and each container with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the Occupational Safety and Health Administration. Permanently mark the label with the date the material was collected

for disposal, the name of the waste generator, the name and affiliation of the certified asbestos supervisor, and the location at which the waste was generated;

(iv) Ensure that the exterior of each container is free of all asbestos residue; and

(v) Exhibit no visible emissions during any of the operations required by this rule.

(2) All asbestos containing waste material shall be deposited within ten (10) calendar days after collection for disposal at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154 or 40 CFR 61.155 and approved by the appropriate city or county department. The requirement is modified by Rule 6.3.2(e) for asbestos containing waste material from asbestos projects conducted under annual permit.

(3) All asbestos containing waste materials, handled as dangerous waste in accordance with chapter 173-303 WAC, shall be excluded from the requirements of Rule 6.3.4 (a)(1) and 6.3.4 (a)(2).

(b) Alternative Storage Method — Asbestos Storage Facility. The owner or operator of a licensed asbestos abatement company or disposal facility may apply to the Control Officer, or designee, to establish a facility for the purpose of collecting and temporarily storing asbestos containing waste material.

(1) It is unlawful to cause or allow the operation of a temporary asbestos storage facility without the prior written approval of the Control Officer, or designee.

(2) The owner or operator must request authorization for an asbestos storage facility. When approved, the Authorization will be returned and be available at the facility.

(3) An asbestos storage facility shall meet the following general conditions:

(i) Asbestos containing waste material must be stored in a container with a single piece liner at least 6 mil in thickness; and

(ii) Said container must be in a secured building or in a secured exterior enclosure; and

(iii) The container and enclosure must be locked except during transfer of asbestos containing waste material and have asbestos warning signs posted on the container;

(iv) Storage, transportation, disposal, and return of the waste shipment record to the waste generator will not exceed the 45 day requirement of 40 CFR Part 61.150; and

(v) A copy of all waste shipment records shall be retained for at least 2 years, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of the waste shipment records shall be provided to the Agency upon request.

(e) Alternative Disposal Method — Asbestos Cement Water Pipe. Asbestos cement water pipe used on public right of ways or public easements shall be excluded from the disposal requirements of Rule 6.3.4 (a)(2) if the following conditions are met:

(1) Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least three (3) feet or more of non-asbestos fill material and the state, county or city authorities are notified in writing of buried asbestos cement pipe; and

(2) All asbestos containing waste material, including asbestos cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos contaminated material, debris, or containers, shall be subject to the requirements of Rule 6.3.)

**Rule 6.3.4 Notification Requirements**

(a) It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, or designee, has been submitted to the ORCAA on approved forms, in accordance with the notification period requirements contained in 6.3.4(c) Notification Period:

(1) Notification is required for all demolitions of structures with a footprint greater than 120 square feet, even if no ACM is present. All other demolition requirements remain in effect.

(2) The notification shall be accompanied by the appropriate nonrefundable fee as set forth in Rule 3.5.

(3) A copy of the notification, all amendments to the notification, the asbestos survey, and a work plan for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

(4) Notification for multiple asbestos projects or demolitions may be filed by a property owner or agent on one form if all the following criteria are met:

(i) The work will be performed continuously by the same contractor; and

(ii) A work plan is submitted that includes: a map clearly identifying the structures involved in the project; the amount and type of ACM in each structure; and the schedule for performing asbestos project and demolition work; and

(iii) The project must be bid as a group under the same contract; and

(iv) The structures must be on contiguous property.

**(b) Exemptions from Notification**

(1) Notification is not required for asbestos projects containing less than 10 linear feet on pipe or 48 square feet (per structure, per calendar year) of any ACM.

(2) Notification is not required for removal and disposal of non-friable caulking, window glazing and roofing.

**(c) Notification Period**

<b>Project</b>	<b>Notification Period</b>
Asbestos	10 days prior to commencement of work on project
Asbestos-NESHAP <sup>1</sup>	14 days prior to commencement of work on project
Asbestos Project Amendments	Prior Notice
Demolition	14 days prior to commencement of work on project
Emergency	Prior Notice

(1) The duration of an asbestos project shall not exceed one year from date of submission of the original notification.



(2) The Control Officer, or designee, may waive the notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) ACM. All other asbestos project and demolition requirements remain in effect.

<sup>1</sup>Projects subject to 40 CFR Part 61 Subpart M must comply with the 14-day notification period.

#### AMENDATORY SECTION

##### ~~(Rule 6.3.5 Controlled and Regulated Substances~~

~~(a) No person shall cause or allow visual asbestos emissions, including emissions from asbestos waste materials~~

~~(1) On public or private lands, on developed or undeveloped properties and on any open uncontrolled and non-designated disposal sites;~~

~~(2) During the collection, processing, handling, packaging, transporting, storage and disposal of any asbestos-containing waste material; or~~

~~(3) From any fugitive source.))~~

##### Rule 6.3.5 Annual Notification

(a) A property owner or agent may file one annual notification for asbestos projects on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(1) The annual notification shall be filed with ORCAA before beginning work on any asbestos project included in the annual notification;

(2) The annual notification covers only those structures, vessels, or buildings from the same industrial grouping located on contiguous or adjacent properties and are under common ownership and control.

(3) The total amount of ACM removed must be less than 260 linear feet on pipes or less than 160 square feet of any ACM; and

(4) The property owner or agent submits quarterly written reports to the Control Officer, or designee, on ORCAA-approved forms within 15 days after the end of each calendar quarter.

#### NEW SECTION

##### Rule 6.3.6 Asbestos Project Amendments

(a) An amendment shall be submitted by the original applicant, to the Control Officer, or a designee, for the following changes in a project:

(1) Change in the quantity of asbestos to be removed; or

(2) Changes in the ACM that will be removed; or

(3) Change of contractor; or

(4) Changes in the start date, completion date, or work schedule, including hours of work.

#### NEW SECTION

##### Rule 6.3.7 Emergencies—Exceptions to Advance Notification Period

(a) The Control Officer, or designee, may waive the advance notification period, if the property owner or agent submits a written request that demonstrates to the Control

Officer, or designee, that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was an event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) ACM were encountered that were not identified during the asbestos survey; or,

(4) The project must proceed to avoid imposing an unreasonable burden.

#### NEW SECTION

##### Rule 6.3.8 Asbestos Removal Requirements Prior to Renovation or Demolition

(a) Except as provided in Rule 6.3.8(b), it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb ACM or damage a structure so as to preclude access to ACM for future removal, without first removing all ACM in accordance with the requirements of this regulation. ACM need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(b) Inaccessible Asbestos Removal Requirements. ACM may be removed during demolition, if the property owner demonstrates to the Control Officer, or designee, through a work plan, that the ACM is not accessible such as:

(1) Structures or buildings that are structurally unsound and in danger of imminent collapse;

(2) Conditions that are immediately dangerous to life and health;

(3) Unable to access all asbestos material prior to demolition.

(4) The owner must submit:

(i) written determination of the hazard by an authorized government official or a licensed structural engineer; and,

(ii) a work plan outlining the procedures that will be followed to control asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

#### NEW SECTION

##### Rule 6.3.9 Procedures for Asbestos Projects

(a) Training Requirements. It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety and Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certificate is current. This certification requirement does not apply to individuals who work on asbestos projects on their own single-family residence(s).

(b) Asbestos Work Practices. Except as provided in Rule 6.3.4 (b)(2) of this Rule, it shall be unlawful for any person to cause or allow the removal of ACM unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order. Emissions from the negative air exhaust shall be controlled by a HEPA filter.

(3) Absorbent ACM, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated absorbent ACM exposed during removal shall be immediately saturated with a liquid wetting agent. All absorbent asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(4) Nonabsorbent ACM, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent ACM exposed during removal shall be immediately coated with a liquid wetting agent. All nonabsorbent asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

(5) Metal components (such as valves and fire doors) that have internal ACM are exempt from the requirements of 6.3.4 if all access to the ACM is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the ACM from the environment.

(6) ACM that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged, unless enclosed inside a negative pressure enclosure.

(7) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(8) No visible asbestos emission shall result from an asbestos project. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(9) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(10) It shall be unlawful for any person to create or allow a condition that results in the disturbance, or likely disturbance, of ACM (e.g., not removing all ACM in a structure scheduled for demolition or partially removing ACM and leaving remaining ACM in a state that makes it more susceptible to being disturbed, or leaving it on the ground, outside and open to the environment).

#### NEW SECTION

#### ***Rule 6.3.10 Disposal of Asbestos-Containing Waste Material***

(a) Except as provided in 6.3.10(c) of this Regulation, ACM must be transferred offsite within 10 days of removal. The ACM may be transferred to an approved temporary storage site or to a waste disposal site operated in accordance with 40 CFR 61.154 or 40 CFR 61.155.

(b) Temporary Storage Site. A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer, or designee, and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(c) Disposal of Asbestos Cement Pipe. Asbestos cement water pipe used on public right-of-ways or public easements shall be excluded from the disposal requirements of Rule 6.3.10 if the following conditions are met:

(1) Asbestos cement pipe may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least three (3) feet or more of non-asbestos fill material and the state, county or city authorities are notified in writing of buried asbestos cement pipe; and

(2) All asbestos-containing waste material, including asbestos cement water pipe fragments that are one (1) linear foot or less, protective clothing, HEPA filters, or other asbestos contaminated material, debris, or containers, shall be subject to the requirements of Rule 6.3.

#### NEW SECTION

#### ***Rule 6.3.11 Compliance with other Rules***

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the United States Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

**WSR 16-15-085  
PROPOSED RULES  
OLYMPIC REGION  
CLEAN AIR AGENCY**

[Filed July 19, 2016, 3:15 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) regulations: Rule 1.11 Federal Regulation Reference Date; Rule 6.1 Notice of Construction Required; Rule 6.1.1 Notice of Intent to Operate; Rule 8.14 Adoption of Federal New Source Performance Standards (NSPS); Rule 8.15 Adoption of National Emissions Standards for Hazardous Air Pollutants (NESHAP); Rule 8.16 Wood Fired Boilers; Rule 8.17 Adoption of National Emissions Standards for Hazardous Air Pollutants for Source Categories; and, Rule 8.18 Adoption of Federal Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry.

Hearing Location(s): ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502, on September 14, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail mark.goodin@orcaa.org, fax (360) 491-6308, by September 9, 2016.

Assistance for Persons with Disabilities: Contact Dan Nelson by September 2, 2016, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to adopt by reference the majority of federal air regulations from 40 C.F.R. Parts 60, 61 and 63, and Section 2.18 of 40 C.F.R. Part 65. This will provide ORCAA authority to enforce these federal air regulations through its own local regulations. Currently, ORCAA's authority to enforce these regulations is provided through WAC 173-400-115 and 173-400-075 respectively for the new source performance standards under 40 C.F.R. Part 60 and NESHAP under 40 C.F.R. Parts 61, 63 and 65. The regulations excluded from the list of proposed regulations to be adopted are those enforced exclusively by other agencies like the Washington departments of ecology and health, emissions guidelines for states or regulations that have no potential impacts on air quality in ORCAA's jurisdiction.

Reasons Supporting Proposal: Adopting by reference the federal air regulations from 40 C.F.R. Parts 60, 61 and 63 into ORCAA's local regulations will provide ORCAA more control over the federal air regulations it enforces. It will allow ORCAA to adopt and enforce its own unique list of federal air regulations instead of relying on the list of regulations adopted by ecology. It will also allow ORCAA to be in control of updating the effective date of the federal regulation adoptions, which is necessary to maintain current versions of the federal regulations adopted. In addition, adoption by reference is a prerequisite before primary enforcement authority over a federal air regulation can be delegated to a state or local agency by the Environmental Protection Agency (EPA). ORCAA intends to be the primary enforcement authority over the federal air regulations adopted by reference and will seek delegation of these regulations from EPA. As the primary enforcement authority ORCAA would be in charge of key enforcement decisions and compliance reports would be required to be sent directly to ORCAA instead of both EPA and ORCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Goodin, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Francea L. McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

July 19, 2016

Francea L. McNair  
Executive Director

### NEW SECTION

#### **RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 2016.

### AMENDATORY SECTION

#### **RULE 6.1 NOTICE OF CONSTRUCTION REQUIRED**

(a) Approval of a Notice of Construction (NOC) Application required. It shall be unlawful for any person to cause or allow the following actions unless a "Notice of Construction (NOC)" application has been filed with and approved by the Agency, except for those actions involving stationary sources excluded under Rule 6.1((e))(b) and ((d))(c):

(1) Construction, installation, or establishment of any stationary source; or

(2) Modification to any existing stationary source.

~~((b) Projects not eligible for exemptions. Any exemption provided in Rule 6.1 (e) or (d) shall not apply to:~~

~~(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Part AAA, (New Residential Wood Heaters). Ecology is responsible for issuing notices of construction to projects subject to Subpart BB (Kraft Pulp Mills) and Subpart S (Primary Aluminum Reduction Plants).~~

~~(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for asbestos demolition and renovation projects subject to 40 CFR 61.145.~~

~~(3) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories).~~

~~(4) Any project that qualifies as a new major stationary source, or a major modification.~~

~~(5) Any modification to a stationary source that requires an increase either in a plant wide cap or in unit specific emissions limit.)~~

~~(b) ((e)) Exemption provided Notice of Intent to Operate. An NOC application and prior approval by the Agency is~~

not required prior to construction, installation, establishment or modification of the following types of stationary sources, provided that a complete "Notice of Intent to Operate" has been filed with the Agency in accordance with Rule 6.1.1:

**(1) Temporary Portable Stationary Sources.** Temporary portable stationary sources that have been previously approved by Ecology or a local air pollution control authority in the State of Washington through an NOC application.

**(2) Stationary Sources based on Potential to Emit.** Any stationary source that:

**(i)** Will not result in emission of any toxic air pollutants listed in WAC 173-460-150 (Class A Toxic Air Pollutants); and,

**(ii)** Will have a combined potential to emit from all emission units less than:

**(A)** 0.5 tons per year of any criteria pollutant; and,

**(B)** 1.0 tons per year of total criteria pollutants and VOC combined; and,

**(C)** 0.005 tons per year of lead; and,

**(D)** 100 pounds per year of any toxic air pollutant listed in WAC 173-460-160 (Class B Toxic Air Pollutants); and,

**(E)** 1.0 tons per year of ozone depleting substances combined.

**(c) ((+)) Categorical Exemptions.** An NOC application and prior approval by the Agency is not required prior to construction, installation, establishment or modification of stationary sources in the following stationary source categories, provided that sufficient records are kept to document the exemption:

Maintenance/construction:

**(1)** Cleaning and sweeping of streets and paved surfaces;

**(2)** Concrete application, and installation;

**(3)** Dredging wet spoils handling and placement;

**(4)** Paving application and maintenance, excluding asphalt plants;

**(5)** Plant maintenance and upkeep activities (grounds keeping, general repairs, routine housekeeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

**(6)** Plumbing installation and plumbing protective coating application associated with plant maintenance activities;

**(7)** Roofing application;

**(8)** Insulation application and maintenance, excluding products for resale;

**(9)** Janitorial services and consumer use of janitorial products;

**(10)** Asphalt laying equipment including asphalt-roofing operations (not including manufacturing or storage);

**(11)** Blast cleaning equipment that uses a suspension of abrasive in liquid water;

**(12)** Spray painting or blasting equipment used at temporary locations to clean or paint bridges, water towers, buildings, or similar structures.

Storage Tanks:

**(13)** Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

**(14)** Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

**(15)** Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

**(16)** Process and white water storage tanks;

**(17)** Storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cft);

**(18)** Storage tanks of a capacity of 10,000 gallons or less, with lids or other appropriate closure, and for the storage of materials containing organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC);

**(19)** Storage tanks of a capacity of 40,000 gallons or less, with lids or other appropriate closure, used for the storage of organic compounds, but not for use with materials containing toxic air pollutants (as defined in chapter 173-460 WAC), with a true vapor pressure less than 0.01 kPa (0.002 psia) (0.0001 atm);

**(20)** Storage tanks of a capacity of 40,000 gallons or less used for the storage of butane, propane, or liquefied petroleum gas;

**(21)** Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

**(22)** Storage tanks used exclusively for storage of diesel fuel;

**(23)** Loading and unloading equipment used exclusively for the storage tanks exempted under this rule.

Combustion:

**(24)** Fuel burning equipment (not including incinerators) that:

**(i)** is used solely for a private dwelling serving five families or less; or

**(ii)** has a maximum heat input rate of 5 MMBtu/hr or less if burning natural gas, propane, or LPG; or

**(iii)** has a maximum heat input rate of 0.5 MMBtu/hr or less if burning waste-derived fuels; or

**(iv)** has a maximum heat input rate of 1 MMBtu/hr or less if burning recycled or used oil per the requirements of RCW 70.94.610; or

**(v)** has a maximum heat input rate of 1 MMBtu/hr or less if burning any other type of fuel and with less than or equal to 0.05% sulfur by weight.

**(25)** All stationary gas turbines with a rated heat input <10 million Btu per hour.

**(26)** Stationary internal combustion engines having rated capacity:

**(i)** <50 horsepower output; or

**(ii)** <500 horsepower and used only for standby emergency power generation.

**(27)** All nonroad engines subject to 40 CFR Part 89.

Material handling:

**(28)** Storage and handling of water based lubricants for metal working where organic content of the lubricant is <10%;

**(29)** Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallons, material with initial atmospheric boiling point not less than 150EC or vapor pressure not more than 5 mm Hg @ 21EC, with lids or other appropriate closure.

## Water treatment:

(30) Septic sewer systems, not including active wastewater treatment facilities;

(31) NPDES permitted ponds and lagoons used solely for the purpose of settling and suspended solids and skimming of oil and grease;

(32) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(33) Process water filtration system and demineralizer vents;

(34) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(35) Demineralizer tanks;

(36) Alum tanks;

(37) Clean water condensate tanks;

(38) Oil/water separators, except those at petroleum refineries;

(39) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(40) Municipal sewer systems, including wastewater treatment plants and lagoons with a design capacity of one million gallons per day or less, provided that they do not use anaerobic digesters, chlorine disinfections or sewage sludge incinerators.

## Environmental chambers and laboratory equipment:

(41) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

(42) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(43) Installation or modification of a single laboratory fume hood;

(44) Laboratory calibration and maintenance equipment. Monitoring/quality assurance/testing:

(45) Equipment and instrumentation used for quality control/assurance or inspection purposes;

(46) Hydraulic and hydrostatic testing equipment;

(47) Sample gathering, preparation and management;

(48) Vents from continuous emission monitors and other analyzers.

## Miscellaneous:

(49) Single-family residences and duplexes;

(50) Plastic pipe welding;

(51) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

(52) Insecticide, pesticide, or fertilizer spray equipment;

(53) Comfort air conditioning;

(54) Flares used to indicate danger to the public;

(55) Natural and forced air vents and stacks for bathroom/toilet activities;

(56) Personal care activities including establishments like beauty salons, beauty schools, and hair cutting establishments;

(57) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;

(58) Tobacco smoking rooms and areas;

(59) Noncommercial smokehouses;

(60) Blacksmith forges for single forges;

(61) Vehicle maintenance activities, not including vehicle surface coating;

(62) Vehicle or equipment washing;

(63) Wax application;

(64) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;

(65) Ozone generators and ozonation equipment;

(66) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;

(67) Electrical circuit breakers, transformers, or switching equipment installation or operation;

(68) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;

(69) Firefighting and similar safety equipment and equipment used to train firefighters;

(70) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;

(71) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(72) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm HG @21EC, and not containing toxic air pollutants (as defined in chapter 173-460 WAC);

(73) Surface coating, aqueous solution or suspension containing <1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;

(74) Cleaning and stripping activities and equipment using solutions having <1% VOCs (by weight); on metallic substances, acid solutions are not exempt;

(75) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

(76) Laundry dryers, extractors or tumblers used exclusively for the removal of water from fabric;

(77) Residential composting facilities;

(78) Restaurants and other retail food preparing establishments;

(79) Routing, turning, carving, cutting and drilling equipment used for metal, wood, plastics, rubber, leather or ceramics;

(80) Steam cleaning equipment used exclusively for that purpose;

(81) Vacuum cleaning systems used exclusively for office or residential housekeeping;

(82) Vacuum producing devices used in laboratory operations and vacuum producing devices that do not remove or convey air contaminants from or to another source;

(83) Vents used exclusively for:

(i) Sanitary or storm drainage systems; or

(ii) Safety valves

(84) Washing or drying equipment used for products fabricated from metal or glass, if no volatile organic material is used in the process.

(85) Welding, brazing or soldering equipment;

(86) Coffee roasters with a design capacity less than 10 pounds per batch;

(87) Bark and soil screening operations;

(88) Portable sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 150 tons per hour;

(89) Fixed sand and gravel plants and crushed stone plants with a cumulative rated capacity of all initial crushers less than or equal to 25 tons per hour.

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

## AMENDATORY SECTION

### **Rule 6.1.1 Notice of Intent to Operate**

(a) For those sources required to submit a notice of intent to operate, a complete Notice of Intent to Operate (NOI) application shall be filed at least 15 days prior to starting operation of the source.

(b) NOI applications shall be made on standard forms of the Agency and shall include:

(1) All information requested in the applicable standard forms;

(2) If submitting a NOI for a stationary source qualifying for the exemption based on potential to emit under Rule 6.1 ((e))b(2), documentation verifying the stationary source's potential to emit;

(3) Any additional information requested by the Agency to verify that operation of the stationary source will be in compliance with applicable air pollution control requirements; and,

(4) Applicable fee according to Rule 3.6.

(c) Condition of operation. The Agency may establish enforceable conditions of operation, through issuance of a regulatory Order, as are reasonably necessary to assure compliance with applicable air pollution control requirements.

(d) Temporary portable sources. Temporary portable sources shall also meet the requirements of Rule 6.1.7.

## AMENDATORY SECTION

### **RULE 8.14 ADOPTION OF FEDERAL NEW SOURCE PERFORMANCE STANDARDS (NSPS)**

(a) The NSPS in 40 CFR Part 60 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 60 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 60 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CFR Part 60 are not adopted:

(i) Subpart B - Adoption and Submittal of State Plans for Designated Facilities;

(ii) Subpart C - Emission Guidelines and Compliance Times;

(iii) Subpart Cb - Large Municipal Waste Combustors that are Constructed on or before September 20, 1994 (Emission Guidelines and Compliance Times);

(iv) Subpart Cc - Municipal Solid Waste Landfills (Emission Guidelines and Compliance Times);

(v) Subpart Cd - Sulfuric Acid Production Units (Emission Guidelines and Compliance Times);

(vi) Subpart Ce - Hospital/Medical/Infectious Waste Incinerators (Emission Guidelines and Compliance Times);

(vii) Subpart S - Primary Aluminum Reduction Plants;

(viii) Subpart BB - Kraft Paper Mills;

(ix) Subpart AAA - New Residential Wood Heaters - as it applies to non-Title V sources;

(x) Subpart BBBB - Small Municipal Waste Combustion Units Constructed on or before August 30, 1999 (Emission Guidelines and Compliance Times);

(xi) Subpart DDDD - Commercial and Industrial Solid Waste Incineration Units that Commenced Construction on or before November 30, 1999 (Emission Guidelines and Compliance Times);

(xii) Subpart FFFF - Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units that Commenced Construction On or Before December 9, 2004;

(xiii) Subpart IIII - Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xiv) Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines - as it applies to non-Title V sources;

(xv) Subpart MMMM - Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units;

(xvi) Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces - as it applies to non-Title V sources;

(xvii) Subpart UUUU - Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units; and,

(xviii) Appendix G - Provisions for an Alternative Method of Demonstrating Compliance with 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

## AMENDATORY SECTION

### **RULE 8.15 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP)**

(a) The NESHAP in 40 CFR Part 61 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 61 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 61 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CFR Part 61 are not adopted:

(i) Subpart B - Radon from Underground Uranium Mines;

(ii) Subpart H - Radionuclide other than Radon from Dept. of Energy Facilities;

(iii) Subpart I - Radionuclide from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H;

(iv) Subpart K - Radionuclide from Elemental Phosphorus Plants;

(v) Subpart Q - Radon from Dept. of Energy Facilities;

(vi) Subpart R - Radon from Phosphogypsum Stacks;

(vii) Subpart T - Radon from Disposal Uranium Mill Tailings; and,

(viii) Subpart W - Radon from Operating Mill Tailings.

**REPEALER**

The following section of Olympic Region Clean Air Agency (ORCAA) Regulation, Rule 8.16, is repealed: **RULE 8.16 WOOD FIRED BOILERS**

**NEW SECTION**

**RULE 8.17 ADOPTION OF NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES**

(a) The NESHAP for Source Categories in 40 CFR Part 63 and its Appendices in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference except for the subparts and sections listed in subsection (4). A current list of adopted federal standards is provided in Appendix A of ORCAA's Regulation.

(1) The term "Administrator" in 40 CFR Part 63 shall mean the Administrator of EPA and the Executive Director of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports under 40 CFR Part 63 the affected facility is required to provide such reports only to the Agency, unless otherwise requested in writing by EPA.

(3) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(4) Exceptions. The following sections and subparts of 40 CFR Part 63, as they apply to non-Title V sources, are not adopted:

(i) Subpart M - National Perchloroethylene Emission Standards for Dry Cleaning Facilities;

(ii) Subpart LL - National Emission Standard for Hazardous Air Pollutants for Primary Aluminum Reduction Plants;

(iii) Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production;

(iv) Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines;

(v) Subpart - BBBB National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities;

(vi) Subpart HHHHHH - Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources; and,

(vii) Subpart XXXXXX - Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

**NEW SECTION**

**RULE 8.18 ADOPTION OF FEDERAL CONSOLIDATED REQUIREMENTS FOR THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURING INDUSTRY**

The Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry in Section 2.18 of 40 CFR Part 65 in effect on the date referenced in ORCAA Rule 1.11 are adopted by reference.

**NEW SECTION**

**APPENDIX A  
ADOPTED FEDERAL REGULATIONS AND STANDARDS**

40 CFR Part 60 - Standards of Performance for New Stationary Sources adopted by reference effective July 1, 2016.

Subpart A	General Provisions
Subpart D	Fossil-Fuel-Fired Steam Generators for which Construction is Commenced after August 17, 1971
Subpart Da	Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978
Subpart Db	Industrial-Commercial-Institutional Steam Generating Units
Subpart Dc	Small Industrial-Commercial-Institutional Steam Generating Units
Subpart E	Incinerators
Subpart Ea	Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994
Subpart Eb	Large Municipal Waste Combustors
Subpart Ec	Hospital/Medical/Infectious Waste Incinerators
Subpart F	Portland Cement Plants
Subpart G	Nitric Acid Plants
Subpart Ga	Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011

Subpart H	Sulfuric Acid Plants
Subpart I	Hot Mix Asphalt Facilities
Subpart J	Petroleum Refineries
Subpart Ja	Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After May 14, 2007
Subpart K	Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973 and prior to May 19, 1978
Subpart Ka	Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978 and prior to July 23, 1984
Subpart Kb	VOC Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984
Subpart L	Secondary Lead Smelters
Subpart M	Secondary Brass and Bronze Production Plants
Subpart N	Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973
Subpart Na	Secondary Emissions from Basic Oxygen Process Steel-making Facilities for which Construction is Commenced after January 20, 1983
Subpart O	Sewage Treatment Plants
Subpart P	Primary Copper Smelters
Subpart Q	Primary Zinc Smelters
Subpart R	Primary Lead Smelters
Subpart T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants
Subpart U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants
Subpart V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants
Subpart W	Phosphate Fertilizer Industry: Triple Superphosphate Plants
Subpart X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities
Subpart Y	Coal Preparation Plants
Subpart Z	Ferroalloy Production Facilities

Subpart AA	Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974 and on or before August 17, 1983
Subpart AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 7, 1983
Subpart CC	Glass Manufacturing Plants
Subpart DD	Grain Elevators
Subpart EE	Surface Coating of Metal Furniture
Subpart GG	Stationary Gas Turbines
Subpart HH	Lime Manufacturing Plants
Subpart KK	Lead-Acid Battery Manufacturing Plants
Subpart LL	Metallic Mineral Processing Plants
Subpart MM	Automobile and Light Duty Truck Surface Coating Operations
Subpart NN	Phosphate Rock Plants
Subpart PP	Ammonium Sulfate Manufacture
Subpart QQ	Graphic Arts Industry: Publication Rotogravure Printing
Subpart RR	Pressure Sensitive Tape and Label Surface Coating Standards
Subpart SS	Industrial Surface Coating: Large Appliances
Subpart TT	Metal Coil Surface Coating
Subpart UU	Asphalt Processing and Asphalt Roof Manufacture
Subpart VV	Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry
Subpart VVa	Equipment Leaks of VOC in Synthetic Organic Chemical Manufacturing Industry for which Construction, Reconstruction, or Modification Commenced After November 7, 2006
Subpart WW	Beverage Can Surface Coating Industry
Subpart XX	Bulk Gasoline Terminals
Subpart AAA	New Residential Wood Heaters - Title V sources only
Subpart BBB	Rubber Tire Manufacturing Industry
Subpart DDD	VOC Emissions from Polymer Manufacturing Industry
Subpart FFF	Flexible Vinyl and Urethane Coating and Printing
Subpart GGG	Equipment Leaks of VOC in Petroleum Refineries



Subpart GGGa	Equipment Leaks of VOC in Petroleum Refineries for which Construction, Reconstruction, or Modification Commenced After January 4, 1983, And On Or Before November 7, 2006
Subpart HHH	Synthetic Fiber Production Facilities
Subpart III	VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Air Oxidation Unit Processes
Subpart JJJ	Petroleum Dry Cleaners
Subpart KKK	Equipment Leaks of VOC from Onshore Natural Gas Processing Plants
Subpart LLL	Onshore Natural Gas Processing: SO2Emissions
Subpart NNN	VOC Emissions from Synthetic Organic Chemical Manufacturing Industry Distillation Operations
Subpart OOO	Nonmetallic Mineral Processing Plants
Subpart PPP	Wool Fiberglass Insulation Manufacturing Plants
Subpart QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems
Subpart RRR	VOCs from Synthetic Organic Chemical Manufacturing Industry Reactor Processes
Subpart SSS	Magnetic Tape Coating Facilities
Subpart TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines
Subpart UUU	Calciners and Dryers in Mineral Industries
Subpart VVV	Polymeric Coating of Supporting Substrates Facilities
Subpart WWW	Municipal Solid Waste Landfills
Subpart AAAA	Small Municipal Waste Combustion Units for which Construction is Commenced after August 30, 1999 or for which Modification or Reconstruction is Commenced after June 6, 2001
Subpart CCCC	Commercial and Industrial Solid Waste Incineration Units for which Construction is Commenced after November, 30, 1999 or for which Modification or Reconstruction is Commenced on or after June 1, 2001

Subpart EEEE	Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006
Subpart IIII	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines - Title V sources only.
Subpart JJJJ	Standards of Performance for Stationary Spark Ignition Internal Combustion Engines - Title V sources only.
Subpart KKKK	Standards of Performance for Stationary Combustion Turbines
Subpart LLLL	Standards of Performance for New Sewage Sludge Incineration Units
Subpart OOOO	Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution
Subpart QQQQ	Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces - Title V sources only.
Subpart TTTT	Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units
40 CFR Part 60	Appendix A
40 CFR Part 60	Appendix B
40 CFR Part 60	Appendix C
40 CFR Part 60	Appendix D
40 CFR Part 60	Appendix F
40 CFR Part 60	Appendix I

40 CFR Part 61 - National Emission Standards for Hazardous Air Pollutants adopted by reference effective July 1, 2016.

Subpart A	General Provisions
Subpart C	Beryllium
Subpart D	Beryllium Rocket Motor Firing
Subpart E	Mercury
Subpart F	Vinyl Chloride
Subpart J	Equipment Leaks of Benzene
Subpart L	Benzene from Coke By-Product Recovery Plants
Subpart M	Asbestos
Subpart N	Inorganic Arsenic from Glass Manufacturing Plants

Subpart O	Inorganic Arsenic from Primary Copper Smelters
Subpart P	Inorganic Arsenic emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities
Subpart V	Equipment Leaks (Fugitive Sources)
Subpart Y	Benzene from Benzene Storage Vessels
Subpart BB	Benzene from Benzene Transfer Operations
Subpart FF	Benzene Waste Operations
40 CFR Part 61	Appendix A
40 CFR Part 61	Appendix B
40 CFR Part 61	Appendix C
40 CFR Part 61	Appendix D
40 CFR Part 61	Appendix E

40 CFR Part 63 - National Emission Standards for Hazardous Air Pollutants for Source Categories adopted by reference effective July 1, 2016

Subpart A	General Provisions
Subpart B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)
Subpart C	List of Hazardous Air Pollutants, Petition Process, Lesser Quantity Designations, Source Category List
Subpart D	Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants
Subpart F	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry
Subpart G	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater
Subpart H	National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks
Subpart I	National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

Subpart J	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production
Subpart L	National Emission Standards for Coke Oven Batteries
Subpart M	National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities - Title V sources only.
Subpart N	National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
Subpart O	Ethylene Oxide Emissions Standards for Sterilization Facilities
Subpart Q	National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers
Subpart R	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
Subpart S	National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry
Subpart T	National Emission Standards for Halogenated Solvent Cleaning
Subpart U	National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins
Subpart W	National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production
Subpart X	National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting
Subpart Y	National Emission Standards for Marine Tank Vessel Loading Operations
Subpart AA	National Emission Standards for Hazardous Air Pollutants from Phosphoric Acid Manufacturing Plants
Subpart BB	National Emission Standards for Hazardous Air Pollutants from Phosphate Fertilizers Production Plants
Subpart CC	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries
Subpart DD	National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

Subpart EE	National Emission Standards for Magnetic Tape Manufacturing Operations
Subpart GG	National Emission Standards for Aerospace Manufacturing and Rework Facilities
Subpart HH	National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities
Subpart II	National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)
Subpart JJ	National Emission Standards for Wood Furniture Manufacturing Operations
Subpart KK	National Emission Standard for the Printing and Publishing Industry
Subpart MM	National Emission Standard for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills
Subpart OO	National Emission Standards for Tanks - Level 1
Subpart PP	National Emission Standards for Containers
Subpart QQ	National Emission Standards for Surface Impoundments
Subpart RR	National Emission Standards for Individual Drain Systems
Subpart SS	National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
Subpart TT	National Emission Standards for Equipment Leaks - Control Level 1
Subpart UU	National Emission Standards for Equipment Leaks - Control Level 2 Standards
Subpart VV	National Emission Standards for Oil-Water Separators and Organic - Water Separators
Subpart WW	National Emission Standards for Storage Vessels (Tanks) - Control Level 2
Subpart XX	National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations
Subpart YY	National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

Subpart CCC	National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants
Subpart DDD	National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production
Subpart EEE	National Emission Standard for Hazardous Air Pollutants from Hazardous Waste Combustors
Subpart GGG	National Emission Standards Pharmaceuticals Production
Subpart HHH	National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities
Subpart III	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production
Subpart JJJ	National Emission Standard for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins
Subpart LLL	National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry
Subpart MMM	National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production
Subpart NNN	National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing
Subpart OOO	National Emission Standards for Hazardous Air Pollutants Emissions: Manufacture of Amino/Phenolic Resins
Subpart PPP	National Emission Standards for Hazardous Air Pollutants Emissions for Polyether Polyols Production
Subpart QQQ	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting
Subpart RRR	National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production - Title V sources only.
Subpart TTT	National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

Subpart UUU	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
Subpart VVV	National Emission Standard for Hazardous Air Pollutants: Publicly Owned Treatment Works
Subpart XXX	National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Siliconmanganese
Subpart AAAA	National Emission Standard for Hazardous Air Pollutants: Municipal Solid Waste Landfills
Subpart CCCC	National Emission Standard for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast
Subpart DDDD	National Emission Standard for Hazardous Air Pollutants: Plywood and Composite Wood Products
Subpart EEEE	National Emission Standard for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)
Subpart FFFF	National Emission Standard for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing
Subpart GGGG	National Emission Standard for Hazardous Air Pollutants: Solvent Extractions for Vegetable Oil Production
Subpart HHHH	National Emission Standard for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production
Subpart IIII	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks
Subpart JJJJ	National Emission Standard for Hazardous Air Pollutants: Paper and Other Web Coating
Subpart KKKK	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Cans
Subpart MMMM	National Emission Standard for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products
Subpart NNNN	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Large Appliances

Subpart OOOO	National Emission Standard for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles
Subpart PPPP	National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products
Subpart QQQQ	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Wood Building Products
Subpart RRRR	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Furniture
Subpart SSSS	National Emission Standard for Hazardous Air Pollutants: Surface Coating of Metal Coil
Subpart TTTT	National Emission Standard for Hazardous Air Pollutants for Leather Finishing Operations
Subpart UUUU	National Emission Standard for Hazardous Air Pollutants for Cellulose Products Manufacturing
Subpart VVVV	National Emission Standard for Hazardous Air Pollutants for Boat Manufacturing
Subpart WWWW	National Emission Standard for Hazardous Air Pollutants: Reinforced Plastic Composites Production
Subpart XXXX	National Emission Standard for Hazardous Air Pollutants: Rubber Tire Manufacturing
Subpart YYYY	National Emission Standard for Hazardous Air Pollutants for Stationary Combustion Turbines
Subpart ZZZZ	National Emission Standard for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines - Title V sources only.
Subpart AAAAA	National Emission Standard for Hazardous Air Pollutants for Lime Manufacturing Plants
Subpart BBBBB	National Emission Standard for Hazardous Air Pollutants for Semiconductor Manufacturing
Subpart CCCCC	National Emission Standard for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

Subpart DDDDD	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters
Subpart EEEEE	National Emission Standard for Hazardous Air Pollutants for Iron and Steel Foundries
Subpart FFFFF	National Emission Standard for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
Subpart GGGGG	National Emission Standard for Hazardous Air Pollutants: Site Remediation
Subpart HHHHH	National Emission Standard for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing
Subpart IIIII	National Emission Standard for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants
Subpart JJJJJ	National Emission Standard for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing
Subpart KKKKK	National Emission Standard for Hazardous Air Pollutants for Clay Ceramics Manufacturing
Subpart LLLLL	National Emission Standard for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing
Subpart MMMMM	National Emission Standard for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations
Subpart NNNNN	National Emission Standard for Hazardous Air Pollutants: Hydrochloric Acid Production
Subpart PTTTT	National Emission Standard for Hazardous Air Pollutants for Engine Test Cells/Standards
Subpart QQQQQ	National Emission Standard for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities
Subpart RRRRR	National Emission Standard for Hazardous Air Pollutants: Taconite Iron Ore Processing
Subpart SSSSS	National Emission Standard for Hazardous Air Pollutants for Refractory Products Manufacturing

Subpart TTTTT	National Emission Standard for Hazardous Air Pollutants for Primary Magnesium Refining
Subpart UUUUU	National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units
Subpart WWWW	National Emission Standards for Hospital Ethylene Oxide Sterilizers
Subpart YYYYY	National Emission Standard for Hazardous Air Pollutants for Area/Sources: Electric Arc Furnace Steelmaking Facilities
Subpart ZZZZ	National Emission Standard for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources
Subpart BBBBB	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities - Title V sources only.
Subpart CCCCC	National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities - Title V sources only.
Subpart DDDDD	National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources
Subpart EEEEE	National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources
Subpart FFFFF	National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources
Subpart GGG-GGG	National Emission Standards for Hazardous Air Pollutants for Primary Non-ferrous Metals Area Sources—Zinc, Cadmium, and Beryllium
Subpart HHH-HHH	National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources - Title V sources only.
Subpart JJJJJ	National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers Area Sources
Subpart LLLLL	National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources

Subpart MMMMMM	National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources
Subpart NNN-NNN	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds
Subpart OOOOOO	National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources
Subpart PPPPPP	National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources
Subpart QQQQQQ	National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources
Subpart RRR-RRR	National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources
Subpart SSSSSS	National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources
Subpart TTTTTT	National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources
Subpart VVVVVV	National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources
Subpart WWW-WWW	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations
Subpart XXXXXX	National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories - Title V sources only.
Subpart YYYYYY	National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities
Subpart ZZZZZZ	National Emission Standards for Hazardous Air Pollutants Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries
Subpart AAAAAA	National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

Subpart BBBBBB	National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry
Subpart CCCCCC	National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing
Subpart DDDDDD	National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Prepared Feeds Manufacturing
Subpart EEEEEEE	National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category
Subpart HHHH-HHH	National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production
40 CFR Part 63	Appendix A
40 CFR Part 63	Appendix B
40 CFR Part 63	Appendix C
40 CFR Part 63	Appendix D
40 CFR Part 63	Appendix E
Section 2.18 of 40 CFR Part 65	Consolidated Requirements for the Synthetic Organic Chemical Manufacturing Industry.

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

**WSR 16-16-012**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Pharmacy Quality Assurance Commission)  
 [Filed July 21, 2016, 11:09 a.m.]

Original Notice.  
 Preproposal statement of inquiry was filed as WSR 16-01-156.  
 Title of Rule and Other Identifying Information: Chapter 246-869 WAC, Pharmacy licensing, the pharmacy quality assurance commission (commission) is proposing new WAC 246-869-105, to allow licensed pharmacists to provide temporary prescription refills to patients whose usual pharmacy access is disrupted during a governor-proclaimed emergency event.  
 Hearing Location(s): Pharmacy Quality Assurance Commission, Business Meeting, Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, on September 29, 2016, at 9:30 a.m.  
 Date of Intended Adoption: September 29, 2016.

Submit Written Comments to: Richard Cieslinski R.Ph., P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by September 19, 2016.

Assistance for Persons with Disabilities: Contact LeAnn George by September 16, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new section will allow licensed pharmacists to provide a temporary prescription refill for patients when the patient's pharmacy access is disrupted during an event, such as earthquakes, floods, landslides, tsunamis or wildfires that result in a governor's emergency proclamation. The rule would allow pharmacists to legally fill a temporary prescription for legend drugs (up to a thirty day supply) or Schedule III, IV or V controlled substances (up to a seven-day supply) in areas where residents are displaced during a governor-proclaimed emergency when the pharmacist can determine that the prescription is current and that there are refills remaining.

Reasons Supporting Proposal: Patients who are displaced from their homes and who cannot access their community pharmacy during a proclaimed emergency would be able to get a temporary prescription refill from any pharmacy licensed by the commission. A pharmacist would have a legal means of filling a temporary prescription (for more than a seventy-two hour supply) in these instances and assure that the patient's medication therapy continues.

Statutory Authority for Adoption: RCW 18.64.005(7), 18.64.500.

Statute Being Implemented: RCW 18.64.005(7).

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

Name of Proponent: Washington state pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Cieslinski R.Ph., 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4861; Implementation and Enforcement: Steve Saxe R.Ph., Executive Director, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Richard Cieslinski R.Ph., 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4861, fax (360) 236-2901, e-mail [richard.cieslinski@doh.wa.gov](mailto:richard.cieslinski@doh.wa.gov).

July 21, 2016

Tim Lynch, PharmD, MS, Chair  
Pharmacy Quality Assurance Commission

#### NEW SECTION

**WAC 246-869-105 Continuity of care refills in proclaimed emergencies.** Notwithstanding WAC 246-869-100 (2)(f), when the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharma-

cists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records; or

(b) If the prescription is expired and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of up to a seventy-two hour supply of the prescribed medication as described in WAC 246-869-100 (2)(f).

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained, whether from the prescription container, the patient's prescriber or from the pharmacy records;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing as soon as possible following the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.

**WSR 16-16-016**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed July 21, 2016, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-041.

Title of Rule and Other Identifying Information: Chapter 246-226 WAC, Radiation protection—Computed tomography, establishes a new chapter of rules for the safe and effective use of computed tomography (CT) X-ray systems for diagnostic purposes.

Hearing Location(s): Department of Health, Town Center 3, Room 224, 111 Israel Road S.E., Tumwater, WA 98511, on September 7, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47820, Olympia, WA 98504-7820, e-mail <https://fortress.wa.gov/doh/policyreview>, by September 7, 2016.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by August 31, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will establish requirements in a new chapter of rules for the

safe and effective use of CT X-ray systems for diagnostic purposes.

Reasons Supporting Proposal: The use of CT technology has grown in recent years in the number of units, the frequency of prescribed scans, and most importantly, the amount of radiation used. The proposed rules are intended to reduce occupational and patient radiation exposure and help prevent overexposure incidents in Washington state that have occurred in other states in recent years.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080.

Statute Being Implemented: Chapter 70.98 RCW.

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: Dan Van Gent, 111 Israel Road S.E., Tumwater, WA 98511, (360) 236-3231.

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

#### Small Business Economic Impact Statement

**SECTION [SECTION] 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

There are two hundred thirty-five hospitals and clinics (facilities) in Washington state using approximately four hundred CT X-ray systems. Currently, anyone using a CT X-ray system must register with the department of health (department) as required by chapters 70.98 RCW and 246-224 WAC, Radiation protection—Radiation machine assembly and registration. Under the generally applicable X-ray requirements for the healing arts established in chapter 246-225 WAC, Radiation protection—X rays in the healing arts, the department inspects registered CT X-ray systems for the health and safety of operators and the public. During inspections, the department notes if the registrant is accredited. If so, the department reviews the last medical physicist survey and records typical doses for head and body scans. The department is proposing rules to establish requirements in a new chapter for the safe and effective use of CT X-ray systems for diagnostic purposes. The proposed rules include requirements for facilities, equipment, staffing, operation and maintenance, records, and reporting requirements, which, collectively, are intended to reduce radiation exposure to the public and help prevent incidents of overexposure of patients and staff.

National Perspective: The use of CT technology has grown in recent years in the number of units, the frequency of prescribed scans, and most importantly, the amount of radiation used. In an October 8, 2009, Initial Communication, the United States Food and Drug Administration (FDA) acknowledged that two hundred six patients had been accidentally exposed to excess CT-generated radiation at the Cedars-Sinai Medical Center in California over an eighteen month period beginning February 2008. At least forty-four

more CT-generated radiation overdose incidents were subsequently discovered at Glendale Adventist Medical Center and at Providence St. Joseph Medical Center in Burbank, California. A number of patients at Huntsville Hospital in Alabama were also exposed to excessive CT-generated radiation. The majority of these excess radiation exposures caused injurious adverse health effects. These findings resulted in adoption of strict rules for CT exams and procedures with stringent upper limits on acceptable radiation doses delivered during CT exams by the state of California radiation authority.

As CT technology advanced rapidly, professionals in the industry became aware that children were often times receiving standard adult CT-generated radiation doses. The doses were not adjusted for the smaller body sizes and shapes of pediatric patients and their increased sensitivity to radiation. Failure to adjust CT-generated radiation doses for children often results in radiation exposures three to four times greater than necessary for pediatric patients. For this and other reasons, several states in addition to California have created CT X-ray system rules including Oregon, Minnesota, Colorado, Utah, Michigan, Nebraska, and Ohio.

Further investigation by the FDA through 2010 revealed that approximately three hundred eighty-five patients nationwide were exposed to excess amounts of radiation during CT brain perfusion scans at six different hospitals. This finding resulted in the FDA adopting a nationwide initiative to reduce unnecessary radiation exposures resulting from CT and other X-ray imaging procedures.<sup>1</sup> However, there are currently no federal rules for any type of patient CT imaging procedures using gantry-style CT X-ray systems.

<sup>1</sup> <http://www.fda.gov/Radiation-Emitting-Products/RadiationSafety/RadiationDoseReduction/ucm2007191.htm>.

Washington State Perspective: In 2005, two professional medical physicists recognized as qualified experts by the department X-ray program found and reported CT patient safety concerns in forty-three facilities surveyed in our state. When compared to the American College of Radiology's (ACR) recommended dose index reference levels, sixty percent of the facilities had higher than recommended dose index values for CT head exams, and more than four percent of the facilities had higher than recommended adult abdomen CT dose index values.

In February 2012, at a CT seminar in Tacoma, one of the same two medical physicists pointed out to the audience of CT operators, radiologists, and hospital administrators that he personally was aware of two recent CT patient overexposures that occurred in our state. He went on to say that the state of Washington has no regulations controlling the use of CT.

The department found many of the conditions that could contribute to the findings described above during inspections of CT X-ray systems over an eighteen month period beginning in 2013. Examples of findings include inadequate attention to protocol password protection, no designation of a responsible radiologist to oversee protocol selection, and no guidance for retakes which may lead to overexposure.

Approach to Rule Making: On January 1, 2012, Centers for Medicare and Medicaid Services began requiring all non-hospital facilities using CT to be accredited by either the ACR or the Intersocietal Accreditation Commission in order to receive medicare reimbursement. This accreditation



requirement leaves a gap in complete accreditation since it does not apply to hospitals and facilities that do not receive medicare reimbursement. The proposed rules will create consistent statewide requirements for all facilities using CT X-ray systems for diagnostic purposes that are compatible with medicare standards. By establishing CT X-ray system requirements in rule, the department seeks to improve patient and operator safety.

To develop the proposed rules, the department used a collaborative rule-making approach. The department developed an initial draft rule based on recommendations from an advisory committee made up of experts in the field of CT. The advisory committee was composed of a representative cross-section of doctors, radiologic technologies, radiation medical physicists, nurses, and hospital administrators from both urban and rural facilities. The advisory committee met six times over nineteen months beginning in July 2013. The department further refined the rules for proposal based on an extensive informal review and comment period held in July 2015.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

**Table A**

NAICS Code	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
621512	Diagnostic Imaging Centers	137	\$9,336	\$7,701
622110	General Medical and Surgical Hospital	89	\$722,465	\$557,047
622111	Office of Physician (except mental health specialist)	3,178	\$11,602	\$7,192

**SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The department surveyed all two hundred thirty-five registrants (entities with registered CT X-ray systems in the state). The department also surveyed three medical physicist groups that provide service to registrants in the state to assess the potential cost of the proposed rule. The survey asked questions about each of the proposed sections and asked participants to identify if they already comply with the proposed rules, or if not, to provide cost estimates to comply. Table 1 below shows the cumulative cost of the proposed rules for the twenty-two respondents. For more information about the spe-

cific rule sections, please refer to the significant analysis that the department developed for this proposed chapter.

**Table 1: Cumulative Cost of the Proposed Rules**

Respondent 1	\$1500
Respondent 2	0
Respondent 3	0
Respondent 4	0
Respondent 5	245
Respondent 6	2250
Respondent 7	1890
Respondent 8	15573
Respondent 9	0
Respondent 10	0
Respondent 11	1500
Respondent 12	2136
Respondent 13	2250
Respondent 14	19100
Respondent 15	0
Respondent 16	21820
Respondent 17	0
Respondent 18	560
Respondent 19	15450
Respondent 20	7480
Respondent 21 (ten sites)	59288
Respondent 22	0
<b>Total</b>	<b>\$151,402</b>
Average cost for all respondents	\$6,882
Average for all respondents reporting costs	\$10,814
Average cost excluding respondent with 10 sites	\$7,086

The department assumes that no businesses will lose sales or revenue by implementing the proposed rules.

**SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

Minor cost threshold (1% payroll) \$9,336  
 Minor cost threshold (3/10% of receipts) \$7,192

As defined in chapter 19.85 RCW, and based on the information above, the proposed rule or portions of the proposed rules may impose more than minor costs on businesses in the industry. The remainder of this document meets the requirements of RCW 19.85.030 and 19.85.040.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the**

**largest businesses required to comply with the proposed rule.**

Based on cost estimates received from survey respondents, the department assumes many of the costs of the proposed rule are comparable regardless of business size. Therefore, the department assumes the proposed rules are likely to impose a disproportionate impact on small businesses.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.**

Modifications to the proposed rules were made to balance the burden of reporting injuries with the necessity to improve patient safety and reduce the incidence of medical errors (CT events) that contribute to injuries. These changes include exempting registrants who include CT events in another department-approved coordinated quality assurance program from the event reporting requirements. The proposed exemption allows small business to take advantage of existing reporting processes rather than creating a new process for the purposes of the proposed rules alone.

Though the proposed rules follow national standards quite closely, they were modified to reduce staffing requirements established in national standards to balance patient safety with patient access to services in rural and acute access areas of the state. This is also an important modification to be consistent with department authority related to the regulation of health professionals.

Overall, the department is proposing rules that provide the least burdensome requirements that still protect occupational and public health and safety.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

As described in Section 1: Approach to Rule Making, the department worked closely with an advisory committee to develop the proposed rules. The advisory committee included representatives from both urban and rural areas specifically to include small business perspectives in the development of the proposed rules. In addition, the advisory committee began development of the proposed rules from the basis of national standards and medicare reimbursement requirements specifically to create consistent statewide requirements for all facilities, including small businesses that currently receive medicare reimbursement for services and assumedly meet those requirements. The department further refined the rules for proposal based on an extensive informal review and comment period and cost survey which included all registrants and outreach to facilities in rural and acute access areas of the state.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

The department assumes no jobs will be created or lost as a result of the proposed rules.

A copy of the statement may be obtained by contacting Michelle Austin, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3250, e-mail Michelle.Austin@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Michelle Austin, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3250, e-mail Michelle.Austin@doh.wa.gov.

July 21, 2016

John Wiesman, DrPH, MPH  
Secretary

**Chapter 246-226 WAC****RADIATION PROTECTION—COMPUTED TOMOGRAPHY**NEW SECTION**WAC 246-226-001 Authority, purpose, and scope.**

The requirements of this chapter are adopted pursuant to the provisions of chapter 70.98 RCW.

This chapter establishes CT X-ray system requirements for the intentional exposure of humans to ionizing radiation for diagnostic imaging.

NEW SECTION

**WAC 246-226-006 Exemptions.** (1) Registrants exclusively using low power CT X-ray systems (5 kW or less) or cone-beam CT X-ray systems are exempt from the requirements of this chapter and shall comply with chapter 246-225 WAC. Cone-beam CT X-ray system is a variation of gantry-style CT X-ray system that rotates around the patient, capturing data using a cone-shaped X-ray beam. This data is used to reconstruct a three-dimensional image.

(2) Registrants using CT simulators exclusively for treatment planning purposes in conjunction with a megavoltage radiation therapy or brachytherapy is exempt from the requirements of this chapter, except that the registrant shall comply with WAC 246-226-090, 246-240-113, and chapter 246-225 WAC.

NEW SECTION**WAC 246-226-007 Relationship to other regulations.**

In addition to the requirements established in this chapter, registrants shall also comply with applicable requirements of the following:

- (1) Chapter 246-220 WAC;
- (2) Chapter 246-221 WAC;
- (3) Chapter 246-222 WAC;
- (4) Chapter 246-224 WAC;
- (5) Chapter 246-225 WAC; and
- (6) Chapter 246-254 WAC.

NEW SECTION

**WAC 246-226-010 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section, WAC 246-220-010 and 246-225-010, apply throughout this chapter unless the context clearly indicates otherwise.

(1) "CT" or "computed tomography" means technology that uses computer-processed X rays to produce tomographic images (virtual slices) of specific areas of the patient's body or scanned object.

(2) "CTDI" or "computed tomography dose index" means the integral of the dose profile along a line perpendicular to the tomographic plane divided by the product of the nominal tomographic section thickness and the number of tomograms produced in a single scan that is:

$$CTDI = \frac{1}{NT} \int_{-\infty}^{\infty} D(z) dz ,$$

Where:

Z = Position along a line perpendicular to the tomographic plane;

D(z) = Dose at position z;

T = Nominal tomographic section thickness;

N = Number of tomograms produced in a single scan.

And:

The dose profile is centered around z and that, for a multiple tomogram system, the scan increment between adjacent scans is nT.

(3) "CTDI<sub>vol</sub>" means the product of the CTDI<sub>w</sub> and NT, divided by the table increment I and expressed as milliGray.

$$CTDI_{vol} = \frac{N \times T}{I} \times CTDI_w$$

(4) "CT dosimetry phantom" means an object used to determine the dose delivered by a CT X-ray system.

(5) "CTN" or "computed tomography number" means the number used to represent the X-ray attenuation associated with each elemental area of the CT image:

$$CTN = \frac{k(\mu_x - \mu_w)}{\mu_w}$$

Where:

k = A constant, a normal value of 1,000 when the Hounsfield scale of CTN is used;

μ<sub>x</sub> = Linear attenuation coefficient of the material of interest;

μ<sub>w</sub> = Linear attenuation coefficient of water.

(6) "CT procedure" means an activity directed at or performed on a patient necessary to make a diagnosis using a CT X-ray system including, but not limited to, setting, modifying, or applying parameters or protocols.

(7) "CT simulator" means a CT unit that allows for precise cancer treatment planning by demonstrating the relationship between the target tumor and healthy tissues while the patient is in a treatment position.

(8) "CT X-ray system" means a gantry-style X-ray system that generates a tomographic image through acquisition of cross-sectional image slices perpendicular to the plane of travel of the gantry.

(9) "Department" means the Washington state department of health.

(10) "Dose profile" means the dose as a function of position along a line.

(11) "DLP" or "dose length product" means the product of the CTDI<sub>vol</sub> and the scan length of a single or group of scans performed on the same body part. This number can be calculated over the entire CT procedure to give an estimate of the total dose. The value is expressed in milliGray centimeters.

(12) "Filtration" means material placed in the beam to preferentially absorb low energy photons that contribute no diagnostically meaningful data to the image.

(13) "Fixed CT X-ray system" means a CT X-ray system that is permanently mounted in the building in which it is used or a portable CT X-ray system that is permanently stationed in one location.

(14) "Joint commission" means the independent, not-for-profit organization that accredits and certifies health care organizations and programs in the United States.

(15) "kW" or "kilowatts" means peak power, which is the highest rated kilovoltage of a CT X-ray system multiplied by the maximum rated amperage multiplied by the power factor.

(16) "Lead CT technologist" means the radiologic technologist licensed under chapter 18.84 RCW and designated by the registrant to perform the duties identified in this chapter. A licensed health care professional listed in RCW 18.130.040 acting within their scope of practice may also be designated by the registrant to perform the duties identified in this chapter.

(17) "Lead interpreting CT physician" means a physician licensed under chapter 18.71 or 18.57 RCW designated by the registrant to perform the duties identified in this chapter. A licensed health care professional listed in RCW 18.130.040 acting within their scope of practice may also be designated by the registrant to perform the duties identified in this chapter.

(18) "Mobile CT X-ray system" means a CT X-ray system that is permanently mounted in a vehicle or trailer.

(19) "Noise" means the standard deviation of the fluctuations in CTN expressed as a percentage of the attenuation coefficient of water. Its estimate (S<sub>n</sub>) is calculated using the following expression:

$$S_n = \frac{100 \cdot \bar{\mu} \cdot s}{\mu_w}$$

Where:

= Linear attenuation coefficient of the material of interest;

$\bar{\mu}$

$\mu_w$  = Linear attenuation coefficient of water;

s = Standard deviation of the CTN of picture elements in a specified area of the CT image.

(20) "Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross-sectional volume over which X-ray transmission data are collected.

(21) "Operator" means a Washington state licensed health care professional whose scope of practice includes CT diagnostics which includes choosing the appropriate scan protocol, appropriately adjusting parameters when necessary, and administering the CT procedure.

(22) "PACS" or "picture archiving and communication system" means a medical imaging technology that provides economical storage of and convenient access to images from CT.

(23) "Parameter" means settings on the CT X-ray system that can be modified including, but not limited to, peak tube potential in kV, filtration thickness, the tube current in mA and the exposure time in milliseconds, and the product of tube current and exposure time in mAs.

(24) "Physician" means an individual licensed under chapter 18.71 or 18.57 RCW.

(25) "Portable CT X-ray system" means a CT X-ray system that is not permanently mounted in a building, vehicle, or trailer and is able to move between locations of use.

(26) "Protocol" means the collection of settings and parameters affecting CT dose and image quality that specify how data collection and reconstruction, patient positioning, and contrast administration are performed.

(27) "Qualified medical physicist" means a physicist who meets the requirements of WAC 246-226-065.

(28) "Radiologic technologist" means an individual licensed under chapter 18.84 RCW.

(29) "Scan" means the complete process of collecting X-ray transmission data for the production of a tomogram.

(30) "Scan increment" means the amount of relative displacement of the patient with respect to the CT X-ray system between successive scans measured along the direction of such displacement.

(31) "Sensitivity profile" means the relative response of the CT X-ray system as a function of position along a line perpendicular to the tomographic plane.

(32) "SSDE" or "size specific dose estimate" means a patient dose estimate which takes into consideration correc-

tions based on the size of the patient using linear dimensions measured on the patients or the patient images.

(33) "Tomogram" means a two dimensional image representing a slice or section through a three dimensional object using a CT X-ray system.

(34) "Tomographic plane" means the geometric plane which is identified as corresponding to the tomogram.

(35) "Tomographic section" means the volume of an object whose X-ray attenuation properties are imaged in a tomogram.

#### NEW SECTION

**WAC 246-226-020 Equipment requirements.** The CT X-ray system must:

(1) Meet the requirements of 21 C.F.R. Sec. 1020.33 (last amended June 10, 2005) at the time of installation and while the CT X-ray system is registered with the department under chapter 246-224 WAC; and

(2) Be equipped:

(a) With a visible signal that indicates when the X-ray exposure is occurring;

(b) So that the operator can immediately terminate an X-ray exposure of greater than one-half second duration at any time during the X-ray exposure;

(c) So that the parameters used during a CT procedure are:

(i) Displayed prior to beginning a scan; and

(ii) Visible by the operator from any location scanning can be initiated.

(d) So that radiation leakage from the tube port does not exceed limits established in WAC 246-225-040 (3) and (4) when data are not being collected for image production.

(e) So that the accuracy of the laser or optical positioning system is within five millimeters maximum deviation on the axial position (z-axis).

(f) With an X-ray production indicator of at least one-half second at or near the gantry that is visible from any point outside the gantry opening.

(g) So that premature termination of the X-ray exposure by the operator requires resetting of the parameters prior to initiating another scan.

#### NEW SECTION

**WAC 246-226-030 Design requirements.** (1) The location of a CT X-ray system must be designed and constructed:

(a) To provide for two-way verbal communication between the patient and the operator at the control panel;

(b) To allow the operator to continuously observe the patient from the control panel during irradiation using windows, mirrors, closed-circuit television, or an equivalent method; and

(c) With an alternate viewing system when the primary viewing system is electronic.

(2) After **(insert effective date of chapter)** and within thirty days of first use of a CT X-ray system, the registrant shall complete and keep on file a radiation protection survey of the room and surrounding areas consistent with *National Council on Radiation Protection and Measurements Report*

#147 (2004). For CT X-ray systems in use before (**insert effective date of the chapter**), the registrant shall complete the radiation protection survey by (**two years after effective date of the chapter**) and keep on file.

(3) For fixed or mobile CT X-ray systems:

(a) Installed after (effective date of the rule), the operator's booth and surrounding occupied areas must be designed and constructed in accordance with the *National Council on Radiation Protection and Measurements Report #147 (2004)*;

(b) Protective barriers must be provided in the ceiling, floor, and walls of the CT X-ray system enclosure to ensure exposure does not exceed dose limits established in chapter 246-221 WAC; and

(c) The control panel must be shielded by a protective barrier that cannot be removed from a protective position between the operator and the radiation source during CT X-ray system operation.

(4) The registrant shall submit a revised radiation shielding plan for department review in accordance with WAC 246-225-030 after replacement of the CT X-ray system, or any change in the CT X-ray system room's construction or surrounding rooms' construction.

(5) Rooms in which a portable CT X-ray system is used are exempt from the requirements of subsections (2), (3), and (4) of this section. However, the operator must be protected to ensure exposure does not exceed dose limits established in chapter 246-221 WAC.

#### NEW SECTION

**WAC 246-226-040 Operating procedures.** (1) The registrant shall:

(a) Establish a procedure to record and retrieve CTDI<sub>vol</sub>, DLP and, when available on the CT X-ray system, SSDE data from every CT procedure performed; and

(b) If available, send each protocol page that lists the technique factors electronically to the PACS.

(2) The registrant shall provide estimated patient dose for an individual study within ten business days of a patient request.

(3) **Effective (insert date six months after the effective date of these rules)**, the registrant shall establish CT procedures for each CT X-ray system in consultation with a qualified medical physicist and the lead interpreting CT physician, or lead CT technologist to ensure they are correct for the intended dose and image quality. The CT procedures must include:

(a) Pediatric CT protocols for each CT X-ray system used for pediatric patients.

(b) Procedural, software, and engineering measures that prohibit anyone from changing protocols or parameters without approval from the lead CT technologist or the lead interpreting CT physician, such as password protection.

(c) Documentation of protocol or parameter changes must be maintained consistent with the requirements of WAC 246-226-100.

(4) The registrant may not allow the CT manufacturer's technical or applications representatives to make protocol changes or other software changes or upgrades that would

impact radiation dose or image quality without the approval of the lead interpreting CT physician, the lead CT technologist, or the qualified medical physicist.

(5) **Effective (insert date twelve months after the effective date of these rules)**, the registrant shall review CT protocols in consultation with a qualified medical physicist and the lead interpreting CT physician, or lead CT technologist to ensure they are correct for the intended dose and image quality as follows:

(a) Review all CT protocols upon installation of a CT X-ray system;

(b) Annually review the following protocols:

(i) New or changed protocols since the last review;

(ii) Pediatric head;

(iii) Pediatric abdomen;

(iv) Adult head;

(v) Adult abdomen;

(vi) High resolution chest; and

(vii) Brain perfusion.

(c) If the facility does not perform the procedures listed in (b)(ii) through (vii) of this subsection, the registrant shall annually review the most frequently performed or highest dose protocols so that a total of at least six protocols are reviewed annually.

(d) As part of the review, the registrant shall:

(i) Compare current protocols to the dose assessments that were made during the last annual performance evaluation required in WAC 246-226-090;

(ii) Determine whether the protocols from each CT procedure are appropriate, can be modified to lower the CTDI<sub>vol</sub> without an unacceptable sacrifice in image quality, or can be eliminated;

(iii) Establish protocols to maintain image quality at the optimal noise level (standard deviation) within dose levels established in WAC 246-226-050.

(iv) Establish guidelines of variability that establish parameter and protocol limits.

(6) The registrant shall limit the use of the CT X-ray system to those permitted by the established guidelines of variability.

(7) The operator may adjust parameters or protocols for a CT procedure as long as they remain within the approved limits established in the guidelines of variability.

(8) The operator shall check the display panel before and after performing each scan to make sure the amount of radiation delivered is appropriate for the CT procedure and individual patient. This may be accomplished by reviewing dose indicator devices if available or dose indices. The operator shall document dose indicators or indices outside expected values and submit the documentation to the lead interpreting CT physician or qualified medical physicist for review.

(9) Each registrant shall create a written policy establishing procedures for retaking CT scans including, but not limited to, how many scans are authorized for a patient and who can authorize additional retakes. The policy must be approved by the lead interpreting CT physician.

(10) When a patient must be held in position for a CT procedure, mechanical supporting or restraining devices must be used unless contraindicated. If the patient must be held by an individual, the individual shall:

- (a) Wear protective gloves and a protective apron of at least 0.5 millimeter lead equivalent;
  - (b) Be positioned so that no part of his or her body will be struck by the useful beam; and
  - (c) Be positioned so that his or her body is as far as possible from the edge of the useful beam.
- (11) If staff routinely working with or around radiation sources hold patients during CT procedures, personnel exposure may not exceed the dose limits established in chapter 246-221 WAC.
- (12) Only individuals whose presence is necessary are allowed in a CT X-ray system room during exposure. Each individual, except the patient, shall be protected by at least 0.5 millimeter lead equivalent apron or a whole body protective barrier.

NEW SECTION

**WAC 246-226-050 Dose limits.** The CTDI<sub>vol</sub> for the following CT procedure on phantoms may not exceed the dose limits established in Table 1.

**Table 1: Dose limits**

CT Procedure	Phantom Size	Dose Limit: CTDI <sub>vol</sub> (mGy)
Adult head	16 cm	80
Adult abdomen	32 cm	30
Pediatric head (one year old)	16 cm	40
Pediatric abdomen (40 pounds)	16 cm	20

NEW SECTION

**WAC 246-226-060 CT events.** (1) The purpose of this section is to improve patient safety by supporting health care providers and facilities in their efforts to reduce the incidence of medical errors that contribute to deterministic injurious health effects. This rule does not relieve the department of its statutory obligation to enforce this and other radiation protection laws.

(2) The registrant shall initiate an investigation within twenty-four hours and complete the investigation within ten business days when:

- (a) The cumulative CTDI<sub>vol</sub> over the course of an individual study at a particular anatomical location exceeds 600 mGy for a pediatric CT procedure or 1500 mGy for an adult CT procedure; or
- (b) Any ionizing radiation exposure from a CT procedure results in unanticipated hair loss, erythema, or functional damage to an organ or physiological system.

(3) For each event, the registrant shall conduct a root cause analysis in consultation with a qualified medical physicist, the lead interpreting CT physician, lead CT technologist, and the operator who performed the CT procedure. The root cause analysis must:

- (a) Follow the procedures and methods of:
  - (i) The joint commission;

- (ii) The department of veterans affairs national center for patient safety; or
  - (iii) A department-approved nationally recognized root cause analysis methodology.
- (b) Include the following information:
- (i) The findings regarding the root cause of the event;
  - (ii) The number and types of health professionals present at the time the reported event occurred;
  - (iii) A corrective action plan consistent with the findings of the root cause analysis and including:
    - (A) How each finding will be addressed and corrected;
    - (B) When each correction will be completed;
    - (C) Who is responsible to implement the corrections;
    - (D) What action will be taken to prevent the event from recurring; and
  - (iv) A monitoring schedule to assess the effectiveness of the corrective action plan, including who is responsible for the monitoring schedule.

(c) If the registrant determines there is no need to create a corrective action plan for a particular event, include a written explanation for the determination.

(4) The root cause analysis must not include any identifying information for any health care professional, facility employee, or patient involved.

(5) The registrant shall make appropriate modifications consistent with the corrective action plan to prevent future events.

(6) This rule does not remove a registrant's responsibility to report a licensed practitioner's unprofessional conduct to the department, as defined under RCW 18.130.180.

(7) A registrant is exempt from the requirements of this section when the registrant is subject to other coordinated quality improvement requirements under RCW 70.41.200 or 70.230.080, and includes CT events as part of the required coordinated quality improvement program.

(8) A registrant is exempt from the requirements of this section when the registrant includes CT events as part of a department-approved coordinated quality improvement program under RCW 43.70.510.

NEW SECTION

**WAC 246-226-065 Qualified medical physicist.** A qualified medical physicist must meet the requirements of either subsection (1), (2), or (3) of this section, and meet the continuing education and experience requirements of subsections (4) and (5) of this section to perform the duties of a qualified medical physicist. To qualify as a qualified medical physicist, an individual must:

- (1) Hold a valid certificate in:
  - (a) Diagnostic radiological physics or radiological physics from the American Board of Radiology;
  - (b) Diagnostic imaging physics from the American Board of Medical Physics; or
  - (c) Diagnostic radiology physics from the Canadian College of Physicists in Medicine.
- (2) Complete the following education and experience:
  - (a) Graduate from an accredited institution with a graduate degree in medical physics, radiological physics, physics, or another relevant physical science or engineering disci-

pline; including formal course work in the biological sciences with at least:

- (i) One course in biology or radiation biology; and
- (ii) One course in anatomy, physiology, or similar topics related to the practice of medical physics.

(b) Three years of documented experience in a clinical CT environment.

(3) Independently evaluated at least three CT X-ray systems in accordance with this chapter in the three years prior to **(the effective date of this chapter)**.

**(4) Continuing education:**

(a) The qualified medical physicist must have earned at least fifteen continuing medical education units in the three years preceding any department review or inspection.

(i) At least half the units must be accredited by the Accreditation Council for Continuing Medical Education or equivalent accreditation; and

(ii) At least one of the units must pertain to CT.

(b) The requirements of this subsection are waived if it has been less than three years since the qualified medical physicist met the requirements under subsection (2) of this section.

(5) **Continuing experience:** The qualified medical physicist must meet (a) or (b) of this subsection in the two years preceding any department review or inspection:

(a) Independently evaluated at least two CT X-ray systems in accordance with this chapter; or

(b) Evaluated at least five CT X-ray systems in accordance with this chapter under the direct supervision of a qualified medical physicist;

(c) The requirements of this subsection are waived if it has been less than two years since the qualified medical physicist met the requirements of subsection (2) or (3) of this section.

NEW SECTION

**WAC 246-226-070 Staffing requirements.** (1) Each registrant with a CT X-ray system shall employ or contract with a licensed health care professional to perform CT procedures. Nothing in this chapter prohibits the registrant from requiring the employed or contracted radiologic technologist to hold a recognized national certification or other accreditation relevant to CT, such as an American Registry of Radiologic Technologists (ARRT) CT certification, prior to performing CT procedures.

(2) The registrant shall provide training to operators performing CT procedures within six months of employment and annually thereafter. Training must be documented for all radiologic technologists in a single training log. The training must be equivalent to the International Atomic Energy Agency, *10 Pearls: Radiation Protection of Patients in CT*. This document is located on the department's web site at <http://www.doh.wa.gov/CommunityandEnvironment/Radiation/XRay>

(3) Each registrant with a CT X-ray system shall employ or contract with a qualified medical physicist and verify the qualified medical physicist meets the requirements of WAC 246-226-065 to perform the activities of the qualified medical physicist specified in this chapter.

(4) The registrant shall appoint a lead interpreting CT physician and a lead CT technologist to work cooperatively to:

(a) Develop, implement, and enforce policies, procedures, and registrant requirements that address:

(i) Radiation protection, the hazards of radiation exposure to both patients and facility personnel, and appropriate monitoring;

(ii) Identification of pregnant or potentially pregnant patients; and

(iii) Safety issues, including contrast use and sedation, and reducing exposure as much as reasonably possible for pediatric patients;

(b) Ensure that a physician is present and immediately available when contrast is administered to a patient; and

(c) Be responsible for:

(i) Implementing the quality control program required in WAC 246-226-080;

(ii) Ensuring compliance with the recommendations of the qualified medical physicist; and

(iii) Overseeing all CT-related materials including, but not limited to, clinical and phantom images, quality control data, and other information required by this chapter.

NEW SECTION

**WAC 246-226-080 Quality control program.** (1) The registrant shall establish, document, and implement a quality control program in consultation with the qualified medical physicist before using a CT X-ray system. The quality control program must be consistent with the manufacturer's recommended quality control standards if available. The quality control program must include, but is not limited to, the following:

(a) On each day of clinical use, measurement of water CTN and standard deviation;

(b) On each day of clinical use, artifact evaluation;

(c) For registrants using wet laser hardcopy for primary interpretation, weekly printer quality control;

(d) Monthly visual checklist;

(e) For registrants using dry laser hardcopy for primary interpretation, monthly printer quality control; and

(f) Monthly display monitors quality control.

(2) If the results of an evaluation included in the quality control program do not meet the requirements of this chapter, the registrant, in consultation with the qualified medical physicist, shall modify the quality control program and document the changes.

NEW SECTION

**WAC 246-226-090 Performance evaluation.** The qualified medical physicist shall conduct a performance evaluation to assess the quality and safety of the CT X-ray system and its operation.

(1) A performance evaluation must be conducted:

(a) Within thirty days of installation if the CT X-ray system passes all manufacture installation tests;

(b) Annually following the initial evaluation; and

(c) After any change, replacement, or reconfiguration of components which, in the opinion of the qualified medical

physicist, could cause a change in the radiation output or image quality.

(2) A performance evaluation must evaluate:

- (a) Alignment light accuracy;
- (b) Slice localization from scanned projection radiograph;
- (c) Table increment and travel accuracy;
- (d) Slice thickness accuracy;
- (e) Image quality, including the following:
  - (i) High-contrast resolution;
  - (ii) Low-contrast resolution;
  - (iii) Image uniformity;
  - (iv) Noise; and
  - (v) Artifact evaluation.
- (f) Gray level performance of CT acquisition display monitors;
  - (g) CTN uniformity, accuracy, and linearity;
  - (h) Safety, including the following:
    - (i) Visual inspection;
    - (ii) Audible and visual signals; and
    - (iii) Posting requirements.
  - (i) The ongoing quality control program under WAC 246-226-080, including evaluation results and corrective actions;
    - (j) Protocols;
    - (k) Radiation output by:
      - (i) Using a calibrated dosimetry system that:
        - (A) Has been calibrated within the preceding twenty-four months; and
        - (B) Is traceable to a national standard.
      - (ii) Using a CT dosimetry phantom that:
        - (A) Is a right circular cylinder of polymethyl methacrylate of density 1.19 plus or minus 0.01 grams per cubic centimeter;
        - (B) Is at least 14 centimeters in length;
        - (C) Is 32.0 centimeters in diameter for evaluating CT X-ray systems designed to image any section of the body;
        - (D) Is 16.0 centimeters for systems designed to image the head, or for whole body CT X-ray systems operated in the head scanning mode; and
        - (E) Provides for the placement of a dosimeter along the axis of rotation and along a line parallel to the axis of rotation 1.0 centimeters from the outer surface and within the phantom. The qualified medical physicist may place additional dosimeters or alignment devices at other locations.
    - (iii) Performing all dose assessments with the CT dosimetry phantom placed on the patient support device without additional attenuation materials present;
    - (iv) Measuring the  $CTDI_{vol}$  by orienting the CT dosimetry phantom so that the measurement point 1.0 centimeter from the peripheral outer surface of the phantom and the measurement point along the axial line of the phantom is in the same angular position within the gantry as the point of maximum surface  $CTDI_{vol}$  identified. The parameters must correspond to typical values used for the average patient protocol. For the purpose of determining the  $CTDI_{vol}$ , the manufacturer's nominal tomographic section thickness for that particular CT X-ray system may be used.

(l) Accuracy of the displayed dose on the CT X-ray system console and verify the displayed dose is within twenty percent of the measured dose.

(3) The qualified medical physicist shall prepare a performance evaluation report and provide it to the registrant within thirty days of completing the performance evaluation. The report must include:

- (a) A summary of the performance evaluation required under this section.
- (b) Recommendations for improvements, if any.
- (c) Type of radiation detection instrument or system used, including the date of the last calibration.

#### NEW SECTION

##### **WAC 246-226-100 Required records and reports.** (1)

The registrant shall maintain written information regarding the operation and calibration of the CT X-ray system including, but not limited to, the following:

- (a) Dates of the latest calibration and where the results are located; and
- (b) Quality control program results required under WAC 246-226-080 of at least the most recent quality control evaluation, and all additional schedules of evaluation established by the qualified medical physicist appropriate for the CT X-ray system.

(2) A registrant shall maintain the following documents for the durations specified and make them available for review by the department upon request:

(a) The most recent radiation protection survey and radiation shielding plan required under WAC 246-226-030 must be retained for as long as the CT X-ray system is in use.

(b) Written approval of the most recent annual review under WAC 246-226-040 for each CT X-ray system with date and signature of the registrant, qualified medical physicist, and lead interpreting CT physician.

(c) Most recent performance evaluation report required under WAC 246-226-090.

(d) Records documenting the qualifications of all personnel who worked with the CT X-ray system as a physician, radiologic technologist, and employed or contracted qualified medical physicist, during the past three years. Records of personnel no longer employed by the CT facility must be retained until the next department inspection following the employee's termination has been completed and the department has determined that the facility is in compliance with the staffing requirements of WAC 246-226-070.

(e) Training log required under WAC 246-226-070, must be retained for at least three years.

(f) All root cause analyses and corrective actions plans required under WAC 246-226-060, must be retained for at least ten years.

#### NEW SECTION

**WAC 246-226-110 Variance request.** A registrant may submit a written request to the department for a variance from the applicable regulations. The registrant shall not use CT X-ray system on patients until the department approves the variance request.



(1) The written request shall be addressed to: X-ray Supervisor, Office of Radiation Protection, Department of Health, P.O. Box 47827, Olympia, WA 98504-7827, and must include:

(a) The specific WAC reference or references of the rule for which the variance is requested;

(b) An explanation of the circumstances involved, and the reason why the rule cannot be followed;

(c) A description of how the proposed alternative meets the intent of the rule and how the registrant shall protect patients, employees, and the public;

(d) A description of the CT X-ray system to be used with supporting pictures or documents; and

(e) The time period for which the variance is requested.

(2) The department may grant a variance if it determines the variance is authorized by law and will not result in undue hazard to public health and safety or property. The department may impose conditions that are necessary to protect human health and safety during the term of the variance.

(3) The department may require the registrant to submit additional information.

(4) The department may conduct an on-site variance inspection to verify the information provided or if it determines that an inspection is necessary.

(5) As determined by the department, variances can be permanent or temporary.

(6) The department may at any time revoke a variance if it is determined that the conditions of the variance are not being followed.

### WSR 16-16-027

#### PROPOSED RULES

#### BUILDING CODE COUNCIL

[Filed July 22, 2016, 4:38 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-115.

Title of Rule and Other Identifying Information: Amendments to chapter 51-11C WAC, the Washington State Energy Code, commercial provisions.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 9, 2016, at 10 a.m.; and at the DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 14, 2016, at 10 a.m.

Date of Intended Adoption: November 18, 2016.

Submit Written Comments to: Steve Simpson, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov, fax (360) 586-9088, by October 21, 2016.

Assistance for Persons with Disabilities: Contact Peggy Bryden by August 25, 2014 [2016], (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. **Section C103.6.2** - replaces item 5 into the list of materials to be provided in operating manuals. This item was unintentionally left out when the list moved from Section C408 to Section C103.

2. **Section C104.2.4** - specifies duct and pipe systems in the requirements for mechanical inspections. Insulation and air leakage requirements in C403 only apply to ductwork, dampers and piping.

3. Definition for **Certified Commissioning Professional** - the list of organizations was revised to reflect those currently accredited. The language regarding the ability of the engineer of record to perform commissioning services was revised to provide clarity of intent and enforcement.

4. **New definitions for Doors** - add definitions for swinging and nonswinging doors, corresponding with the categories in Tables C402.1.3 and C402.1.4.

5. Definition for **Luminaire-Level Lighting Control** - the definition was modified to clarify the system design and control requirements.

6. **Section C401.2.1** - this section was added as a pointer to the new chapter for existing buildings.

7. **Section C402.1** - a pointer was added to item 2 to clarify that windows were included in the component performance option.

8. **Section C402.1.1.1** - editorial change to clarify that the section contained requirements for semi-heated spaces in addition to those found in other parts of this section.

9. **Table C402.1.3** - footnotes b and d were revised. Footnote b adds back in the specifications for thermal spacer blocks and footnote d removes term "below grade walls" since F-factors do not apply to walls.

10. **Section C402.1.4.4** - the title of the section was revised to clarify that it applies to walls with steel studs.

11. **Table C402.1.4** - footnote b was revised as noted in item 9, above.

12. **Section C402.1.5** - equations 4-2 and 4-3 were cleaned up to correct references and terms.

13. **Section C402.4.2** - clarifications to the minimum skylight fenestration area specifications.

14. **Section C402.4.4** - added clarification that non-opaque doors are intended to be included in the fenestration calculation in the same manner as vertical fenestration.

15. **Section C403.2.4.1** - exception 2 was reworded to provide clarity of intent.

16. **Section 405.11** - a section is added as a pointer to the commissioning requirements for electrical and lighting systems.

17. **Section C406.5** - revisions to the option for on-site renewable energy production to clarify it is based on annual energy production.

18. **Section C406.7** - clarification that the section is dealing with water heating energy use.

19. **Table C407.5.1(1)** - (a) Cooling System: "Same as proposed" is struck after Economizer to eliminate confusion. (b) Fan System: The last sentence regarding DOAS systems is deleted to eliminate confusion.

20. **Table C407.5.1(2)** - the column for residential systems was eliminated, along with footnote c since these systems are not governed by Section C403.6 as scoped in the title of the table.

21. **Sections C408.1/C408.2** - refrigeration systems were inadvertently left out of the commissioning scoping section when they were moved from C403 to C410.

22. **Section C410.1** - a sentence is added to allow use of the component performance option. This link was inadvertently omitted when the refrigeration section moved from C403 to C410.

23. **Section[s] C410.2/C410.2.1** - these two redundant sections were consolidated into one section.

24. **Section C503.6** - correction to references in the lighting section and a backwards phrase.

Reasons Supporting Proposal: RCW 19.27A.025 and 19.27A.045.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapters 19.27, 19.27A, and 34.05 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 41011, Olympia, WA 98504-1449, (360) 407-9278; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The changes being made are intended to provide clarification of existing rules and do not impose or change any technical requirements in the code.

A cost-benefit analysis is not required under RCW 34.05.328. There are no technical changes being made; editorial changes to existing rules are proposed to clarify those rules.

July 22, 2016  
Steve K. Simpson  
Council Chair

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

**WAC 51-11C-10300 Section C103—Construction documents.**

**C103.1 General.** Construction documents and other supporting data shall be submitted in one or more sets with each application for a permit. The construction documents shall be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the *code official* is authorized to require necessary construction documents to be prepared by a registered design professional.

**EXCEPTION:** The *code official* is authorized to waive the requirements for construction documents or other supporting data if the *code official* determines they are not necessary to confirm compliance with this code.

**C103.2 Information on construction documents.** Construction documents shall be drawn to scale upon suitable material. Electronic media documents are permitted to be submitted when *approved* by the *code official*. Construction documents shall be of sufficient clarity to indicate the location, nature and extent of the work proposed, and show in sufficient detail pertinent data and features of the building, sys-

tems and equipment as herein governed. Details shall include, but are not limited to, as applicable:

1. Insulation materials and their *R*-values.
2. Fenestration *U*-factors and SHGCs.
3. Area-weighted *U*-factor and SHGC calculations.
4. Mechanical system design criteria.
5. Mechanical and service water heating system and equipment types, sizes and efficiencies.
6. Economizer description.
7. Equipment and systems controls.
8. Fan motor horsepower (hp) and controls.
9. Duct sealing, duct and pipe insulation and location.
10. Lighting fixture schedule with wattage and control narrative.
11. Location of daylight zones on floor plan.
12. Air barrier details including all air barrier boundaries and associated square foot calculations on all six sides of the air barrier as applicable.

**C103.2.1 Building thermal envelope depiction.** The building's thermal envelope shall be represented on the construction documents.

**C103.3 Examination of documents.** The *code official* shall examine or cause to be examined the accompanying construction documents and shall ascertain whether the construction indicated and described is in accordance with the requirements of this code and other pertinent laws or ordinances.

**C103.3.1 Approval of construction documents.** When the *code official* issues a permit where construction documents are required, the construction documents shall be endorsed in writing and stamped "Reviewed for Code Compliance." Such *approved* construction documents shall not be changed, modified or altered without authorization from the *code official*. Work shall be done in accordance with the *approved* construction documents.

One set of construction documents so reviewed shall be retained by the *code official*. The other set shall be returned to the applicant, kept at the site of work and shall be open to inspection by the *code official* or a duly authorized representative.

**C103.3.2 Previous approvals.** This code shall not require changes in the construction documents, construction or designated occupancy of a structure for which a lawful permit has been heretofore issued or otherwise lawfully authorized, and the construction of which has been pursued in good faith within 180 days after the effective date of this code and has not been abandoned.

**C103.3.3 Phased approval.** The *code official* shall have the authority to issue a permit for the construction of part of an energy conservation system before the construction documents for the entire system have been submitted or *approved*, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holders of such permit shall proceed at their own risk without assurance that the permit for the entire energy conservation system will be granted.

**C103.4 Amended construction documents.** Changes made during construction that are not in compliance with the *approved* construction documents shall be resubmitted for approval as an amended set of construction documents.

**C103.5 Retention of construction documents.** One set of *approved* construction documents shall be retained by the *code official* for a period of not less than 180 days from date of completion of the permitted work, or as required by state or local laws.

**C103.6 Building documentation and close out submittal requirements.** The construction documents shall specify that the documents described in this section be provided to the building owner or owner's authorized agent within 180 days of the date of receipt of the certificate of occupancy.

**C103.6.1 Record documents.** Construction documents shall be updated to convey a record of the completed work. Such updates shall include mechanical, electrical and control drawings red-lined, or redrawn if specified, that show all changes to size, type and locations of components, equipment and assemblies.

**C103.6.2 Manuals.** An operating and maintenance manual shall be provided for each component, device, piece of equipment, and system (~~required to be commissioned~~) governed by this code. The manual shall include all of the following:

1. Submittal data indicating all selected options for each piece of equipment.
2. Manufacturer's operation manuals and maintenance manuals for each device, piece of equipment, and system requiring maintenance, except equipment not furnished as part of the project. Required routine maintenance actions, cleaning and recommended relamping shall be clearly identified.
3. Name and address of at least one service agency.
4. Controls system inspection schedule, maintenance and calibration information, wiring diagrams, schematics, and control sequence descriptions. Desired or field-determined setpoints shall be permanently recorded on control drawings at control devices or, for digital control systems, on the graphic where settings may be changed.

5. A narrative of how each system is intended to operate, including recommended setpoints.

**C103.6.3 Compliance documentation.** All energy code compliance forms and calculations shall be delivered in one document to the building owner as part of the project record documents, manuals, or as a standalone document. This document shall include the specific energy code year utilized for compliance determination for each system. NFRC certificates for the installed windows, list total area for each NFRC certificate, the interior lighting power compliance path (building area, space-by-space) used to calculate the lighting power allowance.

For projects complying with Section C401.2 Item 1, the documentation shall include:

1. The envelop insulation compliance path (prescriptive or component performance).

2. All completed code compliance forms, and all compliance calculations including, but not limited to, those required by sections C402.1.5, C403.2.12.1, C405.4, and C405.5.

For projects complying with Section C401.2 Item 2, the documentation shall include:

1. A list of all proposed envelope component types, areas and *U*-values.
2. A list of all lighting area types with areas, lighting power allowance, and installed lighting power density.
3. A list of each HVAC system modeled with the assigned and proposed system type.
4. Electronic copies of the baseline and proposed model input and output file. The input files shall be in a format suitable for rerunning the model and shall not consist solely of formatted reports of the inputs.

**C103.6.4 Systems operation training.** Training of the maintenance staff for equipment included in the manuals required by Section C103.6.2 shall include at a minimum:

1. Review of manuals and permanent certificate.
2. Hands-on demonstration of all normal maintenance procedures, normal operating modes, and all emergency shut-down and start-up procedures.
3. Training completion report.

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

**WAC 51-11C-10400 Section C104—Inspections.**

**C104.1 General.** Construction or work for which a permit is required shall be subject to inspection by the *code official* or his designated agent, and such construction or work shall remain accessible and exposed for inspection purposes until *approved*. It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the *code official* nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material, product, system or building component required to allow inspection to validate compliance with this code.

**C104.2 Required inspections.** The *code official* or his designated agent, upon notification, shall make the inspections set forth in Sections C104.2.1 through C104.2.6.

**C104.2.1 Footing and foundation inspection.** Inspections associated with footings and foundations shall verify compliance with the code as to *R*-value, location, thickness, depth of burial and protection of insulation as required by the code and *approved* plans and specifications.

**C104.2.2 Insulation and fenestration inspection.** Inspections shall be made before application of interior finish and shall verify compliance with the code as to types of insulation and corresponding *R*-values and their correct location and proper installation; fenestration properties (*U*-factor, SHGC and VT) and proper installation; and air leakage controls as required by the code and *approved* plans and specifications.

**C104.2.3 Plumbing inspection.** Inspections verify compliance as required by the code and *approved* plans and speci-

cations as to types of insulation and corresponding *R*-values and protection, required controls and required heat traps.

**C104.2.4 Mechanical inspection.** Inspections shall verify compliance as required by the code and *approved* plans and specifications as to installed HVAC equipment type and size, required controls, duct and piping system insulation and corresponding *R*-value, duct system and damper air leakage and required energy recovery and/or economizers.

**C104.2.5 Electrical and lighting inspection.** Inspections shall verify compliance as required by the code and *approved* plans and specifications as to installed lighting systems, components and controls; motors and installation of an electric meter for each dwelling unit.

**C104.2.6 Final inspection.** The building shall have a final inspection and not be occupied until *approved*.

**C104.3 Reinspection.** A building shall be reinspected when determined necessary by the *code official*.

**C104.4 Approved inspection agencies.** The *code official* is authorized to accept reports of *approved* inspection agencies, provided such agencies satisfy the requirements as to qualifications and reliability relevant to the building components and systems they are inspecting.

**C104.5 Inspection requests.** It shall be the duty of the holder of the permit or their duly authorized agent to notify the *code official* when work is ready for inspection. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code.

**C104.6 Reinspection and testing.** Where any work or installation does not pass an initial test or inspection, the necessary corrections shall be made so as to achieve compliance with this code. The work or installation shall then be resubmitted to the *code official* for inspection and testing.

**C104.7 Approval.** After the prescribed tests and inspections indicate that the work complies in all respects with this code, a notice of approval shall be issued by the *code official*.

**C104.7.1 Revocation.** The *code official* is authorized to, in writing, suspend or revoke a notice of approval issued under the provisions of this code wherever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the building or structure, premise, or portion thereof is in violation of any ordinance or regulation or any of the provisions of this code.

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

**WAC 51-11C-20203 Section C202.3—C.**

**C-FACTOR (THERMAL CONDUCTANCE).** The coefficient of heat transmission (surface to surface) through a building component or assembly, equal to the time rate of heat flow per unit area and the unit temperature difference between the warm side and cold side surfaces (Btu/h ft<sup>2</sup> x °F) [W/(m<sup>2</sup> x K)].

**CERTIFIED COMMISSIONING PROFESSIONAL.** An individual who is certified by an ANSI/ISO/IEC 17024:2012 accredited

organization to lead, plan, coordinate and manage commissioning teams and implement commissioning processes. The individual's accredited certification required by the referenced standard provides a measured level of experience and competence with the various whole building commissioning processes and ability to deliver quality service. Accredited organizations include, but are not limited to, ((~~AABC, BCA~~)) ACG, BCCB, and NEBB. The engineer of record for the project may be ((~~considered~~)) approved by the jurisdiction to perform the certified commissioning professional services if ((~~she/he is qualified to perform~~)) the individual demonstrates previous experience performing commissioning services for the entire commissioning process.

**CIRCULATING HOT WATER SYSTEM.** A specifically designed water distribution system where one or more pumps are operated in the service hot water piping to circulate heated water from the water-heating equipment to the fixture supply and back to the water-heating equipment.

**CLERESTORY FENESTRATION.** See "FENESTRATION."

**CLIMATE ZONE.** A geographical region based on climatic criteria as specified in this code.

**CODE OFFICIAL.** The officer or other designated authority charged with the administration and enforcement of this code, or a duly authorized representative.

**COEFFICIENT OF PERFORMANCE (COP) - COOLING.** The ratio of the rate of heat removal to the rate of energy input, in consistent units, for a complete refrigerating system or some specific portion of that system under designated operating conditions.

**COEFFICIENT OF PERFORMANCE (COP) - HEATING.** The ratio of the rate of heat removal to the rate of heat delivered to the rate of energy input, in consistent units, for a complete heat pump system, including the compressor and, if applicable, auxiliary heat, under designated operating conditions.

**COMMERCIAL BUILDING.** For this code, all buildings that are not included in the definition of "Residential buildings."

**COMPUTER ROOM.** A room whose primary function is to house equipment for the processing and storage of electronic data and that has a design electronic data equipment power density exceeding 20 watts per square foot of conditioned area.

**CONDENSING UNIT.** A factory-made assembly of refrigeration components designed to compress and liquefy a specific refrigerant. The unit consists of one or more refrigerant compressors, refrigerant condensers (air-cooled, evaporatively cooled, or water-cooled), condenser fans and motors (where used) and factory-supplied accessories.

**CONDITIONED FLOOR AREA.** The horizontal projection of the floors associated with the *conditioned space*.

**CONDITIONED SPACE.** An area, room or space that is enclosed within the building thermal envelope and that is directly heated or cooled or that is indirectly heated or cooled. Spaces are indirectly heated or cooled where they communicate through openings with conditioned spaces, where they are separated from conditioned spaces by uninsulated walls, floors or ceilings, or where they contain uninsulated ducts, piping or other sources of heating or cooling.

**CONTINUOUS AIR BARRIER.** A combination of materials and assemblies that restrict or prevent the passage of air through the building thermal envelope.

**CONTINUOUS INSULATION (CI).** Insulating material that is continuous across all structural members without thermal bridges other than fasteners and service openings. It is installed on the interior or exterior or is integral to any opaque surface of the building envelope.

**CONTROLLED PLANT GROWTH ENVIRONMENT.** Group F and U buildings or spaces that are specifically controlled to facilitate and enhance plant growth and production by manipulating various indoor environment conditions. Technologies include indoor agriculture, cannabis growing, hydroponics, aquaculture and aquaponics. Controlled indoor environment variables include, but are not limited to, temperature, air quality, humidity, and carbon dioxide.

**CURTAIN WALL.** Fenestration products used to create an external nonload-bearing wall that is designed to separate the exterior and interior environments.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

**WAC 51-11C-20204 Section C202.4—D.**

**DATA ACQUISITION SYSTEM.** An electronic system managed by the building owner to collect, tabulate and display metering information.

**DAYLIGHT RESPONSIVE CONTROL.** A device or system that provides automatic control of electric light levels based on the amount of daylight in a space.

**DAYLIGHT ZONE.** The portion of the building interior floor area that is illuminated by natural daylight through sidelight and toplight fenestration.

**DEMAND CONTROL VENTILATION (DCV).** A ventilation system capability that provides for the automatic reduction of outdoor air intake below design rates when the actual occupancy of spaces served by the system is less than design occupancy.

**DEMAND RECIRCULATION WATER SYSTEM.** A water distribution system where pumps prime the service hot water piping with heated water upon demand for hot water.

**DOOR, NONSWINGING.** Roll-up, tilt-up, metal coiling and sliding doors, access hatches, and all other doors that are not swinging doors.

**DOOR, SWINGING.** Doors that are hinged on one side and revolving doors.

**DUCT.** A tube or conduit utilized for conveying air. The air passages of self-contained systems are not to be construed as air ducts.

**DUCT SYSTEM.** A continuous passageway for the transmission of air that, in addition to ducts, includes duct fittings, dampers, plenums, fans and accessory air-handling equipment and appliances.

**DWELLING UNIT.** A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

**DYNAMIC GLAZING.** Any fenestration product that has the fully reversible ability to change its performance properties, including *U*-factor, SHGC, or VT.

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

**WAC 51-11C-20212 Section C202.12—L.**

**LABELED.** Equipment, materials or products to which have been affixed a label, seal, symbol or other identifying mark of a nationally recognized testing laboratory, inspection agency or other organization concerned with product evaluation that maintains periodic inspection of the production of the above-labeled items and whose labeling indicates either that the equipment, material or product meets identified standards or has been tested and found suitable for a specified purpose.

**LINER SYSTEM (LS).** A system that includes the following:

1. A continuous vapor barrier liner membrane that is installed below the purlins and that is uninterrupted by framing members.

2. An uncompressed, unfaced insulation resting on top of the liner membrane and located between the purlins.

For multilayer installations, the last rated *R*-value of insulation is for unfaced insulation draped over purlins and then compressed when the metal roof panels are attached.

**LISTED.** Equipment, materials, products or services included in a list published by an organization acceptable to the *code official* and concerned with evaluation of products or services that maintains periodic inspection of production of *listed* equipment or materials or periodic evaluation of services and whose listing states either that the equipment, material, product or service meets identified standards or has been tested and found suitable for a specified purpose.

**LOW-SLOPED ROOF.** A roof having a slope less than 2 units vertical in 12 units horizontal.

**LOW-VOLTAGE DRY-TYPE DISTRIBUTION TRANSFORMER.** A transformer that is air-cooled, does not use oil as a coolant, has an input voltage less than or equal to 600.

**LOW-VOLTAGE LIGHTING.** A lighting system consisting of an isolating power supply, the low voltage luminaires, and associated equipment that are all identified for the use. The output circuits of the power supply operate at 30 volts (42.4 volts peak) or less under all load conditions.

**LUMINAIRE.** A complete lighting unit consisting of a lamp or lamps together with the housing designed to distribute the light, position and protect the lamps, and connect the lamps to the power supply.

**LUMINAIRE-LEVEL LIGHTING CONTROL.** A lighting system consisting of one or more luminaire(s) each with embedded lighting control logic, occupancy and ambient light sensors, local or central wireless networking capabilities, and local override switching capability.

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

**WAC 51-11C-40100 Section C401—General.**

**C401.1 Scope.** The provisions in this chapter are applicable to commercial buildings and their building sites.

**C401.2 Application.** Commercial buildings shall comply with one of the following:

1. The requirements of Sections C402, C403, C404, C405, C406, C408, C409 and C410.
2. The requirements of Section C407, C408, C409, C410, C402.5, C403.2, C404, C405.2, C405.3, C405.4, C405.6 and C405.7. The building energy consumption shall be equal to or less than 87, 90, or 93 percent of the standard reference design building, depending on the option selected per Section C407.3.

**C401.2.1 Application to existing buildings.** Work on existing buildings shall comply with Chapter 5 in addition to the applicable provisions of Chapter 4.

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

**WAC 51-11C-40210 Section C402.1—General (Prescriptive).**

**C402.1 General (Prescriptive).** Building thermal envelope assemblies for buildings that are intended to comply with the code on a prescriptive basis, in accordance with the compliance path described in Item 1 of Section C401.2, shall comply with the following:

1. The opaque portions of the building thermal envelope shall comply with the specific insulation requirements of Section C402.2 and the thermal requirements of either the *R*-value based method of Section C402.1.3, the *U*-, *C*- and *F*-factor based method of Section C402.1.4, or the component performance alternative of Section C402.1.5.
2. Fenestration in building envelope assemblies shall comply with Section C402.4, or the component performance alternative of Section C402.1.5.
3. Air leakage of building envelope assemblies shall comply with Section C402.5.

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

**WAC 51-11C-40211 Section C402.1.1—Low energy buildings.**

**C402.1.1 Low energy buildings.** The following buildings, or portions thereof, separated from the remainder of the building by *building thermal envelope* assemblies complying with this code shall be exempt from all thermal envelope provision of this code:

1. Those that are heated and/or cooled with a peak design rate of energy usage less than 3.4 Btu/hx ft<sup>2</sup> (10.7 W/m<sup>2</sup>) or 1.0 watt/ft<sup>2</sup> (10.7 W/m<sup>2</sup>) of floor area for space conditioning purposes.
2. Those that do not contain *conditioned space*.
3. Greenhouses where cooling does not include a condensing unit and that are isolated from any other conditioned space.
4. Unstaffed equipment shelters or cabinets used solely for personal wireless service facilities.

**C402.1.1.1 Semi-heated buildings and spaces.** The building envelope of semi-heated buildings, or portions thereof,

shall comply with the same requirements as that for conditioned spaces in Section C402, except as modified by this section. Building envelope assemblies separating conditioned space from *semi-heated space* shall comply with exterior envelope insulation requirements. *Semi-heated spaces* heated by mechanical systems that do not include electric resistance heating equipment are not required to comply with the opaque wall insulation provisions of Section C402.2.3 for walls that separate semi-heated spaces from the exterior or low energy spaces. *Semi-heated spaces* shall be calculated separately from other conditioned spaces for compliance purposes. Opaque walls in *semi-heated spaces* shall be calculated as fully code compliant opaque walls for both the target and proposed for the Target UA calculations for Component Performance compliance per Section C402.1.5, and for the Standard Reference Design for Total Building Performance compliance per Section C407.

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

**WAC 51-11C-402121 Table C402.1.3—Opaque thermal envelope assembly *R*-value requirements.**

**Table C402.1.3  
Opaque Thermal Envelope Insulation Component  
Minimum Requirements, *R*-value Method<sup>a,g</sup>**

CLIMATE ZONE	5 AND MARINE 4	
	All Other	Group R
<b>Roofs</b>		
Insulation entirely above deck	R-38ci	R-38ci
Metal buildings <sup>b</sup>	R-25 + R-11 LS	R-25 + R-11 LS
Attic and other	R-49	R-49
<b>Walls, Above Grade</b>		
Mass	R-9.5ci <sup>c</sup>	R-13.3ci
Metal buildings	R-19ci	R-19ci
Steel framed	R-13 + R-10ci	R-19 + R-8.5ci
Wood framed and other	R-21 int	R-21 int
<b>Walls, Below Grade</b>		
Below-grade wall <sup>d</sup>	Same as above grade	Same as above grade
<b>Floors</b>		
Mass <sup>f</sup>	R-30ci	R-30ci
Joist/framing	R-30 <sup>e</sup>	R-30 <sup>e</sup>
<b>Slab-on-Grade Floors</b>		
Unheated slabs	R-10 for 24" below	R-10 for 24" below
Heated slabs	R-10 perimeter & under entire slab	R-10 perimeter & under entire slab

CLIMATE ZONE	5 AND MARINE 4	
	All Other	Group R
Opaque Doors		
Nonswinging	R-4.75	R-4.75

For SI: 1 inch = 25.4 mm. ci = Continuous insulation. NR = No requirement.

LS = Liner system—A continuous membrane installed below the purlins and uninterrupted by framing members. Uncompressed, unfaced insulation rests on top of the membrane between the purlins.

- a Assembly descriptions can be found in Chapter 2 and Appendix A.
- b Where using *R*-value compliance method, a thermal spacer block with minimum thickness of 1/2-inch and minimum *R*-value of R-3.5 shall be provided, otherwise use the *U*-factor compliance method in Table C402.1.4.
- c Exception: Integral insulated concrete block walls complying with ASTM C90 with all cores filled and meeting both of the following:
  1. At least 50 percent of cores must be filled with vermiculite or equivalent fill insulation; and
  2. The building thermal envelope encloses one or more of the following uses: Warehouse (storage and retail), gymnasium, auditorium, church chapel, arena, kennel, manufacturing plant, indoor swimming pool, pump station, water and waste water treatment facility, storage facility, storage area, motor vehicle service facility. Where additional uses not listed (such as office, retail, etc.) are contained within the building, the exterior walls that enclose these areas may not utilize this exception and must comply with the appropriate mass wall *R*-value from Table C402.1.3/*U*-factor from Table C402.1.4.

- d Where heated slabs are below grade, (~~below-grade walls~~) they shall comply with the (~~exterior~~) insulation requirements for heated slabs.
- e Steel floor joist systems shall be insulated to R-38 + R-10ci.
- f "Mass floors" shall include floors weighing not less than:
  1. 35 pounds per square foot of floor surface area; or
  2. 25 pounds per square foot of floor surface area where the material weight is not more than 120 pounds per cubic foot.
- g For roof, wall or floor assemblies where the proposed assembly would not be continuous insulation, an alternate nominal *R*-value compliance option for assemblies with isolated metal penetrations of otherwise continuous insulation is:

Assemblies with continuous insulation (see definition)	Alternate option for assemblies with metal penetrations, greater than 0.04% but less than 0.08%	Alternate option for assemblies with metal penetrations, greater than or equal to 0.08% but less than 0.12%
R-9.5ci	R-11.9ci	R-13ci
R-11.4ci	R-14.3ci	R-15.7ci
R-13.3ci	R-16.6ci	R-18.3ci
R-15.2ci	R-19.0ci	R-21ci
R-30ci	R-38ci	R-42ci
R-38ci	R-48ci	R-53ci
R-13 + R-7.5ci	R-13 + R-9.4ci	R-13 + R-10.3ci
R-13 + R-10ci	R-13 + R-12.5ci	R-13 + R-13.8ci
R-13 + R-12.5ci	R-13 + R-15.6ci	R-13 + R-17.2ci
R-13 + R-13ci	R-13 + R-16.3ci	R-13 + R-17.9ci
R-19 + R-8.5ci	R-19 + R-10.6ci	R-19 + R-11.7ci
R-19 + R-14ci	R-19 + R-17.5ci	R-19 + R-19.2ci
R-19 + R-16ci	R-19 + R-20ci	R-19 + R-22ci
R-20 + R-3.8ci	R-20 + R-4.8ci	R-20 + R-5.3ci
R-21 + R-5ci	R-21 + R-6.3ci	R-21 + R-6.9ci

This alternate nominal *R*-value compliance option is allowed for projects complying with all of the following:

1. The ratio of the cross-sectional area, as measured in the plane of the surface, of metal penetrations of otherwise continuous insulation to the opaque surface area of the assembly is greater than 0.0004 (0.04%), but less than 0.0012 (0.12%).
2. The metal penetrations of otherwise continuous insulation are isolated or discontinuous (e.g., brick ties or other discontinuous metal attachments, offset brackets supporting shelf angles that allow insulation to go between the shelf angle and the primary portions of the wall structure). No continuous metal elements (e.g., metal studs, z-girts, z-channels, shelf angles) penetrate the otherwise continuous portion of the insulation.
3. Building permit drawings shall contain details showing the locations and dimensions of all the metal penetrations (e.g., brick ties or other discontinuous metal attachments, offset brackets, etc.) of otherwise continuous insulation. In addition, calculations shall be provided showing the ratio of the cross-sectional area of metal penetrations of otherwise continuous insulation to the overall opaque wall area.

For other cases where the proposed assembly is not continuous insulation, see Section C402.1.4 for determination of *U*-factors for assemblies that include metal other than screws and nails.

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

**WAC 51-11C-40214 Section C402.1.4—Assembly *U*-factor, *C*-factor, or *F*-factor-based method.**

**C402.1.4 Assembly *U*-factor, *C*-factor, or *F*-factor-based method.** Building thermal envelope opaque assemblies intended to comply on an assembly *U*-, *C*-, or *F*-factor basis shall have a *U*-, *C*-, or *F*-factor not greater than that specified in Table C402.1.4. Commercial buildings or portions of commercial buildings enclosing Group R occupancies shall use the *U*-, *C*-, or *F*-factor from the "Group R" column of Table C402.1.4. Commercial buildings or portions of commercial buildings enclosing occupancies other than Group R shall use the *U*-, *C*-, or *F*-factor from the "All other" column of Table C402.1.4. The *C*-factor for the below-grade exterior walls of the building envelope, as required in accordance with Table C402.1.4, shall extend to the level of the lowest conditioned floor. Opaque swinging doors shall comply with Table C402.1.4 and opaque nonswinging doors shall comply with Table C402.1.3 or C402.1.4. The *U*-factors for typical construction assemblies are included in Appendix A. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook—Fundamentals* using the framing factors listed in Appendix A where applicable and shall include the thermal bridging effects of framing materials.

**C402.1.4.1 Thermal resistance of cold-formed steel stud walls.** *U*-factors of walls with cold-formed steel studs shall be permitted to be determined in accordance with Equation 4-1:

**Equation 4-1:**

$$U = 1/[R_s + (ER)]$$

Where:

- R<sub>s</sub>* = The cumulative *R-value* of the wall components along the path of heat transfer, excluding the cavity insulation and steel studs.
- ER* = The effective *R-value* of the cavity insulation with steel studs.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

**WAC 51-11C-402141 Table C402.1.4—Opaque thermal envelope requirements, *U*-factor method.**

**Table C402.1.4**

**Opaque Thermal Envelope Requirements<sup>a,f</sup>**

CLIMATE ZONE	5 AND MARINE 4	
	All Other	Group R
<b>Roofs</b>		
Insulation entirely above deck	U-0.027	U-0.027
Metal buildings	U-0.031	U-0.031
Attic and other	U-0.021	U-0.021
Joist or single rafter	U-0.027	U-0.027
<b>Walls, Above Grade</b>		
Mass	U-0.104 <sup>d</sup>	U-0.078
Mass transfer deck slab edge	U-0.20	U-0.20
Metal building	U-0.052	U-0.052
Steel framed	U-0.055	U-0.055
Wood framed and other	U-0.054	U-0.054
<b>Walls, Below Grade</b>		
Below-grade wall <sup>b</sup>	Same as above grade	Same as above grade
<b>Floors</b>		
Mass <sup>e</sup>	U-0.031	U-0.031
Joist/framing	U-0.029	U-0.029
<b>Slab-on-Grade Floors</b>		
Unheated slabs	F-0.54	F-0.54
Heated slabs <sup>e</sup>	F-0.55	F-0.55
<b>Opaque Doors</b>		
Swinging	U-0.37	U-0.37
Nonswinging	U-0.34	U-0.34

<sup>a</sup> Use of opaque assembly *U*-factors, *C*-factors, and *F*-factors from Appendix A is required unless otherwise allowed by Section C402.1.4.



- b Where heated slabs are below grade, (~~below-grade walls~~) they shall comply with the *F*-factor requirements for heated slabs.
- c Heated slab *F*-factors shall be determined specifically for heated slabs. Unheated slab factors shall not be used.
- d Exception: Integral insulated concrete block walls complying with ASTM C90 with all cores filled and meeting both of the following:
  1. At least 50 percent of cores must be filled with vermiculite or equivalent fill insulation; and
  2. The building thermal envelope encloses one or more of the following uses: Warehouse (storage and retail), gymnasium, auditorium, church chapel, arena, kennel, manufacturing plant, indoor swimming pool, pump station, water and waste water treatment facility, storage facility, storage area, motor vehicle service facility. Where additional uses not listed (such as office, retail, etc.) are contained within the building, the exterior walls that enclose these areas may not utilize this exception and must comply with the appropriate mass wall R-value from Table C402.1.3/*U*-factor from Table C402.1.4.
- e "Mass floors" shall include floors weighing not less than:
  1. 35 pounds per square foot of floor surface area; or
  2. 25 pounds per square foot of floor surface area where the material weight is not more than 120 pounds per cubic foot.
- f Opaque assembly *U*-factors based on designs tested in accordance with ASTM C1363 shall be permitted. The *R*-value of continuous insulation shall be permitted to be added or subtracted from the original test design.

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

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

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

**Equation 4-2**

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

Where:

- A = Sum of the (UA Dif) values for each distinct assembly type of the building thermal envelope, other than slabs on grade (~~and below-grade walls~~)
  - UA Dif = UA Proposed - UA Table
  - UA Proposed = Proposed *U*-value x Area
  - UA Table = (*U*-factor from Table C402.1.4 or C402.4 (~~or Section C402.1.3~~)) x Area
- B = Sum of the (FL Dif) values for each distinct slab on grade perimeter condition of the building thermal envelope
  - FL Dif = FL Proposed - FL Table
  - FL Proposed = Proposed *F*-value x Perimeter length

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

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

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

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

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

$$CA = (\text{Proposed Vertical Fenestration Area}) - (\text{Vertical Fenestration Area allowed})$$

$$UA_{\text{Wall}} = \text{Sum of the (UA Proposed) values for each opaque assembly of the exterior wall}$$

$$UAW = \text{Sum of the (UA proposed) values for each above-grade wall assembly}$$

$$U_{\text{Wall}} = UAW / \text{sum of wall area (excludes vertical fenestration area)}$$

$$UAV = \text{Sum of the (UA Proposed) values for each vertical fenestration assembly}$$

$$UV = UAV / \text{total vertical fenestration area}$$

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

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

$$DA = (\text{Proposed Skylight Area}) - (\text{Allowable Skylight Area from Section C402.4.1})$$

$$UAR = \text{Sum of the (UA Proposed) values for each roof assembly}$$

$$U_{\text{Roof}} = UAR / \text{sum of roof area (excludes skylight area)}$$

UAS = Sum of the (UA Proposed) values for each skylight assembly  
 US = UAS/total skylight area

**C402.1.5.1 Component U-factors.** The *U*-factors for typical construction assemblies are included in Chapter 3 and Appendix A. These values shall be used for all calculations. Where proposed construction assemblies are not represented in Chapter 3 or Appendix A, values shall be calculated in accordance with the ASHRAE *Handbook—Fundamentals*, using the framing factors listed in Appendix A.

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

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

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

- a. For thermal transmittance purposes, not include the ceiling proper nor the plenum space as part of the assembly; and
  - b. For gross area purposes, be based upon the interior face of the upper plenum surface.
5. Tables in ASHRAE 90.1-2010 Normative Appendix A.

**C402.1.5.2 SHGC rate calculations.** Solar heat gain coefficient shall comply with Table C402.4. The target SHGCA<sub>t</sub> and the proposed SHGCA<sub>p</sub> shall be calculated using Equations 4-3 and 4-4 and the corresponding areas and SHGCs from Table C402.4.

**Equation 4-3—Target SHGCA<sub>t</sub>**

**Equation C402-3  
Target SHGCA<sub>t</sub>**

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

Where:

- SHGCA<sub>t</sub> = The target combined solar heat gain of the target fenestration area.
- SHGC<sub>ogt</sub> = The solar heat gain coefficient for skylight fenestration found in Table ((~~C402.3~~) C402.4).
- A<sub>ogt</sub> = The proposed skylight area.

SHGC<sub>vgt</sub> ≡ The solar heat gain coefficient for vertical fenestration found in Table ((~~C402.3—Buildings utilizing Section C402.3.1.3 shall use the SHGC value specified there. The SHGC may be adjusted for projection factors per the requirements of Section C402.3~~) C402.4 which corresponds to the proposed total fenestration area as a percentage of gross exterior wall).

- A<sub>vgt</sub> = The proposed vertical fenestration area with nonmetal framing.
- A<sub>vgmt</sub> = The proposed vertical fenestration area with fixed metal framing.
- A<sub>vgmot</sub> = The proposed vertical fenestration area with operable metal framing.
- A<sub>vgdt</sub> = The proposed vertical fenestration area of entrance doors.

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

**Equation 4-4**

**Proposed SHGCA<sub>p</sub>**

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

Where:

- SHGCA<sub>t</sub> = The combined proposed solar heat gain of the proposed fenestration area.
- SHGC<sub>og</sub> = The solar heat gain coefficient of the skylights.
- A<sub>og</sub> = The skylight area.
- SHGC<sub>vg</sub> = The solar heat gain coefficient of the vertical fenestration.
- A<sub>vg</sub> = The vertical fenestration area.

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

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

**WAC 51-11C-40220 Section C402.2—Specific insulation requirements.**

**C402.2 Specific building thermal envelope insulation requirements (Prescriptive).** Insulation in building thermal envelope opaque assemblies shall comply with Sections C402.2.1 through C402.2.6 and Table C402.1.3.

Where this section refers to installing insulation levels as specified in Section C402.1.3, assemblies complying with Section C402.1.4 and buildings complying with Section C402.1.5 are allowed to install alternate levels of insulation so long as the *U*-factor of the insulated assembly is less than or equal to the *U*-factor required by the respective path.

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

**WAC 51-11C-40232 Section C402.4.2—Minimum skylight fenestration area.**

**C402.4.2 Minimum skylight fenestration area.** For single story buildings only, in an enclosed space greater than 2,500 square feet (232 m<sup>2</sup>) in floor area, directly under a roof with not less than 75 percent of the ceiling area with a ceiling height greater than 15 feet (4572 mm), and used as an office, lobby, atrium, concourse, corridor, gymnasium/exercise center, convention center, automotive service, manufacturing,

nonrefrigerated warehouse, retail store, distribution/sorting area, transportation, or workshop, skylights are required to provide a total toplight *daylight zone* area not less than half the floor area and shall provide one of the following:

1. A minimum ratio of skylight area to toplight *daylight zone* area under skylights of not less than 3 percent where all skylights have a VT of at least 0.40 as determined in accordance with Section C303.1.3.

2. A minimum skylight effective aperture of at least 1 percent determined in accordance with Equation 4-5.

$$\text{Skylight Effective Aperture} = (0.85 \times \text{Skylight Area} \times \text{Skylight VT} \times \text{WF}) / \text{Daylight zone under skylight}$$

**(Equation 4-5)**

Where:

- Skylight area = Total fenestration area of skylights.
- Skylight VT = Area weighted average visible transmittance of skylights.
- WF = Area weighted average well factor, where well factor is 0.9 if light well depth is less than 2 feet (610 mm), or 0.7 if light well depth is 2 feet (610 mm) or greater.
- Light well depth = Measure vertically from the underside of the lowest point of the skylight glazing to the ceiling plane under the skylight.

EXCEPTION: Skylights designed and installed to exclude direct sunlight entering the occupied space by the use of fixed or automated baffles, or the geometry of skylight and light well.

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

**WAC 51-11C-40234 Section C402.4.4—Doors.**

**C402.4.4 Doors.** *Opaque doors* shall comply with the applicable requirements for doors as specified in Tables C402.1.3 and C402.1.4 and be considered part of the gross area of above grade walls that are part of the *building thermal envelope*. Other doors shall comply with the provisions of Section C402.4.3 for vertical fenestration and the entire door area, including the frame, shall be considered part of the fenestration area of the building thermal envelope.

EXCEPTION: Skylights above daylight zones of enclosed spaces are not required in:

1. Reserved.
2. Spaces where the designed *general lighting* power densities are less than 0.5 W/ft<sup>2</sup> (5.4 W/m<sup>2</sup>).
3. Areas where it is documented that existing structures or natural objects block direct beam sunlight on at least half of the roof over the enclosed area for more than 1,500 daytime hours per year between 8 a.m. and 4 p.m.
4. Spaces where the daylight zone under rooftop monitors is greater than 50 percent of the enclosed space floor area.
5. Spaces where the total floor area minus the sidelight daylight zone area is less than 2,500 square feet (232 m<sup>2</sup>), and where the lighting in the daylight zone is controlled in accordance with Section C405.2.3.1.

**C402.4.2.1 Lighting controls in daylight zones under skylights.** Daylight responsive controls complying with Section C405.2.4.1 shall be provided to control all electric lights within daylight zones.

**C402.4.2.2 Haze factor.** Skylights in office, storage, automotive service, manufacturing, nonrefrigerated warehouse, retail store, and distribution/sorting area spaces shall have a glazing material or diffuser with a haze factor greater than 90 percent when tested in accordance with ASTM D 1003.

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

**WAC 51-11C-403241 Section C403.2.4.1—Thermostatic controls.**

**C403.2.4.1 Thermostatic controls.** The supply of heating and cooling energy to each *zone* shall be controlled by individual thermostatic controls capable of responding to temperature within the *zone*. Controls in the same zone or in neighboring zones connected by openings larger than 10 percent of the floor area of either zone shall not allow for simultaneous heating and cooling. At a minimum, each floor of a building shall be considered as a separate zone. Controls on systems required to have economizers and serving single zones shall have multiple cooling stage capability and activate the economizer when appropriate as the first stage of cooling. See Section C403.3.1 for further economizer requirements. Where humidification or dehumidification or both is provided, at least one humidity control device shall be provided for each humidity control system.

EXCEPTIONS: 1. Independent perimeter systems that are designed to offset only building envelope heat losses or gains or both serving one or more perimeter *zones* also served by an interior system provided:

- 1.1. The perimeter system includes at least one thermostatic control *zone* for each building exposure having exterior walls facing only one orientation (within +/-45 degrees) (0.8 rad) for more than 50 contiguous feet (15,240 mm);
- 1.2. The perimeter system heating and cooling supply is controlled by a thermostat located within the *zones* served by the system; and
- 1.3. Controls are configured to prevent the perimeter system from operating in a different heating or cooling mode from the other equipment within the zones or from neighboring zones connected by openings larger than 10 percent of the floor area of either zone.
- 2. ~~((Any nonperimeter zones not separated from perimeter zones by an interior wall with openings no larger than 10 percent of the perimeter floor zone area shall have setpoints and deadbands coordinated so that cooling in adjacent zones shall not operate until the adjacent zone temperature is 5°F (2.8°C) higher than the perimeter zone temperature.)) Any interior zone open to a perimeter zone shall have setpoints and deadbands coordinated to that cooling in the interior zone shall not operate while the perimeter zone is in heating until the interior zone temperature is 5°F (2.8°C) higher than the perimeter zone temperature, unless the interior and perimeter zones are separated by a partition whose permanent openings are smaller than 10 percent of the perimeter zone floor area.~~

**C403.2.4.1.1 Heat pump supplementary heat.** Unitary air cooled heat pumps shall include microprocessor controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F.

**EXCEPTION:** Packaged terminal heat pumps (PTHPs) of less than 2 tons (24,000 Btu/hr) cooling capacity provided with controls that prevent supplementary heater operation above 40°F.

**C403.2.4.1.2 Deadband.** Where used to control both heating and cooling, zone thermostatic controls shall be configured to provide a temperature range or deadband of at least 5°F (2.8°C) within which the supply of heating and cooling energy to the zone is shut off or reduced to a minimum.

**EXCEPTIONS:**

- 1. Thermostats requiring manual changeover between heating and cooling modes.
- 2. Occupancies or applications requiring precision in indoor temperature control as *approved* by the *code official*.

**C403.2.4.1.3 Setpoint overlap restriction.** Where a *zone* has a separate heating and a separate cooling thermostatic control located within the zone, a limit switch, mechanical stop or direct digital control system with software programming shall be configured to prevent the heating set point from exceeding the cooling setpoint and to maintain a deadband in accordance with Section C403.2.4.1.2.

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

**WAC 51-11C-40511 ~~((Reserved))~~ Electrical power and lighting systems commissioning and completion requirements. Electrical power and lighting systems shall be commissioned and completed in accordance with Section C408.**

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

**WAC 51-11C-40605 Section C406.5—On-site renewable energy option.**

**C406.5 On-site renewable energy.** Buildings shall be provided with on-site renewable energy systems with ~~((a total system rating))~~ an annual energy production per square foot of conditioned floor area of the building of not less than the value specified in Table C406.5.

**Table C406.5  
On-Site Renewable Energy System Rating  
(per square foot)**

<b>Building Area Type</b>	<b><del>((kBTU))</del> kBTu/year</b>	<b>kWh/year</b>
Assembly	1.8	0.53
Dining	10.7	3.14
Hospital	3.6	1.06
Hotel/Motel	2.0	0.59
Multifamily residential	0.50	0.15
Office	0.82	0.24
Other	2.02	0.59
Retail	1.31	0.38
School/University	1.17	0.34
Supermarket	5.0	1.47
Warehouse	0.43	0.13

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

**WAC 51-11C-40607 Section C406.7—Service water heating option.**

**C406.7 Reduced energy use in service water heating.** Buildings shall comply with Sections C406.7.1 and C406.7.2.

**C406.7.1 Building type.** Not less than 90 percent of the conditioned floor area shall be of the following types:

- 1. Group R-1: Boarding houses, hotels or motels.
- 2. Group I-2: Hospitals, psychiatric hospitals and nursing homes.
- 3. Group A-2: Restaurants and banquet halls or buildings containing food preparation areas.
- 4. Group F: Laundries.
- 5. Group R-2: Buildings with residential occupancies.
- 6. Group A-3: Health clubs and spas.

7. Buildings with a service hot water load of 10 percent or more of total building energy loads, as shown with an energy analysis as described in Section C407.

**C406.7.2 Load fraction.** Not less than 60 percent of the annual building service hot water heating energy use, or not less than 100 percent of the annual building service hot water heating energy use in buildings subject to the requirements of

Section C403.5.4, shall be provided by one or more of the following:

1. Service hot water system delivering heating requirements using heat pump technology with a minimum COP of 3.0.

2. Waste heat recovery from service hot water, heat recovery chillers, building equipment, process equipment, a combined heat and power system, or other *approved* system.

3. Solar water-heating systems.

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

**WAC 51-11C-407051 Table C407.5.1(1)—Specifications for the standard reference and proposed design.**

**Table C407.5.1(1)  
Specifications for the Standard Reference and Proposed Designs**

<b>Building Component Characteristics</b>	<b>Standard Reference Design</b>	<b>Proposed Design</b>
Space use classification	Same as proposed	The space use classification shall be chosen in accordance with Table C405.4.2 for all areas of the building covered by this permit. Where the space use classification for a building is not known, the building shall be categorized as an office building.
Roofs	Type: Insulation entirely above deck Gross area: Same as proposed U-factor: From Table C402.1.4 Solar absorptance: 0.75 Emittance: 0.90	As proposed As proposed As proposed As proposed As proposed
Walls, above-grade	Type: Mass wall if proposed wall is mass; otherwise steel-framed wall Gross area: Same as proposed U-factor: From Table C402.1.4 Solar absorptance: 0.75 Emittance: 0.90	As proposed As proposed As proposed As proposed
Walls, below-grade	Type: Mass wall Gross area: Same as proposed U-Factor: From Table C402.1.4 with insulation layer on interior side of walls	As proposed As proposed As proposed
Floors, above-grade	Type: Joist/framed floor Gross area: Same as proposed U-factor: From Table C402.1.4	As proposed As proposed As proposed
Floors, slab-on-grade	Type: Unheated F-factor: From Table C402.1.4	As proposed As proposed
Opaque Doors	Type: Swinging Area: Same as proposed U-factor: From Table C402.1.4	As proposed As proposed As proposed
Vertical Fenestration Other than opaque doors	Area	As proposed

Building Component Characteristics	Standard Reference Design	Proposed Design
	<p>1. The proposed vertical fenestration area; where the proposed vertical fenestration area is less than 30 percent of above-grade wall area.</p> <p>2. 30 percent of above-grade wall area; where the proposed vertical fenestration area is 30 percent or more of the above-grade wall area.</p> <p><i>U</i>-factor: From Table C402.4 for the same framing material as proposed</p> <p>SHGC: From Table C402.4 except that for climates with no requirement (NR) SHGC = 0.40 shall be used</p> <p>External shading and PF: None</p>	<p>As proposed</p> <p>As proposed</p> <p>As proposed</p>
Skylights	<p>Area</p> <p>1. The proposed skylight area; where the proposed skylight area is less than 3 percent of gross area of roof assembly.</p> <p>2. 3 percent of gross area of roof assembly; where the proposed skylight area is 3 percent or more of gross area of roof assembly.</p> <p><i>U</i>-factor: From Table C402.4</p> <p>SHGC: From Table C402.4 except that for climates with no requirement (NR) SHGC = 0.40 shall be used</p>	<p>As proposed</p> <p>As proposed</p> <p>As proposed</p>
Air leakage	<p>For infiltration, the air leakage rate as determined below shall be modeled at 100% when the building fan system is off, and at 25% when the building fan system is on, unless otherwise approved by the building official for unusually pressurized buildings. Per PNNL Report 18898, Infiltration Modeling Guidelines for Commercial Building Energy Analysis, the building air leakage rates as determined in accordance with Section C402.5.1.2 at 0.30 in. w.g. (75 Pa) shall be converted for modeling in annual energy analysis programs by being multiplied by 0.112 unless other multipliers are approved by the building official (e.g., a tested air leakage of 0.40 cfm/ft<sup>2</sup> of total building envelope area at 0.30 in. w.g. (75 Pa) would be calculated at 0.045 cfm/ft<sup>2</sup> of building envelope area). The calculated infiltration rate shall be normalized to the input required by the modeling software.</p>	<p>The Proposed Design air-leakage rate shall be the same as the Standard Design.</p>
Lighting, interior	<p>The interior lighting power shall be determined in accordance with Table C405.4.2. As proposed when the occupancy of the space is not known.</p> <p>Automatic lighting controls (e.g., programmable controls or automatic controls for daylight utilization) shall be modeled in <i>the standard reference design</i> as required by Section C405.</p>	<p>As proposed; where the occupancy of the space is not known, the lighting power density shall be based on the space classification as offices in Table C405.4.2(1).</p>

<b>Building Component Characteristics</b>	<b>Standard Reference Design</b>	<b>Proposed Design</b>
Lighting, exterior	The lighting power shall be determined in accordance with Table C405.5.2(2). Areas and dimensions of tradable and nontradable surfaces shall be the same as proposed.	As proposed
Internal gains	Same as proposed	Receptacle, motor and process loads shall be modeled and estimated based on the space use classification. All end-use load components within and associated with the building shall be modeled to include, but not be limited to, the following: Exhaust fans, parking garage ventilation fans, exterior building lighting, swimming pool heaters and pumps, elevators, escalators, refrigeration equipment and cooking equipment.
Schedules	Same as proposed	Operating schedules shall include hourly profiles for daily operation and shall account for variations between weekdays, weekends, holidays and any seasonal operation. Schedules shall model the time-dependent variations in occupancy, illumination, receptacle loads, thermostat settings, mechanical ventilation, HVAC equipment availability, service hot water usage and any process loads. The schedules shall be typical of the proposed building type as determined by the designer and approved by the jurisdiction.
Outdoor airflow rates	Same as proposed, or no higher than those allowed by Section C403.2.6 (without exception 1), whichever is less.  Demand control ventilation: Shall be modeled as required by Section C403.6 including reduction to the minimum ventilation rate when unoccupied.	As proposed, in accordance with Section C403.2.6.  As proposed
Heating systems	Fuel type: Same as proposed design Equipment type <sup>a</sup> : From Tables C407.5.1(2), C407.5.1(3), and C407.5.1(4) Efficiency: From Tables C403.2.3(2), C403.2.3(3), C403.2.3(4) and C403.2.3(5) Preheat coils: For HVAC system numbers 1 through 4, a preheat coil shall be modeled controlled to a fixed setpoint 20°F less than the design room heating temperature setpoint.	As proposed As proposed As proposed

Building Component Characteristics	Standard Reference Design	Proposed Design
	<p>Capacity<sup>b</sup>: Sized proportionally to the capacities in the proposed design based on sizing runs, i.e., the ratio between the capacities used in the annual simulations and the capacities determined by the sizing runs shall be the same for both the proposed design and <i>standard reference design</i>, and shall be established such that no smaller number of unmet heating load hours and no larger heating capacity safety factors are provided than in the proposed design.</p> <p>Weather conditions used in sizing runs to determine <i>standard reference design</i> equipment capacities may be based either on hourly historical weather files containing typical peak conditions or on design days developed using 99.6% heating design temperatures and 1% dry-bulb and 1% wet-bulb cooling design temperatures.</p>	<p>As proposed</p>
Cooling systems	<p>Fuel type: Same as proposed design</p> <p>Equipment type<sup>c</sup>: From Tables C407.5.1(2), C407.5.1(3), and C407.5.1(4)</p> <p>Efficiency: From Tables C403.2.3(1), C403.2.3(2) and C403.2.3(3). Chillers shall use Path A efficiency.</p> <p>Capacity<sup>b</sup>: Sized proportionally to the capacities in the proposed design based on sizing runs, i.e., the ratio between the capacities used in the annual simulations and the capacities determined by the sizing runs shall be the same for both the proposed design and <i>standard reference design</i>, and shall be established such that no smaller number of unmet cooling load hours and no larger cooling capacity safety factors are provided than in the proposed design.</p> <p>Economizer<sup>d</sup>: (<del>Same as proposed,</del>) In accordance with Section C403.3. The high-limit shutoff shall be a dry-bulb switch with a setpoint as determined by Table C403.3.3.3.</p>	<p>As proposed</p> <p>As proposed</p> <p>As proposed</p> <p>As proposed</p> <p>As proposed</p>
Energy recovery	<p><i>Standard reference design</i> systems shall be modeled where required in Section C403.5.</p>	<p>As proposed</p>
Fan systems	<p>Airflow rate: System design supply airflow rates for the <i>standard reference design</i> shall be based on a supply-air-to-room-air temperature difference of 20°F or the required ventilation air or makeup air, whichever is greater. If return or relief fans are specified in the proposed design, the <i>standard reference design</i> shall also be modeled with fans serving the same functions and sized for the <i>standard reference design</i> system supply fan air quantity less the minimum outdoor air, or 90% of the supply fan air quantity, whichever is larger.</p>	<p>As proposed</p>



Building Component Characteristics	Standard Reference Design	Proposed Design
	<p>Motor brake horsepower: System fan electrical power for supply, return, exhaust, and relief (excluding power to fan-powered VAV boxes) shall be calculated using the following formulas:                      For systems 5, 7, 8 and 10 in Table C407.5.1(4),  <math>P_{fan} = CFM_s \times 0.3</math>                      For all other systems, including DOAS,  <math>P_{fan} = bhp \times 746 / \text{Fan Motor Efficiency}</math>                      Where:  <math>P_{fan}</math> = Electric power to fan motor (watts)  <math>bhp</math> = Brake horsepower of <i>standard reference design</i> fan motor from Table C403.2.12.1(1) - Option 2                      Fan motor = The efficiency from Tables C405.8(1) through C405.8(4) for the efficiency next motor size greater than the <math>bhp</math> using the enclosed motor at 1800 rpm  <math>CFM_s</math> = The <i>standard reference design</i> system maximum design supply fan airflow rate in cfm (<del>DOAS fan power shall be calculated separately from the brake-horsepower allowance</del>)).</p>	<p>As proposed</p>
On-site renewable energy	<p>No on-site renewable energy shall be modeled in the <i>standard reference design</i>.</p>	<p>As proposed.</p>
Shading from adjacent structures/terrain	<p>Same as proposed.</p>	<p>For the <i>standard reference design</i> and the proposed building, shading by permanent structures and terrain shall be taken into account for computing energy consumption whether or not these features are located on the building site. A permanent fixture is one that is likely to remain for the life of the proposed design.</p>
Service water heating	<p>Fuel type: Same as proposed                      Efficiency: From Table C404.2 and per Section C404.2.1                      Capacity: Same as proposed</p>	<p>As proposed                      As proposed</p>
	<p>Demand: Same as proposed</p>	<p>Service hot-water energy consumption shall be calculated explicitly based upon the volume of service hot water required and the entering makeup water and the leaving service hot water temperatures. Entering water temperatures shall be estimated based upon the location. Leaving temperatures shall be based upon the end-use requirements.</p>

Building Component Characteristics	Standard Reference Design	Proposed Design
	<p>Where no service water hot water system exists or is specified in the proposed design, no service hot water heating shall be modeled.</p> <p>Drain water heat recovery: Not required.</p>	<p>Service water loads and usage shall be the same for both the <i>standard reference design</i> and the proposed design and shall be documented by the calculation procedures recommended by the manufacturer's specifications or generally accepted engineering methods.</p> <p>As proposed</p> <p>As proposed</p> <p>Drain water heat recovery modeling shall take into account manufacturer's rated efficiencies per C404.9, quantity of connected drains, the proportional flow rates between the waste stream and the preheated stream. Reductions in service water heating energy use for drain water heat recovery shall be demonstrated by calculations.</p>

- a Where no heating system exists or has been specified, the heating system shall be modeled as fossil fuel. The system characteristics shall be identical in both the standard reference design and proposed design.
- b The ratio between the capacities used in the annual simulations and the capacities determined by sizing runs shall be the same for both the standard reference design and proposed design.
- c Where no cooling system exists or no cooling system has been specified, the cooling system shall be modeled as an air-cooled single-zone system, one unit per thermal zone. The system characteristics shall be identical in both the standard reference design and proposed design.
- d If an economizer is required in accordance with Section C403.3 and where no economizer exists or is specified in the proposed design, then an air economizer shall be provided in the standard reference design in accordance with Section C403.3.

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

**WAC 51-11C-407052 Table C407.5.1 (2)/(3)—HVAC systems map.**

**Table C407.5.1(2)  
HVAC Systems Map for Buildings Governed by Section C403.6<sup>d</sup>**

((Condenser Cooling Source <sup>a</sup>	Heating System Classification <sup>b</sup>	Standard Reference Design HVAC System Type <sup>c</sup>	
		Single-Zone Residential System	All Other
Water/ground	Electric resistance	System 5	System 5
	Heat pump	System 6	System 6
	Fossil fuel	System 7	System 7
	Electric resistance	System 8	System 9
Air/none	Heat pump	System 8	System 9
	Fossil fuel	System 10	System 11))

<u>Condenser Cooling Source<sup>a</sup></u>	<u>Heating System Classification<sup>b</sup></u>	<u>Standard Reference Design HVAC System Type</u>
Water/ground	<u>Electric resistance</u>	<u>System 5</u>
	<u>Heat pump</u>	<u>System 6</u>
	<u>Fossil fuel</u>	<u>System 7</u>
	<u>Electric resistance</u>	<u>System 9</u>

<u>Condenser Cooling Source<sup>a</sup></u>	<u>Heating System Classification<sup>b</sup></u>	<u>Standard Reference Design HVAC System Type</u>
<u>Air/none</u>	<u>Heat pump</u>	<u>System 9</u>
	<u>Fossil fuel</u>	<u>System 11</u>

- a Select "water/ground" if the proposed design system condenser is water or evaporatively cooled; select "air/none" if the condenser is air cooled. Closed-circuit dry coolers shall be considered air cooled. Systems utilizing district cooling shall be treated as if the condenser water type were "water." If no mechanical cooling is specified or the mechanical cooling system in the proposed design does not require heat rejection, the system shall be treated as if the condenser water type were "Air." For proposed designs with ground-source or groundwater-source heat pumps, the standard reference design HVAC system shall be water-source heat pump (System 6).
- b Systems utilizing district heating (steam or hot water) or district cooling and systems with no heating capability shall be treated as if the heating system type were "fossil fuel" for the purpose of Standard Reference Design HVAC system selection. Otherwise, select the path that corresponds to the proposed design heat source: Electric resistance, heat pump (including air source and water source), or fuel fired. For systems with mixed fuel heating sources, the system or systems that use the secondary heating source type (the one with the smallest total installed output capacity for the spaces served by the system) shall be modeled identically in the standard reference design and the primary heating source type shall be used to determine *standard reference design* HVAC system type.
- c ((Select the *standard reference design* HVAC system category: The system under "single-zone residential system" shall be selected if the HVAC system in the proposed design is a single-zone system and serves a residential space. The system under "all other" shall be selected for all other cases.)) Reserved.
- d This table covers those building types required by Section C403.6 to install Dedicated Outdoor Air Systems: Office, retail, education, libraries and fire stations.

**Table C407.5.1(3)  
HVAC Systems Map for All Other Buildings**

<u>Condenser Cooling Source<sup>a</sup></u>	<u>Heating System Classification<sup>b</sup></u>	<u>Standard Reference Design HVAC System Type<sup>c</sup></u>		
		<u>Single-Zone Residential System</u>	<u>Single-Zone Nonresidential System</u>	<u>All Other</u>
<u>Water/ground</u>	Electric resistance	System 5	System 5	System 1
	Heat pump	System 6	System 6	System 6
	Fossil fuel	System 7	System 7	System 2
<u>Air/none</u>	Electric resistance	System 8	System 9	System 3
	Heat pump	System 8	System 9	System 3
	Fossil fuel	System 10	System 11	System 4

- a Select "water/ground" if the proposed design system condenser is water or evaporatively cooled; select "air/none" if the condenser is air cooled. Closed-circuit dry coolers shall be considered air cooled. Systems utilizing district cooling shall be treated as if the condenser water type were "water." If no mechanical cooling is specified or the mechanical cooling system in the proposed design does not require heat rejection, the system shall be treated as if the condenser water type were "Air." For proposed designs with ground-source or groundwater-source heat pumps, the standard reference design HVAC system shall be water-source heat pump (System 6).
- b Systems utilizing district heating (steam or hot water) or district cooling and systems with no heating capability shall be treated as if the heating system type were "fossil fuel" for the purpose of Standard Reference Design HVAC system selection. Otherwise, select the path that corresponds to the proposed design heat source: Electric resistance, heat pump (including air source and water source), or fuel fired. For systems with mixed fuel heating sources, the system or systems that use the secondary heating source type (the one with the smallest total installed output capacity for the spaces served by the system) shall be modeled identically in the standard reference design and the primary heating source type shall be used to determine *standard reference design* HVAC system type.
- c Select the *standard reference design* HVAC system category: The system under "single-zone Group R system" shall be selected if the HVAC system in the proposed design is a single-zone system and serves a residential space. The system under "single-zone other than Group R system" shall be selected if the HVAC system in the proposed design is a single-zone system and serves other than Group R spaces. The system under "all other" shall be selected for all other cases.

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

**WAC 51-11C-40801 Section C408.1—General.**

**C408.1 General.** A building commissioning process led by a *certified commissioning professional* shall be completed for mechanical and refrigeration systems in Sections C403 and C410, service water heating systems in Section C404, electrical power and lighting systems in Section C405 and energy metering in Section C409.

**EXCEPTION:** Buildings, or portions thereof, which are exempt from Sections C408.2 through C408.6 may be excluded from the commissioning process.

**C408.1.1 Commissioning in construction documents.** Construction document notes shall clearly indicate provisions for commissioning and completion requirements in accordance with this section and are permitted to refer to specifications for further requirements.

**C408.1.2 Commissioning plan.** A commissioning plan shall be developed by the project's certified commissioning profes-

sional and shall outline the organization, schedule, allocation of resources, and documentation requirements of the commissioning process. Items 1 through 4 shall be included with the construction documents, and items 5 through 8 shall be submitted prior to the first mechanical inspection. For projects where no mechanical inspection is required, items 5 through 8 shall be submitted prior to the first electrical inspection.

1. A narrative description of the activities that will be accomplished during each phase of commissioning, including the personnel intended to accomplish each of the activities.

2. Roles and responsibilities of the commissioning team, including statement of qualifications of the commissioning professional.

3. A schedule of activities including systems testing and balancing, functional performance testing, and verification of the building documentation requirements in Section C103.6.

4. Where the certified commissioning professional is an employee of one of the registered design professionals of record or an employee or subcontractor of the project contractor, an In-House Commissioning Disclosure and Conflict Management Plan shall be submitted with the commissioning plan. This plan shall disclose the certified commissioning professional's contractual relationship with other team members and provide a conflict management plan demonstrating that the certified commissioning professional is free to identify any issues discovered and report directly to the owner.

5. A listing of the specific equipment, appliances or systems to be tested and a description of the tests to be performed.

6. Functions to be tested.

7. Conditions under which the test will be performed.

8. Measurable criteria for performance.

**C408.1.3 Final commissioning report.** A final commissioning report shall be completed and certified by the *certified commissioning professional* and delivered to the building owner or owner's authorized agent. The report shall be organized with mechanical, lighting, service water heating and metering findings in separate sections to allow independent review. The report shall record the activities and results of the commissioning process and be developed from the final commissioning plan with all of its attached appendices. The report shall include:

1. Results of functional performance tests.

2. Disposition of deficiencies found during testing, including details of corrective measures used or proposed.

3. Functional performance test procedures used during the commissioning process including measurable criteria for test acceptance, provided herein for repeatability.

EXCEPTION: Deferred tests which cannot be performed at the time of report preparation due to climatic conditions.

**C408.1.4. Commissioning process completion requirements.** Prior to the final mechanical, plumbing and electrical inspections or obtaining a certificate of occupancy, the *certified commissioning professional* or approved agency shall provide evidence of systems *commissioning* and completion in accordance with the provisions of this section.

Copies of all documentation shall be given to the owner and made available to the *code official* upon request in accordance with Section C408.1.4.3.

**C408.1.4.1 Commissioning progress report for code compliance.** A preliminary report of commissioning test procedures and results shall be completed and certified by the *certified commissioning professional* or *approved agency* and provided to the building owner or owner's authorized agent. The report shall be organized with mechanical, lighting, service water heating and metering findings in separate sections to allow independent review. The report shall be identified as "Preliminary Commissioning Report" and shall identify:

1. Itemization of deficiencies found during testing required by this code that have not been corrected at the time of report preparation.

2. Deferred tests that cannot be performed at the time of report preparation because of climatic conditions, with anticipated date of completion.

3. Climatic conditions required for performance of the deferred tests.

4. Status of the project's record documents, manuals and systems operation training with respect to requirements in Section C103.6.

**C408.1.4.2 Acceptance of report.** Buildings, or portions thereof, shall not be considered acceptable for a final inspection pursuant to Section C104.2 until the *code official* has received a letter of transmittal from the building owner acknowledging that the building owner or owner's authorized agent has received the Preliminary Commissioning Report. Completion of the Commissioning Compliance Checklist (Figure C408.1.4.2) is deemed to satisfy this requirement.

**C408.1.4.3 Copy of report.** The *code official* shall be permitted to require that a copy of the Preliminary Commissioning Report be made available for review by the *code official*.

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

**WAC 51-11C-40802 Section C408.2—Mechanical systems commissioning.**

**C408.2 Mechanical and refrigeration systems commissioning.** Mechanical and refrigeration equipment and controls subject to Sections C403 and C410 shall be included in the commissioning process required by Section C408.1. The commissioning process shall minimally include all energy code requirements for which the code states that equipment or controls shall "be capable of" or "configured to" perform specific functions.

EXCEPTION: Mechanical systems are exempt from the commissioning process where the building's total mechanical equipment capacity is less than 240,000 Btu/h cooling capacity and less than 300,000 Btu/h heating capacity.

**C408.2.1 Reserved.**

**C408.2.2 Systems adjusting and balancing.** HVAC systems shall be balanced in accordance with generally accepted engineering standards. Air and water flow rates shall be measured and adjusted to deliver final flow rates within the toler-

ances provided in the project specifications. Test and balance activities shall include air system and hydronic system balancing.

**C408.2.2.1 Air systems balancing.** Each supply air outlet and zone terminal device shall be equipped with means for air balancing in accordance with the requirements of Chapter 6 of the *International Mechanical Code*. Discharge dampers used for air system balancing are prohibited on constant volume fans and variable volume fans with motors 10 hp (18.6 kW) and larger. Air systems shall be balanced in a manner to first minimize throttling losses then, for fans with system power of greater than 1 hp (0.74 kW), fan speed shall be adjusted to meet design flow conditions.

EXCEPTION: Fans with fan motors of 1 hp (0.74 kW) or less.

**C408.2.2.2 Hydronic systems balancing.** Individual hydronic heating and cooling coils shall be equipped with means for balancing and measuring flow. Hydronic systems shall be proportionately balanced in a manner to first minimize throttling losses, then the pump impeller shall be trimmed or pump speed shall be adjusted to meet design flow conditions. Each hydronic system shall have either the capability to measure pressure across the pump, or test ports at each side of each pump.

EXCEPTION: The following equipment is not required to be equipped with means for balancing or measuring flow:

1. Pumps with pump motors of 5 hp (3.7 kW) or less.
2. Where throttling results in no greater than five percent of the nameplate horsepower draw above that required if the impeller were trimmed.

**C408.2.3 Functional performance testing.** Functional performance testing specified in Sections C408.2.3.1 through C408.2.3.3 shall be conducted. Written procedures which clearly describe the individual systematic test procedures, the expected systems' response or acceptance criteria for each procedure, the actual response or findings, and any pertinent discussion shall be followed. Testing shall affirm operation during actual or simulated winter and summer design conditions and during full outside air conditions.

**C408.2.3.1 Equipment.** Equipment functional performance testing shall demonstrate the installation and operation of components, systems, and system-to-system interfacing relationships in accordance with approved plans and specifications

such that operation, function, and maintenance serviceability for each of the commissioned systems is confirmed. Testing shall include all modes and *sequence of operation*, including under full-load, part-load and the following emergency conditions:

1. All modes as described in the *sequence of operation*;
2. Redundant or *automatic* back-up mode;
3. Performance of alarms; and
4. Mode of operation upon a loss of power and restoration of power.

**C408.2.3.2 Controls.** HVAC control systems shall be tested to document that control devices, components, equipment, and systems are calibrated and adjusted and operate in accordance with approved plans and specifications. Sequences of operation shall be functionally tested to document they operate in accordance with *approved* plans and specifications.

**C408.2.3.3 Economizers.** Air economizers shall undergo a functional test to determine that they operate in accordance with manufacturer's specifications.

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

**WAC 51-11C-41000 Section C410—Refrigeration system requirements.**

**C410.1 General (prescriptive).** Walk-in coolers, walk-in freezers, refrigerated warehouse coolers, refrigerated warehouse freezers, and refrigerated display cases shall comply with this Section.

Refrigerated warehouse coolers and refrigerated warehouse freezers shall comply with Section C402. Section C402.1.5 Component performance alternative, may be used if granted prior approval by the jurisdiction.

**C410.1.1 Refrigeration equipment performance.** Refrigeration equipment shall have an energy use in kWh/day not greater than the values of Tables C410.2(1) and C410.2(2) when tested and rated in accordance with AHRI Standard 1200. The energy use shall be verified through certification under an approved certification program or, where a certification program does not exist, the energy use shall be supported by data furnished by the equipment manufacturer.

**Table C410.1.1(1)  
Minimum Efficiency Requirements: Commercial Refrigeration**

EQUIPMENT TYPE	APPLICATION	ENERGY USE LIMITS (kWh per day) <sup>a</sup>	TEST PROCEDURE
Refrigerator with solid doors	Holding Temperature	0.10 x V + 2.04	AHRI 1200
Refrigerator with transparent doors		0.12 x V + 3.34	
Freezers with solid doors		0.40 x V + 1.38	
Freezers with transparent doors		0.75 x V + 4.10	
Refrigerator/freezers with solid doors		The greater of 0.12 x V + 3.34 or 0.70	
Commercial refrigerators	Pulldown	0.126 x V + 3.51	

<sup>a</sup> V = Volume of the chiller for frozen compartment as defined in AHAM-HRF-1.

**Table C410.1.1(2)**  
**Minimum Efficiency Requirements: Commercial Refrigerators and Freezers**

EQUIPMENT TYPE				ENERGY USE LIMITS (kWh per day) <sup>a,b</sup>	TEST PROCEDURE
Equipment Class <sup>c</sup>	Family Code	Operating Mode	Rating Temperature		
VOP.RC.M	Vertical open	Remote con- densing	Medium	0.82 x TDA + 4.07	AHRI 1200
SVO.RC.M	Semivertical open	Remote con- densing	Medium	0.83 x TDA + 3.18	
HZO.RC.M	Horizontal open	Remote con- densing	Medium	0.35 x TDA + 2.88	
VOP.RC.L	Vertical open	Remote con- densing	Low	2.27 x TDA + 6.85	
HZO.RC.L	Horizontal open	Remote con- densing	Low	0.57 x TDA + 6.88	
VCT.RC.M	Vertical trans- parent door	Remote con- densing	Medium	0.22 x TDA + 1.95	
VCT.RC.L	Vertical trans- parent door	Remote con- densing	Low	0.56 x TDA + 2.61	
SOC.RC.M	Service over counter	Remote con- densing	Medium	0.51 x TDA + 0.11	
VOP.SC.M	Vertical open	Self-contained	Medium	1.74 x TDA + 4.71	
SVO.SC.M	Semivertical open	Self-contained	Medium	1.73 x TDA + 4.59	
HZO.SC.M	Horizontal open	Self-contained	Medium	0.77 x TDA + 5.55	
HZO.SC.L	Horizontal open	Self-contained	Low	1.92 x TDA + 7.08	
VCT.SC.I	Vertical trans- parent door	Self-contained	Ice cream	0.67 x TDA + 3.29	
VCS.SC.I	Vertical solid door	Self-contained	Ice cream	0.38 x V + 0.88	
HCT.SC.I	Horizontal transparent door	Self-contained	Ice cream	0.56 x TDA + 0.43	
SVO.RC.L	Semivertical open	Remote con- densing	Low	2.27 x TDA + 6.85	
VOP.RC.I	Vertical open	Remote con- densing	Ice cream	2.89 x TDA + 8.7	
SVO.RC.I	Semivertical open	Remote con- densing	Ice cream	2.89 x TDA + 8.7	
HZO.RC.I	Horizontal open	Remote con- densing	Ice cream	0.72 x TDA + 8.74	
VCT.RC.I	Vertical trans- parent door	Remote con- densing	Ice cream	0.66 x TDA + 3.05	
HCT.RC.M	Horizontal transparent door	Remote con- densing	Medium	0.16 x TDA + 0.13	
HCT.RC.L	Horizontal transparent door	Remote con- densing	Low	0.34 x TDA + 0.26	
HCT.RC.I	Horizontal transparent door	Remote con- densing	Ice cream	0.4 x TDA + 0.31	

EQUIPMENT TYPE				ENERGY USE LIMITS (kWh per day) <sup>a,b</sup>	TEST PROCEDURE
Equipment Class <sup>c</sup>	Family Code	Operating Mode	Rating Temperature		
VCS.RC.M	Vertical solid door	Remote condensing	Medium	$0.11 \times V + 0.26$	
VCS.RC.L	Vertical solid door	Remote condensing	Low	$0.23 \times V + 0.54$	
VCS.RC.I	Vertical solid door	Remote condensing	Ice cream	$0.27 \times V + 0.63$	
HCS.RC.M	Horizontal solid door	Remote condensing	Medium	$0.11 \times V + 0.26$	
HCS.RC.L	Horizontal solid door	Remote condensing	Low	$0.23 \times V + 0.54$	
HCS.RC.I	Horizontal solid door	Remote condensing	Ice cream	$0.27 \times V + 0.63$	
SOC.RC.L	Service over counter	Remote condensing	Low	$1.08 \times TDA + 0.22$	
SOC.RC.I	Service over counter	Remote condensing	Ice cream	$1.26 \times TDA + 0.26$	
VOP.SC.L	Vertical open	Self-contained	Low	$4.37 \times TDA + 11.82$	
VOP.SC.I	Vertical open	Self-contained	Ice cream	$5.55 \times TDA + 15.02$	
SVO.SC.L	Semivertical open	Self-contained	Low	$4.34 \times TDA + 11.51$	
SVO.SC.I	Semivertical open	Self-contained	Ice cream	$5.52 \times TDA + 14.63$	
HZO.SC.I	Horizontal open	Self-contained	Ice cream	$2.44 \times TDA + 9.0$	
SOC.SC.I	Service over counter	Self-contained	Ice cream	$1.76 \times TDA + 0.36$	
HCS.SC.I	Horizontal solid door	Self-contained	Ice cream	$0.38 \times V + 0.88$	

<sup>a</sup> V = Volume of the case, as measured in accordance with Appendix C of AHRI 1200.

<sup>b</sup> TDA = Total display area of the case, as measured in accordance with Appendix D of AHRI 1200.

<sup>c</sup> Equipment class designations consist of a combination [(in sequential order separated by periods (AAA).(BB).(C))]:

(AAA) An equipment family code where:

VOP = Vertical open

SVO = Semi-vertical open

HZO = Horizontal open

VCT = Vertical transparent doors

VCS = Vertical solid doors

HCT = Horizontal transparent doors

HCS = Horizontal solid doors

SOC = Service over counter

(BB) An operating mode code:

RC = Remote condensing

SC = Self-contained

(C) A rating temperature code:

M = Medium temperature (38°F)

L = Low temperature (0°F)

I = Ice cream temperature (15°F)

For example, "VOP.RC.M" refers to the "vertical-open, remote-condensing, medium-temperature" equipment class.

**C410.2 Walk-in coolers, walk-in freezers, refrigerated warehouse coolers and refrigerated warehouse freezers.** *Refrigerated warehouse coolers* ~~((and)), refrigerated warehouse freezers~~ ~~((shall comply with this section. Walk-in coolers and walk-in freezers that are not either site assembled or site constructed)), and all walk-in coolers and walk-in freezers including site assembled, site constructed and prefabricated units~~ shall comply with the following:

1. ~~((Be equipped with))~~ Automatic door-closers shall be provided that ((firmly)) fully close walk-in doors that have been closed to within 1 inch (25 mm) of full closure.

EXCEPTION: Automatic closers are not required for doors more than 45 inches (1143 mm) in width or more than 7 feet (2134 mm) in height.

2. Doorways shall ~~((have))~~ be provided with strip doors, curtains, spring-hinged doors or other method of minimizing infiltration when doors are open.

3. *Walk-in coolers and refrigerated warehouse coolers* shall ~~((contain))~~ be provided with wall, ceiling, and door insulation of not less than R-25 or have wall, ceiling and door assembly U-factors no greater than U-0.039. Walk-in freezers and refrigerated warehouse freezers shall ((contain)) be provided with wall, ceiling and door insulation of not less than R-32 or have wall, ceiling and door assembly U-factors no greater than U-0.030.

EXCEPTION: ~~((Glazed portions of doors or structural members need not be insulated.))~~ Insulation is not required for glazed portions of doors or at structural members associated with the walls, ceiling or door frame.

4. The floor of *walk-in freezers* shall ~~((contain))~~ be provided with floor insulation of not less than R-28 or have a floor assembly U-factor no greater than U-0.035.

5. Transparent reach-in doors for *walk-in freezers* and windows in *walk-in freezer* doors shall be ~~((ø))~~ provided with triple-pane glass, ((either)) with the interstitial spaces filled with inert gas or be provided with heat-reflective treated glass.

6. ~~((Windows and))~~ Transparent reach-in doors for walk-in coolers and windows for walk-in coolers doors shall be ((ø)) provided with double-pane or triple-pane((-)) glass, with interstitial space filled with inert ((gas-filled,)) gas, or be provided with heat-reflective treated glass.

7. Evaporator fan motors that are less than 1 hp (0.746 kW) and less than 460 volts shall ~~((use))~~ be provided with electronically commutated motors, brushless direct-current motors, or 3-phase motors.

8. Condenser fan motors that are less than 1 hp (0.746 kW) shall use electronically commutated motors, permanent split capacitor-type motors or 3-phase motors.

9. ~~((Where))~~ Antisweat heaters ((without)) that are not provided with antisweat heater controls ((are provided, they)) shall have a total door rail, glass and frame heater power draw of not ~~((more))~~ greater than 7.1 W/ft<sup>2</sup> (76 W/m<sup>2</sup>) of door opening for walk-in freezers and not greater than 3.0 W/ft<sup>2</sup> (32 W/m<sup>2</sup>) of door opening for walk-in coolers.

10. Where antisweat heater controls are provided, they shall ~~((reduce))~~ be capable of reducing the energy use of the antisweat heater as a function of the relative humidity in the air outside the door or to the condensation on the inner glass pane.

11. Lights in *walk-in coolers, walk-in freezers, refrigerated warehouse coolers and refrigerated warehouse freezers* shall either ~~((use))~~ be provided with light sources with an efficacy of not less than 40 lumens per watt, including ballast losses, or shall ((use light sources with an efficacy of not less than 40 lumens per watt, including ballast losses, in conjunction)) be provided with a device that automatically turns off the lights within 15 minutes of when the walk-in cooler or walk-in freezer space is not occupied.

**C410.2.1** ~~((Walk-in coolers and walk-in freezers. Site assembled or site constructed walk-in coolers and walk-in freezers shall comply with the following:~~

1. Automatic door closers shall be provided that fully close walk-in doors that have been closed to within 1 inch (25 mm) of full closure.

EXCEPTION: Closers are not required for doors more than 45 inches (1143 mm) in width or more than 7 feet (2134 mm) in height.

2. Doorways shall be provided with strip doors, curtains, spring-hinged doors or other method of minimizing infiltration when the doors are open.

3. Walk-in cooler walls, ceilings and doors shall be provided with insulation having a thermal resistance of not less than R-25 or have wall, ceiling and door assembly U-factors no greater than U-0.039. Walk-in freezers walls, ceilings and doors shall be provided with insulation having a thermal resistance of not less than R-32 or have wall, ceiling, door and slab assembly U-factors no greater than U-0.030.

EXCEPTION: Insulation is not required for glazed portions of doors or at structural members associated with the walls, ceiling or door frame.

4. The floor of *walk-in freezers* shall be provided with insulation having a thermal resistance of not less than R-28 or have a floor assembly U-factor no greater than U-0.035.

5. Transparent reach-in doors for and windows in opaque *walk-in freezer* doors shall be provided with triple-pane glass having the interstitial spaces filled with inert gas or provided with heat-reflective treated glass.

6. Transparent reach-in doors and windows in opaque *walk-in cooler* doors shall be double-pane heat-reflective treated glass having the interstitial space gas filled.

7. Evaporator fan motors that are less than 1 hp (0.746 kW) and less than 460 volts shall be electronically commutated motors or 3-phase motors.

8. Condenser fan motors that are less than 1 hp (0.746 kW) in capacity shall be of the electronically commutated or permanent split capacitor-type or shall be 3-phase motors.

EXCEPTION: Fan motors in *walk-in coolers* and *walk-in freezers* combined in a single enclosure greater than 3,000 square feet (279 m<sup>2</sup>) in floor area are exempt.

9. Antisweat heaters that are not provided with antisweat heater controls shall have a total door rail, glass and frame heater power draw not greater than 7.1 W/ft<sup>2</sup> (76 W/m<sup>2</sup>) of door opening for *walk-in freezers*, and not greater than 3.0 W/ft<sup>2</sup> (32 W/m<sup>2</sup>) of door opening for *walk-in coolers*.

10. Antisweat heater controls shall be capable of reducing the energy use of the antisweat heater as a function of the relative humidity in the air outside the door or to the condensation on the inner glass pane.



11. Light sources shall have an efficacy of not less than 40 lumens per watt, including any ballast losses, or shall be provided with a device that automatically turns off the lights within 15 minutes of when the walk-in cooler or walk-in freezer was last occupied.)) **Reserved.**

**C410.2.2 Refrigerated display cases.** Site-assembled or site-constructed refrigerated display cases shall comply with the following:

1. Lighting and glass doors in refrigerated display cases shall be controlled by one of the following:

1.1. Time switch controls to turn off lights during non-business hours. Timed overrides for display cases shall turn the lights on for up to 1 hour and shall automatically time out to turn the lights off.

1.2. Motion sensor controls on each display case section that reduce lighting power by at least 50 percent within 3 minutes after the area within the sensor range is vacated.

2. Low-temperature display cases shall incorporate temperature-based defrost termination control with a time-limit default. The defrost cycle shall terminate first on an upper temperature limit breach and second upon a time limit breach.

3. Antisweat heater controls shall reduce the energy use of the antisweat heater as a function of the relative humidity in the air outside the door or to the condensation on the inner glass pane.

**C410.3 Refrigeration systems.** Refrigerated display cases, walk-in coolers or walk-in freezers that are served by remote compressor and remote condensers not located in a condensing unit, shall comply with Sections C410.4.1 ((and)), C410.4.2, and C403.5.3.

**EXCEPTION:** Systems where the working fluid in the refrigeration cycle goes through both subcritical and supercritical states (transcritical) or that use ammonia refrigerant are exempt.

**C410.3.1 Condensers serving refrigeration systems.** Fan-powered condensers shall comply with the following:

1. The design saturated condensing temperatures for air-cooled condensers shall not exceed the design dry-bulb temperature plus 10°F (5.6°C) for low-temperature refrigeration systems, and the design dry-bulb temperature plus 15°F (8°C) for medium temperature refrigeration systems where the saturated condensing temperature for blend refrigerants shall be determined using the average of liquid and vapor temperatures as converted from the condenser drain pressure.

2. Condenser fan motors that are less than 1 hp (0.75 kW) shall use electronically commutated motors, permanent split-capacitor-type motors or 3-phase motors.

3. Condenser fans for air-cooled condensers, evaporatively cooled condensers, air- or water-cooled fluid coolers or cooling towers shall reduce fan motor demand to not more than 30 percent of design wattage at 50 percent of design air volume, and incorporate one of the following continuous variable speed fan control approaches:

3.1. Refrigeration system condenser control for air-cooled condensers shall use variable setpoint control logic to reset the condensing temperature setpoint in response to ambient dry-bulb temperature.

3.2. Refrigeration system condenser control for evaporatively cooled condensers shall use variable setpoint control logic to reset the condensing temperature setpoint in response to ambient wet-bulb temperature.

4. Multiple fan condensers shall be controlled in unison.

5. The minimum condensing temperature setpoint shall be not greater than 70°F (21°C).

**C410.3.2 Compressor systems.** Refrigeration compressor systems shall comply with the following:

1. Compressors and multiple-compressor system suction groups shall include control systems that use floating suction pressure control logic to reset the target suction pressure temperature based on the temperature requirements of the attached refrigeration display cases or walk-ins.

**EXCEPTION:** Controls are not required for the following:

1. Single-compressor systems that do not have variable capacity capability.
2. Suction groups that have a design saturated suction temperature of 30°F (-1.1°C) or higher, suction groups that comprise the high stage of a two-stage or cascade system, or suction groups that primarily serve chillers for secondary cooling fluids.

2. Liquid subcooling shall be provided for all low-temperature compressor systems with a design cooling capacity equal to or greater than 100,000 Btu/hr (29.3 kW) with a design-saturated suction temperature of -10°F (-23°C) or lower. The subcooled liquid temperature shall be controlled at a maximum temperature setpoint of 50°F (10°C) at the exit of the subcooler using either compressor economizer (inter-stage) ports or a separate compressor suction group operating at a saturated suction temperature of 18°F (-7.8°C) or higher.

2.1. Insulation for liquid lines with a fluid operating temperature less than 60°F (15.6°C) shall comply with Table C403.2.10.

3. Compressors that incorporate internal or external crankcase heaters shall provide a means to cycle the heaters off during compressor operation.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

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

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

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

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

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

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

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

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

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

1. Vertical fenestration alternate per Section C402.1.3 for the new vertical fenestration added.
2. Vertical fenestration alternate per Section C402.4.1.1 for the area adjacent to the new vertical fenestration added.

3. Component performance option with target area adjustment per Section C402.1.5 or the total building performance option in Section C407 for the whole building.

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

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

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

**C503.4 Mechanical systems.** Those parts of systems which are altered or replaced shall comply with Section C403. Additions or alterations shall not be made to an existing mechanical system that will cause the existing mechanical system to become out of compliance.

- EXCEPTION: Existing mechanical systems which are altered or where parts of the systems are replaced are not required to be modified to comply with Section C403.6 as long as mechanical cooling is not added to the system.

All new systems in existing buildings, including packaged unitary equipment and packaged split systems, shall comply with Section C403.

Where mechanical cooling is added to a space that was not previously cooled, the mechanical system shall comply with either Section C403.6 or C403.3.

- EXCEPTIONS:
1. Alternate designs that are not in full compliance with this code may be approved when the code official determines that existing building constraints including, but not limited to, available mechanical space, limitations of the existing structure, or proximity to adjacent air intakes/exhausts make full compliance impractical. Alternate designs shall provide alternate energy savings strategies including, but not limited to, Demand Control Ventilation or increased mechanical cooling or heating efficiency above that required by Tables C403.2.3(1) through C403.2.3(10).

2. Qualifying small equipment: This exception shall not be used for unitary cooling equipment installed outdoors or in a mechanical room adjacent to the outdoors. This exception is allowed to be used for other cooling units and split systems serving one zone with a total cooling capacity rated in accordance with Section C403.2.3 of less than 33,000 Btu/h (hereafter referred to as qualifying small systems) provided that these are high-efficiency cooling equipment with SEER and EER values more than 15 percent higher than minimum efficiencies listed in Tables C403.2.3 (1) through (3), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all qualifying small equipment without economizers shall not exceed 72,000 Btu/h per building, or 5 percent of its air economizer capacity, whichever is greater. That portion of the equipment serving Group R occupancies is not included in determining the total capacity of all units without economizers in a building. Redundant units are not counted in the capacity limitations. This exception shall not be used for the shell-and-core permit or for the initial tenant improvement or for Total Building Performance.

3. Chilled water terminal units connected to systems with chilled water generation equipment with IPLV values more than 25 percent higher than minimum part load efficiencies listed in Table C403.2.3(7), in the appropriate size category, using the same test procedures. Equipment shall be listed in the appropriate certification program to qualify for this exception. The total capacity of all systems without economizers shall not exceed 480,000 Btu/h per building, or 20 percent of its air economizer capacity, whichever is greater. That portion of the equipment serving Group R occupancy is not included in determining the total capacity of all units without economizers in a building. This exception shall not be used for the initial permit (this includes any initial permit for the space including, but not limited to, the shell-and-core permit, built-to-suit permit, and tenant improvement permit) or for Total Building Performance Method.

Alterations to existing mechanical cooling systems shall not decrease economizer capacity unless the system complies with either Section C403.2.6 or C403.3. In addition, for existing mechanical cooling systems that do not comply with either Section C403.2.6 or C403.3, including both the individual unit size limits and the total building capacity limits on units without economizer; other alterations shall comply with Table C503.4.

When space cooling equipment is replaced, controls shall comply with all requirements under Section C403.6 and related subsections or provide for integrated operation with economizer in accordance with Section C403.3.1.

Existing equipment currently in use may be relocated within the same floor or same tenant space if removed and reinstalled within the same permit.

**Table C503.4  
Economizer Compliance Options for Mechanical Alterations**

	<b>Option A</b>	<b>Option B (alternate to A)</b>	<b>Option C (alternate to A)</b>	<b>Option D (alternate to A)</b>
<b>Unit Type</b>	<b>Any alteration with new or replacement equipment</b>	<b>Replacement unit of the same type with the same or smaller output capacity</b>	<b>Replacement unit of the same type with a larger output capacity</b>	<b>New equipment added to existing system or replacement unit of a different type</b>
1. Packaged Units	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,3</sup>	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,3</sup>	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>
2. Split Systems	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Efficiency: + 10/5% <sup>5</sup> Economizer: shall not decrease existing economizer capability	Only for new units < 54,000 Btuh replacing unit installed prior to 1991 (one of two): Efficiency: + 10/5% <sup>5</sup> Economizer: 50% <sup>6</sup>	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>
			For units > 54,000 Btuh or any units installed after 1991: Option A	

	<b>Option A</b>	<b>Option B (alternate to A)</b>	<b>Option C (alternate to A)</b>	<b>Option D (alternate to A)</b>
<b>Unit Type</b>	<b>Any alteration with new or replacement equipment</b>	<b>Replacement unit of the same type with the same or smaller output capacity</b>	<b>Replacement unit of the same type with a larger output capacity</b>	<b>New equipment added to existing system or replacement unit of a different type</b>
3. Water Source Heat Pump	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	(two of three): Efficiency: + 10/5% <sup>5</sup> Flow control valve <sup>7</sup> Economizer: 50% <sup>6</sup>	(three of three): Efficiency: + 10/5% <sup>5</sup> Flow control valve <sup>7</sup> Economizer: 50% <sup>6</sup> (except for certain pre-1991 systems <sup>8</sup> )	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup> (except for certain pre-1991 systems <sup>8</sup> )
4. Hydronic Economizer using Air-Cooled Heat Rejection Equipment (Dry Cooler)	Efficiency: min. <sup>1</sup> Economizer: 1433 <sup>2</sup>	Efficiency: + 10/5% <sup>5</sup> Economizer: shall not decrease existing economizer capacity	Option A	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>
5. Air-Handling Unit (including fan coil units) where the system has an air-cooled chiller	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Economizer: shall not decrease existing economizer capacity	Option A (except for certain pre-1991 systems <sup>8</sup> )	Option A (except for certain pre-1991 systems <sup>8</sup> )
6. Air-Handling Unit (including fan coil units) and Water-cooled Process Equipment, where the system has a water-cooled chiller <sup>10</sup>	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Economizer: shall not decrease existing economizer capacity	Option A (except for certain pre-1991 systems <sup>8</sup> and certain 1991-2004 systems <sup>9</sup> )	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup> (except for certain pre-1991 systems <sup>8</sup> and certain 1991-2015 systems <sup>9</sup> )
7. Cooling Tower	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	No requirements	Option A	Option A
8. Air-Cooled Chiller	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Efficiency: + 5% <sup>11</sup> Economizer: shall not decrease existing economizer capacity	Efficiency (two of two): (1) + 10% <sup>12</sup> and (2) multistage Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>
9. Water-Cooled Chiller	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Efficiency (one of two): (1) + 10% <sup>13</sup> or (2) plate frame heat exchanger <sup>15</sup> Economizer: shall not decrease existing economizer capacity	Efficiency (two of two): (1) + 15% <sup>14</sup> and (2) plate-frame heat exchanger <sup>15</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>
10. Boiler	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2</sup>	Efficiency: + 8% <sup>16</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: + 8% <sup>16</sup> Economizer: shall not decrease existing economizer capacity	Efficiency: min. <sup>1</sup> Economizer: C403.3 <sup>2,4</sup>

- 1 Minimum equipment efficiency shall comply with Section C403.2.3 and Tables C403.2.3(1) through C403.2.3(10).
- 2 System and building shall comply with Section C403.3 (including both the individual unit size limits and the total building capacity limits on units without economizer). It is acceptable to comply using one of the exceptions to Section C403.3 or C504.3.4.
- 3 All equipment replaced in an existing building shall have air economizer complying with Section C403.3 unless both the individual unit size and the total capacity of units without air economizer in the building is less than that allowed in Exception 2 to Section C503.4.
- 4 All separate new equipment added to an existing building shall have air economizer complying with Section C403.3 unless both the individual unit size and the total capacity of units without air economizer in the building is less than that allowed in Exception 3 to Section C503.4.
- 5 Equipment shall have a capacity-weighted average cooling system efficiency:
  - a. For units with a cooling capacity below 54,000 Btuh, a minimum of 10% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2).
  - b. For units with a cooling capacity of 54,000 Btuh and greater, a minimum of 5% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2).
- 6 Minimum of 50% air economizer that is ducted in a fully enclosed path directly to every heat pump unit in each zone, except that ducts may terminate within 12 inches of the intake to an HVAC unit provided that they are physically fastened so that the outside air duct is directed into the unit intake. If this is an increase in the amount of outside air supplied to this unit, the outside air supply system shall be configured to provide this additional outside air and equipped with economizer control.
- 7 Have flow control valve to eliminate flow through the heat pumps that are not in operation with variable speed pumping control complying with Section C403.4.2 for that heat pump.
  - When the total capacity of all units with flow control valves exceeds 15% of the total system capacity, a variable frequency drive shall be installed on the main loop pump.
  - As an alternate to this requirement, have a capacity-weighted average cooling system efficiency that is 5% greater than the requirements in note 5 (i.e., a minimum of 15%/10% greater than the requirements in Tables C403.2.3(1) and C403.2.3(2)).
- 8 Systems installed prior to 1991 without fully utilized capacity are allowed to comply with Option B, provided that the individual unit cooling capacity does not exceed 90,000 Btuh.
- 9 Economizer not required for systems installed with water economizer plate and frame heat exchanger complying with previous codes between 1991 and June 2016, provided that the total fan coil load does not exceed the existing or added capacity of the heat exchangers.
- 10 For water-cooled process equipment where the manufacturers specifications require colder temperatures than available with waterside economizer, that portion of the load is exempt from the economizer requirements.
- 11 The air-cooled chiller shall have an IPLV efficiency that is a minimum of 5% greater than the IPLV requirements in Table C403.2.3(7).
- 12 The air-cooled chiller shall:
  - a. Have an IPLV efficiency that is a minimum of 10% greater than the IPLV requirements in Table C403.2.3(7); and
  - b. Be multistage with a minimum of two compressors.
- 13 The water-cooled chiller shall have an IPLV efficiency that is a minimum of 10% greater than the IPLV requirements in Table C403.2.3(7).
- 14 The water-cooled chiller shall have an IPLV efficiency that is a minimum of 15% greater than the IPLV requirements in Table C403.2.3(7).
- 15 Economizer cooling shall be provided by adding a plate-frame heat exchanger on the waterside with a capacity that is a minimum of 20% of the chiller capacity at standard AHRI rating conditions.
- 16 The replacement boiler shall have an efficiency that is a minimum of 8% higher than the value in Table C403.2.3(5), except for electric boilers.

**C503.5 Service hot water systems.** New service hot water systems that are part of the alteration shall comply with Section C404.

**C503.6 Lighting and motors.** Alterations that replace 50 percent or more of the luminaires in a space enclosed by walls or ceiling-height partitions, replace 50 percent or more of parking garage luminaires, or replace 50 percent or more of the total installed wattage of exterior luminaires shall comply with Sections C405.4 and C405.5. Where less than 50 percent of the fixtures in an interior space enclosed by walls or ceiling-height partitions or parking garage are new, or less than 50 percent ((or more)) of the installed exterior wattage is altered, the installed lighting wattage shall be maintained or reduced.

Where new wiring is being installed to serve added fixtures and/or fixtures are being relocated to a new circuit, controls shall comply with Sections C405.2.1, C405.2.3, C405.2.4, C405.2.5, C405.2.7, C405.3, and as applicable C408.3. In addition, office areas less than 300 ft<sup>2</sup> enclosed by walls or ceiling-height partitions, and all meeting and conference rooms, and all school classrooms, shall be equipped with occupancy sensors that comply with Section C405.2.1 and C408.3. Where a new lighting panel (or a moved lighting panel) with all new raceway and conductor wiring from the panel to the fixtures is being installed, controls shall also

comply with the other requirements in Sections C405.2 and C408.3.

Where new walls or ceiling-height partitions are added to an existing space and create a new enclosed space, but the lighting fixtures are not being changed, other than being relocated, the new enclosed space shall have controls that comply with Sections C405.2.1, C405.2.2, C405.2.3, C405.2.4, C405.2.5 and C408.3.

Those motors which are altered or replaced shall comply with Section C405.8.

**C503.7 Refrigeration systems.** Those parts of systems which are altered or replaced shall comply with Section C410. Additions or alterations shall not be made to an existing refrigerated space or system that will cause the existing mechanical system to become out of compliance. All new refrigerated spaces or systems in existing buildings, including refrigerated display cases, shall comply with Section C410.

**WSR 16-16-040**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Veterinary Board of Governors)  
[Filed July 26, 2016, 12:14 p.m.]

Supplemental Notice to WSR 16-01-043.

Preproposal statement of inquiry was filed as WSR 14-21-010.

Title of Rule and Other Identifying Information: WAC 246-933-420 Basic requirement amount, the veterinary board of governors is offering a supplementary proposal to WSR 16-01-043 filed on December 9, 2015, revising an initial proposal for veterinary continuing education (CE) rules. The new proposal will require a minimum of ten hours of CE in conventional veterinary medicine and allowing up to twenty hours of complementary or alternative veterinary medicine (CAVM) in any three year reporting period.

Hearing Location(s): Department of Health, Creekside Two at Center Point, 20425 72nd Avenue South, Room 309, Kent, WA 98032, on September 19, 2016, at 10:00 a.m.

Date of Intended Adoption: September 19, 2016.

Submit Written Comments to: Lorelei Walker, 111 Israel Road S.E., Tumwater, WA 98501, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by September 12, 2016.

Assistance for Persons with Disabilities: Contact Lorelei Walker by September 12, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: After the public hearing on March 7, 2016, the board decided to revise the proposal to limit CAVM CE to twenty hours and require a minimum of ten hours in conventional veterinary medicine for every three year CE reporting period. The board's current rules related to CE do not address criteria for the approval of CAVM courses. Revising rules will provide clarity to licensees and CE providers regarding how many hours of CAVM CE are allowed. The rule does not change the total number of CE hours required.

Reasons Supporting Proposal: The board originally proposed a ten hour limit on the number of veterinary CAVM CE hours that can be earned in any three year reporting period. After stakeholder feedback from multiple veterinary practitioners who practice solely in CAVM, the board decided to revisit the proposal. The board now proposes to establish a twenty hour limit on CAVM CE and add a ten hour minimum requirement for conventional medicine. The board finds that doing so would not result in a reduction in the quality of care provided and supports the consumer's choices about what kind of care they seek.

Statutory Authority for Adoption: RCW 18.92.030.

Statute Being Implemented: RCW 18.92.030.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lorelei Walker, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, P.O. Box 47852, 111 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4947, fax (360) 236-2901, e-mail [loralei.walker@doh.wa.gov](mailto:loralei.walker@doh.wa.gov).

July 26, 2016  
Suzan Seelye, DVM, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 07-19-130, filed 9/19/07, effective 10/20/07)

**WAC 246-933-420 Basic requirement—Amount.** Continuing veterinary medical education consists of programs of learning which contribute directly to the advancement or enhancement of skills in the practice of veterinary medicine, surgery and dentistry. Licensed veterinarians must complete thirty hours of continuing veterinary medical education every three years ~~((as required))~~ in compliance with chapter 246-12 WAC, Part 7. ((No more than ten hours can be earned in practice management courses in any three year reporting period.))

In any three-year reporting period:

(1) At least ten hours must be earned in conventional (Western) medicine.

(2) No more than twenty hours can be earned in courses related to complementary and alternative veterinary medicine or complementary, alternative, or integrative therapies.

(3) No more than ten hours can be earned in practice management courses.

**WSR 16-16-045**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Veterinary Board of Governors)  
[Filed July 26, 2016, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-11-056.

Title of Rule and Other Identifying Information: WAC 246-933-340 Practice management, the veterinary board of governors (board) is proposing to amend WAC 246-933-340 to include a drug expiration date in the list of labeling requirements for legend drugs dispensed by a veterinarian.

Hearing Location(s): Department of Health, Creekside Two at Center Point, 20425 72nd Avenue South, Room 309, Kent, WA 98032, on September 19, 2016, at 10:00 a.m.

Date of Intended Adoption: September 19, 2016.

Submit Written Comments to: Lorelei Walker, Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov>.

gov/doh/policyreview, fax (360) 236-2901, by August 31, 2016.

Assistance for Persons with Disabilities: Contact Lorelei Walker by August 31, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The labeling requirements for legend drugs dispensed by veterinarians in WAC 246-933-340(5) do not include a drug expiration date. To protect patient safety and to bring the rule into alignment with the requirements of RCW 18.92.013, the proposed rule adds a drug expiration date to labeling requirements for legend drugs dispensed by a veterinarian.

Reasons Supporting Proposal: For patient safety, the board is proposing to amend the rule to include a drug expiration date. The labeling requirements are consistent with current pharmacy requirements. Amending the rule will result in consistency between the rule and statute and provide clear direction to licensed veterinarians when labeling medications to be dispensed and important information to consumers regarding the expiration date of medications.

Statutory Authority for Adoption: RCW 18.92.030, 18.92.013.

Statute Being Implemented: RCW 18.92.030, 18.92.013.

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

Name of Proponent: Department of health, veterinary board of governors, governmental.

Name of Agency Personnel Responsible for Drafting: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4611; Implementation and Enforcement: Lorelei Walker, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4947.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lorelei Walker, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-2901, e-mail Lorelei.Walker@doh.wa.gov.

July 26, 2016

Kathy Schmitt

Deputy Director

Health Professions and Facilities

**AMENDATORY SECTION** (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

**WAC 246-933-340 Practice management.** All veterinary medical facilities shall maintain a sanitary environment to avoid sources and transmission of infection. This includes the proper sterilization or sanitation of all equipment used in diagnosis or treatment and the proper routine disposal of waste materials.

(1) **Surgery:** Surgery shall be performed in a manner compatible with current veterinary practice with regard to anesthesia, asepsis or antiseptics, life support and monitoring

procedures, and recovery care. The minimum standards for surgery shall be:

(a) Aseptic or antiseptic surgery shall be performed in a room designated and reserved for surgery and directly related noncontaminating activities.

(b) The surgery room shall be clean, orderly, well lighted and maintained in a sanitary condition, free of offensive odors.

(c) Storage in the surgery room shall be limited only to items and equipment related to surgery and surgical procedures.

(d) Instruments and equipment utilized in the surgery room shall be appropriate for the type of surgical service being provided.

(e) The operating table shall be constructed of a smooth and impervious material.

(f) Chemical disinfection ("cold sterilization") may be used only for field conditions or minor surgical procedures. Sterilizing of all appropriate equipment is required. Provisions for sterilization shall include a steam pressure sterilizer (autoclave) or a gas sterilizer (e.g., ethylene oxide).

(g) Surgical packs include towels, drapes, gloves, sponges and proper instrumentation. They shall be properly prepared for sterilization by heat or gas (sufficient to kill spores) for each sterile surgical procedure.

(h) For any major procedure, such as opening the abdominal or thoracic cavity or exposing bones or joints, a separate sterile surgical pack shall be used for each animal. Surgeons and surgical assistants shall use aseptic technique throughout the entire surgical procedure.

(i) Uncomplicated ovariohysterectomy or castration of normal healthy animals, and minor surgical procedures, such as excising small skin lesions or suturing superficial lacerations, may be performed under clean, antiseptic conditions. Surgeons and surgical assistants shall wear clean attire and sterile gloves, and care shall be taken to avoid introducing bacterial contamination.

(j) All animals shall be properly prepared for surgery as follows:

(i) Clipping and shaving of the surgical area for major procedures requiring aseptic technique as in (h) of this subsection shall be performed in a room other than the surgery room. Loose hair shall be removed from the surgical area((-);

(ii) Scrubbing the surgical area with soap and water((-);

(iii) Disinfecting the surgical area((-);

(iv) Draping the surgical area if appropriate((-);

(k) Anesthetic equipment appropriate for the type of patient and surgery performed shall be available at all times((-);

(l) Compressed oxygen or other adequate means shall be available to be used for resuscitation((-);

(m) Emergency drugs shall be available to the surgery area((-);

(n) Grossly contaminated procedures, such as lancing and draining abscesses, shall not be performed in the room designated for aseptic or antiseptic surgery.

(2) **Library:** A library of appropriate veterinary journals and textbooks shall be available on the premises for ready reference.

(3) **Laboratory:** Veterinary medical facilities shall have the capability for use of either in-house or consultant laboratory service for blood chemistry, bacterial cultures and antibiotic sensitivity examinations, complete blood counts, histopathologic examinations and complete necropsies. The in-house laboratory facility shall meet the following minimum standards:

(a) The laboratory room shall be clean and orderly with provision for ample storage((-));

(b) Ample refrigeration shall be provided((-));

(c) Any tests performed shall be properly conducted by currently recognized methods to assure reasonable accuracy and reliability of results.

(4) **Radiology:** Veterinary medical facilities shall have the capability for use of either in-house or consultant services for obtaining radiographs of diagnostic quality. Radiology equipment and use shall be in compliance with federal and Washington state laws, and shall follow the guidelines approved by the American Veterinary Medical Association.

(5) **Biologicals and drugs:** The minimum standards for drug procedures shall be:

(a) All controlled substances shall be stored, maintained, administered, dispensed and prescribed in compliance with federal and Washington state laws.

(b) Among things otherwise provided by RCW 18.64.246 and 69.41.050, legend drugs dispensed by a veterinarian shall be labeled with the following:

(i) Name of client or identification of animal((-));

(ii) Date dispensed((-));

(iii) Drug expiration date;

(iv) Complete directions for use((-  
(+)));

(v) Name and strength of the drug((-  
(+))); and

(vi) Name of prescribing veterinarian.

(c) A record of all drugs administered or dispensed shall be kept in the client's record. In the case of companion animals this record shall be by individual animal.

(6) **Limited services:** If veterinary medical services are limited to specific aspects of practice((-));

(a) The public shall be informed of the limitation of services provided((-));

(b) All veterinary services provided in the facility shall conform to the requirements for those services listed in WAC 246-933-330 and this section((-));

(c) The general requirements prescribed in WAC 246-933-320 shall apply to all veterinary medical facilities.

(7) **Exceptions:**

(a) The standards and requirements prescribed in WAC 246-933-330(3) and subsection (1)(a), (c), (j)(i), (n) of this section, shall not apply to equine or food animal veterinary procedures performed in medical facilities.

(b) The standards and requirements prescribed in WAC 246-933-320 (1), (2), (3), (4), (6), (8), 246-933-330 and subsections (1)(a), (b), (c), (e), (h), (j)(i), (l), (n), (2), (3), (4), (6)(b), (c) of this section, shall not apply to equine or food animal veterinary procedures performed on the owner's premises by a veterinarian.

**WSR 16-16-046**

**PROPOSED RULES**

**BUILDING CODE COUNCIL**

[Filed July 26, 2016, 4:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-011 and 16-12-002.

Title of Rule and Other Identifying Information: The subject of this rule is Group E and Group I-4 emergency alarms. This rule making proposal is filed in response to a legislative directive. The purpose is to eliminate current rules regarding emergency voice alarm communication system requirements in Group E and Group I-4 facilities. This action is taken to modify WAC 51-54A-0907 and 51-50-0907 at the direction of the 2016 Washington state legislature under a budget proviso; the legislature found that certain alarm requirements were redundant and/or duplicative of other system technology, and create a financial burden on school districts and Group I-4 facilities across the state.

Hearing Location(s): Spokane Fire Department Training Center, 1618 North Rebecca Street, Spokane, WA 99217, on September 9, 2016, at 10 a.m.; and at the Department of Enterprise Services, Olympia, Washington 98504, on October 14, 2016, at 10 a.m.

Date of Intended Adoption: November 18, 2016.

Submit Written Comments to: Steve Simpson, Council Chair, P.O. Box 91449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov, fax (360) 586-5366, by October 21, 2016.

Assistance for Persons with Disabilities: Contact Tim Nogler, council staff by August 25, 2016, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule-making proposal is to eliminate certain current requirements for emergency voice alarms in the Fire Code, chapter 51-54A WAC, and the Building Code, chapter 51-50 WAC; under the proposed rules, Group E schools and certain I-4 care facilities would no longer be required to install emergency voice alarm systems in their facilities.

Reasons Supporting Proposal: The proposed WAC modification is required due to a budget proviso issued under Section 6012, chapter 35, Laws of 2016. The proviso orders the state building code council to modify current rules related to emergency voice alarm systems in order to avoid unnecessary duplication of infrastructure installation and reduce school construction costs funded through the school construction assistance program in the budget. It specifically states that the council rule-making action must ensure that buildings classified as E occupancies, as defined in the state building code, are not required to install emergency voice alarm systems as defined in the 2012 IFC and IBC section 907.2.3.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Name of Proponent: Washington state legislature, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne T. McCaughan, 1500 Jefferson Street S.E., Olympia, WA 98504, (360) 407-9279; and



Enforcement: Local building Officials, local jurisdiction address.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule making is required by legislative action. Any impact on school districts would be positive, in that they would no longer need to purchase/install certain automatic voice activated alarms. This would also be true for Group I-4 facilities.

A cost-benefit analysis is not required under RCW 34.05.328. This measure was passed by the legislature; any anticipated impact would have been addressed at that level; no fiscal note was requested or prepared to assess the potential impacts.

June 10, 2016  
Steve Simpson  
Chair

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

**WAC 51-50-0907 Section 907—Fire alarm and detection systems.**

**[F] 907.2.3 Group E.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

- EXCEPTIONS:
1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
  2. ~~((Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~ Reserved.
  3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
    - 3.1 Interior corridors are protected by smoke detectors.
    - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
    - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  4. Manual fire alarm boxes shall not be required in Group E occupancies where ~~((the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.))~~ all of the following apply:
    - 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
    - 4.2 The notification appliances will activate on sprinkler water flow.
    - 4.3 Manual activation is provided from a normally occupied location.

**[F] 907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

- EXCEPTIONS:
1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
  2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**[F] 907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

- EXCEPTIONS:
1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
  2. Smoke detection is not required for exterior balconies.

**[F] 907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section ~~((907.5.2.2))~~ 907.5 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

- EXCEPTION(S): ~~((1.))~~ A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.  
~~((2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall be required.

**907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review.** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, 2017.)

**907.10.3 Testing/maintenance.** All inspection, testing, maintenance and programming not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, 2017.)

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**AMENDATORY SECTION** (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0907 Fire alarm and detection systems.**

**907.2.3 Group E.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section (~~((907.5.2.2))~~) 907.5 and installed in accordance with Section 907.6 shall be installed in Group E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. (~~(Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.)~~) Reserved.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 3.1 Interior corridors are protected by smoke detectors.
  - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
  - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where (~~(the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.)~~) all of the following apply:
  - 4.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
  - 4.2 The notification appliances will activate on sprinkler water flow.

4.3 Manual activation is provided from a normally occupied location.

**907.2.6 Group I.** A manual fire alarm system that activates the occupant notification system shall be installed in Group I occupancies. An automatic smoke detection system that notifies the occupant notification system shall be provided in accordance with Sections 907.2.6.1, 907.2.6.2, 907.2.6.3.3 and 907.2.6.4.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas of Group I-1 and I-2 occupancies shall not be required at exits if located at nurses' control stations or other constantly attended staff locations, provided such stations are visible and continually accessible and that travel distances required in Section 907.4.2 are not exceeded.
2. Occupant notification systems are not required to be activated where private mode signaling installed in accordance with NFPA 72 is approved by the fire code official.

**907.2.6.1 Group I-1.** An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and *kitchens*. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:

1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

**907.2.6.4 Group I-4 occupancies.** A manual fire alarm system that initiates the occupant notification signal (~~((utilizing an emergency voice/alarm communication system))~~) meeting the requirements of Section (~~((907.5.2.2))~~) 907.5 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTION((S)): (~~(+))~~) A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.  
~~((2- Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.))~~

**907.5.2.1.2 Maximum sound pressure.** The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall be required.

**907.10 NICET: National Institute for Certification in Engineering Technologies.**

**907.10.1 Scope.** This section shall apply to new and existing fire alarm systems.

**907.10.2 Design review:** All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2017).

**907.10.3 Testing/maintenance:** All inspection, testing, maintenance and programming not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms (effective July 1, 2017).

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Statute Being Implemented: RCW 84.36.070.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Jay Jetter, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1615

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

**WSR 16-16-048**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 26, 2016, 4:32 p.m.]

July 26, 2016

Kevin Dixon

Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-048.

Title of Rule and Other Identifying Information: WAC 458-50-160 Exempt intangible property distinguished from other intangibles.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98501, on September 7, 2016, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Jay Jetter, Department of Revenue, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JayJ@dor.wa.gov, September 7, 2016.

Assistance for Persons with Disabilities: Contact Julie King, (360) 704-5717, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is considering revisions to WAC 458-50-160 to clarify that the intangible personal property tax exemption provided by RCW 84.36.070 only applies to intangible personal property and not to attributes of property like location, view, zoning regulations, office organization, trained workforce, etc. These "attributes" of property can be considered by the appraiser in determining the fair market value of taxable property.

Reasons Supporting Proposal: The revisions will provide clarification of the intangible personal property tax exemption provided by RCW 84.36.070.

AMENDATORY SECTION (Amending WSR 06-24-043, filed 11/30/06, effective 12/31/06)

**WAC 458-50-160 Exempt intangible property distinguished from other intangibles.** (1) **Distinction between property, and characteristics or attributes of property.** The statute (RCW 84.36.070) draws a distinction between intangible personal property and the characteristics or attributes of property, both real and personal. Intangible personal property is exempt from property taxation. However, some characteristics or attributes of property, even though intangible, may be considered in establishing the taxable value of tangible property.

(2) **What intangible personal property is exempt?** The listings of examples of intangible personal property contained in RCW 84.36.070(2) must be consulted, but those listings can be summarized as follows:

(a) Financial intangible property, such as moneys, credits, and publicly issued bonds and warrants, and the bonds, stocks, or shares of private corporations;

(b) Private personal service contracts and athletic or sports franchises, or sports agreements that do not pertain to the use or possession or any interest in tangible personal or real property; and

(c) Miscellaneous types of intangible personal property, such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, integrity of a business, and other similar types of intangible personal property.

(3) **Identifying exempt intangible personal property.** (~~Intangible property is only exempt if it is personal property capable of being individually owned, used, transferred, or held separately from other property.~~) The market value of separate items of intangible personal property should not be

identified or characterized solely using residual accounting methods, or other indirect techniques, such as isolating "excess earnings," from a total business valuation. Market value of exempt intangible personal property should be verifiable, to the extent possible, in an openly traded market where the value of comparable intangible properties can be observed and considered. Intangible assets that are separately identified and valued in reports filed with any state or federal regulatory agency, may be considered when identifying and valuing intangible personal property of the types listed in subsection (2)(c) of this section.

**(4) What intangible characteristics, attributes or other factors affect value and may be considered?** Non-property intangible characteristics or attributes are elements or components of value associated with a real or tangible asset. These characteristics or attributes are "intangible" but they are not "property" and therefore are not tax exempt intangible personal property. They are contingent and dependent upon other property and cannot be owned, used, transferred, or held separately from other property. To the extent that these characteristics, attributes, or other factors contribute to, or affect, the value of property, they must be appropriately considered when determining taxable value. They include the following types:

(a) Zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, or the availability of a skilled work force;

(b) Grants of licenses, permits, and franchises by a government agency that affect the use of the property being valued; and

(c) Other characteristics of property, such as scarcity, uniqueness, adaptability, or utility as an integrated unit.

**WSR 16-16-051**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed July 27, 2016, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-116.

Title of Rule and Other Identifying Information: WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?, 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?, and 314-55-410 Cooperatives.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 7, 2016, at 10:00 a.m.

Date of Intended Adoption: On or after September 21, 2016.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, e-

mail rules@lcb.wa.gov, fax (360) 664-9689, by September 7, 2016.

Assistance for Persons with Disabilities: Contact Joanna Eide by August 31, 2016, (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to amend rules to adhere to changes made to state law by the 2016 legislature. Changes include adjustments to accommodate and provide requirements and direction for cooperative members purchasing plants from licensed producers and to allow licensed retailers to dispose of marijuana products so long as retailers follow the disposal requirements for other marijuana licensees.

Reasons Supporting Proposal: Rule changes are needed to implement changes to marijuana laws passed during the 2016 legislative session. Specifically, WSLCB is proposing rule changes relating to the following measures passed by the legislature:

- HB 2520, concerning the sale of marijuana to regulated cooperatives (SL 2016 c 170).

- HB 2521, allowing for the proper disposal of unsellable marijuana by a licensed marijuana retail outlet (SL 2016 c 171).

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

Statute Being Implemented: RCW 69.50.342, 69.50.345, SL 2016 c 170, SL 2016 c 171, and SL 2016 c 17.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

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

Small Business Economic Impact Statement

A small business economic impact statement (SBEIS) has been prepared under chapter 19.85 RCW for the proposed amendments to WAC 314-55-079 and 314-55-410. The changes to WAC 314-55-079 are technical in nature and simply align the provisions of that rule with statutory changes, meaning they do not impose any new requirements on small businesses, so those changes are not included in this analysis.

**1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:** WAC 314-55-079: The proposed amendments are in response to the statutory changes made by the 2016 legislature that allow licensed retailers to open marijuana packaging for purposes of disposal as authorized by the board. The rule change directs retailers who choose to dispose of marijuana products to comply with the same provisions (WAC 314-55-097) for disposal under WSLCB rule and state law that licensed producers and processors must follow when disposing [of] marijuana products. This is an optional requirement as retailers can still choose to send products back to proces-

sors for disposal as they already do. However, this change was needed as some processors that retailers originally purchased product from have since gone out of business, leaving some retailers with marijuana products on hand that they cannot sell nor dispose of. WSLCB will continue to look at waste disposal options and requirements for licensees along with the department of ecology and local waste management organizations to see where improvements may be made.

WAC 314-55-410: Rule amendments are proposed to provide guidance and requirements for producers and members of registered cooperatives purchasing plants from licensed producers. Added language includes proof of membership in a cooperative and identification requirements, provisions related to the twenty-four hour hold prior to transferring plants, requirements that the transfer of [of] plants be performed at the producer's licensed premises, and prohibiting deliveries of plants. Producers are not required to sell plants to members of registered cooperatives, so they will only need to comply with these new requirements if they choose to sell to members of a cooperative.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:** WAC 314-55-079: Retailers may choose to use professional services for disposal purposes, but they will not be required to comply with the requirements of this rule change.

WAC 314-55-410: Producers will not need any professional services to comply with the new requirements. Producers will be able to engage [no further information supplied by agency].

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** WAC 314-55-079: The costs of compliance will depend on decisions made by retailers. If retailers choose to obtain dispose of marijuana products themselves, costs may or may not be higher than those retailers who choose to send products back to processors for disposal. No additional equipment or supplies are required by the proposed new rule language if a retailer does not choose to dispose of marijuana products itself. If they do choose to, they may need to purchase or create equipment or supplies. These may vary depending on the amount of disposal a retailer chooses to engage in or may need to engage in, and the products they may be disposing of may vary as well [as] necessitating different disposal methods. The costs for disposal for certain products may also vary based upon the retailer's location as local waste authorities and such have different requirements and costs. Because the costs may vary quite widely depending on choices made by the individual retailer, it is difficult to estimate costs. However, WSLCB does not anticipate that the costs for equipment, supplies, labor and increased administrative costs will be more than minor.

WAC 314-55-410: There should be little to no costs associated with complying with the proposed requirements in this rule making. Sales of plants by producers to members of regulated cooperatives will be voluntary on the part of producers, and should not take more than a calculator to achieve. The only costs a producer may incur as part of choosing to engage in such sales would be to increase in employee workload. Again, this is not a requirement. It is optional.

**4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue?** WAC 314-55-079: The new requirements are to allow for disposal of marijuana products that are already not going to be sold and only apply to those who choose to engage in the disposal of marijuana products, so they do not impact sales or revenue.

WAC 314-55-410: The new requirements will not impact sales or revenue generated from those sales. The new requirements may actually serve to facilitate sales between producers and members of a registered cooperative.

**5. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:**

- a. Cost per employee;
- b. Cost per hour of labor; or
- c. Cost per one hundred dollars of sales.

Many marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to WSLCB, though WSLCB does collect data on collection on the value of marijuana at retail and wholesale and sales information. The average price per gram as of April 30, 2016, was \$8.73/gram at retail and \$3.14/gram at wholesale. Sales and excise tax payments data can assist with estimating profits, however, each business is different and costs are not known so there is not enough information for WSLCB to determine profit margins.

For both of these rule changes, the requirements will only apply if the businesses choose to engage in the activities that include the requirements. Additionally, costs will vary depending on the level of activity the licensee engages in, the location they are situated in, and other related factors. The costs for compliance, though they will vary, will be minor.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** Since the proposed changes to requirements in this rule making will only need to be adhered to should the respective licensee choose to engage in the activity, WSLCB has reduced the amount of costs on small businesses as much as possible. No new costs will be incurred for those who do not choose to engage in the activities to which they apply. Even if a licensee chooses to engage in the activities the requirements apply to, costs of compliance will be minor.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rule-making process.

**8. A List of Industries That Will Be Required to Comply with the Rule:** Licensed marijuana retailers will be required to comply with these rules if they choose to dispose of marijuana products.

Licensed producers will be required to comply with the changes to rules if they choose to engage in sales of plants to members of registered cooperatives.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** The changes in these proposals will not result in the loss of jobs. It is unclear whether the new requirements would create jobs, though the changes in law may enable that. Whether this occurs is dependent on many factors, including internal decisions made by businesses which cannot be foreseen by WSLCB.

A copy of the statement may be obtained by contacting Joanna Eide, Policy and Rules Coordinator, WSLCB, 3000 Pacific Avenue S.E., Olympia, WA 98504, phone (360) 664-1622, fax (360) 664-9689, e-mail Joanna.Eide@lcb.wa.gov.

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

July 27, 2016  
Jane Rushford  
Chair

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?** (1)(a) A marijuana producer license allows the licensee to produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees(-); and

(ii) Marijuana plants to members of a registered cooperative under the conditions provided in WAC 314-55-410.

(b) Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. Outdoor grows cannot share common walls or fences.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The WSLCB will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section.

In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the WSLCB. The WSLCB may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production will be imposed at a later date. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

(7) The WSLCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

(a) If the amount of square feet of production of all licensees exceeds the maximum square feet the WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

(a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or

(b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?** (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The WSLCB

will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(6) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(7) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(8) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in the transportation rules in WAC 314-55-085.

(9) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(10) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-410 Cooperatives.** (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four ~~((members are allowed in))~~ qualifying patients or designated providers may become members of a cooperative;

(d) ~~((A member can only belong to))~~ Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. ~~((A monetary contribution or donation is not considered assistance.))~~ Cooperative members must provide non-monetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on ~~((their))~~ his or her recognition card~~((s))~~. At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable mar-

ijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located in the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. The following is required to register a cooperative ~~((a registered member must))~~:

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each ~~((member's))~~ person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement ~~((of))~~ from the property owner granting permission to engage in a cooperative must also be submitted ~~((and must))~~ that includes a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the ~~((medical))~~ marijuana is planned to be grown.

(3) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and WSLCB staff.

(4) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

(5) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

(6) A person may request an administrative hearing to contest a denial of registration or a revocation of a cooperative's registration under subsections (4) and (5) of this section as provided in chapter 34.05 RCW.

(7) Cooperative members purchasing plants from licensed producers.

(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.

(b) Members of a cooperative who wish to purchase plants from a licensed producer must:

(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;

(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required

waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and

(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.

(c) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.

## WSR 16-16-054

### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-06—Filed July 27, 2016, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-048.

Title of Rule and Other Identifying Information: Rating requirements (SSB 6536).

Hearing Location(s): Office of the Insurance Commissioner (OIC), 5000 Capitol Boulevard, Tumwater, WA 98504, on September 15, 2016, at 10:00 a.m.

Date of Intended Adoption: September 16, 2016.

Submit Written Comments to: Bianca Stoner, P.O. Box 40260, Olympia, WA 98504, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109, by September 14, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 14, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature passed SSB 6536 during the 2016 session. The bill requires OIC to standardize the rating requirements for large group disability plans, stand-alone dental plans and stand-alone vision plans, making the rating requirements for these plans the same as the rating requirements for health care services contractors (HCSC) and health maintenance organizations (HMO). The purpose of the rule writing is to implement the requirements of the bill.

Summary of changes:

WAC that OIC is amending: WAC 284-60-010, 284-43-6000, 284-43-6010, 284-43-6020, 284-43-6060, 284-43-6200, and 284-43-6500.

WAC that OIC is moving from Subchapter I to Subchapter J of chapter 284-43 WAC by changing the section number: WAC 284-43-6060, 284-43-6080, 284-43-6120, 284-43-6140, 284-43-6160, 284-43-6200, and 284-43-6220.

Reasons Supporting Proposal: During the 2016 legislative session, the state legislature passed SSB 6536, which became effective on March 31, 2016. The law creates regulatory uniformity for the rating requirements for large group disability plans, stand-alone dental plans and stand-alone vision plans, making the rating requirements for these plans the same as the rating requirements for HCSCs and HMOs.

Statutory Authority for Adoption: RCW 48.02.060.

Statute Being Implemented: SSB 6536 (chapter 156, Laws of 2016, effective March 31, 2016).

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

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

Name of Agency Personnel Responsible for Drafting: Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, (360) 725-7041; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that the proposed rules apply to do not fit within the definition of small businesses under RCW 19.85.020(3).

A cost-benefit analysis is not required under RCW 34.05.328. Exemption under RCW 34.05.328 (5)(b)(iii).

June 27, 2016

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-6000 Authority and purpose.** This subchapter is adopted under the general authority of RCW 48.02.060, 48.44.017, 48.44.020, 48.44.050, 48.46.060, 48.46.062, ~~((and))~~ 48.46.200, and 48.43.733. Its purpose is to provide guidelines for the implementation of RCW 48.44.017 (2), 48.44.020(3), 48.44.022, 48.44.023, 48.44.040, 48.46.060 (4) and (6), 48.46.062(2), 48.46.064, ~~((and))~~ 48.46.066, 48.18.110, 48.18.480, and 48.43.733 as to the filing of ~~((contract forms))~~ grandfathered individual and small group health plans applicable under RCW 48.44.017, 48.44.022, and 48.44.023 by health care service contractors ~~((and))~~, grandfathered individual and small group health plans applicable under RCW 48.46.062, 48.46.064, and 48.46.066 by health maintenance organizations, stand-alone dental plans and stand-alone vision plans offered by health care service contractors, health maintenance organizations, and disability carriers to individuals and small groups, and the calculations and evaluations of premium rates for these contracts.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-6010 Applicability and scope.** This subchapter applies to grandfathered individual and small group health benefit plans ~~((as defined in RCW 48.43.005, and contracts for limited health care services as defined in RCW 48.44.035,))~~ offered by health care service contractors and health maintenance organizations transacting business in this state under chapter 48.44 or 48.46 RCW ~~((-It)),~~ stand-alone dental plans and stand-alone vision plans. This subchapter applies to such plans purchased directly by individuals ~~((and small employers((-large employers and other organizations))).~~



AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-6020 Definitions.** For the purpose of this subchapter:

(1) "Adjusted earned premium" means the amount of "earned premium" the "carrier" would have earned had the "carrier" charged current "premium rates" for all applicable "plans."

(2) "Annualized earned premium" means the "earned premium" that would be earned in a twelve-month period if earned at the same rate as during the applicable period.

(3) "Anticipated loss ratio" means the "projected incurred claims" divided by the "projected earned premium."

(4) "Base rate" means the "premium" for a specific "plan," expressed as a monthly amount per "covered person or subscriber," prior to any adjustments for geographic area, age, family size, wellness activities, tenure, or any other factors as may be allowed.

(5) "Capitation expenses" means the amount paid to a provider or facility on a per "covered person" basis, or as part of risk-sharing provisions, for the coverage of specified health care services.

(6) "Carrier" means a health care service contractor or health maintenance organization.

(7) "Certificate" means the statement of coverage document furnished "subscribers" covered under a "group contract."

(8) "Claim reserves" means the "claims" that have been reported but not paid plus the "claims" that have not been reported but may be reasonably expected.

(9) "Claims" means the cost to the "carrier" of health care services provided to a "covered person" or paid to or on behalf of the "covered person" in accordance with the terms of a "plan." This includes "capitation payments" or other similar payments made to providers or facilities for the purpose of paying for health care services for a "covered person."

(10) "Community rate" means the weighted average of all "premium rates" within a filing with the weights determined according to current enrollment.

(11) "Contract" means an agreement to provide health care services or pay health care costs for or on behalf of a "subscriber" or group of "subscribers" and such eligible dependents as may be included therein.

(12) "Contract form" means the prototype of a "contract" and any associated riders and endorsements filed with the commissioner by a health care service contractor or health maintenance organization.

(13) "Contribution to surplus, contingency charges, or risk charges" means the portion of the "projected earned premium" not associated directly with "claims" or "expenses."

(14) "Covered person" or "enrollee" has the same meaning as that contained in RCW 48.43.005.

(15) "Current community rate" means the weighted average of the "community rates" at the renewal or initial effective dates of each plan for the year immediately preceding the renewal period, with weights determined according to current enrollment.

(16) "Current enrollment" means the monthly average number and demographic makeup of the "covered persons"

for the applicable contracts during the most recent twelve months for which information is available to the carrier.

(17) "Earned premium" means the "premium" plus any rate credits or recoupments, applicable to an accounting period whether received before, during, or after such period.

(18) "Expenses" means costs that include but are not limited to the following:

(a) Claim adjudication costs;

(b) Utilization management costs if distinguishable from "claims";

(c) Home office and field overhead;

(d) Acquisition and selling costs;

(e) Taxes; and

(f) All other costs except "claims."

(19) "Experience period" means the most recent twelve-month period from which the carrier accumulates the data to support a filing.

(20) "Extraordinary expenses" means "expenses" resulting from occurrences atypical of the normal business activities of the "carrier" that are not expected to recur regularly in the near future.

(21) "Grandfathered" has the same meaning as that contained in RCW 48.43.005.

(22) "Group contract" or "group plan" means an agreement issued to an employer, corporation, labor union, association, trust, or other organization to provide health care services to employees or members of such entities and the dependents of such employees or members.

~~((22))~~ (23) "Incurred claims" means "claims" paid during the applicable period plus the "claim reserves" as of the end of the applicable period minus the "claim reserves" as of the beginning of the applicable period. Alternatively, for the purpose of providing monthly data or trend analysis, "incurred claims" may be defined as the current best estimate of the "claims" for services provided during the applicable period.

~~((23))~~ (24) "Individual contract" means a "contract" issued to and covering an individual. An "individual contract" may include dependents.

~~((24))~~ (25) "Investment earnings" means the income, dividends, and realized capital gains earned on an asset.

~~((25))~~ (26) "Loss ratio" means "incurred claims" as a percentage of "earned premiums" before any deductions.

~~((26))~~ (27) "Medical care component of the consumer price index for all urban consumers" means the similarly named figure published monthly by the United States Bureau of Labor Statistics.

~~((27))~~ (28) "Net worth or reserves and unassigned funds" means the excess of assets over liabilities on a statutory basis.

~~((28))~~ (29) "Plan" means a "contract" that is a health benefit plan as defined in RCW 48.43.005 or a "contract" for limited health care services as defined in RCW 48.44.035.

~~((29))~~ (30) "Premium" has the same meaning as that contained in RCW 48.43.005.

~~((30))~~ (31) "Premium rate" means the "premium" per "subscriber" or "covered person" obtained by adjusting the "base rate" for geographic area, family size, age, wellness activities, or any other factors as may be allowed.

~~((31))~~ (32) "Projected earned premium" means the "earned premium" that would be derived from applying the proposed "premium rates" to the current enrollment.

~~((32))~~ (33) "Projected incurred claims" means the estimate of "incurred claims" for the rate renewal period based on the current enrollment.

~~((33))~~ (34) "Proposed community rate" means the weighted average of the "community rates" at the renewal dates of each plan for the renewal period, with weights determined according to current enrollment.

~~((34))~~ (35) "Provider" has the same meaning as that contained in RCW 48.43.005.

~~((35))~~ (36) "Rate renewal period" means the period for which the proposed "premium rates" are intended to remain in effect.

~~((36))~~ (37) "Rate schedule" means the schedule of all "base rates" for "plans" included in the filing.

~~((37))~~ (38) "Requested increase in the community rate" means the amount, expressed as a percentage, by which the "proposed community rate" exceeds the "current community rate."

~~((38))~~ (39) "Service type" means the category of service for which "claims" are paid, such as hospital, professional, dental, prescription drug, or other.

~~((39))~~ (40) "Small group contracts" or "small group plans" means the class of "group contracts" issued to "small employers," as that term is defined in RCW 48.43.005.

~~((40))~~ (41) "Staffing data" means statistics on the number of providers and associated compensation required to provide a fixed number of services or provide services to a fixed number of "covered persons."

~~((41))~~ (42) "Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care.

(43) "Stand-alone vision plan" means coverage for a set of benefits limited to vision care including, but not necessarily limited to, materials.

(44) "Subscriber" means a person on whose behalf a "contract" or "certificate" is issued.

~~((42))~~ (45) "Unit cost data" means statistics on the cost per health care service provided to a "covered person."

~~((43))~~ (46) "Utilization data" means statistics on the number of services used by a fixed number of "covered persons" over a fixed length of time.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-6060 General contents of all filings.** Each filing required by WAC ~~((284-43-920))~~ 284-43-6560 must be submitted with the filing transmittal form prescribed by and available from the commissioner. The form must include the name of the filing entity, its address, identification number, the type of filing being submitted, the form name or group name and number, and other relevant information. Filings also must include the information required on the filing summary set forth in WAC ~~((284-43-945))~~ 284-43-6660 for individual and small group plans and rate schedules or as set forth in WAC ~~((284-43-950))~~ 284-43-6540 for group plans and rate schedules other than those for small groups.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-6200 Geographic rating area factor development.** (1) For nongrandfathered individual or small group health plans offered, issued or renewed on or after January 1, 2014, if an issuer elects to adjust its premium rates based on geographic area, the issuer must use the geographic rating areas designated in WAC ~~((284-170-252))~~ 284-43-6700.

(2) The premium ratio for the highest cost geographic rating area, when compared to the lowest cost geographic rating area, must not be more than 1.15.

(a) King County is the index geographic rating area for purposes of calculating the premium ratio. The geographic rating area factor for the index area must be set at 1.00.

(b) A health-status related factor may not be used to establish a rating factor for a geographic rating area. Health factor means any of the following:

- (i) Health status of enrollees or the population in an area;
- (ii) Medical condition of enrollees or the population in an area, including both physical and mental illnesses;
- (iii) Claims experience;
- (iv) Health services utilization in the area;
- (v) Medical history of enrollees or the population in an area;
- (vi) Genetic information of enrollees or the population in an area;
- (vii) Disability status of enrollees or the population in an area;
- (viii) Other evidence of insurability applicable to the area.

(3) Assignment of a factor to a geographic rating area must be actuarially sound and based on provider reimbursement differences. An issuer must fully document the basis for the assigned rating factors in the actuarial memo submitted with a rate filing.

(4) The geographic rating area factors must be applied uniformly to individuals or small groups applying for or receiving coverage from the issuer.

(5) For out-of-state enrollees covered under a health benefit plan issued to a Washington resident, an issuer must apply the geographic rating area factor based on the primary subscriber's Washington residence. For out-of-state enrollees who are covered under a health benefit plan issued through an employer whose primary place of business is Washington, an issuer must apply the geographic rating area factor based on the employer's primary place of business.

(6) This section does not apply to stand alone dental plans offered on the Washington health benefit exchange.

AMENDATORY SECTION (Amending WSR 16-03-018, filed 1/8/16, effective 1/8/16)

**WAC 284-43-6500 Applicability and scope.** This subchapter is adopted under the general authority of RCW 48.02.060. This subchapter applies to health benefit plans as defined in RCW 48.43.005 ~~((and))~~, contracts for limited health care services as defined in RCW 48.44.035, stand-alone dental plans and stand-alone vision plans. This subchapter also applies to plans ~~((issued or renewed on or after~~

January 1, 2016,) offered by carriers under the requirements of ((chapter 19, Laws of 2015)) RCW 48.43.733.

### NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
284-43-6060	284-43-6580
284-43-6080	284-43-6600
284-43-6120	284-43-6620
284-43-6140	284-43-6640
284-43-6160	284-43-6660
284-43-6200	284-43-6680
284-43-6220	284-43-6700

AMENDATORY SECTION (Amending WSR 83-14-002, filed 6/23/83, effective 9/1/83)

**WAC 284-60-010 Scope.** (1) This regulation, WAC 284-60-010 through 284-60-100, applies to all insurers and to every disability insurance policy form filed for approval in this state after August 31, 1983, except:

(a) Additional indemnity and premium waiver forms for use only in conjunction with life insurance policies;

(b) Medicare supplement policy forms which are regulated by chapter 284-55 WAC;

(c) Credit insurance policy forms issued pursuant to chapter 48.34 RCW;

(d) Group policy forms other than:

(i) Specified disease policy forms((:));

(ii) Policy forms, other than loss of income forms, as to which all or substantially all, of the premium is paid by the individuals insured thereunder((:));

(iii) Policy forms, other than loss of income forms, for issue to single employers insuring less than one hundred employees((:)).

(e) Policy forms filed by health care service contractors or health maintenance organizations;

(f) Policy forms initially approved before September 1, 1983, including subsequent requests for rate increases and modifications of rate manuals;

(g) Health plans other than:

(i) Grandfathered individual health plans;

(ii) Grandfathered small group health plans.

(h) Stand-alone dental only plans; and

(i) Stand-alone vision only plans.

(2) Approvals of policy forms of the types subject to this regulation approved before September 1, 1983, and which are not in compliance with the provisions of this regulation on January 1, 1985, are hereby withdrawn as of January 1, 1985, and such forms shall not thereafter be used for new issues.

**WSR 16-16-055**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed July 27, 2016, 11:56 a.m.]

Supplemental Notice to WSR 16-10-111.

Preproposal statement of inquiry was filed as WSR 15-13-056.

Title of Rule and Other Identifying Information: WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?, 314-29-020 Group 1 violations against public safety, and 314-29-038 Group 5 public safety violations for sports entertainment facility licenses.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 7, 2016, at 10:00 a.m.

Date of Intended Adoption: September 21, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-1631, by September 7, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by September 7, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is part of the board's ongoing chapter review of all of our WAC chapters. Also included in this rule making is a new section to address sports entertainment facility licenses.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: Chapter 66.44 RCW.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not requirement.

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

July 27, 2016

Jane Rushford

Chairman

AMENDATORY SECTION (Amending WSR 09-13-037, filed 6/10/09, effective 7/1/09)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?** (1) A licensee or a mandatory alcohol server training permit holder has twenty days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

**(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within twenty days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

(b) If the penalty does not include a suspension, the licensee must pay a twenty-five percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within thirty days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the WSLCB.

(d) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

**(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surround-

ing the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearings examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

**AMENDATORY SECTION** (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

**WAC 314-29-020 Group 1 violations against public safety.** (1) Group 1 violations are considered the most serious because they present a direct threat to public safety. Violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-29-015(4).

(2) Group 1 violations will be counted sequentially rather than independently by group. For example, if a licensee received a violation for over service on one day and a violation for sale to a minor a week later, the sale to a minor would be treated as a second offense since both violations are in the same violation group.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<b>Violations involving minors:</b> <b>Sale or service to minor:</b> Sale or service of alcohol to a person under 21 years of age. <b>Minor frequenting</b> a tavern, lounge, or other restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
<b>Sale or service to apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Conduct violations:</b> <b>Disorderly conduct</b> by licensee or employee, or permitting on premises. <b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty. <b>Criminal conduct:</b> Permitting or engaging in criminal conduct. WAC 314-11-015	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090	5 day suspension or \$500 monetary option	7 day suspension	30 day suspension	Cancellation of license
<b>Condition of suspension violation:</b> Failure to follow any suspension restriction while liquor license is suspended. WAC 314-29-040	Original penalty plus 10 day suspension with no monetary option	Cancellation of license		

NEW SECTION

**WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses.** Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

- (1) General public safety violation penalties.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
<p><b>Violations involving minors:</b>  <b>Sale or service to minors outside of WAC 314-29-038(c):</b> Sale or service of alcohol to a person under 21 years of age.  <b>Minor frequenting</b> a restricted area.                      RCW 66.44.270                      RCW 66.44.310                      WAC 314-11-020                      WAC 314-16-150</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Sale or service to an apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person.                      RCW 66.44.200                      WAC 314-16-150</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Conduct violations:</b>  <b>Disorderly conduct</b> by licensee or employee, or permitting on premises.  <b>Licensee and/or employee</b> intoxicated on the licensed premises and/or drinking on duty.  <b>Criminal conduct:</b> Permitting or engaging in criminal conduct.                      WAC 314-11-015</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties.                      RCW 66.28.090                      RCW 66.44.370                      WAC 314-11-090</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) WSLCB youth access compliance checks, in accordance with chapter 314-31 WAC.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license

\* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.

**WSR 16-16-059**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 27, 2016, 12:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-088.

Title of Rule and Other Identifying Information: WAC 308-409-020, 308-409-030, 308-409-050; and add new WAC 308-409-090.

Hearing Location(s): Department of Licensing, Business and Professions Division, Real Estate Programs, 405 Black Lake Boulevard S.W., Conference Room 2105, Olympia, WA 98502, on September 7, 2016, at 9:00 a.m.

Date of Intended Adoption: September 8, 2016.

Submit Written Comments to: Dee A. Sharp, P.O. Box 9021, Olympia, WA 98507-9021, e-mail dsharp@dol.wa.gov, fax (360) 570-4981, by September 6, 2016.

Assistance for Persons with Disabilities: Contact Tamara McCowan by September 6, 2016, TTY (360) 664-8885 or (360) 664-6504.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All updates and adoptions are being proposed for our state to remain in compliance with state (chapter 18.310 RCW) and federal rules under section 1124 to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) as modified by section 1473 of the Dodd-Frank Act.

The proposed updates and adoption will: Update current fingerprint processes in rule to include submission to fingerprinting vendor and clarify fingerprinting fees will be paid to and set by the vendor; update existing time frame for renewing rules to accommodate for technology changes; and will adopt a new rule pertaining to valuation independence standards as required under the Truth in Lending Act (TILA) 15 U.S.C. Secs. 1601-1667.

Reasons Supporting Proposal: Rule modifications and adoptions are proposed to comply with the final federal rules pertaining to state's requirements to supervise appraisal management companies in compliance with the amendments made to Title XI by the Dodd-Frank Act.

Statutory Authority for Adoption: RCW 18.310.020 (1) and (11).

Statute Being Implemented: Chapter 18.310 RCW.

Rule is necessary because of federal law, 12 U.S.C. § 3353(d); 12 C.F.R. § 226.42

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dee A. Sharp, Olympia, (360) 664-6504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adopts or references federal statutes or regulations without substantive change - exempt under RCW 19.85.025(3) and 34.05.310 (4)(c); and imposes no costs to businesses - exempt under RCW 19.85.030 (1)(a) and 19.85.020(2).

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

July 27, 2016  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

**WAC 308-409-020 Application process to license as an appraisal management company.** (1) An entity applying for licensure as an appraisal management company shall present to the department:

(a) A completed licensure application form that complies with RCW 18.310.060;

(b) Completed registration forms for the owner(s) of ten percent or more of the company and controlling persons, including a designated controlling person(-);

(c) Fingerprint (~~(cards, that are)~~) background checks that are identified to the appraisal management company program, for owner(s) of ten percent or more of the company and controlling person(s);

(i) An application submitted without the required fingerprint (~~(card(s))~~) background check is considered incomplete.

(ii) (~~(When)~~) If a fingerprint (~~(card)~~) submission is rejected, the owner or controlling person must (~~(submit to the department a new fingerprint card)~~) follow the department's authorized vendor's procedures for resubmitting fingerprints within twenty-one calendar days (~~(of written notice to the address of record on file with the appraisal management company program)~~) of the date the department notifies the applicant.

(iii) Failure to (~~(submit a new fingerprint card may result in a suspension of the appraisal management company license until the fingerprint card is received by the department)~~) follow the vendor's fingerprint procedures within twenty-one days may result in a suspension of the appraisal management company license until the vendor's fingerprint procedures are followed. The applicant will be responsible for any fingerprinting fees due to the department's authorized vendor.

(iv) If the fingerprint (~~(card)~~) submission is rejected, the applicant must pay a new fee for fingerprinting and background processing. After three failed submissions, the program may use other sources/methods to satisfy the background check requirement.

- (d) Proof of surety bond; and
- (e) Appropriate fees.

(2) A change in ownership or controlling person(s) of the appraisal management company will require the new owner(s) or controlling person(s) to submit owner or controlling person registration form(s) to the department together with fingerprint (~~(cards)~~) background check(s), that are identified to the appraisal management company program(~~(, and appropriate processing fees)~~) within fourteen business days of change.

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

**WAC 308-409-030 Licensure and renewal.** (1) Appraisal management companies must be licensed by January 1, 2012.

(2) Each original and renewal license issued under chapter 18-310 RCW shall expire two years from date of issue.

(3) To be renewed as an appraisal management company, the holder of a valid license shall submit an application and pay the prescribed fee to the director no earlier than (~~(ninety))~~ one hundred twenty days prior to the expiration date.

(4) If a company fails to renew a license prior to its expiration and no more than one year has passed since the company last held a valid license, the company may obtain a renewed license by paying the renewal fee and late renewal penalty fee.

(5) The director shall cancel the license of any company whose renewal fee is not received within one year from the date of expiration. A company may obtain a new license by applying for original licensure as an appraisal management company.

AMENDATORY SECTION (Amending WSR 11-24-067, filed 12/6/11, effective 1/6/12)

**WAC 308-409-050 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.310 RCW:

Title of Fee	Fee
Original licensure	\$2,400.00
Renewal	1,200.00
Late renewal penalty	38.00
Duplicate license	30.00
Fingerprint processing	<del>((35-25))</del> <u>per vendor schedule*</u>

\*Fees for the category marked with an asterisk are determined by contract with an outside vendor.

NEW SECTION

**WAC 308-409-090 Valuation independence standards.** (1) Appraisal management companies shall select an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; and

(2) Appraisal management companies shall conduct appraisal management services in accordance with the requirements of the Truth in Lending Act, 15 U.S.C. Secs. 1601-1667.



**WSR 16-16-069**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed July 28, 2016, 9:55 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: New WAC 246-907-0301 Pharmacy assistant fees and renewal cycle, proposing application and renewal fees for pharmacy assistants to implement SB 5549 (chapter 4, Laws of 2016).

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road, Room 158, Tumwater, WA 98501, on September 8, 2016, at 11:00 a.m.

Date of Intended Adoption: October 28, 2016.

Submit Written Comments to: Megan Mikkelsen, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-4626, by September 8, 2016.

Assistance for Persons with Disabilities: Contact Megan Mikkelsen by September 1, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5549 authorizes the department to charge an individual registration fee for pharmacy assistants, and placed pharmacy assistants under the Uniform Disciplinary Act. The department already credentials registered pharmacy assistants but does not charge a fee for the individual registration. Currently, the department must use licensing fees of pharmacists, pharmacy technicians and pharmacies to cover the costs of regulating pharmacy assistants. Revenue is needed to cover the costs of credentialing and regulating the pharmacy assistant profession

Reasons Supporting Proposal: RCW 43.70.250 requires the cost of each licensing program to be fully borne by the profession's members and licensing fees to be based on the licensing program's costs. The proposed fees are intended to cover the average costs of credentialing, discipline and other costs for registered pharmacy assistants and makes registration annual instead of every two years. This change in frequency is intended to reduce the burden on pharmacy assistants or employers that pay the registration fee.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: SB 5549 (chapter 4, Laws of 2016).

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: Megan Mikkelsen, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4617; and Implementation and Enforcement: Steve Saxe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3903.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

July 28, 2016

John Wiesman, DrPH, MPH  
 Secretary

**NEW SECTION**

**WAC 246-907-0301 Pharmacy assistant licensing periods and fees—Fees and renewal cycle.** (1) Pharmacy assistant registrations must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following nonrefundable fees will be charged for pharmacy assistants:

Original fee	\$25.00
Renewal fee	\$25.00
Late renewal penalty	\$25.00
Expired license reissuance	\$25.00
Duplicate credential	\$10.00
Verification of credential	\$15.00

**WSR 16-16-073**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

(Board of Osteopathic Medicine and Surgery)

[Filed July 28, 2016, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-065.

Title of Rule and Other Identifying Information: WAC 246-853-600 Sexual misconduct, the board of osteopathic medicine and surgery (board) is proposing to amend the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by osteopathic physicians.

Hearing Location(s): Department of Health, Kent Office, 20425 72nd Avenue South, Building 2, Suite 310, Kent, WA 98032, on September 23, 2016, at 9:30 a.m.

Date of Intended Adoption: September 23, 2016.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by September 21, 2016.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633, by September 19, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies and updates the sexual misconduct rule to establish what forcible or nonconsensual acts are within the definition of sexual misconduct by osteopathic physicians. The board's proposed rule adds acts of sexual misconduct which include

sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the board be consistent in its enforcement activities to more fully comply with RCW 18.130.050, 18.130.062, and Executive Order 06-03.

Reasons Supporting Proposal: Experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by osteopathic physicians. The proposal will establish clearer standards of conduct for osteopathic physicians and will help them understand what acts constitute sexual misconduct.

Statutory Authority for Adoption: RCW 18.57.005 and 18.130.050.

Statute Being Implemented: RCW 18.130.050 and 18.130.062.

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

Name of Proponent: Washington state board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv), rules that only clarify language of a rule without changing its effect.

July 28, 2016  
C. Hunter, DO  
Chair

AMENDATORY SECTION (Amending WSR 07-12-091, filed 6/6/07, effective 7/7/07)

**WAC 246-853-600 Sexual misconduct.** (1) ~~((Definitions:))~~ The definitions in this section apply throughout this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician or masturbation by the osteopathic physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician.

(3) An osteopathic physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the osteopathic physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors((;)) including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the osteopathic physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

~~((5))~~ (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

~~((6))~~ (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

~~((7))~~ (8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

**WSR 16-16-079**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 29, 2016, 10:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-138.

Title of Rule and Other Identifying Information: Development of new chapter 392-900 WAC is required to allow the office of the superintendent of public instruction (OSPI) to implement two pilot grant programs established in section[s] 5026 and 5028, chapter 3, Laws of 2015.

The procedures defined in the new chapter outline the processes for both the class size reduction grant and the STEM grant programs.

Hearing Location(s): OSPI, Policy Room, 600 South Washington Street, Olympia, WA 98501, on September 8, 2016, at 1:00 p.m.

Date of Intended Adoption: September 12, 2016.

Submit Written Comments to: Scott Black, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail scott.black@k12.wa.us, fax (360) 586-3946, by September 8, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by September 1, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Legislation enacted in 2015 (sections 5026 and 5028, chapter 3, Laws of 2015) requires the OSPI to implement two pilot school construction grant programs during the 2015-17 biennium.

Reasons Supporting Proposal: OSPI's current school construction rules do not provide a process that would allow OSPI to timely or effectively award these grant funds during the biennium. New grant funding procedures are necessary to preserve the general welfare by allowing OSPI to proceed with the grants and distribution of funding to school districts in accordance with the legislature's intent.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6268; and Enforcement: Lorrell Noahr, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6265.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose any costs on school districts.

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

July 28, 2016  
 Randy Dorn  
 State Superintendent  
 of Public Instruction

**Chapter 392-900 WAC**  
**PILOT GRANT PROGRAMS**

**STEM AND K-3 CLASS SIZE REDUCTION PILOT  
 GRANT PROGRAMS ESTABLISHED IN THE 2015-17  
 WASHINGTON STATE CAPITAL BUDGET 2EHB  
 115.SL.**

NEW SECTION

**WAC 392-900-010 Authority.** This chapter is adopted pursuant to RCW 28A.525.020, which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of state funding assistance to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, 28A.525.162 through 28A.525.178.

NEW SECTION

**WAC 392-900-020 Purpose.** The purpose of this chapter is to set forth provisions applicable to approval of STEM pilot project grants and K-3 class size reduction grants as provided for in sections 5026 and 5028, chapter 3, Laws of 2015 3rd sp. sess. (2EHB 1115 (2015)).

NEW SECTION

**WAC 392-900-030 Eligibility.** Eligibility for school construction assistance program funding through the STEM grant program will be based on a school district's ability to demonstrate a lack of sufficient space for science classrooms and labs to enable students to meet Washington state graduation requirements. The STEM grant award will constitute the district's local funding for purposes of eligibility for the school construction assistance program under RCW 28A.525.166.

Eligibility for the K-3 class size reduction grant program will be based on a school district's ability to demonstrate a need for additional K-3 classrooms as outlined in chapter 41, Laws of 2015, 3rd sp. sess. (2ESSB 6080 (2015)), regardless of any available eligibility for school construction assistance program funding. The K-3 class size reduction grant award may not constitute local funding in the school construction assistance program under RCW 28A.525.166.

NEW SECTION

**WAC 392-900-040 Funding assistance percentage.** (1) The state funding assistance percentage for the STEM pilot program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the district's free and reduced school lunch program, plus the following additional percentage points:

- (a) Ten for second class school districts;

(b) Ten for school districts with funding assistance percentages of more than fifty percent.

(2) The enhanced funding assistance percentage for the K-3 class size reduction grant program is the computed state ratio defined in RCW 28A.525.166 plus twenty percent of the percent of district head count eligible and enrolled in the free and reduced school lunch program.

#### NEW SECTION

**WAC 392-900-050 Construction cost allocation (CCA).** The eligible construction cost in the STEM grant program shall be calculated by multiplying the approved square foot area of the projects as set forth in WAC 392-900-040 by the construction cost allocation as set forth in WAC 392-343-060.

#### NEW SECTION

**WAC 392-900-060 Eligible square footage.** (1) Eligible area for STEM pilot projects is one thousand four hundred forty square feet per science lab or classroom combination, or both; and one thousand forty square feet per science classroom. The total eligible area per STEM project must not exceed fifteen thousand eight hundred forty.

(2) Additional square footage funded through the STEM grant program will be excluded from the school district's inventory of instructional space as defined in WAC 392-343-019 for determining eligibility for state assistance until the date of the final review of the latest study and survey of the affected school district following acceptance of the project by the school district board of directors, or for a period of five years, whichever is earliest.

(3) Additional square footage funded through the K-3 class size reduction grant program becomes part of a school district's inventory of instructional space for determining eligibility as defined in WAC 392-343-019 and shall be ineligible for state funding assistance for modernization for thirty years as described in WAC 392-347-015(4).

(4) Districts receiving funding through the STEM and class size reduction grants may modernize facilities that were previously closed pursuant to WAC 392-347-042.

#### NEW SECTION

**WAC 392-900-070 Process requirements.** (1) The following documents and information will be required to be submitted to the office of the superintendent of public instruction before STEM grant awards are finalized:

(a) New-in-lieu resolution (if applicable);  
 (b) Intent to construct board resolution;  
 (c) Five-year use/thirty-year life board resolution; and  
 (d) Certification letter from school district that any excess costs above STEM grant award and enhanced state assistance funding will be covered with local funding.

(2) Upon completion of all STEM projects, the following shall be submitted to the office of the superintendent of public instruction:

(a) Certified letter from architect verifying final square footage of project; and  
 (b) Final acceptance of completion board resolution.

(3) The following documents and information will be required to be submitted to the superintendent of public instruction before K-3 class size reduction grants awards are finalized:

(a) Five-year use/thirty-year life board resolution;  
 (b) Project assurances board resolution;  
 (c) Certification that the school district has authorized local funds to complete the project(s);  
 (d) Certification that the school district has an available site(s) for the project(s);  
 (e) Certification that additional classrooms will achieve progress towards the average class size objectives for the 2017-18 school year enumerated in RCW 28A.150.260 in effect as of October 31, 2014, and all-day kindergarten as funded pursuant to RCW 28A.150.315.

(4) Upon completion of all K-3 class size reduction grant projects, the following shall be submitted to the superintendent of public instruction:

(a) Name of school facility;  
 (b) Number of classrooms added, renovated or modernized;  
 (c) Gross square footage added, renovated or modernized;  
 (d) Total project budget amount (construction and soft costs);  
 (e) Final construction contract amount;  
 (f) Site plan;  
 (g) Floor plan(s);  
 (h) Area analysis;  
 (i) If applicable, high-performance scorecard and credit cost analysis (chapter 39.35D RCW);  
 (j) If applicable, high-performance ELCCA executive summary (chapter 39.35D RCW);  
 (k) If applicable, apprenticeship reporting documentation (RCW 39.04.320); and  
 (l) Final acceptance of completion board resolution.

#### NEW SECTION

**WAC 392-900-080 State funded combination projects.** Eligible STEM grant projects that are undertaken in conjunction with another school construction assistance program project must follow all applicable requirements defined in chapters 392-342 through 392-347 WAC. State construction assistance funding and STEM grant awards for eligible area within the STEM grant project will be calculated separately in accordance with this chapter.

#### NEW SECTION

**WAC 392-900-090 Waiver of rules to facilitate pilot grant programs.** Subject to factual determinations by the superintendent of public instruction, the provisions of chapters 392-341 through 392-347 WAC which supplement statutory requirements are hereby deemed waived to the extent any provision would prevent or delay the implementation of legislative allocations, grant programs or pilot grant programs.

**WSR 16-16-087**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Osteopathic Medicine and Surgery)  
 [Filed July 29, 2016, 2:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-075.

Title of Rule and Other Identifying Information: WAC 246-854-200 Sexual misconduct, the board of osteopathic medicine and surgery (board) is proposing to amend the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by an osteopathic physician assistant (PA).

Hearing Location(s): Department of Health, Kent Office, 20425 72nd Avenue South, Building 2, Suite 310, Kent, WA 98032, on September 23, 2016, at 9:45 a.m.

Date of Intended Adoption: September 23, 2016.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by September 21, 2016.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633, by September 19, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies and updates the sexual misconduct rule to establish what forcible or nonconsensual acts are within the definition of sexual misconduct by osteopathic PAs. The board's proposed rule adds acts of sexual misconduct which include sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the board be consistent in its enforcement activities to more fully comply with RCW 18.130.050, 18.130.062, and Executive Order 06-03.

Reasons Supporting Proposal: Experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by osteopathic PAs. The proposal will establish clearer standards of conduct for osteopathic PAs and will help them understand what acts constitute sexual misconduct.

Statutory Authority for Adoption: RCW 18.57.005, 18.57A.020, and 18.130.050.

Statute Being Implemented: RCW 18.130.050 and 18.130.062.

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

Name of Proponent: Washington state board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

July 29, 2016  
 C. Hunter, DO  
 Chair

AMENDATORY SECTION (Amending WSR 07-12-091, filed 6/6/07, effective 7/7/07)

**WAC 246-854-200 Sexual misconduct.** (1) ~~((Definitions))~~ The definitions in this section apply throughout this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the osteopathic physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the osteopathic physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Osteopathic physician assistant" means a person licensed to practice osteopathic medicine and surgery under chapter 18.57A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) An osteopathic physician assistant shall not engage in sexual misconduct with a current patient or a key third party. An osteopathic physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the osteopathic physician assistant or masturbation by the osteopathic physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the osteopathic physician assistant.

(3) An osteopathic physician assistant shall not engage in any of the conduct described in subsection (2) of this section

with a former patient or key third party if the osteopathic physician assistant:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the osteopathic physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors(;) including, but not limited to, the following:

(a) Documentation of formal termination;

(b) Transfer of the patient's care to another health care provider;

(c) The length of time that has passed;

(d) The length of time of the professional relationship;

(e) The extent to which the patient has confided personal or private information to the osteopathic physician assistant;

(f) The nature of the patient's health problem;

(g) The degree of emotional dependence and vulnerability.

~~((5))~~ (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

~~((6))~~ (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

~~((7))~~ (8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

### WSR 16-16-090

#### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-08—Filed July 29, 2016, 4:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-051.

Title of Rule and Other Identifying Information: Prescription emergency fill notification.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard, Tumwater, WA 98501, on September 6, 2016, at 1:30 p.m.

Date of Intended Adoption: September 20, 2016.

Submit Written Comments to: Jim Freeburg, P.O. Box 40258, Olympia, WA 98504, e-mail [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax (360) 586-3109 by September 6, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 2, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are intended to clarify that issuers are required to disclose their emergency fill policies to consumers, including any cost-sharing requirements (if applicable). The rules also clarify that an emergency fill is a covered benefit. Finally, the rules clarify that only pharmacy provider agreements need to reflect changes made in previous rule making (R 2014-13).

Reasons Supporting Proposal: Consumers have the right to be aware of any benefits available to them under the terms of their policy. This includes any cost-sharing requirements that may apply to the benefit. In addition, issuers have asked for clarification regarding their responsibility to amend provider agreements to reflect previous rule making.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.510.

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

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

Name of Agency Personnel Responsible for Drafting: Jim Freeburg, P.O. Box 40260, Olympia, WA 98504, (360) 725-7170; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504, (360) 725-7117; and Enforcement: AnnaLisa Gellermann, P.O. Box 40255, Olympia, WA 98504, (360) 725-7037.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The health insurance issuers that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting [no further information supplied by agency].

July 29, 2016

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-5110 Cost-sharing for prescription drugs.** (1) A carrier and health plan unreasonably restrict the treatment of patients if an ancillary charge, in addition to the plan's normal copayment or coinsurance requirements, is imposed for a drug that is covered because of one of the circumstances set forth in either WAC 284-43-817 or 284-43-818. An ancillary charge means any payment required by a carrier that is in addition to or excess of cost-sharing explained in the policy or contract form as approved by the commissioner. Cost-sharing means amounts paid directly to a provider or pharmacy by an enrollee for services received under the health benefit plan, and includes copayment, coinsurance, or deductible amounts.

(2) When an enrollee requests a brand name drug from the formulary in lieu of a therapeutically equivalent generic drug or a drug from a higher tier within a tiered formulary, and there is not a documented clinical basis for the substitution, a carrier may require the enrollee to pay for the difference in price between the drug that the formulary would have

required, and the covered drug, in addition to the copayment. This charge must reflect the actual cost difference.

(3) When a carrier approves a substitution drug, whether or not the drug is in the carrier's formulary, the enrollee's cost-sharing for the substitution drug must be adjusted to reflect any discount agreements or other pricing adjustments for the drug that are available to a carrier. Any charge to the enrollee for a substitution drug must not increase the carrier's underwriting gain for the plan beyond the gain contribution calculated for the original formulary drug that is replaced by the substitution.

(4) If a carrier uses a tiered formulary in its prescription drug benefit design, and a substitute drug that is in the formulary is required based on one of the circumstances in either WAC 284-43-817 or 284-43-818, the enrollee's cost sharing may be based on the tier in which the carrier has placed the substitute drug.

(5) If a carrier requires cost-sharing for enrollees receiving an emergency fill as defined in WAC 284-170-470, then issuers must disclose that information to enrollees within their policy forms.

AMENDATORY SECTION (Amending WSR 16-01-081, filed 12/14/15, effective 12/14/15)

**WAC 284-43-5170 Prescription drug benefit disclosures.** (1) A carrier must include the following information in the certificate of coverage issued for a health benefit plan, policy or agreement that includes a prescription drug benefit:

(a) A clear statement explaining that the health benefit plan, policy or agreement may cover brand name drugs or medication under the circumstances set forth in WAC 284-43-817 or 284-43-818, including, if a formulary is part of the benefit design, brand name drugs or other medication not in the formulary.

(b) A clear explanation of the substitution process that the enrollee or their provider must use to seek coverage of a prescription drug or medication that is not in the formulary or is not the carrier's preferred drug or medication for the covered medical condition.

(c) A clear statement explaining that consumers may be eligible to receive an emergency fill for prescription drugs under the circumstances described in WAC 284-170-470. The disclosure must include the process for consumers to obtain an emergency fill, and cost-sharing requirements, if any, for an emergency fill.

(2) When a carrier eliminates a previously covered drug from its formulary, or establishes new limitations on coverage of the drug or medication, at a minimum a carrier must ensure that prior notice of the change will be provided as soon as is practicable, to enrollees who filled a prescription for the drug within the prior three months.

(a) Provided the enrollee agrees to receive electronic notice and such agreement has not been withdrawn, either electronic mail notice, or written notice by first class mail at the last known address of the enrollee, are acceptable methods of notice.

(b) If neither of these notice methods is available because the carrier lacks contact information for enrollees, a carrier may post notice on its web site or at another location

that may be appropriate, so long as the posting is done in a manner that is reasonably calculated to reach and be noticed by affected enrollees.

(3) A carrier and health plan may use provider and enrollee education to promote the use of therapeutically equivalent generic drugs. The materials must not mislead an enrollee about the difference between biosimilar or bioequivalent, and therapeutically equivalent, generic medications.

AMENDATORY SECTION (Amending WSR 16-07-144, filed 3/23/16, effective 4/23/16)

**WAC 284-170-470 Pharmacy claims—Rejections, notifications and disclosures.** Issuers must provide to billing pharmacies sufficient information about transactions initiated by the pharmacy so that pharmacy claims can be processed in a timely manner.

(1) For purposes of this section "claim rejection" is an administrative step in the claim process where a claim is neither paid nor denied, but is held awaiting a defined action from the pharmacist, prescriber, or member.

(2) An issuer must notify the billing pharmacy of a claim rejection electronically and make available to the pharmacy, utilizing the National Council for Prescription Drug Programs (NCPDP) Telecommunications Standard transaction, all required data elements, as well as the following information, to the extent supported by the transaction:

(a) Rejection reasons such as prior authorization, quantity level limit, and exclusion;

(b) Other medications to consider that would not require a preauthorization (if applicable);

(c) Other medications to consider that would require a preauthorization (if applicable);

(d) Instructions for further processing of claim or for more specific contact information which may include a reference to a specific location on a web site;

(e) Contact phone number of a person or department to contact who can provide additional information.

(3) Every issuer must notify its participating pharmacies of its claim process in its contracts.

(4) Every issuer must be responsible for ensuring that any person acting on behalf of or at the direction of the issuer or acting pursuant to carrier standards or requirements complies with these transaction standards.

(5) In every pharmacy provider agreement, the issuer must:

(a) Disclose if the provider or pharmacy has the right to make a prior authorization request; and

(b) Provide that if the issuer requires the authorization number to be transmitted on a pharmaceutical claim, the issuer will provide the authorization number to the billing pharmacy. The authorization number will be communicated to the billing pharmacy after approval of a prior authorization request and upon receipt of a claim for that authorized medication.

(6) The prior authorization determination must be transmitted to the requesting party and must include the following:

(a) Information about whether a request was approved.

(b) If the request was made by the pharmacy, notification will additionally be made to the prescriber.

(7) In every pharmacy provider agreement, every issuer will state that an issuer will authorize an emergency fill by the dispensing pharmacist and approve the claim payment. An emergency fill is only applicable when:

(a) The dispensing pharmacy cannot reach the issuer's prior authorization department by phone as it is outside of that department's business hours; or

(b) An issuer is available to respond to phone calls from a dispensing pharmacy regarding a covered benefit, but the issuer cannot reach the prescriber for full consultation.

(8) The issuer's emergency fill policy must include the following:

(a) The inclusionary and exclusionary list of medications provided for emergency fill by issuers. This list must be posted online on the issuer's web site; this can be accomplished by linking to a common web site dedicated to administrative simplification and available to the public, such as OneHealthPort.

(b) The authorized amount of the emergency fill will be no more than the prescribed amount up to a seven day supply or the minimum packaging size available at the time the emergency fill is dispensed.

(c) An emergency fill (~~(medication does not necessarily constitute))~~ is a covered ((health service-)) benefit. However, determination as to whether ((this)) the subsequent fill is a covered health service under the patient benefit will be made as part of the prior authorization processing.

(9) Pharmacies and issuers are not required to comply with these contract provisions if the failure to comply is occasioned by any act of God, bankruptcy, act of a governmental authority responding to an act of God or other emergency, or the result of a strike, lockout, or other labor dispute.

#### WSR 16-16-094

##### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Podiatric Medical Board)

[Filed August 1, 2016, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-7-066 [15-07-066].

Title of Rule and Other Identifying Information: WAC 246-922-600 Sexual misconduct, the podiatric medical board (board) is proposing to amend the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a podiatric physician.

Hearing Location(s): Blackriver Training and Conference Center, 800 Oakesdale Avenue S.W., Renton, WA 98057, on October 13, 2016, at 9:30 a.m.

Date of Intended Adoption: October 13, 2016.

Submit Written Comments to: Brett Cain, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <https://fortress.wa.gov/doh/policyreview>, fax (360) 236-2901, by October 11, 2016.

Assistance for Persons with Disabilities: Contact Cece Zenker at (360) 236-4633, by October 10, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule clarifies and updates the sexual misconduct rule to establish what forcible or nonconsensual acts are within the definition of sexual misconduct by podiatric physicians. The board's proposed rule adds acts of sexual misconduct which include sexual contact with any person including people who are not patients, clients, or key parties that involves force, intimidation, lack of consent; or a conviction of a sex offense listed in RCW 9.94A.030. Updating the sexual misconduct rule will establish clearer standards of conduct and will help the board be consistent in its enforcement activities to more fully comply with RCW 18.130.050, 18.130.062, and Executive Order 06-03.

Reasons Supporting Proposal: Experience with investigations and enforcement under the current rule has raised the need to clarify what acts constitute sexual misconduct by podiatric physicians. The proposal will establish clearer standards of conduct for podiatric physicians and will help them understand what acts constitute sexual misconduct.

Statutory Authority for Adoption: RCW 18.22.015 and 18.130.050.

Statute Being Implemented: RCW 18.130.050 and 18.130.062.

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

Name of Proponent: Washington state podiatric medical board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brett Cain, 111 Israel Road S.E., Tumwater, WA 98504, (360) 236-4766.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv). Rules that clarify language of a rule without changing its effect.

July 29, 2016

Suzanne M. Wilson, DPM  
Chair

AMENDATORY SECTION (Amending WSR 07-12-092, filed 6/6/07, effective 7/7/07)

**WAC 246-922-600 Sexual misconduct.** (1) (~~Definitions~~) The definitions in this section apply throughout this section unless the context clearly requires otherwise:

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the podiatric physician-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the podiatric physician and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.



(b) "Podiatric physician" means a person licensed to practice podiatric medicine and surgery under chapter 18.22 RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, domestic partners, parents, siblings, children, guardians and proxies.

(2) A podiatric physician shall not engage in sexual misconduct with a current patient or a key third party. A podiatric physician engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the podiatric physician or masturbation by the podiatric physician while the patient is present;
- (i) Offering to provide practice-related services, such as medication, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the podiatric physician.

(3) A podiatric physician shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the podiatric physician:

- (a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or
- (b) Uses or exploits privileged information or access to privileged information to meet the podiatric physician's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A-.030.

(5) To determine whether a patient is a current patient or a former patient, the board will analyze each case individually, and will consider a number of factors((-)) including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the podiatric physician;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

((6)) (6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment

purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

((7)) (7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

((8)) (8) A violation of any provision of this section shall constitute grounds for disciplinary action.

**WSR 16-16-098**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 1, 2016, 2:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-108.

Title of Rule and Other Identifying Information: Chapter 392-700 WAC, Dropout reengagement.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, Brouillet Room, 600 South Washington, Olympia, WA 98501, on September 8, 2016, at 11:00 a.m.

Date of Intended Adoption: September 12, 2016.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 8, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by September 1, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 392-700 WAC requires updating to clarify student eligibility, program requirements, and reporting processes for dropout reengagement programs. Specific changes are the removal of language that prohibits a student who has been expelled or long-term suspended from being counted for state funding and providing an additional month of state funding for programs operating during the fall quarter. Additional housekeeping changes were made.

Statutory Authority for Adoption: RCW 28A.175.100 and 28A.175.010.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation and Enforcement: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsec-

tion (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

August 1, 2016  
Randy Dorn  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-015 Definitions.** The following definitions in this section apply throughout this chapter:

(1) "**Agency**" means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) "**Annual average full-time equivalent (AAFTE)**" means the total monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) "**Attendance period requirement**" is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) "**CEDARS**" refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) "**College**" means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) "**College level class**" is a class provided by a college that is one hundred level or above.

(7) "**Consortium**" means a regional group of organizations that ~~((will))~~ consist of districts, tribal compact schools, charter schools and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts, tribal compact schools, and charter schools and reduce the administrative burden ~~((on districts))~~.

(8) "**Consortium agreement**" means the agreement that is signed by the authorized consortium lead and all district, tribal compact school, and charter school superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts, tribal compact schools, and charter schools.

(9) "**Consortium lead**" means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(10) "**Count day**" is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(11) "**Credential**" is identified as one of the following:

- (a) ~~((High school equivalency certificate;~~
- ~~((b)))~~ High school diploma; ~~((c))~~ ~~College certificate received after completion of a college program requiring at least forty hours of instruction;~~
- ~~((d))~~ College degree; or

~~((e))~~ ~~Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;))~~ or

~~((b))~~ Associate degree.

(12) "**Enrolled student**" is an eligible student whose enrollment and attendance meets the criteria outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding. An enrolled student can be further defined as one of the following:

~~((a))~~ New student is an enrolled student who is being claimed for state funding for the first time by the program.

~~((b))~~ Continuing student is an enrolled student who has continuously been enrolled in the program and claimed for state funding on at least one count day.

~~((c))~~ Returning student is an enrolled student who has returned to the program after not receiving program services for a period of at least one count day and not more than ten count days.

~~((d))~~ Reenrolling student is an enrolled student who has reenrolled in the program after not receiving program services for a period of eleven count days or more.

(13) "**ERDC**" refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(14) "**Full-time equivalent (FTE)**" is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(15) "**Indicator of academic progress**" means a standard academic benchmark that demonstrates academic performance which is attained by a reengagement student. These indicators will be tracked and reported by the program and district, tribal compact school, or charter school for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Earns at minimum a 0.25 high school ((€)) credit;

(b) Earns at minimum a whole college credit;

~~((c))~~ Receives a college certificate after completion of a college program requiring at least forty hours of instruction;

~~((d))~~ Receives an industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction;

~~((e))~~ Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

~~((€))~~ ~~((f))~~ Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

~~((€))~~ ~~((g))~~ Makes a significant gain in a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

~~((€))~~ ~~((h))~~ Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;

~~((f))~~ (i) Successfully completes ~~((approved))~~ college readiness course work with documentation of competency attainment;

~~((g))~~ (j) Successfully completes job search and job retention course work with documentation of competency attainment;

~~((h))~~ (k) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

~~((i))~~ (l) Enrolls in a college level class for the first time (limited to be claimed once per enrolled student);

~~((j))~~ (m) Successfully completes an English as a second language (ESL) class;

~~((k))~~ (n) Successfully completes an adult basic education (ABE) class; or

~~((l))~~ (o) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.

(16) **"Instructional staff"** means the following:

(a) For programs operated by a district, tribal compact school, charter school, or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college.

(17) **"Letter of intent"** means the document signed by the district, tribal compact school, charter school, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, tribal compact school, charter school, college, or agency agree to implement.

(18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection ~~((13))~~ (16) of this section.

(19) **"OSPI"** means the office of superintendent of public instruction.

(20) **"Program"** means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district, tribal compact school, or charter school superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district, tribal compact school, or charter school, and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district, tribal compact school, or charter school agree to implement.

(23) **"Resident district"** means the district where the student resides or a district that has accepted full responsibility for a student who lives outside of the district through the choice transfer process pursuant to RCW 28A.225.200 through 28A.225.240. For students enrolled in a tribal com-

pact school or charter school, the tribal compact school or charter school is the student's resident district.

(24) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once every week that has at least three days of instruction.

**AMENDATORY SECTION** (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-035 Student eligibility.** (1) A student is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age ~~((, but at least sixteen years of age, as of))~~ at the beginning of the school year but whose sixteenth birthday occurs on or before September 1st ;

(b) Has not yet met the high school graduation requirements of either the district, tribal compact school, charter school, or the college under RCW 28B.50.535; and

(c) At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-five percent of the high school credits expected to be earned by their cohort. A cohort is the group of ~~((district))~~ students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be earned by their cohort;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected to be earned by their cohort;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district, tribal compact school, or charter school graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

(d) If determined not to be credit deficient as outlined in subsection (1)(c) of this section, has been recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, a district, tribal compact school, or charter school designated school personnel, or staff from community agencies which provide educational advocacy services;

(e) Are not currently enrolled in any high school ~~((or other educational program))~~ classes that receive state basic education funding, excluding an approved skill center pro-

gram, a Jobs for Washington's Graduates program, or running start program (~~((receiving state basic education funding))~~); (~~and~~)

(f) ~~((Released from their district of residence and accepted by the serving district, if the program is operated by a different district.))~~ Students who are claimed for state funding by a district, tribal compact school, or charter school outside the district they live in, must be released by either a choice transfer or interdistrict agreement. When a choice transfer is in place, the student's resident district as defined in WAC 392-700-015(23) becomes the district operating the program.

(2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

- (a) Earns a high school diploma;
- (b) Earns an associate degree; or

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-042 Program operating agreements and OSPI approval.** (1) Districts, tribal compact schools, charter schools, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

~~((a) In each of these models, the necessary agreement(s) will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, pursuant to RCW 28A.225.220 through 28A.225.230, in order to attend the program. If the resident district does not participate in an OSPI approved program, another district, agency, or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 with the petitioning entity to provide a program for the eligible students.~~

~~(b))~~ Regardless of the model of operation, the state funding is allocated to the district, tribal compact school, charter school, or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district, tribal compact school, or charter school may enter into one of the following models of operations through the OSPI approval process:

(a) Directly operate a program where the services are provided by the district, tribal compact school, or charter school resources; (~~or~~)

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, tribal compact schools, charter schools, colleges, and/or agencies by executing a consortium agreement that is signed by all members (~~(districts)~~).

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts including tribal compact schools and charter schools, and reduce the administrative burden (~~(on districts)~~). If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(a) Take the lead in organizing and managing the regional consortium;

(b) Provide information and technical assistance to districts, tribal compact schools, and charter schools interested in participating in the consortium and providing the opportunity for their students (~~(from their district)~~) to enroll;

(c) ~~((Advance))~~ Develop scopes of work with agencies and colleges to operate the programs;

(d) Provide oversight and technical assistance to the program to align with all requirements of this chapter and the delivery of quality programming;

(e) Assist the program with the preparation of required reports, enrollment data, and course records needed (~~(by each district)~~) to enroll students, award credit, and report FTE and performance to OSPI;

(f) Facilitate data entry of required student data into each (~~(district's)~~) district, tribal compact school, or charter school's statewide student information system related to enrollment; and

(g) Work with the districts, tribal compact schools, and charter schools to facilitate the provision of special education (~~and~~), accommodations under Section 504 of the Rehabilitation Act of 1973, and transitional bilingual instruction pursuant to WAC 392-700-147.

(4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, tribal compact school, charter school, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts, tribal compact school, or charter school must be approved.

(c) Any program which meets the definition of an online school program in RCW 28A.250.010 must be approved as an online provider, pursuant to RCW 28A.250.060(2).

(6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(7) OSPI will provide model documents that can be modified to include (~~(district/college/agency)~~) district, tribal compact school, charter school, college, or agency specific lan-

guage and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(8) Upon initial approval, OSPI will specify the duration of the approval and indicate the necessary criteria to obtain reapproval.

(9) After receiving a notice of approval, OSPI will assign a code to be used when reporting students enrolled in the program.

(10) This chapter does not affect the authority of districts, tribal compact schools, and charter schools under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programs as defined by WAC 392-700-015(20).

**AMENDATORY SECTION** (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-065 Instruction.** (1) All program instruction will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer to new students as defined in WAC 392-700-015 (12)(a) and reenrolling student as defined in WAC 392-700-015 (12)(d) standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The program will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district, tribal compact school, charter school, or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction (ESL); and

(v) Other course work approved by the district, tribal compact school, or charter school including cooperative work experience.

(c) Instruction will be scheduled so that enrolled students have the opportunity to attend and work with instructional staff during the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(ii) For any one instructional session, the program will assign instructional staff as needed to maintain an instructional staff to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff to students may not exceed 2:50.

(3) Instruction for students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered to all students, as appropriate for their goals, skills levels, and completion of prerequisites:

(i) Basic skills remediation courses and high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-137 Award of credit.** (1) For programs operated by districts, tribal compact schools, charter schools, and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

- (i) September through November;
- (ii) December through February;
- (iii) March through May; and
- (iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit (~~(ranging from at least 0.1 credits to no more than)~~ for a minimum of 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. (~~The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.~~)

(iv) For students taking part in district, tribal compact school, or charter school approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district, tribal compact school, or charter school.

(v) The district, tribal compact school, or charter school must award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district, tribal compact school, or charter

school review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district, tribal compact school, or charter school, and the college will determine whether the high school diploma will be awarded by the district, tribal compact school, or charter school or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college (~~(but has been determined by the college to be at the ninth grade level or higher)~~). The college will determine the type of credit (~~College based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category~~); and

(iii) 0.5 (~~(elective)~~) subject specific credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work(~~and~~

~~(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE)~~ which is aligned to the common core standards.

(c) If the district, tribal compact school, or charter school is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district, tribal compact school, or charter school will determine the type of credit based on the articulation agreement between the college and district, tribal compact school, or charter school;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college (~~(but has been determined by the district to be at the ninth grade level or higher)~~). The district, tribal compact school, or charter school will determine the type and amount of credit for each class (~~College based high school equivalency certificate and ABE classes will not be included in this category~~) based on the articulation agreement between the college and district, tribal compact school, or charter school; and

(iii) 0.5 (~~(elective)~~) subject specific credits will be awarded for successful completion of every five quarter or

three semester hours of high school equivalency certificate course work(~~and~~

(iv) ~~ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE).~~

(3) The district, tribal compact school, or charter school is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district, tribal compact school, or charter school will be provided by the college or agency as needed to facilitate this process.

(4) The district, tribal compact school, or charter school will ensure that the process for awarding high school credits under this scope of work is implemented as part of ~~((the district's))~~ their policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-147 Provision of special education** ~~((and))~~, **Section 504 of the Rehabilitation Act of 1973 accommodations, and transitional bilingual instructional program.** (1) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of special education services ((to any enrolled reengagement students who qualify for special education in accordance with all)) in a properly formulated individualized education program (IEP) for students aged sixteen and older who have been determined eligible for special educational services, and are otherwise qualified for participation in the program. The provision of special education services by the resident district must be consistent with state and federal law ((and)) pursuant to WAC 392-172A-01190, and includes the identification, evaluation, education, and placement of eligible students consistent with chapter 392-172A WAC.

(2) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of accommodations in a properly formulated 504 plan for students who have been determined eligible for services related to Section 504 of the Rehabilitation Act of 1973 ((accommodations will be provided to all eligible students served by the agency or college in accordance with all applicable state and federal law)), and are otherwise qualified for participation in the program.

(3) The resident district as defined in WAC 392-700-015(23) is responsible for the provision of services to students who are eligible for transitional bilingual services, and are otherwise qualified for participation in the program.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-152 Statewide student assessment.** (1) All reengagement programs will ensure that students participate in the statewide assessment of student learning to fulfill the minimum requirements for high school graduation and comply with state and federal school ~~((and district))~~ accountability requirements.

(2) A district, tribal compact school, charter school, direct funded technical college, or educational service district that has been assigned a school code is required to administer the required statewide assessments for each enrolled student and cohort as defined by WAC 392-700-035 (1)(c).

(3) The program staff is not required to be direct test administrators ~~((students can access the tests through the reporting district))~~ but may act in this capacity with the approval of the ~~((reporting))~~ district, tribal compact school, charter school, direct funded technical college, or educational service district that has been assigned a school code which will be responsible for the appropriate training of agency or college staff ~~((The reporting district will submit the proposed test site information to OSPI if a program is operating in adult jail, adult institution, hospital care, home care, library, group home, or church)).~~

~~((3))~~ (4) Program students will be included when calculating school and state statistics in relation to the statewide assessments.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-155 Annual reporting calendar.** (1) For programs operated by ~~((district and))~~ districts, tribal compact schools, charter schools or agencies and for below one hundred level classes offered in a college operated program, the following requirements will be met in relation to the school calendar:

(a) A school year begins September 1st and ends August 31st.

(b) The program will provide the reporting district, tribal compact school, or charter school a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Must have at a minimum of nine hundred planned hours of instruction for the school year.

(2) For programs operated by colleges and for college level classes, the school year calendar shall meet the following criteria:

(a) The specific planned days of instruction will be identified; and

(b) There must be a minimum of ten instructional months.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-160 Reporting of student enrollment.**

(1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district, tribal compact school, charter school, or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) For continuing students as defined by WAC 392-700-015 (12)(b), met the attendance period requirement pursuant to WAC 392-700-015(3);

(e) For continuing students as defined by WAC 392-700-015 (12)(b), met the weekly status check requirement pursuant to WAC 392-700-015((23)) (24);

(f) Has not withdrawn or been dropped (~~(prior to)~~) on or before the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not eligible to be claimed by a state institution pursuant to WAC 392-122-221;

(i) Is not enrolled in a high school (~~(program)~~) class, including alternative learning experience, college in the high school, or another reengagement program, excluding Jobs for Washington's Graduates, special education and/or transitional bilingual instructional program;

(j) If concurrently enrolled in a special education, transitional bilingual instruction, skills center ((program)), or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136; and

(k) ~~((Is not suspended pursuant to WAC 392-400-260 or expelled pursuant to WAC 392-400-275 or 392-400-295 by the program; and~~

~~(H))~~ A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates, special education and/or transitional bilingual instructional programs, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates, special education and/or transitional bilingual instructional programs, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress.

(a) Satisfactory progress is defined as the documented attainment (~~((of at least one credential identified in WAC 392-700-015(11) and/or))~~) of at least one indicator of academic progress identified in WAC 392-700-015(15).

(b) A ~~((student who after three months of being claimed for state funding has not attained a credential or))~~ continuing

student as defined by WAC 392-700-015 (12)(b) and for returning student as defined by WAC 392-700-015 (12)(c) who after being claimed for state funding for three count days excluding the September count day has not earned an indicator of academic progress cannot be claimed for state funding until ((a credential or)) an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may permit the student to continue to attend;

(ii) When the student achieves (~~(a credential or))~~ an indicator of academic progress, the student may be claimed for state funding (~~((for))~~) on the following (~~(month))~~ count day; and

(iii) Rules governing the calculation of the three (~~(months))~~ count day period are:

(A) The September count day is excluded from the three count day period for the indicator of academic attainment. Students whose enrollment spans over the September count day have an additional month to earn an indicator of academic progress.

(B) The three (~~(months))~~ count days may occur in two different school years, if the student is enrolled in consecutive school years; and

~~((B))~~ (C) The three (~~(months))~~ count days are not limited to consecutive months, if there is a break in the student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as (~~(follows:~~

~~(a) When the program's total planned hours of instruction pursuant to WAC 392-700-155 for the school year equals or exceeds nine hundred hours:~~

~~(i) The program is considered a full-time program; and~~  
~~(ii) An enrolled student is a full-time student and is reported as))~~ 1.0 FTE on each monthly count day.

~~((b))~~ Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-165 Funding and reimbursement.** (1) OSPI shall apportion funding for an approved program to districts, tribal compact schools, charter schools, or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reim-



bursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts, tribal compact schools, and charter schools will be as follows:

(i) Monthly payments for the months September through December are based on estimated student enrollment projected by the district, tribal compact school, or charter schools.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, tribal compact school, or charter school, the district, tribal compact school, or charter school will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For programs operated by a college or agency under a scope of work or contracted services agreement with a district, tribal compact school, or charter school:

(i) The district, tribal compact school, or charter school may retain up to seven percent of the basic education allocation; and

(ii) The agency or college will receive the remaining basic education allocation.

(d) For programs operated as part of a consortium with a consortium lead agency:

(i) The district, tribal compact school, or charter school may retain up to five percent of the basic education allocation;

(ii) The consortium lead may retain up to seven percent of the basic education allocation; and

(iii) The operating agency or college will receive the remaining basic education allocation.

(3) Programs and districts, tribal compact school, or charter school may provide transportation for students but additional funds are not generated or provided.

(4) ~~((Reengagement))~~ Students ((enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC)) identified as eligible for K-12 transitional bilingual instruction, enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC, and receiving transitional bilingual instruction services on or before the monthly count day but within the last month they were claimed for transitional bilingual instruction program enhanced funding, can be claimed by the district ((for bilingual)), tribal compact school, or charter school for transitional bilingual instruction program enhanced funding for the months of September through June.

(5) Students identified as eligible for special education services and receiving special education services on or before the monthly count day but within the last month they were

claimed for special education funding, can be claimed by the district, tribal compact school, or charter school for special education funding for the months of September through June.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-175 Required documentation and reporting.** (1) Student documentation:

(a) The program shall submit to the reporting district, tribal compact school, charter school, or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district, tribal compact school, charter school, or direct funded technical college;

(B) Evidence of minimum attendance period; and

(C) Earned ~~((credentials or attained an))~~ indicators of academic progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, tribal compact school, charter school, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) ~~((Monthly))~~ CEDARS student reporting. Approved programs are responsible for submitting all required student information to OSPI in accordance with the CEDARS reporting guidance and reengagement operational instructions. ~~((If the program's model of operation is a partnership or consortium, the agreement must identify who is responsible for providing the information.))~~

(3) Annual reporting.

(a) The program will prepare and submit an annual performance report to the district, tribal compact school, charter school, agency, or college under which the program is operating no later than October 1st.

(b) The district, agency, or college will review and submit the program's annual performance report to OSPI no later than November 1st. The annual performance must be completed using the designated OSPI reporting tool.

(c) The annual report will ~~((include the following))~~ provide the previous school year's student level data:

(i) A list of the program's ((total number of)) enrolled students by:

(A) Gender, age, race/ethnicity((, and credential type who earned a));

(B) Earned credentials as defined in WAC 392-700-015(1)((;

(ii) Program's total number of students by gender, age, race/ethnicity, and indicator of academic progress types who));

(C) Attained ((am)) indicators of academic progress as defined in WAC 392-700-015(15). For high school and college credit, detail the subject area;

(D) The number of months each enrolled student was claimed for state funding;

(E) The number of months each enrolled student was served;

(F) The status of each enrolled student at the end of the school year (graduated, continuing, exited by student choice, exited by program choice, or turned twenty-one during the school year).

((iii)) (ii) Total number of instructional staff.

(A) For programs operated by a district, tribal compact school, charter school, or agency, report total number of instructional staff assigned to the program.

(B) For programs operated by a college, report the number of instructional staff teaching students for the program.

AMENDATORY SECTION (Amending WSR 15-15-115, filed 7/16/15, effective 8/16/15)

**WAC 392-700-195 Longitudinal performance goals.**

(1) Longitudinal performance data for the program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The district, tribal compact school, or charter school will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students.

(3) At the end of each school year, the ERDC will identify the cohort of students for each program for whom longitudinal tracking will be done. Standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, the district, tribal compact school, charter school, and program representatives and will apply to all programs.

(4) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.

(5) The ERDC and OSPI will work with the district, tribal compact school, and charter school so that the district, tribal compact school, and charter school, and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the district, tribal compact school, charter school, or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.

**WSR 16-16-103**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed August 2, 2016, 8:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-23-108.

Title of Rule and Other Identifying Information: Chapter 16-662 WAC, Weights and measures—National handbooks and retail sale of motor fuel. The department is proposing to adopt:

(1) The 2016 edition of NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices);

(2) The 2016 edition of NIST Handbook 130 (Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality) with modifications; and

(3) The 2016 edition of NIST Handbook 133 (Checking the Net Contents of Packaged Goods).

The department is also proposing to establish in rule a civil penalty matrix for violations of the Motor Fuel Quality Act (chapter 19.112 RCW) and chapter 19.94 RCW.

Hearing Location(s): Washington State Department of Agriculture, 1111 Washington Street S.E., Natural Resources Building, Conference Room 259, Olympia, WA 98504-2560, on September 7, at 2:00 p.m.

Date of Intended Adoption: September 21, 2016.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARules.comments@agr.wa.gov, fax (360) 902-2094, by September 7, 2016.

Assistance for Persons with Disabilities: Contact Deanna Painter by August 31, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As provided under chapters 19.94 and 19.112 RCW, the department annually amends its rules to adopt current national standards for commercial measuring instruments and devices and for fuels. The department adopts the current version of NIST Handbook 44, NIST Handbook 130 with modifications, and NIST Handbook 133 in order to maintain uniformity with other states where appropriate. The department is also proposing to include a civil penalty matrix for violations of the Motor Fuel Quality Act.

Reasons Supporting Proposal: The purpose of this chapter is to establish requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures and that are in effect in other states. The department is proposing to adopt the most recent version of NIST Handbook 44, 130 (with modifications), and 133. The NIST handbooks are national consensus codes that establish industry standards for weighing and measuring devices, legal metrology, engine fuel quality, net contents of packaged goods, and specifications and tolerances for reference standards and field standard weights and measures. The department adopts these handbooks in order to maintain uniformity with other states where appropriate. Adoption in rule of the department's civil penalty matrix will provide clarity and transparency regarding how civil penalties for violations of the Motor Fuel Quality Act.

ity Act and chapter 19.94 RCW are calculated, including consideration of aggravating and mitigating circumstances.

Statutory Authority for Adoption: RCW 19.94.190, 19.94.195, 19.112.020, 19.112.140, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 19.112 RCW.

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

Name of Proponent: Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jerry Buendel, 1111 Washington Street, Olympia, WA 98504-2560, (360) 902-1856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules adopt by reference national motor fuel quality standards and are exempt from a small business economic impact statement (SBEIS) requirement under RCW 19.85.061. The Washington state department of agriculture (WSDA) is adopting the 2016 versions of NIST Handbooks 44, 130 and 133. The NIST handbooks are national consensus codes that establish industry standards for weighing and measuring devices, legal metrology, engine fuel quality, net contents of packaged goods, and specifications and tolerances for reference standards and field standard weights and measures. Under chapters 19.112 and 19.94 RCW, WSDA is mandated to adopt these national standards.

The rules that adopt the civil penalty provisions implement the range of civil penalties and general criteria for such penalties under chapter 19.112 RCW. The penalty rules are not substantive business regulations imposing costs on businesses or any other compliance requirements for which an SBEIS is required under either RCW 19.85.030(1) or 19.85.040(1).

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

August 2, 2016  
Brad White  
Assistant Director

## Chapter 16-662 WAC

### **WEIGHTS AND MEASURES—NATIONAL HANDBOOKS (~~AND RETAIL~~), SALE OF MOTOR FUEL, AND PENALTIES FOR VIOLATIONS**

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

**WAC 16-662-100 Purpose.** (1) This chapter establishes, under the authority of the Washington state department of agriculture (WSDA), requirements for the state of Washington that are reasonably consistent with the uniform rules adopted by the National Conference on Weights and Measures (NCWM) and published by the National Institute of Standards and Technology (NIST). This chapter also establishes requirements for the retail sale and advertising of motor fuel, and establishes a matrix for determining civil

penalties under RCW 19.112.060 (1)(b) for motor fuel quality violations.

(2) This chapter applies specifically to the:

(a) Uniform specifications, tolerances and other technical requirements for weighing and measuring devices addressed in *NIST Handbook 44*;

(b) Uniform regulation for weighing and measuring devices under the national type evaluation program (NTEP) addressed in *NIST Handbook 130*;

(c) Uniform procedures for checking the net contents of packaged goods addressed in *NIST Handbook 133*;

(d) Uniform packaging and labeling regulation addressed in *NIST Handbook 130*;

(e) Uniform regulation for the method of sale of commodities addressed in *NIST Handbook 130*;

(f) Uniform examination procedure for price verification addressed in *NIST Handbook 130*;

(g) Engine fuels, petroleum products, and automotive lubricants regulation addressed in *NIST Handbook 130*;

(h) Specifications and tolerances for reference standards and field standard weights and measures addressed in the *NIST Handbook 105* series; (~~and~~)

(i) Requirements for the retail sale and advertising of motor fuel; and

(j) Civil penalties for motor fuel quality violations as provided for under RCW 19.112.060 (1)(b).

(3)(a) *NIST Handbook 44*, *NIST Handbook 130*, *NIST Handbook 133*, and *NIST Handbooks 105* are available on the NIST web site at <http://www.nist.gov/pml/wmd/pubs/handbooks.cfm> or may be purchased on the NCWM web site at <http://www.ncwm.net/publications> or by mail from the National Conference on Weights and Measures, 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Copies of the NIST handbooks and ASTM standards are available for viewing at the Washington State Department of Agriculture, 2nd Floor, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-2560.

(b) You may search the NTEP data base for certificates of conformance (CC) on the NCWM web site at [http://www.ncwm.net/ntep/cert\\_search](http://www.ncwm.net/ntep/cert_search).

(c) For information regarding the contents and application of these publications and data base, contact the weights and measures program at the Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, telephone number 360-902-1857, or e-mail [wts&measures@agr.wa.gov](mailto:wts&measures@agr.wa.gov).

AMENDATORY SECTION (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

**WAC 16-662-105 Standards adopted by the Washington state department of agriculture (WSDA).** Except as otherwise modified in this chapter, WSDA adopts the following national standards:

National standard for:	Contained in the:
(1) The specifications, tolerances, and other technical requirements for the design, manufacture, installation, performance test, and use of weighing and measuring equipment	((2014)) <u>2016</u> Edition of <i>NIST Handbook 44 - Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices</i>
(2) The procedures for checking the accuracy of the net contents of packaged goods	((2014)) <u>2016</u> Edition of <i>NIST Handbook 133 - Checking the Net Contents of Packaged Goods</i>
(3) The requirements for packaging and labeling, method of sale of commodities, national type evaluation, examination procedures for price verification, and engine fuels, petroleum products and automotive lubricants	((2014)) <u>2016</u> Edition of <i>NIST Handbook 130 - Uniform Laws and Regulations in the areas of legal metrology and engine fuel quality</i> . Specifically:
(a) Weights and measures requirements for all food and nonfood commodities in package form	<i>Uniform Packaging and Labeling Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(b) Weights and measures requirements for the method of sale of food and nonfood commodities	<i>Uniform Regulation for the Method of Sale of Commodities</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(c) Weights and measures requirements for price verification	<i>Examination Procedure for Price Verification</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(d) Definitions; standard fuel specifications; classification and method of sale of petroleum products; retail storage tanks and dispenser filters; condemned product; product registration; and test methods and reproducibility limits	<i>Uniform Engine Fuels and Automotive Lubricants Regulation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.

National standard for:	Contained in the:
(e) Weights and measures requirements for national type evaluation	<i>Uniform Regulation for National Type Evaluation</i> as adopted by the National Conference on Weights and Measures and published in <i>NIST Handbook 130</i> , ((2014)) <u>2016</u> Edition.
(4) Specifications and tolerances for reference standards and field standard weights and measures	<i>NIST Handbook 105-1, Specifications and Tolerances for Field Standard Weights (NIST Class F) - 1990;</i>
	<i>NIST Handbook 105-2, Specifications and Tolerances for Field Standard Measuring Flasks - 1996;</i>
	<i>NIST Handbook 105-3, Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards - 2010;</i>
	<i>NIST Handbook 105-4, Specifications and Tolerances for Liquefied Petroleum Gas and Anhydrous Ammonia Liquid Volumetric Provers - 2010;</i>
	<i>NIST Handbook 105-5, Specifications and Tolerances for Field Standard Stopwatches - 1997;</i>
	<i>NIST Handbook 105-6, Specifications and Tolerances for Thermometers - 1997;</i>
	<i>NIST Handbook 105-7, Specifications and Tolerances for Dynamic Small Volume Provers - 1997;</i>
	<i>NIST Handbook 105-8, Specifications and Tolerances for Field Standard Weight Carts - 2003.</i>

**AMENDATORY SECTION** (Amending WSR 14-19-033, filed 9/9/14, effective 10/10/14)

**WAC 16-662-115 Modifications to NIST Handbook 130.** (1) WSDA adopts the following modifications to the listed sections of the *Uniform Regulation for the Method of Sale of Commodities* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(b):

Modified Section:	Modification:
Section 2.20.1. Method of Retail Sale	<p>Modify the existing text in section 2.20.1 with the following: "Type of Oxygenate must be Disclosed.</p> <p>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol.</p> <p>(b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel.</p> <p>(c) Gasoline-ethanol blend fuels containing not more than ten percent <del>(%)</del> ethanol by volume, must be labeled "Contains up to 10% Ethanol."</p> <p>(d) <del>((Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "Ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</del></p>

Modified Section:	Modification:
	<p><del>(e))</del> This information shall be posted on the upper fifty percent of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
<p><del>((Section 2.20.2. Documentation for Dispenser Labeling Purposes</del></p>	<p>Replace the existing text in section 2.20.2. Documentation for Dispenser Labeling Purposes, with: "At the time of delivery of the fuel, the retailer shall be provided, on an invoice, bill of lading, shipping paper, or other documentation a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol.")</p>

Modified Section:	Modification:
Section ((2-23)) <u>2.23.2.</u> Animal Bedding	Modify the existing text to add: "2.23.2. Sawdust, Barkdust, Decorative Wood Particles, and Similar Products. As used in this subsection, "unit" means a standard volume equal to 200 cubic feet. When advertised, offered for sale, or sold within Washington state, quantity representations for sawdust, barkdust, decorative wood particles, and similar loose bulk materials must be in cubic measures or units and fractions thereof."
<u>Section 2.30.2.</u> <u>Labeling Requirements</u>	<u>Modify the existing text to add: Ethanol flex fuel identification and labeling must be done in accordance with 16 C.F.R. Part 306.</u>
Section 2.31.2. Labeling of Retail Dispensers	<p>Modify the existing text to add the following: "2.31.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel.</p> <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel."</p> <p>(b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p> <p>Modify the existing text to add the following: "2.31.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel.</p> <p>(a) Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "biodiesel" or "biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel Blend).</p>

Modified Section:	Modification:
	(b) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."
Section 2.31.4. Exemption	Modify the existing text to delete section 2.31.4.
Section 2.34. Retail Sales of Electricity Sold as a Vehicle Fuel	Modify the existing text to delete section 2.34.

(2) WSDA adopts the following modifications to the listed sections of the *Uniform Engine Fuels and Automotive Lubricants Regulation* requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(d):

Modified Section:	Modification:
Section 2.1.2. Gasoline-Ethanol Blends	<p>Replace the existing text in section 2.1.2 with the following: "When gasoline is blended with 1 to 10 volume percent ethanol, the ethanol shall meet the requirements of ASTM D4806 and either:</p> <p>(a) The base gasoline used for blending with ethanol shall meet the requirements of ASTM D4814; except that the base gasoline shall meet the minimum temperature for a Vapor-Liquid Ratio of 20 for the applicable vapor lock protection class as follows:</p> <ul style="list-style-type: none"> <li>(1) Class 1 shall be 60°C (140°F)</li> <li>(2) Class 2 shall be 56°C (133°F)</li> <li>(3) Class 3 shall be 51°C (124°F)</li> <li>(4) Class 4 shall be 47°C (116°F)</li> <li>(5) Class 5 shall be 41°C (105°F)</li> </ul> <p>or</p> <p>(b) The blend shall meet the requirements of ASTM D4814."</p>

Modified Section:	Modification:
	<p>Modify the existing text to add the following: "2.1.2.1. Maximum Vapor Pressure. The maximum vapor pressure of a gasoline-ethanol blend shall not exceed ASTM D4814 limits by more than 1.0 psi for:</p> <p>(a) Only 9 to 10 volume percent ethanol blends from June 1 through September 15.</p> <p>(b) All blends of 1 to 10 volume percent ethanol from September 16 through May 31."</p>
<p>Section 3.2.6. Method of Retail Sale</p>	<p>Modify the existing text in section 3.2.6 with the following: "Type of Oxygenate must be Disclosed.</p> <p>(a) All automotive gasoline or automotive gasoline-oxygenate blends kept, offered, or exposed for sale, or sold at retail containing at least 1.5 mass percent oxygen shall be identified as "with" or "containing" (or similar wording) the predominant oxygenate in the engine fuel. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate. Where mixtures of only ethers are present, the retailer may post the predominant oxygenate followed by the phrase "or other ethers." In addition, gasoline-methanol blend fuels containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol.</p> <p>(b) Methanol at one percent or greater, by volume, in gasoline for use as motor vehicle fuel must be labeled with the maximum percentage of methanol contained in the motor vehicle fuel.</p> <p>(c) Gasoline-ethanol blend fuels containing not more than ten percent, by volume, must be labeled "Contains up to 10% Ethanol."</p>

Modified Section:	Modification:
	<p><del>(d) ((Ethanol at greater than ten percent by volume must be labeled with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol" (example: E40 Ethanol). E85 fuel ethanol shall be identified and labeled in accordance with section 3.8. E85 Fuel Ethanol.</del></p> <p><del>(e))</del> This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
<p><del>((Section 3.2.7. Documentation for Dispenser Labeling Purposes</del></p>	<p>Modify the existing text in section 3.2.7 with the following: "The retailer shall be provided, at the time of delivery of the fuel, on an invoice, bill of lading, shipping paper, or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentrations sufficient to yield an oxygen content of at least 1.5 mass percent in the fuel. Where mixtures of only ethers are present, the fuel supplier may identify the predominant oxygenate in the fuel (i.e., the oxygenate contributing the largest mass percent oxygen). In addition, any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. This documentation is only for dispenser labeling purposes; it is the responsibility of any potential blender to determine the total oxygen content of the engine fuel before blending. When ethanol and/or methanol is blended at one percent or greater, by volume, in gasoline for use as motor vehicle fuel, documentation must include the volumetric percentage of ethanol and/or methanol."))</p>

Modified Section:	Modification:
Section 3.8.2. <u>Labeling Requirements</u>	<u>Modify the existing text to add: Ethanol flex fuel identification and labeling shall be in accordance with 16 C.F.R. Part 306.</u>
Section 3.9.2. Retail Dispenser Labeling	Modify the existing text in section 3.9.2 to add: "(c) Each retail dispenser of fuel methanol shall be labeled by the capital letter M followed by the numerical value maximum volume percent and ending with the word "Methanol." (Example: M85 Methanol.) This information shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."
Section 3.15.2. Labeling of Retail Dispensers	<p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.5. Labeling of Retail Dispensers Containing Not More Than 5% Biodiesel. Each retail dispenser of biodiesel blend containing not more than five percent biodiesel must be labeled "May contain up to 5% Biodiesel.""</p> <p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.6. Labeling of Retail Dispensers Containing More Than 5% Biodiesel. Each retail dispenser of biodiesel or biodiesel blend containing more than five percent biodiesel must be labeled with the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either "Biodiesel" or "Biodiesel blend" (examples: B100 Biodiesel; B60 Biodiesel blend)."</p> <p>Modify the existing text in subsection 3.15.2 to add: "3.15.2.7. Placement of label. Labels shall be posted on the upper 50% of the dispenser front panel in a position clear and conspicuous from the driver's position in a type at least 12.7 mm (1/2 in.) in height, 1.5 mm (1/16 in.) stroke (width of type)."</p>
Section 3.15.4. Exemption	Delete section 3.15.4.

(3) WSDA adopts the following modifications to the listed sections of the Uniform Regulation for National Type Evaluation requirements published in *NIST Handbook 130*, identified in WAC 16-662-105 (3)(e):

Modified Section:	Modification:
Section 2.3. Director	Modify the existing text in section 2.3 with the following: "Director - Means the director of the Washington state department of agriculture."
Section 4. Prohibited Acts and Exemptions	<p>Modify the existing text in ((<del>section</del>)) <u>subsection (c)</u> with the following: "A device in service in this state prior to July 5, 1997, that meets the specifications, tolerances, and other technical requirements of the <i>National Institute of Standards and Technology Handbook 44</i> shall not be required to be traceable to an active CC."</p> <p>Modify the existing text in ((<del>section</del>)) <u>subsection (d)</u> with the following: "A device in service in this state prior to July 5, 1997, removed from service by the owner or on which the department has issued a removal order after July 5, 1997, and returned to service at a later date shall be modified to meet all specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 effective on the date of the return to service. Such a device shall not be required to be traceable to an active CC." ((<del>Modify the existing text in section (c) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."</del>))</p>



Modified Section:	Modification:
	<p>Modify the existing text in ((<del>section</del>)) <u>subsection</u> (e) with the following: "A device in service in this state prior to July 5, 1997, which is repaired after such date shall meet the specifications, tolerances, and other technical requirements of the National Institute of Standards and Technology Handbook 44 and shall not be required to be traceable to an active CC."</p> <p>Modify the existing text in ((<del>section</del>)) <u>subsection</u> (f) with the following: "A device in service in this state prior to July 5, 1997, that is still in use may be installed at another location in this state provided the device meets requirements in effect as of the date of installation in the new location; however, the device shall not be required to be traceable to an active CC."</p> <p>Modify the existing text in ((<del>section</del>)) <u>subsection</u> (g) with the following: "A device in service in ((<del>this</del>)) <u>another</u> state prior to July 5, 1997, may be installed in this state; however, the device shall meet the specifications, tolerances, and other technical requirements for weighing and measuring devices in the National Institute of Standards and Technology Handbook 44 and be traceable to an active CC."</p>
Section 5. Participating Laboratory and Agreements	Modify the existing text to delete section 5.
Section 6. Revocation of Conflicting Regulations	Modify the existing text to delete section 6.
Section 7. Effective Date	Modify the existing text to delete section 7.

NEW SECTION

**WAC 16-662-160 Definitions for civil penalties and enforcement—Motor fuel quality.** The following definitions apply to WAC 16-662-165 and 16-662-170:

"Violation" means commission of an act or acts prohibited by chapter 19.112 RCW, Motor Fuel Quality Act, and this chapter or the failure to act in compliance with the requirements of chapter 19.112 RCW and this chapter. Viola-

tions include the following: Marketing motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity and quality of a motor fuel; hindering or obstructing the director or the director's authorized agent in the performance of their duties; marketing a motor fuel that is contrary to the provisions of chapter 19.112 RCW and the regulations adopted under the authority of the Motor Fuel Quality Act.

"First violation" means an act or omission unlawful under RCW 19.112.050 that has resulted in a notice of violation or a notice of correction.

"Second violation" means one same or similar violation as a first violation that occurs within two years of the first violation.

"Third violation" means one same or similar violation as a second violation that occurs within two years of the second violation.

"Fourth violation" means one same or similar violation as a third violation that occurs within two years or the third violation.

"Subsequent violation" means one same or similar violation as a fourth violation that occurs within two years of the fourth or any subsequent violation.

"Similar violation" means a violation of a comparable but not identical standard or requirement. For example: A violation of an ASTM fuel standard would be a violation similar to a violation of a different ASTM fuel standard. A violation of an ASTM fuel standard would not be similar to a violation of fuel pricing violation. When determining the level of violation, prior incidents will be based on the date that a final order or stipulated order resolved the prior violation and not from the date that the incident occurred.

"Notice of correction" means a document issued by the department in accordance with RCW 43.05.100. A notice of correction will identify any condition that is a violation. Any violation identified in a notice of correction is a violation even though that violation is not subject to a civil penalty when the notice of correction is issued.

"Notice of intent" means a document issued by the department in accordance with RCW 43.05.110. A notice of intent assesses a civil penalty under RCW 19.112.060 (1)(b) for violations of chapter 19.112 RCW as provided under WAC 16-662-165 and 16-662-170.

NEW SECTION

**WAC 16-662-165 Civil penalties and enforcement—Motor fuel quality.** (1) Enforcement actions and civil penalties will be assessed as described below. The department considers each violation to be a separate and distinct occurrence.

(a) Penalties for ASTM specifications violations include a gasoline or diesel sample not meeting one or more ASTM quality specifications as indicated by the department's contract laboratory certificate of analysis. The applicable standards include: D4814 gasoline and gasoline - oxygenate blends, ASTM D7467 biodiesel blends greater than five percent and equal to or less than twenty percent, ASTM 6751 B100 and D975 diesel and biodiesel blends equal to or less than five percent, gasoline - ethanol blends exceeding legal

limits, ASTM D5798 ethanol flex fuel, also referred to as E85 fuel ethanol or E85 motor fuel.

	<b>Gasoline</b>	<b>Diesel</b>	<b>Biodiesel and biodiesel blends</b>	<b>Other fuels</b>
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,500.00	\$1,500.00	\$1,500.00	\$1,500.00
3rd Violation	\$3,000.00	\$3,000.00	\$3,000.00	\$3,000.00
4th and subsequent violations	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

(b) Penalties for biodiesel and biodiesel blend ratio violations, including biodiesel and biodiesel blends above or below what is labeled on the dispenser.

	<b>Blends between 0 and 5 percent</b>	<b>Blends between 6 and 20 percent</b>	<b>Blends between 21 and 99 percent</b>	<b>100% Biodiesel</b>
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,200.00	\$1,400.00	\$1,400.00	\$1,400.00
3rd Violation	\$1,700.00	\$1,900.00	\$1,900.00	\$1,900.00
4th and subsequent violations	\$2,700.00	\$2,900.00	\$2,900.00	\$2,900.00

(c) Penalties for water in retail fuel storage tanks violations, including failed field tests to determine water in fuel storage tanks exceeding NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsections 4.1 and 4.2.

	<b>Water phase exceeding 1 inch in storage tanks used for gasoline or diesel</b> <b>Water phase exceeding 1/4 inch in storage tanks used for biodiesel blends up to 20%</b>	<b>Water phase exceeding 1/4 inch in storage tanks used for gasoline ethanol blends or biodiesel blends above 20%</b>	<b>Any fuel storage tank with a water phase exceeding 6 inches</b>
1st Violation	NOC	Stop-Sale and \$200.00	Stop-Sale and \$1,500.00
2nd Violation	\$1,000.00	Stop-Sale and \$1,000.00	Stop-Sale and \$3,000.00
3rd Violation	\$2,500.00	Stop-Sale and \$2,500.00	Stop-Sale and \$6,000.00
4th and subsequent violation	\$5,000.00	Stop-Sale and \$5,000.00	Stop-Sale and \$10,000.00

(d) Penalties for fuel dispenser labeling and retail storage tank fill connection marking violations, including biodiesel, ethanol blended and other fuels offered for sale without dispenser labeling required by WAC 16-662-105 and NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Section 3 Classification and Method of Sale of Petroleum Products as modified by WAC 16-662-115; and retail storage tanks missing fill connection markings as required by NIST Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulation, Retail Storage Tanks and Dispenser Filters, Subsection 4.4 Product Storage Identification.

	<b>Biodiesel blends</b>	<b>Gasoline and gasoline-ethanol blends up to 10 percent</b>	<b>Ethanol flex fuel</b>	<b>Other fuels</b>
1st Violation	Notice of Correction			
2nd Violation	\$200.00			
3rd Violation	\$500.00			
4th and subsequent violations	\$1,000.00			

(e) Penalties for octane labeling violations, including octane levels in gasoline lower than posted on the fuel dispenser.

	Between .7 and .9 octane lower	Between 1 and 1.9 octane lower	Between 2 and 2.9 octane lower	Greater than 3 octane lower
1st Violation	Notice of Correction	Notice of Correction	Notice of Correction	Notice of Correction
2nd Violation	\$1,000.00	\$1,500.00	\$2,500.00	\$3,000.00
3rd Violation	\$2,500.00	\$3,000.00	\$5,000.00	\$6,000.00
4th and subsequent violations	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00

(2) Penalties for other violations. Penalties for violations not covered under subsection (1) of this section will be determined by applying one of the above sections that is most similar to the violation and by applying aggravating and mitigating factors under WAC 16-662-170.

**NEW SECTION**

**WAC 16-662-170 Civil penalties and enforcement—Aggravating and mitigating factors.** (1) As provided under RCW 19.112.060 (1)(b), the department has discretion to determine the civil penalty based on circumstances such as the gravity of violations and the history of violations. Criteria for determining whether and how to adjust the civil penalties specified in WAC 16-662-165 are considered aggravating and mitigating factors.

(2) When assessing a penalty using aggravating or mitigating factors, the department will provide a written summary to include the base penalty amount provided in the civil penalty section and any aggravating and/or mitigating factors it considered when arriving at a final civil penalty amount that differs from the base penalty amount.

(3) The department may increase a civil penalty based on the penalties found in WAC 16-662-165 because of aggravating factors including, but not limited to, the following:

(a) Situations where the civil penalty assessed is not substantially equivalent to the violator's economic benefit derived from the violation.

(b) The number of separate violations contained within a single notice of intent.

(c) The magnitude of the harm or potential harm caused by the violation, including the degree of harm to any affected vehicles, property, people, or to the environment.

(d) The sameness or similarity of the current violation to previous violations committed within the previous two years.

(e) The extent to which the violation is part of a pattern of the same or substantially similar violations including violations at other locations operated by the same business or person.

(f) The department may assess up to the maximum penalty of ten thousand dollars as authorized under RCW 19.112.060 (1)(b) when the department determines one or more aggravating factors are associated with violations presenting grave risks to persons, property, or the environment or that represent a pattern of repeated violations presenting moderate risks to persons, property, or the environment.

(4) The department may reduce a civil penalty based on the civil penalty identified in WAC 16-662-165 because of mitigating factors including, but not limited to, the following:

(a) Voluntary disclosure of a violation.

(b) Promptly taking voluntary corrective actions to stop further harm and/or minimize the likelihood that the violation will be repeated.

(c) Promptly making appropriate restitution to any identified customers who were affected or may have been affected by the violation.

(d) Proof that the violations occurred due to structural failures or unintentional errors on the part of the business owner or operator when such failures or errors were outside the control or responsibility of the owner or operator. However, the owner or operator is responsible for the quality of fuel offered for sale at that location.

**NEW SECTION**

**WAC 16-662-175 Other actions not precluded.** When appropriate, the department may decide: Not to pursue a civil penalty; to issue a notice of correction in lieu of pursuing a civil penalty or issuing a stop sale order; to negotiate settlements of cases; and to refer violations or alleged violations to any federal, state, or county authority with jurisdiction.

**WSR 16-16-104  
PROPOSED RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**  
[Filed August 2, 2016, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-092.

Title of Rule and Other Identifying Information: Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations, governs employers who are permitted to self-insure their workers' compensation obligations pursuant to Title 51 RCW.

This filing modifies WAC 296-15-4316, which addresses what a self-insurer must do when a worker elects vocational option 2 benefits. The existing language must be changed to conform to the provisions of RCW 51.32.096, a new statute enacted through chapter 137, Laws of 2015 (SHB 1496).

Hearing Location(s): Department of Labor and Industries, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501-5414, on September 19, 2016, at 3:30 p.m.

Date of Intended Adoption: October 18, 2016.

Submit Written Comments to: James Nylander, P.O. Box 44890, Olympia, WA 98504-4890, e-mail James.Nylander@lni.wa.gov, fax (360) 902-6977, by September 19, 2016.

Assistance for Persons with Disabilities: Contact Ginny Klapstein by September 6, 2016, TTY (800) 833-6388 or (360) 902-6748.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current language in WAC 296-15-4316 states that workers who are eligible for vocational retraining have fifteen calendar days from the date the rehabilitation plan is approved to decline further services and elect option 2 benefits instead. This language conflicts with the time frame established by RCW 51.32.096. The proposed language change will align this rule with the requirements of the new law.

Reasons Supporting Proposal: This proposal is necessary to conform to the provisions of RCW 51.32.096.

Statutory Authority for Adoption: RCW 51.04.020.

Statute Being Implemented: RCW 51.32.096.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: James Nylander, 243 Israel Road S.E., Tumwater, WA 98501, (360) 902-6907.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was determined to be unnecessary based on RCW 19.85.025(3), as this change is being made solely to comply with state law.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was determined to be unnecessary based on RCW 34.05.328 (5)(b)(iii). As stated above, this change is being made solely to comply with state law.

August 2, 2016  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 08-06-058, filed 2/29/08, effective 3/31/08)

**WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits?** When the department approves a rehabilitation plan, the department will notify the worker (~~((will be notified))~~) in writing of their right to decline further vocational rehabilitation services and elect option 2 benefits (~~((within fifteen calendar days))~~). The worker must make an election within the time frame required in WAC 296-19A-600. When the worker elects option 2 benefits, the self-insurer must take the following action within five working days of receiving the worker's request:

(1) Terminate time-loss benefits with proper notification to the worker as required in WAC 296-15-420(9);

(2) Establish the total amount of the option 2 award and a payment schedule for the option 2 benefits that begins the date time-loss is terminated;

(3) Submit a Self-Insurance Vocational Reporting Form to the department. The Self-Insurance Vocational Reporting Form must include:

(a) The total vocational services costs paid since the date the worker was found eligible for services;

(b) The option 2 election form signed by the worker; and

(c) Documentation that includes the total amount of the option 2 award and payment schedule.

(4) Commence payment of option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than fifteen days after the date time-loss is terminated. Option 2 benefits may be paid before the department issues an order.

**WSR 16-16-105**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 2, 2016, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-090.

Title of Rule and Other Identifying Information: Chapter 296-823 WAC, Occupational exposure to bloodborne pathogens, and WAC 296-27-031 Reporting fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S129, Tumwater, WA 98501, on September 8, 2016, at 1:30 p.m.

Date of Intended Adoption: November 1, 2016.

Submit Written Comments to: Tari Enos, P.O. Box 44620, Olympia, WA 98504, e-mail tari.enos@lni.wa.gov, fax (360) 902-5619, by September 15, 2016.

Assistance for Persons with Disabilities: Contact Tari Enos by August 25, 2016, at (360) 902-5541.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule making in chapter 296-823 WAC is to update the recordkeeping and reporting requirements to be in line with those in chapter 296-27 WAC, Recordkeeping and reporting, as well as being at-least-as-effective-as the Occupational Safety and Health Administration (OSHA). When WAC 296-27-031 was updated to be in line with OSHA in 2015, a requirement to report motor vehicle accidents (MVA) was inadvertently deleted and we are proposing to reinstate this requirement.

References, formatting and minor housekeeping changes may be made throughout the chapter and section listed above.

**WAC 296-27-031 Reporting fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents.**

- In subsection (9), remove "If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, inpatient hospitalization, amputation, or loss of an eye" due to this change removing the requirement to report MVAs unless they weren't in a construction zone.

**WAC 296-823-170 Records.**

- Update title from "Records" to "Medical records and recording needle stick and sharps injuries."
- Update "Your Responsibility" section to read "To establish and maintain medical records, and record all occupational injuries resulting from contaminated needle sticks or cuts from contaminated sharps."
- Update the table to read:

You must <del>((meet the requirements))</del> ...	in <del>((this))</del> section:
Establish and maintain medical records	WAC 296-823-17005
<del>((Maintain a sharps injury log))</del> Record needle stick and sharps injuries.	WAC 296-823-17010

**WAC 296-823-17010 Maintain a sharps injury log.**

- Update title of WAC to read "Recording needle stick and sharps injuries."
- Update subsection (1) to read: "You must follow the requirements in chapter 296-27 WAC, Recordkeeping and reporting, for recording occupational injuries and illnesses including needle stick and sharps injuries, unless you meet one of the exemptions specified in WAC 296-27-00103 or WAC 296-27-00105."
- Update subsection (2) to read: "If you are not exempt from the recordkeeping requirements in chapter 296-27 WAC, then you must also record the type and brand of device involved in injuries resulting from a needle stick or cut with a sharps that is contaminated with another person's blood or other potentially infectious material on the OSHA 300 log or equivalent form."
- Remove subsection (3) and the note following it.

Reasons Supporting Proposal: Updating the recordkeeping and reporting rules are so chapter 296-823 WAC requirements match those of chapter 296-27 WAC, as well as being at-least-as-effective-as OSHA.

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

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Miller, Tumwater, Washington, (360) 902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are adopting or incorporating by reference without material change, federal statutes or regulations changes and are exempt under RCW 19.85.025(3) referencing RCW 34.05-310 (4)(c).

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared. The pro-

posed rules are adopting or incorporating by reference without material change, federal statutes or regulations changes and are exempt under RCW 34.05.328 (5)(b)(iii).

August 2, 2016

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

**WAC 296-27-031 Reporting fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents.** (1) You must report to DOSH within eight hours of a work-related incident that results in:

- (a) A fatality; or
- (b) An inpatient hospitalization of any employee.

Notes: 1. Secure the scene of work-related events that result in the death or inpatient hospitalization of any worker, refer to WAC 296-800-320.  
2. Do not move equipment involved (i.e., personal protective equipment (PPE), tools, machinery or other equipment), unless it is necessary to remove the victim or prevent further injuries, refer to WAC 296-800-32010.

(2) You must report to DOSH within twenty-four hours of a work-related incident that results in either an amputation or the loss of an eye that does not require inpatient hospitalization.

Notes: 1. If the amputation or loss of an eye requires inpatient hospitalization, follow the eight-hour reporting requirement in WAC 296-27-031(1).  
2. Inpatient hospitalization that involves only observation or diagnostic testing is not a reportable inpatient hospitalization.

(3) If you do not learn about a reportable fatality, inpatient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to DOSH within the following time periods after the fatality, inpatient hospitalization, amputation, or loss of an eye is reported to you or any of your agents:

- (a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.
- (b) Twenty-four hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(4) If you do not learn right away that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to DOSH within the following time periods after you or any of your agents learn that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident:

- (a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.
- (b) Twenty-four hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(5) You must report the fatality, inpatient hospitalization, amputation, or loss of an eye in the required time frame using one of the following methods:

- (a) By telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233) or in person to the Labor and Industries' Division of Occupational Safety

and Health (DOSH) office located nearest to the site of the incident;

(b) By telephone to the OSHA toll-free telephone number, 1-800-321-OSHA (1-800-321-6742); or

(c) To DOSH by any other means.

(6) If the local office is closed, you must report a fatality, inpatient hospitalization, amputation, or the loss of an eye incident by:

(a) Calling the department at 1-800-4BE-SAFE (1-800-423-7233); or

(b) Calling OSHA's toll-free telephone number at 1-800-321-6742.

(7) You must provide DOSH with the following information for each fatality, inpatient hospitalization, amputation, or loss of an eye:

- (a) The establishment name;
- (b) The location of the work-related incident;
- (c) The time and date of the work-related incident;
- (d) The type of reportable event (i.e., fatality, inpatient hospitalization, amputation, or loss of an eye);
- (e) The number of employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;
- (f) The names of the employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;
- (g) Your contact person and their phone number; and
- (h) A brief description of the work-related incident.

(8) If a fatality does not occur during or right after the work-related incident, you must only report it to DOSH if the fatality occurs within thirty days of the work-related incident.

(9) You must report a fatality, inpatient hospitalization, amputation, or loss of an eye that resulted from a motor vehicle accident that occurred in a construction work zone. ~~((If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, inpatient hospitalization, amputation, or loss of an eye.))~~ However, the fatality, inpatient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(10) You do not have to report an incident that resulted in a fatality, inpatient hospitalization, amputation, or loss of an eye to DOSH if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, inpatient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(11) You must report to DOSH when a heart attack occurs in the work environment that results in a fatality or inpatient hospitalization. DOSH will decide whether to investigate the event, depending on the circumstances of the heart attack.

(12) You must only report to DOSH each inpatient hospitalization that involves medical care or treatment. Inpatient hospitalization involving only observation or diagnostic testing need not be reported.

AMENDATORY SECTION (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

**WAC 296-823-170 Medical records and recording needle stick and sharps injuries.**

**Summary**

**Your responsibility:**

To ~~((obtain))~~ establish and maintain ~~((required))~~ medical records, and record all occupational injuries resulting from contaminated needle sticks or cuts from contaminated sharps.

<b>You must <del>((meet the requirements))</del> ...</b>	<b>in <del>((this))</del> section:</b>
Establish and maintain medical records	WAC 296-823-17005
<del>((Maintain a sharps injury log))</del> <u>Record needle stick and sharps injuries</u>	WAC 296-823-17010

AMENDATORY SECTION (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

**WAC 296-823-17010 ~~((Maintain a))~~ Recording needle stick and sharps ~~((injury log))~~ injuries.**

~~((EXEMPTION: You are exempt from the requirements to record contaminated sharps injuries if you have ten or less employees.))~~

(1) You must ~~((record contaminated sharps injuries on your OSHA 300 or equivalent log))~~ follow the requirements in chapter 296-27 WAC, Recordkeeping and reporting, for recording occupational injuries and illnesses including needle stick and sharps injuries, unless you meet one of the exemptions specified in WAC 296-27-00103 or 296-27-00105.

~~((Reference: Requirements for the OSHA 300 log are found in chapter 296-27 WAC, Recordkeeping and reporting.))~~

~~(2) You must record and maintain contaminated sharps injury information in a way that protects the confidentiality of the injured employee.~~

~~(3) You must also record the following additional information for contaminated sharps injuries:~~

~~(a) The type and brand of device involved in the incident;~~

~~(b) The department or work area where the exposure incident occurred;~~

~~(c) An explanation of how the incident occurred.~~

~~(4) You must maintain your contaminated sharps injury records for five years.~~

**Note:** You may record the additional information in any format you choose, such as on the OSHA 300 and 301 forms. It must be retrievable and identifiable to each specific injury.)

(2) If you are not exempt from the recordkeeping requirements in chapter 296-27 WAC, then you must also record the type and brand of device involved in injuries resulting from a needle stick or cut with a sharps that is contaminated with another person's blood or other potentially infectious material on the OSHA 300 log or equivalent form.

**WSR 16-16-113**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed August 2, 2016, 4:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-081.

Title of Rule and Other Identifying Information: WAC 458-61A-208 Foreclosure—Deeds in lieu of foreclosure—Sales pursuant to court order.

Hearing Location(s): Capital Plaza Building, 2nd Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on September 8, 2016, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.*

Copies of draft rules are available for viewing and printing on our web site at dor.wa.gov.

Date of Intended Adoption: September 15, 2016.

Submit Written Comments to: David Hesford, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DavidH@dor.wa.gov, by September 8, 2016.

Assistance for Persons with Disabilities: Contact Julie King, (360) 704-5717, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend WAC 458-61A-208 to:

1. Reflect recent decision at the Washington state court of appeals (*Department of Revenue v. FDIC*, 190 Wash.App. 150 (2015)) holding that a sale by a receiver in a receivership proceeding did not qualify for an exemption from real estate excise tax as a sale made "upon execution of a judgment" (the exemption is in RCW 82.45.010 (3)(j)).

2. Amend examples and order of rule to increase clarity on department policy.

Reasons Supporting Proposal: To recognize a recent court decision and update information in the current rule.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: David Hesford, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1586; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

August 2, 2016  
 Kevin Dixon  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-09-053, filed 4/15/14, effective 5/16/14)

**WAC 458-61A-208 (~~Foreclosure~~) Transfers pursuant to deeds of trust, foreclosure proceedings, executions of a judgment, deeds in lieu of foreclosure(~~—Sales pursuant to court order~~), and contract forfeiture.** (1) **Introduction.** The real estate excise tax does not apply to any transfer or conveyance made pursuant to:

(a) A deed of trust in a foreclosure proceeding;

(b) An order of sale by a court in any mortgage, deed of trust, or lien foreclosure proceeding (~~or upon~~);

(c) An execution of a judgment as provided in chapters 6.17 and 6.21 RCW;

(d) A deed in lieu of foreclosure to satisfy a mortgage or deed of trust; or

(e) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property.

(2) **Examples.** This rule contains examples that, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

(3) **Deed of trust.** The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.

(4) **Court-ordered sale in a foreclosure proceeding.**

(a) **Application to foreclosure proceedings only.** The real estate excise tax does not apply to an order or sale by a court in any mortgage, deed of trust, or lien foreclosure proceeding. RCW 82.45.010 (3)(j). This exemption does not apply to court-ordered sales in proceedings other than a mortgage, deed of trust, or lien foreclosure proceeding (such as a sale negotiated in a receivership proceeding; see subsection (5)(c) of this section) (generally, any type of negotiated sale is taxable unless an exemption applies, and the exemption here does not apply to negotiated sales outside of mortgage, deed of trust, or lien foreclosure proceedings).

(b) **Reporting requirements.** Real estate excise tax affidavits which state claims for this tax exemption must cite the cause number of the foreclosure proceeding on the affidavit and the transfer document. In order to claim this exemption, a copy of the court decision must be available and provided to the county treasurer or the department (~~upon~~) on request.

~~((2) Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.~~

~~(a))~~ (c) **Examples.**

**Example 1.** Joan and Sam are friends. They decide to jointly purchase real property worth \$100,000 as tenants in common. One year later, they decide to end their co-ownership of the property. Joan and Sam cannot agree on how the property should be divided. They both obtain legal counsel and go to court to resolve the issue. The court orders that Sam will deed his interest in the real property to Joan and Sam will be paid \$65,000 for his interest in the property. (~~Not~~) **Real**

estate excise tax is due on the transfer ~~((since))~~ because the transfer ~~((is pursuant to a court ordered sale.~~

~~((b)))~~, while ordered by the court, is not ordered by the court in a mortgage, deed of trust, or lien foreclosure proceeding.

**Example 2.** Rather than ~~((going to trial))~~ end their co-ownership, Joan and Sam agree to ~~((a settlement during the course of their negotiations.~~ The attorneys draft an agreeable settlement under which Sam will get the property and Joan will be paid \$75,000. The settlement agreement is presented to the court and the judge signs off on the agreement. Tax is due on the transfer because this is not a court ordered sale.

~~((3) Foreclosure and contract forfeiture.))~~ continue owning the property. After a few years, however, Joan and Sam fail to make payments on their mortgage and their lender forecloses. The court orders a sale of the property in a mortgage foreclosure proceeding. Real estate excise tax is not due on the transfer.

**(5) Execution of a judgment.**

(a) **Sheriff's sale.** The real estate excise tax does not apply to a transfer of real property made upon execution of a judgment under chapters 6.17 (dealing with executions of a judgment) and 6.21 RCW (dealing with sales made due to an execution of a judgment, known generally as sheriff's sales), which refers to a writ of execution by the court ordering a sale of real property by a county sheriff. A real estate excise tax affidavit must be filed with the county, and a copy of the writ of execution must be available and provided to the county treasurer or department on request.

(b) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale. The taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.

(c) **Receivers.** The real estate excise tax applies to a sale by a receiver appointed by a court to give effect to the court's judgment under RCW 7.60.025 (dealing with the appointment of receivers).

**(d) Examples.**

**Example 3.** Bill sells property to Sam on a contract. After one year, Sam stops making payments on the contract. Bill obtains a judgment against Sam for nonpayment, and the court issues a writ of execution to enforce the judgment. At the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. Sam is unable to make payment to redeem the right of redemption during the redemption period. When the redemption period is over, Bill turns the certificate of purchase over to the Sheriff. The Sheriff issues a Sheriff's deed to Bill. No real estate tax is due on the issuance of the Sheriff's deed to Bill.

**Example 4.** Alternatively, at the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. To exercise the right of redemption, the holder must remit \$50,000 to the Sheriff. Sam sells the right of redemption to Jerry for \$10,000. Real estate excise tax is due on \$60,000 for the transfer of the right of redemption from Sam to Jerry. Jerry exercises the right of redemption by paying \$50,000 to the Sheriff. The Sheriff issues a Sheriff's deed

to Jerry. No real estate tax is due on the issuance of the Sheriff's deed to Jerry. Two affidavits should be completed and filed together: One for the taxable transfer between Sam and Jerry for the right of redemption with tax paid, and a second one claiming the exemption from the Sheriff's sale to Jerry when the deed is presented.

**(6) Deed in lieu of foreclosure.** The real estate excise tax does not apply to the following transfers where no additional consideration passes:

(a) A transfer by deed in lieu of foreclosure to satisfy a mortgage or deed of trust; or

(b) A transfer from a contract purchaser to the contract holder in lieu of forfeiture of a contract of sale upon default of the underlying obligation~~((=or))~~.

**(c) Examples.**

**Example 5.** Sally sells real property to Frank. Frank obtains a \$150,000 loan from Easy Bank. The bank secures the loan with a deed of trust on the real property. Frank is unable to make the payments on the loan. Frank transfers the property back to Easy Bank by deed in lieu of foreclosure to satisfy the deed of trust. No real estate excise tax is due on the transfer.

**Example 6.** Mel sells real property to George. George obtains a \$100,000 loan from Zephyr Bank. The bank secures the loan with a deed of trust on the real property. George is unable to make the payments on the loan. George obtains a second loan of \$25,000 from Sam. Sam secures his loan with a second deed of trust on the real property. Sam's deed of trust is in junior position to Zephyr Bank's deed of trust. Later, George can't make payments to either the bank or Sam. At this time, George owes the bank \$95,000 and Sam \$23,000. George transfers the real property to Sam by deed in lieu of foreclosure to satisfy Sam's junior deed of trust. The debt to Zephyr Bank (the senior position debt) remains unpaid on the property at the time of transfer. The transfer is partially exempt and partially taxable. The deed in lieu of the junior position debt is exempt. The senior position debt to the bank that remains outstanding on the property at the time of the transfer meets the definition of consideration and is subject to tax. Tax would be due on \$95,000.

**Example 7.** Joe purchases a manufactured home and has it installed in a mobile home park. Joe signs a contract with the mobile home park owner to pay \$300 in monthly rent. If the rent is not paid, the contract states that the park owner has a lien against the manufactured home. Joe is injured and moves in with relatives in another state. Joe does not pay rent for six months. The park owner takes title to the mobile home under the authority of the rent contract, and puts it up for sale to recover his interest for back rent. The park owner sells the manufactured home to Mimi. No tax is due on the transfer to the park owner, since that transfer was to satisfy a lien on the property. Real estate excise tax is due on the sale to Mimi.

**(7) Contract forfeiture.** The real estate excise tax does not apply where no additional consideration passes in a transfer occurring through the cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, regardless of whether the contract contains a forfeiture clause, such as a declaration of forfeiture made under the provisions of RCW 61.30.070.



~~((d) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.~~

~~(i) Meg sells real property to Julie on a real estate contract. The contract price is \$65,000. Julie makes payments for one year and then loses her job and can't make payments on the contract. Julie feels that she has some equity in the property, but she and Meg disagree on how to resolve the issue. Eventually, they come to an agreement. Meg will pay Julie \$1,500; Julie will sign a deed in lieu of forfeiture and transfer the property to Meg. At the time of the deed in lieu of forfeiture, the outstanding balance of the contract was \$61,000. Even though the transfer was by a deed in lieu of forfeiture, there is additional consideration passing (the \$1,500). The transfer is subject to tax. The taxable selling price is \$62,500, which is the total of the outstanding contract balance that was canceled plus the \$1,500 paid to Julie.~~

~~(ii) Sally sells real property to Frank. Frank obtains a \$150,000 loan from Easy Bank. The bank secures the loan with a deed of trust on the real property. Frank is unable to make the payments on the loan. Frank transfers the property back to Easy Bank by deed in lieu of foreclosure to satisfy the deed of trust. No real estate excise tax is due on the transfer.~~

~~(iii) Mel sells real property to George. George obtains a \$100,000 loan from Zephyr Bank. The bank secures the loan with a deed of trust on the real property. George is unable to make the payments on the loan. George obtains a second loan of \$25,000 from Sam. Sam secures his loan with a second deed of trust on the real property. Sam's deed of trust is in junior position to Zephyr Bank's deed of trust. Later, George can't make payments to either the bank or Sam. At this time, George owes the Bank \$95,000 and Sam \$23,000. George transfers the real property to Sam by deed in lieu of foreclosure to satisfy Sam's junior deed of trust. The debt to Zephyr Bank (the senior position debt) remains unpaid on the property at the time of transfer. The transfer is partially exempt and partially taxable. The deed in lieu of the junior position debt is exempt. The senior position debt to the bank that remains outstanding on the property at the time of the transfer meets the definition of consideration and is subject to tax. Tax would be due on \$95,000.~~

~~(iv) Joe purchases a manufactured home and has it installed in a mobile home park. Joe signs a contract with the mobile home park owner to pay \$300 in monthly rent. If the rent is not paid, the contract states that the park owner has a lien against the manufactured home. Joe is injured and moves in with relatives in another state. Joe does not pay rent for six months. The park owner, takes title to the mobile home under the authority of the rent contract, and puts it up for sale to recover his interest for back rent. The park owner sells the manufactured home to Mimi. No tax is due on the transfer to the park owner, since that transfer was to satisfy a lien on the property. Real estate excise tax is due on the sale to Mimi.~~

~~(4) **Deed of trust.** The real estate excise tax does not apply to the foreclosure sale of real property by the trustee under the terms of a deed of trust, whether to the beneficiary listed on that deed or to a third party.~~

~~(5)) **Example 8.** Meg sells real property to Julie on a real estate contract. The contract price is \$65,000. Julie makes payments for one year and then loses her job and can't make payments on the contract. Julie feels that she has \$1,500 in equity in the property. They agree that Meg will pay Julie \$1,500 for her equity in the property and Julie will sign a deed in lieu of forfeiture and transfer the property to Meg. At the time of the deed in lieu of forfeiture, the outstanding balance of the contract was \$61,000. Even though the transfer was by a deed in lieu of forfeiture, there is additional consideration passing (the \$1,500). The transfer is subject to tax on the additional consideration of \$1,500.~~

~~(8) **Assignment of indebtedness.** A transfer from a servicing agent, who has acquired real property under this section, to the actual owner of the indebtedness that was foreclosed upon is not subject to real estate excise tax. In order to claim this exemption, a copy of the assignment of the indebtedness or a copy of the trustee's deed identifying the servicing agent as an agent for the actual owner must be available and provided to the county treasurer or the department ~~((upon))~~ on request.~~

~~((For example,)) **Example 9.** Gil sells real property to Max. Max obtains a \$125,000 loan from Zone Finance. The finance company secures the loan with a deed of trust on real property. Zone Finance sells the loan to Federal National Mortgage Association (Fannie Mae). The finance company becomes the servicing agent for the loan. Max can't make payments on the loan. Due to nonpayment on the debt, the Trustee (under the authority of the Deed of Trust) conducts a Trustee's sale of the real property. The Trustee transfers the property to the Zone Finance via a Trustee's Deed. No real estate excise tax is due on that transfer. Zone Finance Company transfers real property to Fannie Mae, the actual owner of the debt. No real estate excise tax is due on that transfer.~~

~~((6) **Sheriff's sale.**~~

~~(a) **Introduction.** The real estate excise tax does not apply to a transfer of real property made by a county sheriff pursuant to a court decree. A real estate excise tax affidavit must be filed with the county.~~

~~(b) The real estate excise tax applies to a subsequent sale or assignment of the right of redemption and the certificate of purchase that result from the sheriff's sale. The taxable consideration includes any payment given or promised to be given. It also includes the amount of underlying encumbrance, the payment of which is necessary for the exercise of the right of redemption.~~

~~(c) **Examples.**~~

~~(i) Bill sells property to Sam on a contract. After one year, Sam stops making payments on the contract. Bill obtains a judgment against Sam for nonpayment. At the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. Sam is unable to make payment to redeem the right of redemption during the redemption period. When the redemption period is over, Bill turns the certificate of purchase over to the Sheriff. The Sheriff issues a Sheriff's Deed to Bill. No real estate tax is due on the issuance of the Sheriff's deed to Bill.~~

~~(ii) Alternatively, at the Sheriff's sale, Bill obtains a certificate of purchase. Sam obtains the right of redemption. To exercise the right of redemption, the holder must remit~~

~~\$50,000 to the Sheriff. Sam sells the right of redemption to Jerry for \$10,000. Real estate excise tax is due on \$60,000 for the transfer of the right of redemption from Sam to Jerry. Jerry exercises the right of redemption by paying \$50,000 to the Sheriff. The Sheriff issues a Sheriff's Deed to Jerry. No real estate tax is due on the issuance of the Sheriff's deed to Jerry.~~

~~(7))~~ **(9) Documentation.** In addition to the documentation requirements set forth in subsections (1) and ~~((5))~~ **(8)** of this ~~((section))~~ **rule**, a copy of the recorded original mortgage, deed of trust, contract of sale, or lien document must be available and provided to the county treasurer or the department ~~((upon))~~ **on** request.

**WSR 16-16-115**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed August 3, 2016, 7:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-093.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock brand inspection.

Hearing Location(s): Department of Agriculture (WSDA), Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98501, on September 12, 2016, at 11:00 a.m.; and at WSDA, Conference Room 238, 21 North First Avenue, Yakima, WA 98902, on September 19, 2016, at 11:00 a.m.

Date of Intended Adoption: October 7, 2016.

Submit Written Comments to: Henri Gonzales, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., September 19, 2016.

Assistance for Persons with Disabilities: Contact WSDA receptionist by September 2, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend chapter 16-610 WAC to:

- Increase the certificate of permit fee from \$1.00 per book to \$5.00 per book;
- Abolish the equine bill of sale book;
- Clarify the requirement that all veterinarians certified to issue livestock inspection certificates must pass a written exam; and
- Modify the language to increase clarity and conform with current industry practices.

Reasons Supporting Proposal: Increasing the certificate of permit fee will align the costs associated with printing and distributing the books.

Veterinarians that are certified to issue livestock inspection certificates are acting on behalf of the department's livestock inspection program and to ensure integrity and accuracy of those certificates it is imperative that the veterinarians understand the regulations and process.

Due to nonuse of the equine bill of sale books, the department is proposing to eliminate the printing of the books. A sample equine bill of sale will be available on the department's web site at no cost.

Statutory Authority for Adoption: RCW 16.57.160 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 16.57 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Budde, Olympia, (509) 994-3345.

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

Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** WSDA's livestock inspection program is proposing to amend chapter 16-610 WAC.

The purpose of this chapter is to promote the economic vitality of the livestock industry by minimizing exposure to animal diseases and providing owner asset protection through ownership inspections and livestock identification at state, national, and international levels. One of the ways the department accomplishes this is by requiring a certificate of permit (COP) to accompany all livestock in transit in the state; consigned to a public livestock market, special sale or livestock processing facility; or upon entry into a certified feedlot. The COP documents the owner of the livestock and other identifying information specific to the livestock being transported.

The proposed key amendment to this chapter increases the COP fee from \$1.00 per book of twenty-five to \$5.00 per book of twenty-five. The department is proposing to increase the COP fee in order to recoup the actual printing and distribution costs.

In addition, the department is proposing to:

- Provide other document options in place of the department's equine bill of sale form for use when selling horses and discontinue printing the booklet version of the form;
- Clarify that "successfully" completing department-provided certification means that all veterinarians certified to issue livestock inspection certificates must pass a written exam; and
- Modify the language to make it more clear and readable.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS):** Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs on businesses.

"Minor cost" means a cost that is less than one percent of annual payroll or the greater of either .3 percent of annual revenue or \$100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

**INDUSTRY ANALYSIS:** The proposed rule impacts licensed brand holders, licensed dairies, livestock dealers, sale yards, public livestock markets, feed lots, horse owners, and veterinarians.

Currently, the department requires anyone selling horses to complete an equine bill of sale form to track ownership. The proposal provides the option of documenting horse transactions on any type of bill of sale type form. Individuals that wish to continue to use the department's form may access it free of charge on the internet rather than purchase the form in a book of twenty-five. This will decrease costs to anyone selling horses.

Veterinarians that want to offer livestock inspection certificates to their clients must be certified by the department. In order to become certified, a veterinarian must successfully complete department-provided training that includes reading printed brands, reading brands or other marks on animals, completion of official documents, and reviewing ownership documents. The proposal simply clarifies in rule that "successfully" completing the required training means that the veterinarian must pass a written exam. This rule clarification does not negatively impact veterinarians since it is already standard practice to require a passing score on the written exam.

In order to determine the economic impact of the proposal to increase the certificate of permit fee from \$1.00 for a book of twenty-five to \$5.00 for a book of twenty-five, the department conducted a survey. The department has analyzed the survey results and determined that costs are more than minor for two of the businesses that responded.

**INVOLVEMENT OF SMALL BUSINESSES:** Small businesses have been involved in writing the proposed rules and in providing the department with the expected costs associated with the changes. Program staff met with the livestock identification advisory board to discuss the proposed rule amendments on May 19, 2016, and again on June 20, 2016. The livestock identification advisory board represents meat processors, horse industry, cattle feeding industry, public livestock markets, dairy producers, and beef producers. The department also added articles in the Ketch Pen (a publication targeting the cattle industry) and the Trail Dust (a publication distributed by the Cattle Producers of Washington) communicating the proposed rule amendments.

On June 27, 2016, the department sent a postcard survey to approximately six thousand one hundred one licensed brand holders, licensed dairies, livestock dealers, sale yards, public livestock markets, and feedlots to determine how the proposal to increase the COP fee from \$1.00 per book of twenty-five to \$5.00 per book of twenty-five would impact them. The survey instructed recipients to complete an online survey through Survey Monkey or to contact a staff person directly to provide data. Sixty-two businesses responded to the survey - all of whom were small businesses.

**COST OF COMPLIANCE:** RCW 19.85.040 directs agencies to analyze the costs of compliance for businesses required to comply with the proposed rule. In order for the costs to exceed \$100, a business would need to purchase more than twenty books. Each book contains twenty-five certificates of permit and multiple cattle can be shipped under a single permit. Of the businesses surveyed, only two busi-

nesses indicated that they would need to purchase more than twenty books during a twelve month time period. It is our understanding that businesses that normally purchase more than twenty books are haulers or public livestock markets that voluntarily purchase the COP books to give out as a convenience to their customers either free-of-charge or for a fee.

**JOBS CREATED OR LOST:** Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules. In collecting information from representative small businesses through a survey the program estimates that there will be no jobs lost as a result of small businesses complying with the rules.

**DISPROPORTIONATE IMPACT TO SMALL BUSINESSES:** RCW 19.85.040 directs agencies to determine whether the proposed rule will have a disproportionate cost impact on small businesses by comparing the cost of compliance for small business with the cost of compliance for the ten percent of the largest businesses required to comply with the proposed rules.

All businesses that responded to the survey had fifty or fewer employees and therefore are considered small businesses under RCW 19.85.020. There are no large businesses impacted by the proposed rule amendment. Since there are no large businesses impacted by the amendments, there is not a disproportionate impact between large and small businesses.

**CONCLUSION:** To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the livestock identification program has analyzed the economic impact of the proposed rules on small businesses and has determined that only a very small percent of small businesses will incur more than minor costs.

Please contact Kris Budde if you have any questions by phone (509) 994-3345 or e-mail [kbudde@agr.wa.gov](mailto:kbudde@agr.wa.gov).

A copy of the statement may be obtained by contacting Jodi Jones, P.O. Box 42577, Olympia, WA 98504-2577, phone (360) 902-1889, fax (360) 902-2087, e-mail [jjones@agr.wa.gov](mailto:jjones@agr.wa.gov).

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

August 3, 2016  
Lynn N. Briscoe  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

**WAC 16-610-015 Certificate of permit.** (1) A certificate of permit (WSDA form #7020), commonly known as a "transportation permit" or a "haul slip," must accompany livestock:

- (a) In transit (cattle);
  - (b) Consigned to a public livestock market, special sale, or livestock processing facility; or
  - (c) Upon entry into a certified feedlot (cattle).
- (2) The certificate of permit may not be used as a bill of sale for cattle.
- (3) A certificate of permit may be purchased by contacting the department at 360-902-1855 or [livestockid@](mailto:livestockid@)

agr.wa.gov. The price is \$~~((1.00))~~ 5.00 for a book of twenty-five.

- (4) The certificate of permit must include:
- (a) Owner's name and address;
  - (b) Livestock breed;
  - (c) Sex of the animal;
  - (d) Brand or other methods of livestock identification;
- and
- (e) Any other information that the director considers necessary.

**AMENDATORY SECTION** (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

**WAC 16-610-018 Proof of ownership documents.** (1)

Proof of ownership for cattle and horses may be established at the time of a livestock inspection by presenting one of the following documents:

- (a) An official livestock inspection certificate issued by the director.
- (b) A duplicate certificate or certified copy of an original inspection document issued by the director.
- (c) For cattle only, a self-inspection certificate completed prior to June 10, 2010, and any other information required in WAC 16-610-016.
- (d) An official inspection certificate issued by another state or province that maintains a livestock inspection program.
- (e) Registration papers on purebred horses.
- (f) Registration papers on purebred cattle if the brand is not recorded in this state.
- (g) For horses only, a bill of sale. ~~((Department form #7092 Equine Bill of Sale may be used and may be purchased by contacting the department at 360-902-1855. The purchase price of an Equine Bill of Sale is \$1.00 for a book of twenty-five.))~~ A sample equine bill of sale is available by accessing the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.
- (h) A certificate of veterinary inspection issued by a state that does not maintain a livestock inspection program. Vaccination/test tags and the animal description must be verifiable and match the document.

(2) Only original inspection certificates, official duplicate certificates, or certified copies of inspection certificates are acceptable. The name of the livestock owner must appear on the document that is submitted. Carbon copies, faxed copies or photocopies will not be accepted except for registration papers on purebred livestock.

**AMENDATORY SECTION** (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

**WAC 16-610-060 Veterinarian certification.** (1) The director may certify veterinarians, who are licensed and accredited in Washington state and who comply with the requirements of this section, to issue livestock inspection certificates.

(2) Veterinarians licensed and accredited in Washington state who wish to issue inspection certificates for livestock must apply for certification on the department's application

form (WSDA form #7028). The application must include the following:

- (a) The full name and principal business address of the individual applying for certification;
- (b) The applicant's Washington state veterinary license number;
- (c) The geographic area in which the applicant will issue inspection certificates for livestock;
- (d) A statement describing the applicant's experience with large animals, especially cattle and horses;
- (e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;
- (f) The signature of the applicant; and
- (g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of thirty-five dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certificate was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of thirty-five dollars per applicant.

(5) All veterinarians applying for certification or renewal of certification must ~~((successfully))~~ complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;
  - (b) Reading of brands or other marks on animals;
  - (c) Completion of official documents; and
  - (d) Review of satisfactory ownership documents.
- (6) The director will maintain a list of veterinarians certified to perform livestock inspections. Interested parties may request a copy of the list ~~((from))~~ by contacting the department ~~((by calling))~~ at 360-902-1855 or [livestockid@agr.wa.gov](mailto:livestockid@agr.wa.gov).

(7) Inspections by certified veterinarians are conducted upon request and provided at the discretion of the veterinarian.

(8) Certified veterinarians must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

**AMENDATORY SECTION** (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

**WAC 16-610-066 Replacement copies of brand inspection documents.** (1) Individuals can request replace-

ment copies of inspection documents issued by the director which are held by the department.

(2) All requests for replacement copies will be submitted on AGR Form 930-7093 to the department. This form is available on the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.

(3) A twenty-five dollar fee will be charged per document for replacement copies and must accompany the form.

(4) Replacement copies will only be issued to a requestor whose name appears as the buyer, seller, or owner on the document being requested.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

**WAC 16-610-085 Production brands.** (1) Before a production brand may be used in Washington state, it must be recorded with the director according to the provisions of chapter 16.57 RCW and in the same manner as an ownership brand.

(2) Forms to record a brand may be obtained (~~from the director~~) by contacting the department at 360-902-1855, e-mailing [livestockid@agr.wa.gov](mailto:livestockid@agr.wa.gov) or accessing the department's web site at <http://agr.wa.gov/FoodAnimal/Livestock/>.

(3) The director will not charge a fee to record a production brand if the person recording the brand has already paid to record an ownership brand.

(4) Production brands are not recognized for ownership purposes, recorded for ownership purposes, or accepted for livestock inspection purposes.

(5) Dairy cattle: Owners may use any digit or combination of digits as a production brand to identify their dairy cattle as long as the brand is located on the neck or between the hock and the stifle of a hind leg.

(6) Beef cattle: Owners may use a production brand to identify beef cattle but only when the cattle also bear a brand that is currently recorded to the owner of the animal.

(a) On beef cattle, production brands may be located on either side of the animal on the shoulder or hip.

(b) Any numeral digit or combination of digits may be used for a beef cattle production brand as long as they do not conflict with currently recorded ownership brands.

(7) Only Arabic numerals can be used for production brands.

**WSR 16-16-118**  
**PROPOSED RULES**  
**BUILDING CODE COUNCIL**  
[Filed August 3, 2016, 10:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-012.

Title of Rule and Other Identifying Information: The subject of this rule is adoption of regulatory guidance under WAC 51-54A-0105 and 51-54A-3800 for the cannabis industry, specifically marijuana processing or extraction facilities. The council established a special technical advisory group (TAG) to include industry representatives, local officials, and

other affected parties to develop proposed permanent rules. TAG met from March through May 2016 and developed the draft language; the proposed rules were adopted by the council on an emergency basis on June 10, 2016.

Hearing Location(s): Spokane Fire Department Training Center, 1618 North Rebecca Street, Spokane, WA 99217, on September 9, 2016, at 10 a.m.; at the Department of Enterprise Services, 1500 Jefferson Street S.E., Olympia, WA 98504, on October 14, 2016, at 10 a.m.

Date of Intended Adoption: November 18, 2016.

Submit Written Comments to: Steve Simpson, Council Chair, P.O. Box 91449 [41449], Olympia, WA 98504-1449, e-mail [sbcc@ga.wa.gov](mailto:sbcc@ga.wa.gov) [[sbcc@des.wa.gov](mailto:sbcc@des.wa.gov)], fax (360) 586-5366, by October 21, 2016.

Assistance for Persons with Disabilities: Contact Peggy Bryden, council staff, by August 25, 2016, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule-making proposal is to provide regulatory guidance on life/safety requirements for the cannabis industry as regulated by the Fire Code, chapter 51-54A WAC. It is intended that this will improve conditions for those working in processing/extraction facilities, and enhance life/safety for communities where these facilities are located. Emergency rules are currently in place under WSR 16-13-077 to address life/safety concerns.

Reasons Supporting Proposal: The Washington liquor and cannabis board (LCB) regulates licensing for the newly established and fast-growing cannabis industry in Washington state. The legalization of cannabis in Washington provided opportunity for business development in the new industry; legal production and sales began in 2014. As a result, administrative oversight was needed to protect public health and safety as well as the health and safety of industry employees. LCB adopted regulations in WAC 314-55-104 which requires processors using closed loop systems to meet certain standards, and the use of the system and facilities must be in compliance with any required fire, safety, and building code requirements specified in WAC, including the State Building and Fire Codes, NFPA standards and other applicable standards. The state building code council (SBCC) worked with LCB, industry representatives, local officials, and other stakeholders to collaboratively adopt rules to ensure life/safety.

Statutory Authority for Adoption: Chapter 19.27 RCW.

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

Name of Proponent: SBCC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne T. McCaughan, 1500 Jefferson Street S.E., Olympia, WA 98504, (360) 407-9279; and Enforcement: Local building officials, local jurisdiction address.

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

Small Business Economic Impact Statement

**1. Description of compliance requirements:** SBCC is filing proposed rules to adopt changes to WAC 51-54A-0105 and 51-54A-3800, the State Fire Code. These changes will

establish permanent rules to regulate fire safety in the extraction/processing functions of the cannabis industry. The marijuana extraction businesses are required to be inspected for compliance with the State Fire Code by the local fire marshal, in order to be licensed to produce plant oils. The rule is intended to facilitate the Fire Code inspection by identifying the Fire Code related provisions for marijuana plant oil extraction. The proposed rules apply where hazardous materials are used or equipment is regulated by the existing Fire Code. An engineering report is required for unlisted extraction equipment. An exhaust ventilation system, backup power supply, and gas detection are applicable depending on the type of extraction process and hazard identified.

The proposed WAC 51-54A-0105 covers permits and is being filed to correct citations for operational and construction permits, and WAC sections related to the Fire Code. These marijuana processing/extraction business operations are already required to apply for permits under the Fire Code, per licensing regulations promulgated by LCB.

**2. Professional services that a small business is likely to need to comply:** To meet fire safety requirements for marijuana processing/extraction requires professional services of a licensed engineer when extraction equipment is not listed. Installation of backup power, exhaust ventilation and gas detection systems require a professional mechanical and electrical contractor.

The proposed rules do not require any additional reporting or recordkeeping for the small business owner. Permits are required under the current Fire Code. Additional time for plan approval is expected under the newly revised rules, for a limited period of time.

**3. Costs of compliance including equipment, supplies, labor, professional services, and increased administrative costs:** As reviewed for this report, engineering/design bids for unlisted equipment are not to exceed \$5,000. Actual costs incurred may be less. The bids include the required technical report, a general process flow diagram, review of construction documents for the building where the equipment is located, and a site inspection to verify conformance with the technical report.

The incremental cost from one manufacturer for listed extraction equipment versus an unlisted product is \$8,500. Use of listed equipment avoids the cost of the engineering technical report.

A hazardous exhaust fume hood is required for extraction processes using flammable or combustible liquids. Installation of the fume hood interlocked with electrical components in the extraction area, equipment and labor is estimated at \$1,500, where the Fire Code allows a Type II hood based on quantities of combustibles.

Extraction processes using gaseous hydrocarbon based solvents must have a gas detection system. Installation of gas detection system equipment and labor estimated at :\$5,000.

An emergency power supply is required for extraction systems using electricity, and where lighting, ventilation, gas detection, emergency alarms or automatic fire extinguishing systems are installed. Installation of emergency power supply equipment and labor estimated at : \$10,000.

Systems using over one hundred pounds of carbon dioxide must post a sign indicating the hazard. Estimated cost \$100.

Building/fire permits are expected to range from \$117 to \$800.

The total estimated incremental cost to comply with the rule ranges from \$17,000 for an unlisted system using non-flammable or noncombustible liquid or other than gaseous hydrocarbon solvents; to \$25,500 for a listed system using flammable or combustible liquid or gaseous hydrocarbon solvents. This assumes these costs are not already required by the Fire Code.

Several estimates submitted by stakeholders included the costs of constructing the building used for extraction at \$45,000 to \$60,000; and the cost of installing electrical service including panels, wiring, lighting and receptacles, and also including emergency power and gas detection, at \$37,000 to \$40,000. This report assumes cost for initial build out of the facility, including the cost of a new or refurbished building, would not be impacted by the rule making. Normally expected construction costs are not included in the estimated incremental cost. These are base costs necessary to operate a cannabis extraction business. Emergency power and gas detection are considered separately.

The proposed rule requires the extraction process to be located in a code compliant building. As with other businesses these facilities will be reviewed using the State Fire Code to determine if they would be classified as hazardous occupancies. If so, then they would need to meet the Fire Code general requirements for hazardous occupancies along with the specific requirements based on the type of hazard present. The proposed rule prohibits locating a marijuana processing business in an assembly (Group A) building, or a school or nursing facility.

**4. Small business sales and revenue:** The marijuana extraction businesses are required to be inspected for compliance with the State Fire Code by the local fire marshal, in order to be licensed and conduct business. The rule is intended to facilitate the Fire Code inspection by identifying the Fire Code related provisions for marijuana plant oil extraction.

The required engineering report provides a method to allow for the use of equipment that has not been listed by a nationally recognized listing agency for the use. The report requirements are based on administrative requirements that have been tailored to extraction processes. Such reports are used by other industries when listed equipment is not available; manufacturer's detailed specifications can often substitute if sufficient information is presented.

The State Fire Code also permits approval as an "alternative method" which could apply to a piece of equipment or process that has been historically used for botanical extraction in other industries. Thus, the proposed rule provides guidance on approving equipment where no listing exists; and allows for flexibility for the businesses and the code officials, thereby reducing cost impact.

The proposed rule will not cause businesses to lose sales or revenue. The proposed rule provides a path to secure a license needed to conduct business.

**5. Disproportionate cost impact on small businesses:**

The proposed rule will not have a disproportionate impact on small businesses. The Washington Federation of Marijuana Businesses surveyed their membership during July 2016 to help identify potential impacts of the proposed rule making. The data collected indicate that most (ninety-eight percent) of the businesses identified as "processors" have fewer than fifty full-time employees. The cost per employee to meet the fire safety requirements will be uniform across the businesses licensed to extract oils from marijuana. The costs for compliance are similar to costs to comply with the unamended Fire Code.

**6. Steps taken by the agency to reduce the costs of the rule on small businesses:** The location for extraction operations is broadened from an earlier requirement to have a dedicated room within a production facility, to allow certain operations to take place in a dedicated "area."

The definition of "processing" was modified to limit it to hazardous processes that utilize chemicals or equipment regulated by the Fire Code. This ensures that harvesting, trimming or packaging of the plant is not subject to these rules.

Identification requirements for certain/specific manufacturing/part numbers is eliminated so as to protect proprietary information.

**7. How the agency will involve small businesses in the development of the rule:** SBCC convened a special TAG on cannabis issues to bring together the affected parties: Representatives of the cannabis industry, building officials, a local clean air agency and state agency representatives including LCB and the department of labor and industries (L&I), fire officials and other entities affected by the rule. The group met seven times over the course of three months to develop the rule(s), reaching consensus on most issues;

SBCC created a special page on the SBCC web site for the cannabis issues TAG to report progress of TAG, meeting minutes, and draft documents.

SBCC developed a stakeholder list in GovDelivery for interested parties to notify them of the activities, purpose and progress of TAG.

SBCC worked with representatives of LCB and L&I to ensure that the code language developed is consistent with other rules and state agency regulations.

SBCC requested information re: Potential impact on small businesses from the "interested parties" list developed during the 2015 code amendment process, and from the 2016 cannabis issues TAG/interested parties list.

SBCC worked with industry partners to assess potential impact by contacting the Washington Federation of Marijuana Businesses to survey their membership.

**8. A list of industries that will be required to comply with the rule:** Licensed marijuana processors that utilize extraction methods are described in the rule. LCB has issued eight hundred ninety-four licenses for marijuana processors; there are an additional seven hundred licenses pending. A list of the processor businesses is available at <http://lcb.wa.gov/records/frequently-requested-lists>.

**9. An estimate of the number of jobs that will be created or lost:** It is estimated that no jobs will be created or lost due to the proposed rule regulating the fire safety of marijuana extraction. The proposed rule facilitates compliance

with the Fire Code for businesses seeking a license with LCB.

A copy of the statement may be obtained by contacting Joanne T. McCaughan, SBCC, P.O. Box 41449, Olympia, WA 98504-1449, phone (360) 407-9279, fax (360) 586-5366, e-mail [joanne.mccaughan@des.wa.gov](mailto:joanne.mccaughan@des.wa.gov).

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

June 10, 2016  
Steve Simpson  
Chair

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

**WAC 51-54A-0105 Permits.****SECTION 105 SCOPE AND GENERAL REQUIREMENTS**

**105.1.1 Permits required.** Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment, which is regulated by this code, or to cause any such work to be done shall first make application to the fire *code official* and obtain the required permit.

**105.6.4 Carbon dioxide systems.** An operational permit is required for carbon dioxide systems having more than 100 pounds of carbon dioxide.

~~((105.6.4.9))~~ **105.6.49 Marijuana extraction systems.** An operational permit is required to use a marijuana/cannabis extraction system regulated under WAC 314-55-104.

**105.7.19 Marijuana extraction systems.** A construction permit is required to install a marijuana/cannabis extraction system regulated under WAC ~~((244-55-104 [WAC 314-55-104]))~~ 314-55-104.

**105.7.20 Underground supply piping for automatic sprinkler system.** A construction permit is required for the installation of the portion of the underground water supply piping, public or private, supplying a water-based fire protection system. The permit shall apply to all underground piping and appurtenances downstream of the first control valve on the lateral piping or service line from the distribution main to one foot above finished floor of the facility with the fire protection system. Maintenance performed in accordance with this code is not considered to be a modification and does not require a permit.

EXCEPTIONS:

1. When the underground piping is installed by the aboveground piping contractor.
2. Underground piping serves a fire protection system installed in accordance with NFPA 13D.

NEW SECTION**WAC 51-54A-3800 Marijuana processing or extraction facilities.****SECTION 3801—ADMINISTRATION**

**3801.1 Scope.** Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by

the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.

**3801.2 Application.** The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

**3801.2.1** For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.

**EXCEPTION:** Provisions of WAC 314-55-104 do not apply to this chapter.

**3801.2.2** The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.

**3801.3 Multiple hazards.** Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

**3801.4 Existing building or facilities.** Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.

**3801.5 Permits.** Permits shall be required as set forth in Section 105.6 and 105.7.

#### SECTION 3802—DEFINITIONS

**Desolventizing.** The act of removing a solvent from a material.

**Finding.** The results of an inspection, examination, analysis or review.

**Marijuana processing.** Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

**Miscella.** A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

**Observation.** A practice or condition not technically non-compliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

**Transfilling.** The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

#### SECTION 3803—PROCESSING OR EXTRACTION OF MARIJUANA

**3803.1 Location.** Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

**3803.2 Systems, equipment and processes.** Systems, equipment, and processes shall be in accordance with Sections 3803.2.1 through 3803.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

**3803.2.1 Application.** Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

**3803.2.2 General requirements.** In addition to the requirements in Section 3803, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3803.2.7.

**3803.2.3 Systems and equipment.** Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.

**3803.2.4 Change of extraction medium.** Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.

**3803.2.5 Required technical report.** The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.

**3803.2.5.1 Content of technical report and engineering analysis.** All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
  - 4.1 Author of the report;
  - 4.2 Date of report;
  - 4.3 Seal, date and signature of engineer of record performing the design; and
  5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.



6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.

7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.

8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.

9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

**3803.2.6 Building analysis.** The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

**3803.2.6.1 Site inspection.** The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

**3803.2.7 Post-process purification and winterization.** Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

### 3803.3 Construction requirements.

**3803.3.1 Location.** Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

**3803.3.1.1 Extraction room.** The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.

**3803.3.2 Egress.** When a marijuana extraction room is provided, at least one exit, swinging in the direction of egress travel shall be provided with an automatic door closing device and panic hardware.

**3803.3.2.1 Facility egress.** Egress requirements shall be in compliance with Chapter 10 of the International Building Code.

**3803.3.3 Ventilation.** Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.

**3803.3.4 Control area.** Control areas shall comply with Section 5003.8.3.

**3803.3.5 Ignition source control.** Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25% of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.

**3803.3.6 Interlocks.** When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

### 3803.3.7 Emergency power.

**3803.3.7.1 Emergency power for extraction process.** Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

**3803.3.7.2 Emergency power for other than extraction process.** An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;
4. Emergency alarm systems;
5. Automatic fire extinguishing systems.

**3803.3.8 Continuous gas detection system.** For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25% of the LEL/LFL limit of the materials.

**3803.4 Carbon dioxide enrichment or extraction.** Extraction processes using carbon dioxide shall comply with this section.

**3803.4.1 Scope.** Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3803.4

through 3803.4.3. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas systems, dry ice, or on-site carbon dioxide generation.

**3803.4.2 Permits.** Permits shall be required as set forth in Sections 105.6 and 105.7.

**3803.4.3 Signage.** At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

**3803.5 Flammable or combustible liquid.** The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

**3803.5.1 Scope.** The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

**3803.5.2 Location.** The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

**WSR 16-16-119  
PROPOSED RULES  
PUGET SOUND**

**CLEAN AIR AGENCY**  
[Filed August 3, 2016, 10:55 a.m.]

Original Notice.

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

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

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 22, 2016, at 8:45 a.m.

Date of Intended Adoption: September 22, 2016.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 21, 2016.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Section 3.11** - the agency's practice for many years has been to adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts

for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The consumer price index for the Seattle/Tacoma/Bremerton area increased by 2.25 percent for the 2015 calendar year, which amounts to an increase of \$405 in the maximum civil penalty amount.

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

**Section 3.25** - this section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2015. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the proposed amendments would change the reference date to July 1, 2016.

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

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

Name of Agency Personnel Responsible for Drafting: Carole Cenci, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4061; Implementation and Enforcement: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 3, 2016

Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 3.11 CIVIL PENALTIES**

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((~~17,983.00~~)) 18,388.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((~~17,983.00~~)) 18,388.00, for each day of continued noncompliance.

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

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

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

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

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

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

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

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

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

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

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

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

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

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

(h) Civil penalties incurred but not paid shall accrue interest beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed

by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

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

### **AMENDATORY SECTION**

#### **REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~((2015))~~ 2016.

### **WSR 16-16-120**

#### **PROPOSED RULES**

#### **PUGET SOUND**

#### **CLEAN AIR AGENCY**

[Filed August 3, 2016, 10:56 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.03 (Applicability of Registration Program).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 22, 2016, at 8:45 a.m.

Date of Intended Adoption: September 22, 2016.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psccleanair.org, fax (206) 343-7522, by September 21, 2016.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This technical amendment for the registration program is being proposed to address interests regarding marijuana producers. The agency has been actively reaching out to marijuana producers to provide information regarding the requirement to submit notices of construction. As the agency has been working with the producers, we have gathered a great deal of information on emissions, equipment and activities that are used in the production process and have concluded that marijuana producers warrant registration. Most producers have control equipment that triggers the requirement to register the facility and the agency has been registering these sources as they are inspected and as they receive orders of approval. However, not all producers have equipment that triggers the current requirement to register. An example is outdoor producers that may not have equipment for odor control and do not trigger any other registration criteria. To fill this gap in agency regu-

lations, we are proposing that the criteria for registration be amended to include all marijuana producers through a specific reference.

**Reasons Supporting Proposal:** The benefit of this proposal is ensuring that all sources within a given industry are treated equally. One of the purposes of our registration program is to ensure sources are complying with the agency's regulations through inspections and outreach. The program is funded solely through fees paid by the sources generating the emissions. This amendment will allow the agency to recover the costs of regulating this industry. There will be a cost to the small number of sources that would be brought into the registration program as a result of this amendment.

**Statutory Authority for Adoption:** Chapter 70.94 RCW.

**Statute Being Implemented:** RCW 70.94.141.

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

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

**Name of Agency Personnel Responsible for Drafting:** Carole Cenci, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4061; **Implementation and Enforcement:** Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 3, 2016  
Craig Kenworthy  
Executive Director

## **AMENDATORY SECTION**

### **REGULATION I, SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM**

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines and the provisions of Subpart JJJJ pertaining to owners and operators of emergency stationary spark ignited internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart BBBB pertaining to bulk gaso-

line plants, and Subparts WWWW, CCCCC, HHHHHH, WWWW, XXXXXX, YYYYYY, and ZZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NOx), particulate matter (PM2.5 or PM10), sulfur oxides (SOx), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane, butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Crushing operations subject to Section 9.18; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm ( $\geq 4$ " diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

- (I) Dry sorbent injection;
- (J) Flaring;
- (K) Non-selective catalytic reduction;
- (L) Refrigerated condenser;
- (M) Selective catalytic reduction; or
- (N) Wet scrubber;
- (6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm ( $\geq 10$ " diameter inlet):
  - (A) Baghouse;
  - (B) Demister;
  - (C) Electrostatic precipitator;
  - (D) HEPA (high efficiency particulate air) filter;
  - (E) HVAF (high velocity air filter);
  - (F) Mat or panel filter;
  - (G) Mist eliminator;
  - (H) Multiple cyclones;
  - (I) Rotoclone;
  - (J) Screen;
  - (K) Venturi scrubber;
  - (L) Water curtain; or
  - (M) Wet electrostatic precipitator;
- (7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm ( $\geq 27$ " diameter inlet);
- (8) Sources with any of the following equipment or activities:
  - (A) Asphalt batch plants;
  - (B) Burn-off ovens;
  - (C) Coffee roasters;
  - (D) Commercial composting with raw materials from off-site;
  - (E) Commercial smokehouses with odor control equipment;
  - (F) Concrete batch plants (ready-mix concrete);
  - (G) Galvanizing;
  - (H) Iron or steel foundries;
  - (I) Microchip or printed circuit board manufacturing;
  - (J) Rendering plants;
  - (K) Rock crushers or concrete crushers;
  - (L) Sewage treatment plants with odor control equipment;
  - (M) Shipyards;
  - (N) Steel mills;
  - (O) Wood preserving lines or retorts; (~~(P)~~)
  - (P) Dry cleaners using perchloroethylene; or (~~(Q)~~)
  - (Q) Marijuana production; and
- (9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.
  - (b) The requirements of this article shall not apply to:
    - (1) Motor vehicles;
    - (2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;
    - (3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

### WSR 16-16-121

#### PROPOSED RULES

#### PUGET SOUND

#### CLEAN AIR AGENCY

[Filed August 3, 2016, 10:56 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Section 5.07 (Annual Registration Fees).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 22, 2016, at 8:45 a.m.

Date of Intended Adoption: September 22, 2016.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@psc Clean Air Agency, fax (206) 343-7522, by September 21, 2016.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed technical amendment to the registration program will clarify civil penalties that may be issued for late registration fees and also to facilities that submitted incorrect or incomplete information used for determining registration fees. Section 5.07 of Regulation I outlines the due date for registration fees and includes an allowance for collecting a penalty of three times the registration fee under certain circumstances. These circumstances include situations when the fees are delinquent, or if incorrect or incomplete information was submitted such that fees could not be calculated properly. With various amendments (for other purposes) over time, the resulting language has become challenging to clearly interpret when registration fees were sufficiently delinquent to be eligible for enforcement action. The agency is proposing that the lan-

guage in this section of the rule be clarified to clearly identify when a registration fee is delinquent and the penalty associated with the delinquent fee can be applied.

Reasons Supporting Proposal: The benefit of this proposal is ensuring that civil penalties for late registration fees and for sources that submit incorrect or incomplete information used for determining registration fees are determined consistently. There will be no costs as a result of this amendment.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

Name of Agency Personnel Responsible for Drafting: Carole Cenci, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4061; Implementation and Enforcement: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

August 3, 2016  
Craig Kenworthy  
Executive Director

**AMENDATORY SECTION**

**REGULATION I, SECTION 5.07 ANNUAL REGISTRATION FEES**

(a) The Agency shall assess annual fees as set forth in Section 5.07(c) of this regulation for services provided in administering the registration program. Fees received under the registration program shall not exceed the cost of administering the program, which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program. Payment of these fees by the owner or operator of a source shall maintain its active registration status (even if it is not actively operating).

(b) Upon assessment by the Agency, registration fees are due and payable within 45 days of the date of the invoice. ~~((They))~~ Registration fees shall be deemed delinquent if not

fully paid within 45 days of the date of the invoice. Persons or sources that ~~((knowingly))~~ under-report~~((ing))~~ emissions, fail to submit ~~((or))~~ other information used to set fees, or ~~((persons required))~~ fail to pay ~~((emission or permit))~~ required fees ~~((who are more than))~~ within 90 days of the date of the invoice. ~~((late with such payments))~~ may be subject to a penalty equal to 3 times the amount of the original fee owed (in addition to other penalties provided by chapter 70.94 RCW).

(c) Except as specified in Section 5.07 (d) and (e) of this regulation, registered sources shall be assessed a fee of \$1,150, plus the following fees:

(1) Sources subject to a federal emission standard as specified in Section 5.03 (a)(1) of this regulation shall be assessed \$2,100 per subpart of 40 CFR Parts 60-63;

(2) Sources subject to a federally enforceable emission limitation as specified in Section 5.03 (a)(2) or meeting the emission thresholds specified in Section 5.03 (a)(3) of this regulation shall be assessed \$2,300;

(3) Sources subject to the emission reporting requirements under Section 5.05(b) of this regulation shall be assessed \$30 for each ton of CO and \$60 for each ton of NOx, PM10, SOx, HAP, and VOC, based on the emissions reported during the previous calendar year;

(4) Sources with more than one coffee roaster installed on-site that are approved under a Notice of Construction Order of Approval shall be assessed \$2,300;

(5) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of <100,000 tons per year shall be assessed \$5,750; and

(6) Sources of commercial composting with raw materials from off-site and with an installed processing capacity of ≥100,000 tons per year shall be assessed \$23,000.

(d) Gasoline dispensing facilities shall be assessed the following fees based on their gasoline throughput during the previous calendar year (as certified at the time of payment):

- (1) More than 6,000,000 gallons . . . . . \$4,085;
- (2) 3,600,001 to 6,000,000 gallons . . . . . \$2,030;
- (3) 1,200,001 to 3,600,000 gallons . . . . . \$1,350;
- (4) 840,001 to 1,200,000 gallons . . . . . \$675;
- (5) 200,001 to 840,000 gallons . . . . . \$340.

(e) The following registered sources shall be assessed an annual registration fee of \$140, provided that they meet no other criteria listed in Section 5.03(a) of this regulation:

(1) Sources with spray-coating operations subject to Section 9.16 of this regulation that use no more than 4,000 gallons per year of total coatings and solvents;

(2) Gasoline dispensing facilities subject to Section 2.07 of Regulation II with gasoline annual throughput during the previous calendar year (as certified at the time of payment) of no more than 200,000 gallons;

(3) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(4) Unvented dry cleaners using perchloroethylene; and

(5) Batch coffee roasters subject to notification under Section 6.03 (b)(11) of this regulation.

**WSR 16-16-122**  
**PROPOSED RULES**  
**PUGET SOUND**  
**CLEAN AIR AGENCY**  
 [Filed August 3, 2016, 10:57 a.m.]

August 3, 2016  
 Craig Kenworthy  
 Executive Director

Original Notice.

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

Title of Rule and Other Identifying Information: Amend Regulation I, Section 14.05 (Processing of Public Records Requests - Electronic Public Records).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on September 22, 2016, at 8:45 a.m.

Date of Intended Adoption: September 22, 2016.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by September 21, 2016.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by September 15, 2016, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a technical amendment to remove subsection (c) of Regulation I, Section 14.05 in its entirety. This subsection was based upon RCW 43.105.280 which allowed the agency, if needed, to charge a fee to provide customized access to an electronic record to a requester. In 2015, the Washington state legislature deleted RCW 43.105.280, including the provision allowing the agency to charge a fee for customized access. Thus, the amendment would remove subsection (c), referring to RCW 43.105.280, in full from Section 14.05. In addition, to date the agency has not been in the position of needing to charge a fee for customized access in providing electronic records and the agency has been able to work with requesters to provide electronic records in formats that are easily or reasonably accessible to the agency and the requester.

Reasons Supporting Proposal: The benefit of the amendment is to make the agency's rules consistent with state law.

There are no costs associated with the proposed amendments.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Dold, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4015.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

**AMENDATORY SECTION**

**REGULATION I, SECTION 14.05 PROCESSING OF PUBLIC RECORDS REQUESTS - ELECTRONIC PUBLIC RECORDS**

(a) **Requesting electronic public records.** The process for requesting electronic public records is the same as for requesting paper public records.

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

~~((e) **Customized access to data bases.** With the consent of the requester, the Agency may provide customized access under RCW 43.105.280 if the public record is not reasonably locatable or not reasonably translatable into the format requested. The Agency may charge a fee consistent with RCW 43.105.280 for such customized access.))~~

**WSR 16-16-123**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 3, 2016, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-08-063.

Title of Rule and Other Identifying Information: Academic achievement, accountability and assessment. Rules to outline available graduation alternatives for students to meet their high school assessment graduation requirement.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 South Washington Street, Olympia, WA 98501, on September 9, 2016, at 10:00 a.m.

Date of Intended Adoption: September 14, 2016.

Submit Written Comments to: Collette Mason, OSPI, P.O. Box 47200, Olympia, WA 98504, e-mail collette.mason@k12.wa.us, fax (360) 725-0424, by September 9, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by September 2, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current chapter 392-501 WAC has outdated language and processes related to the graduation alternatives available for students in Washington state and students transferring [transferring] to Washington state.

The proposed edits are intended to address the following:

(1) Generalize all references to WASL as Washington's high school assessment.

(2) Align eligibility to alternatives in keeping with the intent of RCW 28A.655.061 (3)(d).

(3) Outline any additional content areas included in the already listed alternatives.

(4) Clean-up language/provide clarifying language related to each alternative.

(5) Update submission processes for each alternative to align with current practice.

Statutory Authority for Adoption: RCW 28A.655.065 and 28A.655.061.

Statute Being Implemented: RCW 28A.655.065 and 28A.655.061.

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

Name of Agency Personnel Responsible for Drafting: Collette Mason, OSPI, P.O. Box 47200, Olympia, WA 98502, (360) 725-6068; Implementation: Michael Middleton, OSPI, P.O. Box 47200, Olympia, WA 98502, (360) 725-6434; and Enforcement: Gil Mendoza, OSPI, P.O. Box 47200, Olympia, WA 98502, (360) 725-6343.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact and no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 30.05.328 [34.05.-328] per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule under subsection (5)(c)(iii).

August 1, 2016

Randy Dorn

State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-001 Authority.** The authority for this chapter is RCW 28A.655.065 and 28A.655.061, which direct the superintendent of public instruction to:

(1) Develop and implement eligibility requirements and guidelines for objective alternative assessments for students to demonstrate achievement of state standards in content areas in which the student has not yet met the standard on ~~((the))~~ Washington's high school ~~((Washington))~~ assessment ~~((of student learning (WASL)))~~; and

(2) Develop guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who:

(a) Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma; and

(b) Have special, unavoidable circumstances.

**~~((PSAT,))~~ SAT, ACT, IB AND AP COMPARISON  
OPTION**

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-102 General description.** The ~~((PSAT,))~~ SAT, ACT, IB and AP comparison option is an objective alternative assessment authorized in RCW 28A.655.061 (10)(b) that allows a student to use a score from the following tests to demonstrate that the student has met or exceeded the state standard for ~~((reading, writing,))~~ English language arts, science or mathematics on:

(1) ~~((The mathematics component of the PSAT;~~

~~(2)))~~ The ~~((reading or))~~ English ~~((writing,))~~ language arts, science or mathematics component as designated by superintendent, of the SAT (science not applicable) or ACT; or

~~((3)))~~ (2) International Baccalaureate or advanced placement examinations listed in WAC 392-501-104(2).

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-103 Eligibility.** (1) A student is eligible for the ~~((PSAT,))~~ SAT, ACT, IB and AP comparison option if the student has taken the applicable component of ~~((the Washington))~~ Washington's high school assessment ~~((of student learning (WASL)))~~ at least once and has not met the standard for which the student is applying to use this option. To meet these criteria, a student must have ~~((sat for and generated a scale score during the administration of the WASL.~~

~~(2) To be eligible for the PSAT mathematics option, the student must have taken the PSAT prior to September 1, 2008.~~

~~(3)))~~ a recorded valid attempt of the general high school assessment.

(2) A student may use a score earned on the ((PSAT,)) SAT, ACT, IB or ((an)) advanced placement examination taken prior to or after ((taking the WASL once)) one valid attempt of the general high school assessment.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-104 Required scores.** (1) As required in RCW 28A.655.061 (10)(b), the state board of education shall identify the score students must achieve on the ~~((mathematics portion of the PSAT and the reading or))~~ English ~~((writing,))~~ language arts, science and mathematics components of the SAT (science not applicable) and ACT.

(2) A student who scores at least a three on the grading scale of one to five on the following advanced placement examinations shall meet the applicable high school standard:

(a) For meeting the mathematics standard, the calculus or statistics advanced placement examination;

(b) For meeting the ~~((writing standard, the English language and composition advanced placement examination; or~~

~~(c) For meeting the reading))~~ English language arts standard, the English language and composition advanced placement examination and one of the following additional exam-



inations: English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics ((advanced placement examination)).

(c) For meeting the science standard, biology, chemistry, physics or environmental science.

(3) A student who scores at least a four at the higher level on the following International Baccalaureate tests shall meet the applicable high school standard:

(a) For meeting the mathematics standard, the mathematics or further mathematics tests;

(b) For meeting the English language arts standard, the Language A: Literature; Language A: Language and literature, business and management, economics, geography, history, information technology is a global society, philosophy, psychology or social and cultural anthropology.

(c) For meeting the science standard, biology, chemistry, or physics.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-105 Application process.** (1) The superintendent of public instruction shall develop and make available to ~~((students and))~~ school district personnel ~~((@ PSAT,))~~ an online application to capture SAT, ((and)) ACT ((mathematics)), IB and/or AP comparison applications for documenting that a student has met the eligibility requirements in WAC 392-501-103 and achieved the scores required in WAC 392-501-104.

(2) If the student is eligible, the student shall ~~((complete an application and submit the application to the school principal or designee))~~ work with school personnel to collect the SAT, ACT, IB and/or AP score reports to submit through the state provided graduation alternatives online application.

(3) If the school principal or designee agrees that the eligibility criteria have been met, the principal or designee shall ~~((transmit a facsimile or mail a copy of the application and the copy of the student's official PSAT, SAT, ACT, or AP score report that was sent to the school and to the office of superintendent of public instruction (OSPI)).~~

~~((4) After the superintendent, or his or her designee, has received and verified the application to be complete and consistent with the requirements of this chapter, staff from the office of superintendent of public instruction shall notify the school principal or designee and the school district assessment coordinator once the application is verified.))~~ submit a copy of the student's official SAT, ACT, IB or AP score report via the graduation alternatives application for district assessment coordinator approval.

(4) If the district assessment coordinator, or their designee, agrees that the eligibility criteria have been met, the district assessment coordinator or designee shall approve the form (with accompanying score report(s)) present in the graduation alternatives online application for submission to the office of superintendent of public instruction.

(5) Upon approval of the submission, the school principal or designee shall notify the student of the ((verification)) approval. OSPI ((staff)) shall document in the ((student's

state)) state's assessment records that the student met the applicable high school standard.

~~((5) The superintendent of public instruction shall act upon the student's application within thirty days of receiving the application.~~

~~((6) School staff shall include a copy of the application, the student's score report, and the verification in the student's cumulative folder.))~~ (6) Superintendent will conduct regular audits of district submissions to ensure accuracy and consistency in reported student status. Where irregularities are found, superintendent will notify the district for corrective action.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-106 Notification requirements.** The school principal or a designee shall notify students and their parents or guardians when students are in the eleventh and twelfth grade years of the availability of the ~~((PSAT,))~~ SAT, ACT, IB and AP comparison option.

#### **((WASL/GRADES)) GRADES COMPARISON OPTION**

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-200 General description.** The ~~((WASL/grades))~~ grades comparison option is an objective alternative assessment authorized in RCW 28A.655.065 (3) and (4) that compares the applicant's grades in applicable courses with the grades of students who took the same courses and met or exceeded the assessment standard. This option may be used for meeting the high school ~~((reading, writing,))~~ English language arts, science and/or mathematics ((standard)) assessment requirement.

AMENDATORY SECTION (Amending WSR 11-19-042, filed 9/13/11, effective 10/14/11)

**WAC 392-501-201 Eligibility.** A student is eligible for the GPA comparison option if the student meets the following conditions:

(1) The student has taken the applicable component of the state high school assessment at least once and has not met the standard for which the student is applying to use this option. To meet these criteria, a student must have ~~((sat for and generated a valid scale score during the administration of the state))~~ a recorded valid attempt of the general high school assessment.

(2) The student is in the twelfth grade.

(3) The student has a cumulative grade point average of 3.2 or higher when the application is ~~((filed))~~ submitted.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-202 Process for determining the comparison cohort and calculating the GPAs.** (1) For the pur-

pose of this section, "applicant" means an eligible student applying for the ~~((WASL/grades))~~ grades comparison option.

(2) A school district representative or designee shall ~~((determine the comparison cohort and complete the calculation in this subsection for all eligible students who apply to use this option))~~ utilize the grade comparison tool(s) provided by the office of superintendent of public instruction to calculate the grade comparison of the applicant against those identified as the cohort.

(3) To complete the ~~((WASL/grades))~~ grades comparison option for eligible students, the ~~((school district representative or designee shall complete the following steps))~~ grades comparison tool will:

(a) Identify the group of students in the same school as the applicant who took the same mathematics, science or English language arts high school courses, ~~((which ever))~~ whichever is applicable, in the same school year as the applicant. This group includes all of the students in the school who took courses with the same course title and course number (e.g., Algebra 1, Sophomore English) as the applicant, in the same school year, regardless of the grade level of the student. When selecting courses to be used, the following guidelines shall be followed:

(i) The credits generated by the courses must equal two annual high school credits and must include the most recent courses taken in which a comparison cohort of six or more students can be identified.

(ii) In order for applicants using the cohort comparison to meet the mathematics standard, the courses must be eligible for a mathematics graduation credit.

(iii) In order for applicants using the cohort comparison to meet the ~~((reading or writing))~~ English language arts standard, the courses must be eligible for an English/Language arts graduation credit.

(iv) In order for applicants using the cohort comparison to meet the science standard, the courses must be eligible for a science graduation credit.

(b) From the group of students identified in (a) of this subsection, the ~~((school district representative or designee))~~ grades comparison tool shall identify the "comparison cohort," which includes all students who met or slightly exceeded the state standard on the ~~((WASL))~~ high school assessment. For purposes of determining "who met or slightly exceeded the state standard," scores in Level 3 shall be used:

- (i) Mathematics: ~~((400-433))~~ 2583 - 2681;
- (ii) ~~((Reading: 400-426))~~ English language arts: 2583 - 2681; and
- (iii) ~~((Writing: 17-20))~~ Science: 400 - 422.

(c) If there are fewer than six students in the comparison cohort, the cohort ~~((may))~~ will be expanded to also include students in Level 4. If there are still fewer than six students in the comparison cohort, the applicant is not eligible to use the ~~((WASL/grades))~~ grades comparison option.

(d) The ~~((school district representative or designee))~~ grades comparison tool shall compute the grade point average for the selected courses for the applicant and for each student in the comparison cohort. The following grade - number conversions shall be used:

A	= 4.0
A-	= 3.7
B+	= 3.3
B	= 3.0
B-	= 2.7
C+	= 2.3
C	= 2.0
C-	= 1.7
D+	= 1.3
D	= 1.0
E or F	= 0.0
Credit/No Credit	May not be used
Pass/Fail	May not be used

~~((e))~~ The ~~((school district representative or designee))~~ grades comparison tool shall then calculate the mean comparison cohort grade point average of all the students in the comparison cohort.

~~((f))~~ The ~~((school district representative or designee))~~ grades comparison tool shall then compare the applicant's grade point average in the relevant high school courses to the mean comparison cohort grade point average of the students in the comparison cohort.

(g) If the applicant's grade point average is below the mean comparison cohort grade point average, the student is not eligible to file the ~~((application))~~ grades comparison form and no further action is required.

(h) If the applicant's grade point average is equal to or higher than the mean comparison cohort grade point average, the ~~((principal or a designee shall transmit the application with the results of the calculation))~~ school district representative or designee shall submit the form with the results of the calculation via the graduation alternatives application for approval by their district assessment coordinator.

(i) If the district assessment coordinator, or their designee, agrees that the eligibility criteria have been met, the district assessment coordinator or designee shall approve the form(s), with the results of the calculation, in the graduation alternatives application for submission to the office of the superintendent of public instruction for approval.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-204 Application timeline and approval criteria.** (1) The ~~((superintendent of public instruction))~~ district assessment coordinator shall approve the ~~((application))~~ grades comparison form if:

- (a) The student eligibility requirements are met; and
- (b) ~~((The process for identifying the comparison cohort and for calculating the grade point averages and the mean grade point average was followed; and~~
- ~~((e)))~~ The applicant's grade point average is equal to or greater than the mean grade point average of the comparison cohort.

(2) ~~((If the application is approved,))~~ Upon approval of the submission, the school principal or designee shall notify the student of the approval, OSPI will document in the student's state assessment record that the student met the applicable high school assessment standard and the applicant will be deemed to have met the applicable content standard for purposes of obtaining a certificate of academic achievement or individual achievement.

(3) ~~The superintendent of public instruction ((must act upon the student's application and notify the applicant's school principal or designee and the school district assessment coordinator whether the application was approved or denied within thirty days of receiving the application. The school principal or designee shall notify the student.~~

(4) ~~School staff shall include a copy of the application and approval notification in the student's cumulative folder))~~ will conduct regular audits of district submissions to ensure accuracy and consistency in reported student status. Where irregularities are found, superintendent will notify the district for corrective action.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-206 Notification requirements.** The school principal or a designee shall notify students and their parents or guardians when students are in the eleventh and twelfth grade years of the availability of the ~~((WASL/grades))~~ grades comparison option.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-300 General description.** A collection of evidence (COE) is a high school graduation alternative assessment ~~((option))~~ authorized under RCW 28A.655.065 that evaluates a set of work samples in a specific content area ~~((English language arts, science (biology/life science) and mathematics((reading, and/or writing)))~~ based on classroom work prepared by a student. Students may prepare a COE for one or more content areas.

AMENDATORY SECTION (Amending WSR 11-19-042, filed 9/13/11, effective 10/14/11)

**WAC 392-501-310 Eligibility.** A student who has taken the state high school assessment at least once and has not met standard in one or more of the content areas is eligible to submit a collection of evidence for each content area in which they have not met standard ~~((as an alternative assessment))~~ if: The student has ~~((sat for and generated a valid scale score during the administration of the state))~~ a recorded valid attempt of the general high school assessment.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-320 Application process.** (1) The superintendent of public instruction shall make available to students and school district personnel a COE submission ~~((application))~~ procedure for documenting that a student has

met the eligibility requirements as set forth in WAC 392-501-310.

(2) It is the responsibility of the school district to determine whether the student is eligible for the COE option. If the student is eligible, the school district is required to inform the student of the COE alternative assessment option.

(3) If the student is eligible, the student, with the assistance of school district personnel, shall submit ~~((an application))~~ a collection of evidence to the superintendent of public instruction via the ~~((Washington assessment management system (WAMS)))~~ COE scoring center.

(4) The superintendent of public instruction will publish an annual calendar established before each school year setting forth the timelines for the twice yearly ~~((registration,))~~ submission, scoring, and student and district reporting ~~((for))~~ of the COE.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-330 Guidelines and protocols.** (1) Specific guidelines for types and numbers of work samples for English language arts, science and mathematics~~((reading, or writing))~~ will be published and made available to students, guardians, schools, and districts. The guidelines will be published on the office of the superintendent of public instruction (OSPI) web site at ~~((http://www.k12.wa.us/assessment/default))~~ http://www.k12.wa.us/assessment/GraduationAlternatives/CollectionofEvidence.aspx as approved by the state board of education in an open and public process.

(2) ~~((Protocols for submission of work samples will include a Student Information Form, a Work Sample Documentation Form, and Work Sample Sign-Off Forms.))~~ Protocols for submission of work samples will be published on the OSPI web site at ~~((http://www.k12.wa.us/assessment/default))~~ http://www.k12.wa.us/assessment/GraduationAlternatives/CollectionofEvidence.aspx as approved by the state board of education in an open and public process.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-340 Sufficiency process for all content areas.** The following process will be utilized in determining sufficiency for a collection of evidence for one or more of the content areas submitted by a student. Upon receipt by OSPI, a collection of evidence will be reviewed to determine whether the protocols for submission have been met. OSPI will notify a school district of any missing ~~((paperwork or signatures))~~ materials. If the school district does not provide the missing ~~((paperwork or signatures))~~ materials within the time frame ~~((provided))~~ communicated, the collection of evidence will be returned without a score.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-350 Scoring process for all content areas.** The following process will be utilized to determine a score for a submitted collection ~~((for one or more of the content areas)).~~

(1) Collections shall be scored at the state level by ~~((a panel of educators))~~ professional scorers screened, selected, and trained by OSPI. To be selected as a scorer, a person must ~~((be a certificated educator in the content area, provide teacher leadership at the building and/or district level, and work with high school students in the content area in which they teach))~~ have a bachelor's degree.

(2) A submitted collection of evidence shall be scored in a rigorous process that aligns with state content standards and comparable ~~((WASL))~~ Washington state high school assessment performance.

(3) Uniform scoring criteria will be published on the OSPI web site at ~~((http://www.k12.wa.us/assessment/default))~~ http://www.k12.wa.us/assessment/GraduationAlternatives/CollectionofEvidence.aspx as approved by the state board of education in an open and public process.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-360 Standard setting ~~((process))~~ for all content areas for the collection of evidence.** (1) ~~((A neutral committee of educators, business people, and students will be trained on the state content standards in mathematics, reading, and writing. They will be led by an expert facilitator trained in standard setting processes. The facilitator assists the standard setting committees in order to determine the cut score which all collections must attain in order to meet standard in one or more of the content areas.~~

~~((2))~~ The standard setting committee) The superintendent of public instruction will recommend ~~((a))~~ cut scores for each content area to the state board of education for graduation purposes.

~~((3))~~ (2) The state board of education shall have the responsibility of accepting or not accepting the recommended cut scores generated from the superintendent of public instruction's standard setting ~~((results))~~ process, using an open and public process.

AMENDATORY SECTION (Amending WSR 08-10-015, filed 4/25/08, effective 5/26/08)

**WAC 392-501-380 Collection of evidence adherence to national standards.** National Standards for Educational and Psychological Testing (AERA, NCME, APA, 1999) will be applied in all stages of the development and implementation of the collection of evidence in order to ensure reliability and validity of the COE as an alternative assessment ~~((option))~~. The National Technical Advisory Committee for the superintendent of public instruction shall also provide ongoing technical assistance for the COE.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-502 Waivers for transfer students from other states who enroll in eleventh or twelfth grade.**

(1) The requirement that a student obtain a certificate of academic achievement or a certificate of individual achievement to graduate shall be waived for students who transfer to a Washington public school from another state in the ~~((elev-~~

~~enth or))~~ twelfth grade year if the student provides documentation that he or she has met standards in another state on a high school assessment ~~((or for students eligible to receive special education services, on an alternate assessment)),~~ general or alternate. The assessment in the other state must be used for purposes of the high school assessment required in the federal Elementary and Secondary Education Act or be used for purposes of a high school graduation exit examination. Waivers shall be granted as follows:

(a) If the student met standards on ~~((both))~~ the mathematics, science, and ~~((reading or))~~ English language arts assessments in the other state, the applicable certificate shall be waived.

(b) If a student did not meet the standard on the mathematics assessment in the other state, then the student must meet the mathematics standard on the applicable Washington assessment for the certificate to be waived.

(c) If the student did not meet the standard on the ~~((reading assessment or))~~ English language arts assessment, then the student must meet the ~~((reading))~~ English language arts standard on the applicable Washington assessment for the certificate to be waived.

(d) ~~((If the student did not meet the standard on the writing or English language arts assessment, then the student must meet the writing standard on the applicable Washington assessment for the certificate to be waived.~~

~~((e))~~ If the other state did not have a writing assessment, then the student must have met the standard on the English language arts assessment or other assessment used to meet the English/language arts assessment or other assessment used to meet the English/language arts requirement in the federal Elementary and Secondary Education Act for the certificate to be waived.

~~((2))~~ If the student did not meet the standard on the science assessment, then the student must meet the science standard on the applicable Washington assessment for the certificate to be waived.

(e) If student was administered the consortium-generated assessment for mathematics and/or English language arts also administered by Washington, and did not meet the standards for graduation established by Washington, but did meet the standards for his or her former state, the student may apply for the associated waiver. In the event the student met or exceeded Washington's requirements with the administration in the former state, the student will be granted a certificate.

(2)(a) For eleventh grade transfer students, before using the process detailed in subsection (1) of this section, the student must be administered the Washington assessments for mathematics and English language arts. If the student does not meet standard on either the mathematics and/or English language arts assessment, the student may then apply his or her previous state assessment scores in pursuit of waiving the certificate requirement.

(b) Until the new next generation science standards assessment is administered in Washington eleventh grade students may apply for waiver from the science portion of the certificate per the process in subsection (1) of this section without administration of a Washington science assessment. The graduation alternative system will not allow student

access to the science waiver until the student is in twelfth grade.

(3) The student waiver application must document passage of the assessment by one of the following options:

(a) The out-of-state school from which the student transferred must transmit (~~(directly)~~) to the student's new school a score report from the former school or school district where the student took the high school general assessment or alternate assessment. The score report must contain the student's assessment results (i.e., specific scores) by content area and whether or not the student met the state required standards. If the score report does not include whether or not the student met the standards, then the former school or school district must provide information documenting that the standards were met. If the out-of-state school (~~(directly)~~) transmitted the score report when the student enrolled in the Washington school system, then the (~~(student need not provide)~~) the report need not be transmitted again; or

(b) The out-of-state school from which the student transferred must transmit (~~(directly)~~) to the student's new school, if it has not done so already, the student's transcript documenting the student's assessment results (i.e., specific scores). The transcript must contain the student's assessment results by content area and whether or not the student met the state required standards. If the transcript does not include whether or not the student met the standards, then the former school or school district must provide information documenting that the standards were met.

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-504 Application and approval process.** (1) To obtain a waiver, (~~(the student or the student's parent or guardian must complete and submit to the student's principal or designee a waiver application developed by))~~ a waiver form must be submitted by the district to the superintendent of public instruction. The principal of the school or designee shall review the information and transmit through the district office the ((application)) wavier form and a copy of the student's assessment score report or transcript, if listing the state test scores, to the superintendent of public instruction ((for approval)) via the graduation alternatives online application.

(2) (~~(Applications must be received by the superintendent of public instruction by April 1 of the student's twelfth grade year to provide time for processing prior to graduation.~~

(3) ~~The superintendent of public instruction must act upon the student's application and notify the applicant's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of receiving the application. The school principal or designee shall notify the student.~~

(4) ~~If approved,)~~ Upon approval: The student's transcript shall indicate that the applicable certificate was waived.

(~~(5) School staff shall include a copy of the application, the student's score report or transcript, and the approval notification in the student's cumulative folder.~~)

AMENDATORY SECTION (Amending WSR 10-01-055, filed 12/9/09, effective 1/9/10)

**WAC 392-501-510 Access to alternative assessment.**

(1) Students who transfer into a public school from out-of-state (~~(or)~~), from out-of-country or into a public school from within the state from a nonpublic school setting in the (~~(eleventh or)~~) twelfth grade year may utilize an objective alternative assessment for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

(2) Students who transfer into a public school from out-of-state, from out-of-country or into a public school from within the state from a nonpublic school setting for their 11th (~~(or 12th)~~) grade year (~~(into a public school from within the state from a nonpublic school setting)~~) may utilize an objective alternative assessment for meeting the high school standards in science as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

(3) Students who were exempted from the high school assessment in (~~(10th)~~) 11th grade due to their status as a new student with non-English proficiency, may utilize an objective alternative assessment after their (~~(10th)~~) 11th grade year, in the content areas originally exempted, for purposes of meeting the high school standards as provided in RCW 28A.655.061 and 28A.655.065 without taking the state high school assessment.

AMENDATORY SECTION (Amending WSR 15-04-083, filed 2/2/15, effective 3/5/15)

**WAC 392-501-601 Eligibility and application requirements.** (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year (eleventh grade year under a specific circumstance where an educator has caused a testing irregularity), from (~~(successfully demonstrating)~~) participating in a testing opportunity that would allow demonstration of his or her skills and knowledge ((on the)), whether the general state high school assessment, ((or)) any of the objective alternative assessments authorized in RCW 28A.655.061 or 28A.655.065, or the alternate assessment or associated alternative assessments ((available)) applicable to students eligible for special education services. Appeals to the superintendent shall include a detailed description of the special, unavoidable circumstance that denied the student access to the testing opportunity, and will document a trend of continued improvement towards meeting standard (e.g., test scores, course grades, etc.) that demonstrates had the student participated in the state assessment, there was a reasonable probability the student would have met standard:

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and/or severe medical condition. The condition must be documented by a medical professional and

included with the application, within the constraints of the Health Insurance Portability and Accountability Act (HIPAA); or

(iii) Another unavoidable event of a similarly compelling magnitude that district administrators determine prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district;

(f)(i) Students who transfer from an out-of-state, out-of-country, or nonpublic (including home-school environment) school to a Washington public school in the twelfth grade year after ~~((December 31st))~~ the end of the first term or February 15th whichever is first.

(ii) Application evidence must support a student's attempt of all available and feasible assessment opportunities and/or alternatives provided by Washington state before the application will be judged eligible for panel review.

(3) A school district superintendent may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or alternate assessment or associated alternative assessments available to students eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

(a) The major irregularity was caused by school district personnel;

(b) The student was not at fault for the irregularity; and

(c) The school district has taken documented disciplinary action against the school district personnel.

(4) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

(5) The application shall require that the following materials be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), IEP, 504 or transitional bilingual education program documentation pertinent to decisions about student access to available assessment type and/or testing accommodations (if applicable), enrollment/transfer information (if applicable), and the student's transcript. The principal of the school shall

review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

(6) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

(7) Applications ~~((must))~~ are to be received by the superintendent of public instruction on or before May 1st or October 1st for processing and determinations.

AMENDATORY SECTION (Amending WSR 15-04-083, filed 2/2/15, effective 3/5/15)

**WAC 392-501-602 Special, unavoidable circumstance appeal review board and approval criteria.** (1) The special, unavoidable circumstance appeal review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board, where membership and panel experience allows, shall be chaired by a current or former high school principal and shall consist of current or former district administrators, teachers, school department heads, and/or school district assessment directors with experience and expertise with the Washington learning standards. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate. As needed, the superintendent may elect to reappoint previous members if new candidates are not available to assume review board positions.

(3) The special, unavoidable circumstance appeals review board shall review applicable special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on a state high school assessment or on an objective alternative assessment;

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

(c) After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior state high school assessment or alternative assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the special, unavoidable circumstance appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of receiving the recommendation from the certificate appeals review board. The timeline for acting on the application recommendation may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable content area assessment was waived.

~~((10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.))~~

AMENDATORY SECTION (Amending WSR 07-13-035, filed 6/13/07, effective 7/22/07)

**WAC 392-501-604 Notification requirements.** The school principal or a designee shall, as applicable, notify students and parents or guardians when student is in their ~~((eleventh and))~~ twelfth grade year ~~((s))~~ of the availability of special, unavoidable circumstance appeals.

AMENDATORY SECTION (Amending WSR 10-01-054, filed 12/9/09, effective 1/9/10)

**WAC 392-501-705 Eligibility and application requirements.** (1) A student, ~~((or a student's parent or guardian, may initiate a waiver request to))~~ based on the decision of the student's IEP team, who participated in eleventh or twelfth grade Washington access to instruction and measurement (WA-AIM) using the engagement rubric process, will have his or her assessment graduation requirement for the content area automatically waived by the superintendent of public instruction ~~((#)).~~ Assessment participation with the engagement rubric is appropriate if in the determination of the IEP team a student's cognitive development is identified at the awareness level. The automatic waiver ~~((request))~~ can cover one or all state assessed content areas of study. Students with cognitive development at the awareness level exhibit behaviors that include, but are not limited to, the following:

(a) Having limited intentionality and being unable to communicate using presymbolic strategies.

(b) Reactions to environmental stimuli are limited to crying, opening eyes, movement, etc.

(c) Behavior not under the student's control but reflects a general physical state (e.g., hungry, wet, sleepy).

(d) Being conscious (awake) during limited times each day.

(e) Requiring parents, teachers, or other adults to interpret the child's state from behaviors such as sounds, body movements, and facial expressions.

(f) Other criteria as defined by the superintendent of public instruction's guidelines posted to the agency web site.

(2) For ~~((a student requesting a))~~ the automatic waiver ~~((under this section))~~ to be processed, the student must have the following documented in his or her records:

(a) The student is in high school and is designated as being in the 11th or 12th grade.

(b) The individualized education program (IEP) team as identified under WAC 392-172A-03095, through an evaluation of the student's behaviors and educational history, determines that the student is functioning at the awareness level (as defined in subsection (1) of this section).

~~((3) Filing a waiver request requires the use of a specific form developed by the superintendent of public instruction. Completing the waiver request requires:~~

~~(a) The special education teacher responsible for the IEP of the student to complete and sign the awareness waiver application and document the student's nonparticipation in the state assessment system in the student's IEP.~~

~~(b) The waiver application is submitted to the district's special education director for review, verification, and signature.~~

~~(c) Upon verification, the district special education director files the waiver application form with the district assessment coordinator.~~

~~(d) The district assessment coordinator reviews, signs, and transmits the waiver application to the superintendent of public instruction per instruction listed on the form.~~

~~(e) Staff from the office of)~~ (c) The superintendent of public instruction shall record a status of "waived" in the state graduation data base ~~((, then transmit a confirmation e-mail to~~

the student's high school principal and the district assessment coordinator.

(f)).

(d) The school shall complete all necessary school and district documentation, including but not limited to, IEP documentation.

**WSR 16-16-126  
PROPOSED RULES  
STATE BOARD OF EDUCATION**

[Filed August 3, 2016, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-077.

Title of Rule and Other Identifying Information: WAC 180-51-115 Procedures for granting high school graduation credits for students with special educational needs.

Hearing Location(s): Brouillet Room, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, on September 7, 2016, at 4:20 p.m.; and at the Skamania Lodge, Jefferson Room, 1131 S.W. Skamania Lodge Way, Stevenson, WA 98648, on September 15, 2016, at 9:00 a.m.

Date of Intended Adoption: November 10, 2016.

Submit Written Comments to: Linda Drake, P.O. Box 47206, Olympia, WA 98504-7206, e-mail linda.drake@k12.wa.us, fax (360) 664-3631, by September 8, 2016.

Assistance for Persons with Disabilities: Contact Denise Ross by September 8, 2016, TTY (360) 644-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the existing rule is to clarify that students in a program for special education services are not exempted from participating in the state assessment system.

Reasons Supporting Proposal: The state board of education (SBE) office receives multiple telephone inquiries per year regarding this rule suggesting that educators around the state are confused by the current language of the rule.

Statutory Authority for Adoption: RCW 28A.230.090.

Statute Being Implemented: RCW 28A.230.090.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

<b>WSR:</b>	<b>Title of Rule:</b> Procedures for granting high school credits for special education students.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates:** No fiscal impact, WAC 180-51-115 changes a reference from the phrase "from the certificate of academic achievement graduation requirement under RCW 28A.655.060(3)" to "from a student's participation in the statewide academic system." This change of reference does not create additional costs for school districts.

**Estimated Cash Receipts to:** No estimated cash receipts.

**Estimated Expenditures From:** No estimated expenditures.

**Estimated Capital Impact:** No estimated capital impact.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6031, e-mail Thomas.kelly@k12.wa.us.

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

August 3, 2016  
Ben Rarick  
Executive Director

AMENDATORY SECTION (Amending WSR 07-07-051, filed 3/14/07, effective 4/14/07)

**WAC 180-51-115 Procedures for granting high school graduation credits for students with special educational needs.** (1) No student shall be denied the opportunity to earn a high school diploma solely because of limitations on the student's ability. The board of directors of districts granting high school diplomas shall adopt written policies, including procedures, for meeting the unique limitations of each student. Such procedures may provide for:

(a) The extension of time the student remains in school up to and including the school year in which such student reaches twenty-one years of age;

(b) A special education program in accordance with chapter 28A.155 RCW if the student is eligible; and

(c) Special accommodations for individual students, or in lieu thereof, exemption from any requirement in this chapter, if such requirement impedes the student's progress toward graduation and there is a direct relationship between the failure to meet the requirement and the student's limitation.

(2) ~~((Unless otherwise prohibited by federal or state special education laws, such procedures may not provide for exemption from the certificate of academic achievement graduation requirement under RCW 28A.655.060 (3)(c).))~~ Such procedures may not provide an exemption from a student's participation in the statewide assessment system.

**WSR 16-16-127  
PROPOSED RULES  
STATE BOARD OF EDUCATION**

[Filed August 3, 2016, 11:48 a.m.]

Original Notice.



Preproposal statement of inquiry was filed as WSR 16-13-056.

Title of Rule and Other Identifying Information: WAC 180-18-055 Alternative high school graduation requirements.

Hearing Location(s): Brouillet Room, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, on September 7, 2016, at 4:40 p.m.; and at 1131 Skamania Lodge Way, Stevenson, WA 98648, on September 15, 2016, at 9:15 a.m.

Date of Intended Adoption: November 10, 2016.

Submit Written Comments to: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, e-mail jack.archer@k12.wa.us, fax (360) 586-2357, by September 5, 2016.

Assistance for Persons with Disabilities: Contact Denise Ross by September 2, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. Correct obsolete references and statutory citations, and delete certain unnecessary provisions.

2. Add clarity and specificity to the requirements for an application for a waiver under this section. Establish separate and additional requirements for application for renewal of a waiver under this section for additional years.

3. Make clear that a request for waiver under this section must come from a school district and not an individual high school, though the intent may be to implement it for an individual high school.

4. Establish a due date for submission of a waiver application under this district in relation to the scheduled meeting of the state board of education (SBE) at which it will be considered.

5. Establish criteria for evaluation of a waiver request, and for evaluation of a request for renewal of an existing waiver.

6. Condition the eligibility of a waiver request under this section for a school that has been identified by the superintendent of public instruction as persistently lowest-achieving.

7. Set a due date for the annual report that must be submitted to SBE by a school district that has received a waiver under this section.

Statutory Authority for Adoption: RCW 28A.305.140.

Statute Being Implemented: RCW 28A.305.140.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, Room 253, 600 Washington Street, Olympia, WA, (360) 725-6035; Implementation and Enforcement: Ben Rarick, Old Capitol Building, Room 253, 600 Washington Street, Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

<b>WSR:</b>	<b>Title of Rule:</b> Alternative high school graduation requirements.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates:** Fiscal impact is indeterminate.

**Estimated Cash Receipts to:** No estimated cash receipts.

**Estimated Expenditures From:** Indeterminate.

**Estimated Capital Impact:** No estimated capital impact.

**Part II: Narrative Explanation:**

**II. A - Brief Description Of What the Measure Does That Has Fiscal Impact:** Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

WAC 180-18-055(3) states that a district's request for a waiver must include "any supplemental information and documentation as may be required by the state board of education."

**II. B - Cash Receipts Impact:** Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

None.

**II. C - Expenditures:** Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

Since we do not know what supplemental information and documentation may be required by SBE as part of a district's application process, the fiscal impact of these rule changes is indeterminate.

**Part III: Expenditure Detail:**

**III. A - Expenditures by Object or Purpose:** Indeterminate.

**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street, Olympia, WA, phone (360) 725-6301, e-mail thomas.kelly@k12.wa.us.

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

August 3, 2016

Ben Rarick

Executive Director

AMENDATORY SECTION (Amending WSR 04-23-006, filed 11/4/04, effective 12/5/04)

**WAC 180-18-055 Alternative high school graduation requirements.** ~~((1) The shift from a time and credit based system of education to a standards and performance based education system will be a multiyear transition. In order to facilitate the transition and encourage local innovation, the state board of education finds that current credit based grad-~~

uation requirements may be a limitation upon the ability of high schools and districts to make the transition with the least amount of difficulty. Therefore, the state board will provide districts and high schools the opportunity to create and implement alternative graduation requirements:

~~((2))~~ (1) A school district ~~((or high school with permission of the district board of directors;))~~ or approved private high school ~~((;))~~ desiring to implement a local restructuring plan to provide an effective educational system to enhance the educational program for high school students, may apply to the state board of education for a waiver for a high school from one or more of the requirements of ~~((chapter 180-51))~~ WAC 180-51-067 or 180-51-068.

~~((3))~~ (2) The state board of education may grant the waiver for a period up to four school years.

~~((4))~~ (3) The ~~((waiver application shall be in the form of a resolution adopted by the district or private school board of directors which includes a request for the waiver and a plan for restructuring the educational program of one or more high schools which consists of at least the following information:~~

(a) Identification of the requirements of chapter 180-51 WAC to be waived;

(b) Specific standards for increased student learning that the district or school expects to achieve;

(c) How the district or school plans to achieve the higher standards, including timelines for implementation;

(d) How the district or school plans to determine if the higher standards are met;

(e) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan;

(f) Evidence that students, families, parents, and citizens were involved in developing the plan; and

(g) Identification of the school years subject to the ~~((waiver;))~~ request for a waiver under this section must include a completed application, a resolution adopted by the district board of directors and signed by the board chair or president and the district superintendent, and any supplemental information and documentation as may be required by the state board of education. The resolution must identify the provisions of WAC 180-51-067 or 180-51-068 requested to be waived and the high school for which the provisions would be waived, and state the educational purposes for requesting that they be waived.

~~((5))~~ (4) The ~~((plan for restructuring the educational program of one or more high schools may consist of the school improvement plans required under WAC 180-16-220, along with the requirements of subsection (4)(a) through (d) of this section;))~~ state board of education will develop and post on its public web site an application form for use in requesting a waiver under this section. A completed application must provide at a minimum the following information:

(a) Identification of the specific provisions of WAC 180-51-067 or 180-51-068 proposed to be waived;

(b) Identification of the high school and the school years for which the provisions would be waived;

(c) Identification of the indicators of student performance at the school that motivate the request for the waiver;

(d) Identification and discussion of the educational purposes to be pursued under the waiver plan;

(e) Identification of the measurable goals for improved student achievement proposed to be attained under the waiver plan;

(f) An explanation of why waiver of the provisions named in (a) would increase the likelihood of reaching or making significant progress toward the goals over the term of the waiver plan;

(g) A description of the instructional plan to be used to reach the goals for improved student achievement;

(h) An explanation of why successful implementation of the proposed instructional plan requires waiver of the provisions named in (a) of this subsection.

(i) Identification of the measures and metrics that will be used to determine the degree to which the goals of the waiver for student achievement are being met and identify needs for any changes in the waiver plan;

(j) Evidence of support for the waiver plan by families and the community;

(k) A description of how the district will keep families and the community informed of any changes in implementation of the waiver plan and of progress toward meeting the goals of the waiver for student achievement.

The board resolution, completed application, and any supplemental materials must be submitted to the state board of education in electronic form no later than forty days prior to the meeting of the state board of education at which the request for the waiver will be considered.

~~((6))~~ The application also shall include documentation that the school is successful as demonstrated by indicators such as, but not limited to, the following:

(a) The school has clear expectations for student learning;

(b) The graduation rate of the high school for the last three school years;

(c) Any follow-up employment data for the high school's graduate for the last three years;

(d) The college admission rate of the school's graduates the last three school years;

(e) Use of student portfolios to document student learning;

(f) Student scores on the high school Washington assessments of student learning;

(g) The level and types of family and parent involvement at the school;

(h) The school's annual performance report the last three school years; and

(i) The level of student, family, parent, and public satisfaction and confidence in the school as reflected in any survey done by the school the last three school years;))

(5) A waiver granted under this section may be renewed on a request of the school district board of directors to the state board of education. Before submitting the renewal request, the school district must conduct at least one public meeting to evaluate and provide opportunity for public comment on the educational program that was implemented as a result of the original waiver. The renewal request to the state board shall include a description of the programs and activities implemented under the waiver plan, a description of any changes

made in or proposed to the original waiver plan and the reasons for such changes, evidence that students in advanced placement or other postsecondary options programs have not been disadvantaged by the waiver, and a summary of the comments received at the public meeting or meetings. In addition to the requirements set forth in subsections (3) and (4) of this section, an application for renewal of a waiver shall include documentation that the school is making significant progress toward the goals for student achievement enumerated in the prior application, as demonstrated by indicators, disaggregated by major student subgroup, such as:

(a) Student performance on statewide assessments and any district- or school-based assessments of student learning;

(b) Adjusted five-year cohort graduation rate for the last three school years;

(c) Follow-up employment data for the students in the school's last three graduating classes as may be collected by the school or district;

(d) Participation in postsecondary education and training by the school's last three graduating classes;

(e) Any other documentation or data that indicates significant progress in student achievement, especially if data described in (a) through (d) of this subsection are not available at the time of application.

~~((7))~~ (6) A waiver from one or more of the requirements of WAC ((180-51-060)) 180-51-067 or 180-51-068 may be granted only if the district ((or school)) provides documentation ((and rationale)) that any noncredit-based graduation requirements that will replace the requirements of WAC 180-51-067 or 180-51-068 in whole or in part ((WAC 180-51-060,)) will support the state's ((performance-based education system being implemented pursuant to RCW 28A.630.885,)) essential academic learning requirements as developed and periodically revised by the superintendent of public instruction and ((the noncredit based requirements)) meet the ((minimum college core admissions standards)) college academic distribution requirements as ((accepted)) approved by the ((higher education coordinating board)) Washington student achievement council for students planning to attend a baccalaureate institution.

(7) In the event that the superintendent of public instruction shall determine that the required action plan developed and submitted to the state board of education under RCW 28A.657.050 for a school identified as a persistently lowest achieving school requires compliance with WAC 180-51-067 or 180-51-068, any waiver granted under this section to a district for such a school shall be terminated by the state board of education upon notification of the state board and the district by the superintendent.

~~(8) ((A waiver granted under this section may be renewed upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational requirements that were implemented as a result of the waiver. The request to the state board shall include information regarding the activities and programs implemented as a result of the waiver, whether higher standards for students are being achieved, assurances that students in advanced placement or other postsecondary options programs, such as but not lim-~~

~~ited to: College in the high school, running start, and tech-prep, shall not be disadvantaged, and a summary of the comments received at the public meeting or meetings.)) The state board of education shall evaluate a request for a waiver under this section based on whether:~~

~~(a) The district has clearly set specific, quantifiable goals for improved student achievement to be attained through implementation of the waiver plan;~~

~~(b) The district has described in detail the instructional plan to be implemented to reach the goals for student achievement;~~

~~(c) The district has detailed the measures and metrics through which it will determine the extent to which the goals of the waiver are being attained;~~

~~(d) The district has provided a clear explanation, supported by research evidence or best practice, of why the proposed instructional plan is likely to be effective in achieving the specified goals for student achievement;~~

~~(e) The district has clearly explained why waiver of the specific provisions of WAC 180-51-067 and 180-51-068 named in subsection (5)(a) of this section is necessary for the successful implementation of the instructional plan;~~

~~(f) The district has submitted evidence to show that the instruction to be provided to students under the waiver plan is aligned with Washington state learning standards under RCW 28A.655.070; and~~

~~(g) The district has presented evidence of support for the waiver plan by families and the community.~~

~~(9) In addition to the requirements of subsection (8) of this section, the state board of education shall evaluate a request for a renewal of a waiver under this section for additional years based on the following:~~

~~(a) The progress of the school to which the waiver applies in reaching the goals for student achievement set forth in the prior application, as measured by the indicators identified in subsection (4)(i) of this section;~~

~~(b) The five-year adjusted cohort graduation rate of the school for the last three years;~~

~~(c) Any available data on postsecondary employment and participation in postsecondary education by students who graduated or will graduate during the term of the current waiver;~~

~~(d) Performance by the school during the term of the current waiver on indicators in the Washington achievement index developed by the state board of education under RCW 28A.657.110; and~~

~~(e) Evidence of support from families, teachers, district and school administrators, and the community for continuation of the waiver of the specified provisions of WAC 180-51-067 or 180-51-068 for the additional years requested.~~

~~((9))~~ (10) The state board of education shall notify the state board for community and technical colleges, the ((higher education coordinating board)) Washington state achievement council and the council of presidents of any waiver granted under this section.

~~((10) Any waiver requested under this section will be granted with the understanding that the state board of education will affirm that students who graduate under alternative graduation requirements have in fact completed state require-~~

~~ments for high school graduation in a nontraditional program.)~~

(11) ~~((Any))~~ A ~~((school or))~~ district granted a waiver under this chapter shall report ~~((annually))~~ to the state board of education, in a form and manner to be determined by the board, no later than July 31 of each year, on the progress and effects of implementing the waiver.

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

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.