

WSR 23-01-003
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed December 7, 2022, 1:13 p.m., effective January 7, 2023]

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

Purpose: To update and clarify the rules related to property division dissolution orders involving the retirement plan. Updates include the elimination of certain fees.

Citation of Rules Affected by this Order: Repealing WAC 415-02-720; and amending WAC 415-02-500, 415-02-510, 415-02-520, 415-02-530, and 415-02-540.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-19-063 on September 16, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 7, 2022.

Tracy Guerin
Director

OTS-3615.2

AMENDATORY SECTION (Amending WSR 10-14-072, filed 7/1/10, effective 8/1/10)

WAC 415-02-500 Property division in dissolution orders¹. This section applies to all retirement plans that the department administers. This section also directs you to additional sections as needed for your particular situation.

(1) **What can a court do?** A court can enter a dissolution order dividing your retirement account in either of the following ways:

(a) Awarding an interest² in your account to your ex-spouse by using WAC 415-02-510 or 415-02-530; or

(b) Splitting³ your account into two separate accounts (one for you and one for your ex-spouse) by using WAC 415-02-520 or 415-02-540, but only if you are vested at the time the dissolution order is entered. "Vested" is defined in subsection (~~((16))~~) (15) of this section.

(2) **Which section should I use?** Consult the following table for direction to the section to use in developing your property division dissolution order. Different sections are provided depending on whether your property division dissolution order is going to provide an interest to your ex-spouse or whether you are splitting your retirement account with your ex-spouse.

If you are in this system and plan:	And the following is true:	Use this section:
Any	You need general information and rules about drafting dissolution orders related to your retirement plan and system.	415-02-500
JRF, JRS, LEOFF Plan 1, and WSPRS Plan 1	You are drafting a dissolution order. (We recommend that you contact the department for assistance because some exceptions may apply.)	415-02-510
LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, and TRS Plan 1 or 2, WSPRS Plan 2	You are drafting a dissolution order that will be entered before you are vested ((; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse)) .	415-02-510
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-520
PERS Plan 3, SERS Plan 3, and TRS Plan 3	You are drafting a dissolution order that will be entered before you are vested ((; or You are vested and you are drafting a dissolution order that awards an interest in your account to your ex-spouse)) .	415-02-530
	You are vested and you are drafting a dissolution order that splits your benefit into two separate accounts (for you and your ex-spouse).	415-02-540
PERS Plan 2, SERS Plan 2, and TRS Plan 2	The department has already accepted your property division order, and you are considering a transfer to Plan 3.	415-02-550

(3) **What are the requirements for dissolution orders and amendments that provide for a property division of my retirement account?** The order must:

(a) Be entered by a court of competent jurisdiction and enforceable in Washington state;

(b) Be filed with the department within (~~ninety~~) 90 days of the court's entry of the order;

(c) Establish the right of your ex-spouse to a portion of your retirement;

(d) Provide the name and date of birth of your ex-spouse;

(e) Incorporate the applicable language in this section and one of the following: WAC 415-02-510, 415-02-520, 415-02-530, or 415-02-540; and

(f) Indicate which WAC section was used in support of the order.

(4) **What else, besides a copy of the dissolution order, must my ex-spouse and I provide to the department?** You must provide addresses and Social Security numbers for both you and your ex-spouse before the department will honor a dissolution order or amendment. This information can be submitted in a cover letter, in another document, or by other means arranged with the department.

(5) **I belong to more than one retirement plan. Does the order have to be written any differently?** The order must include specific provisions for each plan.

(a) Example for providing an **interest** to an ex-spouse (RCW 41.50.670 and WAC 415-02-510): Paul belongs to both TRS Plan 2 and PERS Plan 3. His preretirement dissolution order gives an interest in his retirement accounts to his ex-spouse. The order should include the language provided in:

(i) WAC 415-02-510 to divide Paul's TRS Plan 2 monthly retirement allowance or accumulated contributions.

(ii) WAC 415-02-530 to divide Paul's PERS Plan 3 monthly retirement allowance and/or accumulated contributions.

(b) Example for **splitting** an account with an ex-spouse: Mary is vested in both TRS Plan 2 and PERS Plan 3. Her preretirement dissolution order provides for splitting her retirement accounts with her ex-spouse. The order should include the language provided in:

(i) WAC 415-02-520 for preretirement splits to divide Mary's TRS Plan 2 retirement account.

(ii) WAC 415-02-540 for preretirement splits to divide Mary's PERS Plan 3 monthly retirement allowance and/or defined contributions.

(6) **What happens if my ex-spouse misses the (~~ninety-day~~) 90-day deadline for filing a copy of the dissolution order with the department?**

(a) RCW 41.50.670 requires the "obligee" (ex-spouse) to file a copy of the dissolution order with the department within (~~ninety~~) 90 days of the order's entry with the court of record.

(b) The department will accept an order after the (~~ninety-day~~) 90-day deadline but will not make retroactive payments or split your defined contribution account retroactively.

(7) **How will the department divide the "after-tax" and "tax-deferred" dollars in my retirement account between my ex-spouse and me?** Depending on your plan and how long you have been a member, your retirement account may include both "after-tax" and "tax-deferred" dollars. The department will divide the "after-tax" and "tax-deferred" dollars based on the amount(s) awarded to your ex-spouse, unless the dissolution order states otherwise.

Example: At the time of John's marriage dissolution, he had \$50,000 total contributions in his retirement account with \$20,000 in after-taxed dollars and \$30,000 in tax-deferred dollars. The dissolution order awards 50% of his accumulated contributions to his ex-spouse, Susan. Therefore, the department will give Susan \$10,000 of after-tax dollars and \$15,000 of tax-deferred dollars.

(8) **If I am in a retirement plan that offers survivor options, can the court order me to name my ex-spouse as my survivor beneficiary?** Yes. To do so, the dissolution order must include the language in RCW 41.50.790(1).

(9) **Is there a minimum benefit amount that the department will pay to my ex-spouse if the property division dissolution order splits my retirement account with my ex-spouse?** The answer is different depending on if the department accepts the property division dissolution order **BEFORE** or **AFTER** you retire.

(a) **BEFORE** retirement split: Yes. If the court order splits your account with your ex-spouse, and your ex-spouse's monthly payment will be less than the minimum monthly dollar amount for your retirement plan, the department may make a lump sum payment instead of monthly payments. The lump sum payment will be equal to the present value of the monthly payments. The department will **NOT** make the lump sum payment until your ex-spouse meets the age requirement for a normal retirement for your system and plan.

(b) **AFTER** retirement split: No. The department will pay the amount specified in the dissolution order as the ex-spouse's monthly payment amount even if it is less than the minimum monthly dollar amount for your system and plan.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. A court may not order the department to pay more than ~~((seventy-five))~~ **75** percent of your monthly retirement allowance to your ex-spouse. See RCW 41.50.670(4).

~~((11))~~ **~~(How much is the fee the department charges for making payments directly to my ex-spouse?)~~** The fee for making payment to your former spouse is ~~seventy-five~~ dollars. The fee will be divided evenly between you and your former spouse. See RCW 41.50.680.

~~((12))~~ **What happens to my account if I return to retirement system membership?** Please contact the department for information if you are in this situation.

~~((13))~~ **(12) What language should the property division order use to divide my deferred compensation program (DCP) account?** Refer to WAC 415-501-495 or contact DCP for information about your DCP account and your marriage dissolution.

~~((14))~~ **(13) How do I contact the department for additional assistance?** ~~((Complete))~~ Contact information is available in WAC 415-06-100 (How do I contact the department?). Any release of information to someone besides the member requires a signed information release form or a subpoena duces tecum.

~~((15))~~ **(14) Where can I find examples of completed property division dissolution orders?** Following are examples of the required language from the statutes and WAC sections that must be used in a dissolution order. The information in ***bold italics*** will be dictated by your own circumstances.

(a) **Example 1.** Jane Doe, a nonvested member of PERS Plan 2, and her husband, John Doe, decide to divorce. **WAC 415-02-510** governs dissolution orders of nonvested members of PERS Plan 2. Jane and John

complete the paragraphs in RCW 41.50.670(2) and WAC 415-02-510(2) as follows:

Defined Benefits:
RCW 41.50.670(2),
paragraph two, and
WAC 415-02-510(2)

If *Jane Doe* (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to *John Doe* (the obligee), *N/A* dollars from such payments or *a fraction where the numerator is equal to 24 (the number of months in which service credit was earned while the marital community was in existence), and the denominator is equal to the number of months of service credit earned by the obligor at the time of retirement X 50* percent of such payments.

If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

Accumulated Contributions:
RCW 41.50.670(2),
paragraph three, and
WAC 415-02-510(2)

If *Jane Doe* (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to *John Doe* (the obligee) *\$5,700* dollars plus interest at the rate paid by the Department of Retirement Systems on member contributions. Such interest will accrue from the date of this order's entry with court of record.

(b) **Example 2:** Binh Nguyen (a TRS Plan 3 retiree) and his wife, Lan Nguyen, are obtaining a property division dissolution order that splits his retirement account. When he retired, Binh had selected Lan to receive survivor benefits. WAC 415-02-540 applies, and the couple completes the required paragraphs.

Defined Benefits:
WAC
415-02-540(~~(12)~~)
(13)

The Department of Retirement Systems (department) shall create a **defined benefit account** for Lan Nguyen (ex-spouse) in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and pay him or her \$350 (amount) for his or her life. To pay for this benefit, Binh Nguyen's (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective no more than 30 days after the department's acceptance of the order.

Defined Contributions:
WAC 415-02-540(9)

The Department of Retirement Systems (department) shall split Binh Nguyen's (member's) **defined contribution account** in the Teachers' Retirement System Plan 3 (name of retirement system and plan) and create a separate account for Lan Nguyen (ex-spouse). The amount of \$25,000 (amount) shall be transferred from Binh Nguyen's (member's) **defined contribution account** to Lan Nguyen's (ex-spouse's) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.

(~~(16)~~) (15) **Terms used:**

- (a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Obligee - RCW 41.50.500(5).
- (d) Obligor - RCW 41.50.500(6).
- (e) Plan 3 - WAC 415-111-100.
- (f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes for section:

- 1 "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state. RCW 41.50.500(3) (2002).
- 2 When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.
- 3 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account has been established, your account and your ex-spouse's account are not tied in any way.

[Statutory Authority: RCW 41.50.050(5) and 41.50.680. WSR 10-14-072, § 415-02-500, filed 7/1/10, effective 8/1/10. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-500, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-500, filed 5/27/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 22-13-052, filed 6/8/22, effective 7/9/22)

WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest¹ in my Plan 1 or 2 retirement account?

~~((a))~~ **Who (~~may use~~) uses this section?** ~~((a))~~ You **MUST** use this section if you are a member of LEOFF Plan 1, WSPRS Plan 1, JRF or JRS, or a **nonvested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2.

~~((b))~~ You ~~may~~ use this section if you are a ~~vested~~ member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-520.)

(2) Dividing a defined monthly retirement benefit (defined benefit). Your defined monthly retirement benefit may be divided between you and your ex-spouse.

(a) What language must the property division dissolution order or amendment include? The order must include the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both. (See example in WAC 415-02-500(~~(15))~~) (14).)

If _____ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to _____ (the obligee) _____ dollars from such payments or ____ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If _____ (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to _____ (the obligee) _____ dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

~~((3))~~ **(b) How will my account be affected if the department accepts the property division dissolution order BEFORE I retire?**

~~((a))~~ **(i)** Your ex-spouse will not receive any payments from the department until you terminate your employment or retire.

~~((b))~~ **(ii)** If you terminate your employment and request a withdrawal of your accumulated contributions, the department will pay your ex-spouse his or her share when you receive your payment. If you terminate your employment and do not request a withdrawal of contributions, your ex-spouse will be unable to receive his or her share until you withdraw your accumulated contributions.

~~((c))~~ **(iii)** If you die before retirement, the department will pay your ex-spouse his or her share of your accumulated contributions in a lump-sum payment.

~~((4))~~ **(c) How will my account be affected if the department accepts the property division dissolution order AFTER I retire?**

~~((a))~~ (i) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your monthly retirement allowance the first month after the department has accepted the order.

~~((b))~~ (ii) If your ex-spouse dies before you, the portion of your monthly retirement allowance that was being paid to your ex-spouse will be paid to you.

~~((c))~~ (iii) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least 30 days before you retired and the order required the department to name your ex-spouse as a survivor beneficiary (if allowed by your retirement system and plan). See RCW 41.50.700(1) and 41.50.790.

~~((d))~~ (iv) If you are a member of LEOFF Plan 1 or WSPRS Plan 1 and if one of the provisions in RCW 41.50.700(3) applies:

~~((i))~~ (A) Your ex-spouse may be eligible to receive payments for the life of your surviving spouse; or

~~((ii))~~ (B) If you are a member of LEOFF Plan 1, your ex-spouse may be eligible to receive payments for his or her lifetime.

~~((5))~~ (d) **Is there a maximum payment amount that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

~~((6))~~ (e) **If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

~~((7))~~ (f) **What happens if I transfer to Plan 3 after the department has accepted my property division dissolution order or most recent amendment?** See WAC 415-02-550 for information.

~~((8))~~ (g) **Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(9) for the language that must be used.

~~((9))~~ (3) **Terms used:**

(a) Department's acceptance - That the department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnote to section:

¹ When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050. WSR 22-13-052, § 415-02-510, filed 6/8/22, effective 7/9/22. Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-510, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5),

41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-510, filed 5/27/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-520 How can my Plan 1 or 2 retirement account be split¹ by a property division dissolution order? (1) Who (~~may use~~) uses this section? Vested members of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, TRS Plan 1 or 2, SERS Plan 2, or WSPRS Plan 2 who have or will have a property division dissolution order or amendment dated on or after July 1, 2003². If (~~your ex-spouse will be receiving an interest in your account~~) you are not a vested member, use WAC 415-02-510.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split **your** retirement account into two separate accounts—one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated **BEFORE** or **AFTER** retirement.

(3) **How will my account be affected if the department accepts the property division dissolution order BEFORE my retirement?**

(a) The department will split your retirement account into two completely separate accounts and create an account for your ex-spouse under his or her Social Security number for the amount awarded in the dissolution order.

(b) The department will pay each of you out of your separate accounts either a monthly allowance or a withdrawal of contributions.

(c) If you retire and receive a monthly retirement allowance, your monthly retirement allowance will have a permanent reduction to offset the amount awarded as a monthly payment to your ex-spouse.

(d) Your monthly retirement allowance will be payable over your lifetime, and your ex-spouse's monthly payment will be payable over your ex-spouse's lifetime.

(e) You will have the right to choose a benefit option with a survivor feature. See WAC 415-02-320.

(f) Your ex-spouse will not have the right to choose a benefit option with a survivor feature, but may name a beneficiary to receive any final death payment that may be due.

(g) If you terminate employment, any decision you make about your accumulated contributions will have no effect upon your ex-spouse's separate account.

(h) When you or your ex-spouse dies, there will be no impact to the other person's retirement account because the accounts are independent from one another.

(i) Your ex-spouse may begin receiving monthly payments when your ex-spouse reaches retirement age for your retirement plan, or the first day of the month following the department's acceptance of the order, whichever is later. The minimum age for an ex-spouse to begin receiving a benefit from:

(A) TRS Plan 1 and PERS Plan 1 is age (~~sixty~~) 60;

(B) PERS Plan 2, PSERS, SERS Plan 2, and TRS Plan 2 it is age (~~sixty-five~~) 65;

(C) LEOFF Plan 2 is age (~~fifty-three~~) 53; and

(D) WSPRS Plan 2 is age (~~fifty-five~~) 55.

Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving a monthly payment. Your ex-spouse must apply for his or her monthly payment according to the rules for your system and plan.

(j) Your ex-spouse may withdraw his or her share of the accumulated contributions at any time before receiving a monthly payment. Regardless of whether your ex-spouse withdraws or receives a monthly payment, your monthly retirement allowance will be permanently reduced to account for your ex-spouse's share of your retirement account.

(4) **Is there a limit to the amount of contributions I can award to my ex-spouse?** Yes. The amount of contributions awarded to your ex-spouse cannot be greater than the **percentage** of your monthly retirement allowance used to determine the amount of the monthly payment awarded to your ex-spouse.

Example:

Accumulated contributions earned during the marriage period:	\$50,000	
Member's monthly retirement allowance:	\$1,000	
Percentage of member's monthly retirement allowance awarded to ex-spouse:	50%	
Monthly payment awarded to ex-spouse:	\$500 (50% of \$1,000)	
Contributions awarded to ex-spouse:	\$25,000 (50% of 50,000)	

(5) **What happens if my retirement account was split and then I retire early?**

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your retirement plan may require that your monthly retirement allowance be reduced by an early retirement factor (ERF) or by some other method. See WAC 415-02-320.

(b) To determine the reduction to your monthly retirement allowance (when an ERF is used) because of your preretirement split (~~((see subsection (3)(c) of this section))~~), the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your monthly retirement allowance.

Example: You are a member of PERS Plan 2 and retire for disability two years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly payment of (~~five hundred dollars~~) \$500.

Your monthly retirement allowance before ERF is applied:	\$2,500	
ERF (factor for retiring two years early)	0.82	
Your base allowance:	\$2,050	(\$2500 x 0.82 ERF)
Adjustment for divorce split:	- \$410	(ex-spouse's \$500 x 0.82 (ERF))
The monthly retirement allowance you will receive:	\$1640	(\$2050 - \$410)

Your ex-spouse will receive the full monthly amount (\$500) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(6) **What language must be used for a property division dissolution order or amendment that is accepted by the department BEFORE my retirement?**

(a) The order must include the language provided below. Do **not** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly payment must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create an account for _____ (ex-spouse) in the _____ (name of retirement system and plan) and transfer \$_____ from _____'s (member's) accumulated contributions account into _____'s (ex-spouse's) account. If _____ (ex-spouse) does not withdraw the contributions and becomes eligible, the department will pay him or her \$_____ (amount) as a monthly payment for his or her life. If _____ (member) retires and receives a monthly retirement benefit payment, the payment will be permanently reduced to account for _____'s (ex-spouse's) monthly payment. This provision shall become effective (~~(no more than 30 days)~~) as soon as administratively possible after the department's acceptance of the order.

(b) If you are a member of PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to your ex-spouse must be specified in the order if he or she is awarded a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

If _____ (ex-spouse) receives a monthly retirement payment, the department shall use _____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(7) How will my account be affected if the department accepts the property division dissolution order AFTER my retirement?

(a) The department will split your retirement account **only if** you selected your ex-spouse to receive survivor benefits at the time you retired. If you did not select your ex-spouse to receive survivor benefits at the time you retired, you cannot use this section. You **must** use WAC 415-02-510.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through ~~((f))~~ (d) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly payment the first month after the department has accepted the dissolution order.

(8) If the property division dissolution order is dated AFTER my retirement, how will my monthly retirement allowance be calculated after the split?

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly payment. The following describes how the new amount of your monthly retirement allowance will be calculated, assuming your ex-spouse was awarded a monthly payment of (~~one thousand dollars~~) \$1,000 in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly retirement allowance by dividing your current monthly allowance by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:

Current monthly retirement allowance = \$1679.38

Option factor = 0.9400000

Single life benefit amount = $\$1679.38 / 0.9400000 = \1786.57

Step 2 The single life benefit (\$1786.57) is divided by your annuity factor (see WAC 415-02-360) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:

Your age at time of the split = 61 years old

Annuity factor for age 61 = 0.0084149

Present value of single life benefit = $\$1786.57 / 0.0084149 = \$212,310.31$

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly payment (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:

Ex-spouse's monthly benefit amount = \$1000

Ex-spouse's age at time of the split = 67

Annuity factor for age 67 = 0.0095028

Present value of your ex-spouse's monthly benefit = $\$1000 / 0.0095028 = \$105,232.14$

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:

Present value of single life benefit = \$212,310.31

Less present value of ex-spouse's benefit = -105,232.14

Your present value = \$107,078.17

Step 5 The department determines the amount of your new monthly retirement allowance by multiplying your present value by your annuity factor.

Example:

Your present value = \$107,078.17

Annuity factor = 0.0084149

Your new monthly retirement allowance = $\$107,078.17 \times 0.0084149 = \901.05

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:

Your percentage of the single life benefit present value:
 $\$107,078.17 / \$212,310.31 = .5043$

Your ex-spouse's percentage of the single life benefit present value:
 $\$105,232.14 / \$212,310.31 = .4957$

(9) **What language must be used in a property division dissolution order or amendment that is accepted by the department *AFTER* my retirement?**

(a) The order must include the language provided below. Do **not** use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's monthly benefit must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create an account for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her \$ _____ (amount) as a monthly benefit payment for his or her life. To pay for this benefit, _____'s (retiree's) monthly retirement benefit payment will be reduced for his or her life. If (retiree) has any unused contributions remaining in his or her account, \$ _____ (amount) shall be transferred to _____'s (ex-spouse's) account. This provision shall become effective (~~(no more than 30 days)~~) as soon as administratively possible after the department's acceptance of the order.

(b) If the member is in PERS Plan 1 or TRS Plan 1, the amount of service credit awarded to the ex-spouse must be specified in the order if he or she is entitled to a portion of gainsharing payments and cost-of-living adjustments. Because gainsharing payments and cost-of-living adjustments are based on service credit, the following paragraph must be included:

If _____ (ex-spouse) receives a monthly retirement payment, the department shall use _____ (number) months of service credit to calculate future gainsharing payments, if any, and cost-of-living adjustments when he or she becomes eligible.

(10) **Is there a maximum payment amount that the department will pay to my ex-spouse?** Yes. See RCW 41.50.670(4) or WAC 415-02-500(10) for information.

(11) **May I amend an existing order that awarded an interest in my account to my ex-spouse under WAC 415-02-520, and remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as your survivor beneficiary will change the amount of your monthly retirement allowance. See WAC 415-02-520(9) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose benefit Option 2 (joint and (~~(one hundred)~~) 100 percent survivorship) when he retired, and named May as his survivor beneficiary. Two years after Julio's retirement, the couple divorced. The court awarded "~~(one hundred)~~ 100 percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio may return to court and obtain an order stating that May is to receive "\$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-520(9) and be signed by the court no sooner than July 1, 2003.

(12) (~~(How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.~~

~~(13))~~ **What happens if I transfer to Plan 3 after the property division dissolution order has been filed with the department?** See WAC 415-02-550 for information.

~~((14))~~ **(13) Terms used:**

(a) Department's acceptance - The department's determination that a dissolution order fully complies with the department's requirements and RCW 41.50.500.

(b) Dissolution order - RCW 41.50.500.

(c) Plan 3 - WAC 415-111-100.

(d) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnotes to section:

¹ When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.

² If your ex-spouse was not listed as your survivor beneficiary at retirement, then no postretirement property division dissolution order (or postretirement amendment) may split your retirement account using WAC 415-02-520.

[Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-520, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500, 41.50.670 et seq., 41.50.790. WSR 04-09-043, § 415-02-520, filed 4/14/04, effective 5/15/04; WSR 03-24-049, § 415-02-520, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-520, filed 5/27/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-014, filed 5/27/03, effective 7/1/03)

WAC 415-02-530 How can a property division dissolution order give my ex-spouse an interest¹ in part of my Plan 3 retirement account? (1) (~~(Who may use this section?~~

~~(a))~~ You **MUST** use this section if you are a member of TRS Plan 3, PERS Plan 3 or SERS Plan 3 and do not have enough service credit to receive a service retirement from the defined benefit portion of your retirement plan when you meet the age requirement.

~~((b) You **MAY** use this section if you are a member of TRS Plan 3, PERS Plan 3 or SERS Plan 3, and have earned enough service to receive a service retirement from the defined benefit portion of your retirement plan when you meet the age requirement. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-540.))~~

(2) Dividing a defined monthly retirement benefit (defined benefit). Your defined monthly retirement benefit may be divided between you and your ex-spouse.

(a) **What language must the property division dissolution order or amendment include to pay a portion of my defined monthly retirement benefit to my ex-spouse?** The order must use the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both.

If _____ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to _____ (the obligee) _____ dollars from such payments or _____ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

~~((3))~~ **(b) How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order BEFORE I retire?**

~~((a))~~ **(i)** Your ex-spouse will not receive any payments from your defined benefit portion until you retire.

~~((b))~~ **(ii)** If you or your ex-spouse dies before you retire, the portion of your defined benefit account awarded to your ex-spouse in the dissolution order ends.

~~((4))~~ **(c) How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order AFTER I retire?**

~~((a))~~ **(i)** If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your defined benefit payment the first month after the department has accepted the order.

~~((b))~~ **(ii)** If your ex-spouse dies before you, the portion of your defined benefit payment being paid to him or her will be paid to you.

~~((e))~~ **(iii)** If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least ~~((thirty))~~ **30** days before you retired and it required the department to name your ex-spouse as a survivor beneficiary. See RCW 41.50.700(1) and 41.50.790.

~~((5))~~ **(d) Is there a maximum payment amount of the defined benefit portion of my retirement account that the property division dissolution order can award to my ex-spouse? Yes.** See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

~~((6) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (13) for the language that must be used.~~

~~((7))~~ **(e) If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

~~((8) How much is the fee the department charges for making payment directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11).~~

~~((9))~~ **(3) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary? Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order**

splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (14) for the language that must be used.

(4) **Dividing a defined contribution account.** Your accumulated defined contribution account may be divided between you and your ex-spouse.

(a) **What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse?** The order must include the language provided in the following paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (14)(b)).

The Department of Retirement Systems (department) shall split _____ (member's) **defined contribution account** in the _____ (name of retirement system and plan) and create a separate account for _____ (ex-spouse). The amount of \$ _____ (amount) shall be transferred from _____ 's (member's) **defined contribution account** to _____ 's (ex-spouse's) new account. This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(b) **Can my entire defined contribution account balance be awarded to my ex-spouse?** Yes, using the language provided in the following paragraph:

The Department of Retirement Systems (department) shall transfer _____ (member's) entire defined contribution account in the _____ (name of retirement system) to a separate account for _____ (ex-spouse). This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(c) **If the department accepts the property division dissolution order BEFORE I retire, how will the department divide my defined contribution account with my ex-spouse?**

~~((a))~~ (i) The amount the dissolution order awards to **your ex-spouse** will be deducted from **your** account and set up in a separate account for your ex-spouse (under his or her Social Security number). Upon acceptance of the order, the department will affect the transfer of the specified amount as soon as administratively possible. The amount in your ex-spouse's separate account will be subject to market gains and losses after the transfer.

~~((b))~~ (ii) **You** and **your ex-spouse** will manage your individual portions of the account independently from one another.

~~((e))~~ (iii) **You** must continue to contribute to your account during your employment.

~~((d))~~ (iv) **Your ex-spouse** may not contribute to his or her account.

~~((10))~~ **What options does my ex-spouse have in managing his or her separate defined contribution account?** Your ex-spouse may:

~~(a)~~ Transfer money between the state-managed (WSIB) or the self-directed (SELF) investment programs; and

~~(b)~~ Transfer money among the investment options in the SELF-directed program.

~~(11) How will the department make distributions to both my ex-spouse and me on each of our defined contribution accounts?~~

~~(a) When you separate from employment or retire, the funds in your defined contribution account will be disbursed to you according to your distribution choice.~~

~~(b) Your ex-spouse must begin distribution from his or her account at the same time that you request distribution from your account.~~

~~(c) Both you and your ex-spouse have the same distribution options as outlined in WAC 415-111-310.)~~

(d) **If the department accepts the property division dissolution order AFTER I retire, how will the department divide my defined contribution account with my ex-spouse?** If your defined contribution account has not been exhausted at the time the department accepts the dissolution order, the department will divide the remaining funds as specified in the dissolution order according to subsections (3) and (4) of this section.

(e) **What options does my ex-spouse have in managing his or her separate defined contribution account?** Your ex-spouse may:

(i) Transfer money between the state-managed (WSIB) or the self-directed (SELF) investment programs; and

(ii) Transfer money among the investment options in the SELF-directed program.

(iii) If **you** die **before** a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum distribution of the funds in your account.

~~((e))~~ (iv) If **you** die **before** a distribution has been made from your defined contribution account, your ex-spouse must begin receiving distribution of his or her funds at that time according to the distribution options in WAC 415-111-310.

~~((f))~~ (v) If **your ex-spouse** dies **before** a distribution has been made from his or her defined contribution account, your ex-spouse's beneficiary(ies) must apply for a lump sum distribution of the funds in his or her account.

~~((g))~~ (vi) If **you** die **after** you begin receiving funds from your defined contribution account but before your funds have been exhausted, the remaining balance of the funds will be disbursed to your designated beneficiary(ies).

~~((h))~~ (vii) If **your ex-spouse** dies **after** receiving funds from his or her account but before the funds have been exhausted, the remaining balance of the funds will be disbursed to your ex-spouse's designated beneficiary.

~~((12) **What language must the dissolution order or most recent amendment include to pay a portion of my defined contribution account to my ex-spouse?** The language provided in the following paragraph must be used. The order or amendment must state a specific dollar amount.~~

~~The Department of Retirement Systems (department) shall divide _____'s (member's) **defined contribution account** in the _____ retirement system and plan) and create a separate account for _____ (ex-spouse). The amount of \$_____ shall be transferred from _____'s (member's) **defined contribution account** to _____'s (ex-spouse) new account. This provision shall become effective no more than 30 days after the department's acceptance of the order.~~

~~(13) If the department accepts the property division dissolution order AFTER I retire, how will the department divide my defined contribution account with my ex-spouse? If your defined contribution account has not been exhausted at the time the department accepts the dissolution order, the department will divide the remaining funds as specified in the dissolution order according to subsections (9) through (12) of this section.~~

~~(14))~~ (5) **Terms used:**

- (a) Department's acceptance - Order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.
- (b) Dissolution order - RCW 41.50.500.
- (c) Ex-spouse - WAC 415-02-030.
- (d) Obligee - RCW 41.50.500(5).
- (e) Obligor - RCW 41.50.500(6).
- (f) Plan 3 retirement systems - WAC 415-111-100.
- (g) Split accounts - WAC 415-02-030.
- (h) Survivor benefits - WAC 415-02-030.

Footnote to section:

- ¹ When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement benefit payments or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-530, filed 5/27/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-24-049, filed 11/26/03, effective 1/1/04)

WAC 415-02-540 How can my Plan 3 retirement account be split¹ by a property division dissolution order? (1) Who may use this section?

You may use this section if:

- (a) You are a member of TRS Plan 3, SERS Plan 3 or PERS Plan 3;
- (b) You have enough service credit to receive a defined benefit payment when you meet the age requirement for your system; and
- (c) You have or will have a property division dissolution order or amendment dated on or after July 1, 2003². If your ex-spouse will be receiving an interest in your account, use WAC 415-02-530.

(2) **What are the rules for splitting my account?** If you and your ex-spouse are eligible, the department will split both portions of **your** retirement account (defined benefit and defined contributions) into two separate accounts - one for you, and one for your ex-spouse. The rules for splitting your account are different depending on whether your dissolution order or most recent amendment is dated **before** or **after** retirement.

(3) **How will the defined benefit portion of my retirement account be affected if the department accepts the property division dissolution order BEFORE I retire?**

(a) The department will split **your** defined benefit account into two completely separate accounts and create an account for your ex-spouse for the amount awarded in the defined benefit portion of the dissolution order under your ex-spouse's Social Security number.

(b) The department will pay each of you a defined benefit, when eligible, out of your separate accounts.

(c) The amount awarded to your ex-spouse as his or her defined benefit payment will be a permanent reduction to your defined benefit payment amount.

(d) Your defined benefit payment will be payable over your lifetime, and your ex-spouse's defined benefit payment will be payable over his or her lifetime.

(e) You will have the right to pick a survivor option for your defined benefit payment for your own account.

(f) Your ex-spouse will not have the right to pick a survivor option for his or her defined benefit payment but may name a beneficiary to receive any final death payment that may be due.

(g) You may begin receiving your defined benefit payment when eligible according to the rules for your system.

(h) Your ex-spouse may begin receiving monthly payments when he or she reaches age (~~sixty-five~~) 65, or the first day of the month following the department's acceptance of the order, whichever is later. Your ex-spouse must apply for retirement according to the rules for your system and plan. Your age or retirement eligibility has no effect on when your ex-spouse is eligible to begin receiving his or her monthly benefit.

(i) When you or your ex-spouse dies, there will be no impact to the other person's retirement account, because the accounts are independent from one another.

(4) What happens to my defined benefit if my account was split and then I retire early?

(a) If you are eligible and decide to retire early, or must retire early because of a disability, your monthly retirement benefit payment will be reduced by an early retirement factor (ERF). See WAC 415-02-320.

(b) To determine the reduction to your benefit because of your preretirement split (see subsection (3)(c) of this section), the adjustment to the amount awarded to your ex-spouse in the dissolution order will be reduced by the ERF used to reduce your benefit.

Example: You are a member of TRS Plan 3 and retire for disability five years before you are eligible for a service retirement. The dissolution order awarded your ex-spouse a monthly benefit of (~~two hundred fifty dollars~~) \$250.

Your defined benefit before ERF is applied:	\$1,000	
ERF (factor for retiring two years early)	0.61	
Your base benefit:	\$610	(\$1,000 x 0.61 ERF)
Adjustment for divorce split:	-\$152.50	(ex-spouse's \$250 x 0.61 (ERF))
The defined benefit you will receive:	\$457.50	(\$610 - \$152.50)

Your ex-spouse will receive the full monthly amount (\$250) that was awarded to him or her in the dissolution order, regardless of your benefit amount.

(5) What language must be used in a property division dissolution order that the department accepts *BEFORE* I retire to pay a portion of my monthly defined benefit payment to my ex-spouse? The order must use the language provided below. Do not use the language in RCW 41.50.670(2). The exact dollar amount of your ex-spouse's defined monthly benefit payment must be specified. Do not use formulas or percentages.

The Department of Retirement Systems (department) shall create a **defined benefit monthly account** for _____ (ex-spouse) in the _____ (name of retirement system and plan). When _____ (ex-spouse) becomes eligible for monthly payments, [s]he (upon application) will begin to receive \$_____ per month for the remainder of his/her lifetime. When _____ (member) becomes eligible for monthly payments, [s]he (upon application) will begin to receive the calculated monthly benefit less the amount herein specified for _____ (ex-spouse). This provision shall become effective ~~((no more than 30 days))~~ as soon as administratively possible after the department's acceptance of the order.

(6) If ordered in the dissolution order, how will the department split my preretirement defined contribution account?

(a) The amount the dissolution order awards to your ex-spouse will be deducted from your defined contribution account and set up in a separate account for your ex-spouse under his or her Social Security number. Upon acceptance of the order, the department will affect the transfer of the specified amount as soon as administratively possible. The amount in your ex-spouse's separate account will be subject to market gains and losses after the transfer.

(b) You and your ex-spouse will manage your separate accounts independently from one another.

(c) You must continue to contribute to your account during your employment.

(d) Your ex-spouse may not contribute to his or her account.

(7) What options does my ex-spouse have in managing his or her separate defined contribution account? Your ex-spouse may:

(a) Transfer money between investment programs (state-managed (WSIB) or self-directed (SELF)); and

(b) Transfer money among the investment options in the SELF-directed program.

(8) How will the department make distributions to my ex-spouse and me out of our defined contribution accounts?

(a) **You** must be separated from employment before funds in your account can be distributed according to your distribution choice.

(b) **Your ex-spouse** may begin receiving distribution of the funds in his or her account at any time according to his or her distribution choice.

(c) Both you and your ex-spouse will have the same distribution options as outlined in WAC 415-111-310.

(d) If **you** die before a distribution has been made from your defined contribution account, your beneficiary(ies) must apply for a lump sum death benefit from your account.

(e) If **your ex-spouse** dies before a distribution has been made from his or her account, your ex-spouse's beneficiary(ies) must apply for a lump sum death payment from his or her account.

(f) If **you** die after you begin receiving funds but before the funds in your account have been exhausted, the balance will be paid to your designated beneficiary(ies).

(g) If **your ex-spouse** dies after receiving funds but before the funds in his or her account have been exhausted, the balance will be paid to your ex-spouse's designated beneficiary(ies).

(9) What language must be used in a property division dissolution order to award a portion of my defined contribution account to my ex-spouse? The order must include the language provided in the following

paragraph. The exact dollar amount to transfer to your ex-spouse's defined contribution account must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 (~~((15))~~) (14)(b)).

The Department of Retirement Systems (department) shall split _____ (member's) **defined contribution account** in the _____ (name of retirement system and plan) and create a separate account for _____ (ex-spouse). The amount of \$_____ (amount) shall be transferred from _____'s (member's) **defined contribution account** to _____'s (ex-spouse's) new account. This provision shall become effective (~~((no more than 30 days))~~) as soon as administratively possible after the department's acceptance of the order.

(10) **Can my entire defined contribution account balance be awarded to my ex-spouse?** Yes, using the language provided in the following paragraph:

The Department of Retirement Systems (department) shall transfer _____ (member's) entire defined contribution account in the _____ (name of retirement system) to a separate account for _____ (ex-spouse). This provision shall become effective as soon as administratively possible after the department's acceptance of the order.

(11) **Can I amend an existing order that has awarded an interest in my account to my ex-spouse under WAC 415-02-530 and remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-540 (9) and (~~((13))~~) (14) for the language that must be used.

Example:

Julio and May were married when Julio retired. Julio chose survivor Option 2 (joint and (~~((one hundred))~~) 100 percent survivorship) when he retired. This meant that if Julio died, May would receive monthly survivor benefits. Two years after Julio's retirement, the couple divorced. The court awarded "~~((one hundred))~~ 100 percent of retirement benefits" to Julio. Julio later learned that this award did not change the survivor option. Julio can return to court and obtain an order stating that May is to receive "\$0" as the dollar amount for her separate monthly benefit. The order must use the language in WAC 415-02-540 and be signed by the court no sooner than July 1, 2003.

(~~((11))~~) (12) **If the dissolution order or amendment is dated AFTER my retirement, how will my defined monthly retirement benefit payment be split?**

(a) The department will split your defined monthly retirement benefit payment **only if** you selected your ex-spouse to receive a survivor benefit at the time you retired. If you did not select your ex-spouse to receive a survivor benefit at the time you retired, you cannot use this section. You **must** use WAC 415-02-530.

(b) If you selected your ex-spouse to receive survivor benefits at the time you retired, the rules in subsection (3)(a) through (f) of this section will apply.

(c) At the time the department splits your account, your ex-spouse will be removed as the survivor beneficiary on your account.

(d) Regardless of his or her age, your ex-spouse will begin receiving a monthly benefit payment the first month after the department accepts the property division dissolution order.

~~((12))~~ (13) **If the dissolution order or amendment is dated AFTER my retirement, how will my monthly retirement benefit be calculated after the split?**

(a) The dissolution order must state the exact dollar amount your ex-spouse is to receive as his or her separate monthly benefit. The following describes how the new amount of your benefit will be calculated assuming your ex-spouse was awarded a monthly benefit of ~~((six hundred dollars))~~ \$600 in the dissolution order.

Step 1 The department will determine the single life benefit of your current monthly benefit payment by dividing your currently monthly benefit payment by the survivor option factor (see WAC 415-02-380) in effect at the time of the split.

Example:

Currently monthly benefit = \$1200

Option factor = 0.865

Single life benefit amount = $\$1200 / 0.865 = \1387.28

Step 2 The single life benefit (\$1387.28) is divided by your annuity factor (see WAC 415-02-340) to determine the current present value of the single life benefit amount. The annuity factor the department uses is the factor for your age as of the date of the split.

Example:

Your age at time of the split = 61 years old

Annuity factor for age 61 = 0.0065448

Present value of single life benefit = $\$1387.28 / 0.0065448 = \$211,966.75$

Step 3 The department then determines the present value of your ex-spouse's share by dividing your ex-spouse's monthly benefit amount (as awarded in the dissolution order) by your ex-spouse's annuity factor. The annuity factor is the factor for your ex-spouse's age as of date of the split.

Example:

Ex-spouse's monthly benefit amount = \$600

Ex-spouse's age at time of the split = 67

Annuity factor for age 67 = 0.0076715

Present value of your ex-spouse's monthly benefit = $\$600 / 0.0076715 = \$78,211.56$

Step 4 Next, the department subtracts your ex-spouse's present value from the single life benefit present value. The result is the present value of the benefit you will receive.

Example:

Present value of single life benefit = \$211,966.75

Less present value of ex-spouse's benefit = -78,211.56

Your present value = \$133,755.19

Step 5 The department determines your new monthly benefit amount by multiplying your present value by your annuity factor.

Example:

Your present value = \$133,755.19

Annuity factor = 0.0065448

Your new monthly benefit amount = \$133,755.19 x 0.0065448 = \$875.40

(b) The department determines the percentage of the total present value each of you will receive by dividing each of your present value amounts by the single life benefit present value amount.

Example:

Your percentage of the single life benefit present value:

\$133,755.19/\$211,966.75 = .6310

Your ex-spouse's percentage of the single life benefit present value:

\$78,211.56/\$211,966.75 = .3690

~~((13))~~ **(14) What language must the postretirement property division dissolution order or most recent amendment include to split my monthly defined benefit payment with my ex-spouse?** Do not use the language in RCW 41.50.670(2). The order must include the language provided in the following paragraph. The exact dollar amount of your ex-spouse's monthly benefit payment must be specified. Do not use formulas or percentages. (See example in WAC 415-02-500 ~~((15))~~ **(14)**(b).)

The Department of Retirement Systems (department) shall create a **defined benefit account** for _____ (ex-spouse) in the _____ (name of retirement system and plan) and pay him or her \$_____ (amount) for his or her life. To pay for this benefit, _____ (member's) **monthly defined benefit** payment will be reduced for life. This provision shall become effective ~~((no more than 30 days))~~ as soon as administratively possible after the department's acceptance of the order.

~~((14))~~ **(15) How will the department split my postretirement defined contribution account?** If your defined contribution account has not been fully disbursed at the time of the dissolution order, the department will split the remaining portion of your defined contribution according to the provisions of subsections (6) through (9) of this section.

~~((15))~~ **(16) Is there a maximum payment that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

~~((16) How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.)~~

(17) Terms used:

(a) Department's acceptance - A dissolution order that fully complies with the department of retirement systems' requirements and chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Ex-spouse - WAC 415-02-030.

(d) Split accounts - WAC 415-02-030.

(e) Survivor benefits - WAC 415-02-030.

(f) Plan 3 retirement systems - WAC 415-111-100.

(g) TRS - Teachers' retirement system.

Footnotes to section:

- 1 When a court splits your retirement account, the department will establish a separate account for your ex-spouse. Once the account is established, your account and your ex-spouse's account are not tied in any way.
- 2 If an ex-spouse was not listed as the member's survivor beneficiary at retirement, then no postretirement property division order (or postretirement amendment) may split the member's retirement account using WAC 415-02-540.

[Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670 et seq., [41.50.]790. WSR 03-24-049, § 415-02-540, filed 11/26/03, effective 1/1/04. Statutory Authority: RCW 41.50.050(5), 41.50.500, [41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, § 415-02-540, filed 5/27/03, effective 7/1/03.]

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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 415-02-720	What does the department charge for processing split payments?
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WSR 23-01-006

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 7, 2022, 3:20 p.m., effective January 7, 2023]

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

Purpose: The department of revenue is amending WAC 458-53-030 to recognize 2022 legislation (2SHB 1210), which changes the terminology referencing "marijuana" to "cannabis."

Citation of Rules Affected by this Order: Amending WAC 458-53-030 Stratification of assessment rolls—Real property.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070.

Adopted under notice filed as WSR 22-20-003 on September 21, 2022.

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

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

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

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

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

Date Adopted: December 7, 2022.

Atif Aziz
Rules Coordinator

OTS-4102.1

AMENDATORY SECTION (Amending WSR 16-11-031, filed 5/10/16, effective 6/10/16)

WAC 458-53-030 Stratification of assessment rolls—Real property. (1) **Introduction.** This rule explains the stratification process for real property. The stratification process is the grouping of real property within each county into homogeneous classifications based upon certain criteria in order to obtain representative samples. Stratification is used in determining the number of appraisals to be included in the ratio study and also for ratio calculation. The county's most current certified assessment rolls are used for stratification. Counties must stratify rolls using a land use code stratification system as prescribed by the department. (See RCW 36.21.100.)

(2) **Stratification - Parcel count and total value - Exclusions.** The stratification of the real property assessment rolls must include a parcel count and a total value of the taxable real property parcels in each stratum, excluding the following:

(a) Designated forest lands. (See chapter 84.33 RCW);

(b) Timberland classified under chapter 84.34 RCW. (See RCW 84.34.060);

(c) Current use properties in those counties where a separate study is conducted pursuant to WAC 458-53-095(3);

(d) State assessed properties; and

(e) State-owned game lands as defined in RCW 77.12.203(2).

(3) **Stratification - By county.** For the real property ratio study, the assessment roll must be stratified for individual counties according to land use categories and substratified by value classes as determined by the department. Stratification will be reviewed at least every other year by the department to determine if changes need to be made to improve sampling criteria. After the strata have been determined, the department will notify the counties of the strata limits, and each county must provide the department with the following, taken from the county's assessment rolls:

(a) A representative number of samples, as determined by the department, in each stratum, together with:

(i) The name and address of the taxpayer for each sample;

(ii) The land use code for each sample;

(iii) The previous year's assessed value for each sample;

(iv) The current year's assessed value for each sample; and

(v) The actual number of samples;

(b) The total number of real property parcels in each stratum;

and

(c) The total assessed value in each stratum for both the previous year and the current year.

(4) **Counties to provide information timely.** The stratification information described in subsection (3) of this rule must be provided by the counties to the department in a timely manner to enable the department to certify the preliminary ratios in accordance with WAC 458-53-200(1). Failure to provide the information in a timely manner will result in the department using its best estimate of stratum values to calculate the real property ratio.

(5) **Standard two-digit land use code.** The following two-digit land use code will be used as the standard to identify the actual use of the land. Counties may elect to use a more detailed land use code system using additional digits, however, no county land use code system may use fewer than the standard two digits.

RESIDENTIAL

- 11 Household, single family units
- 12 Household, 2-4 units
- 13 Household, multiunits (5 or more)
- 14 Residential condominiums
- 15 Mobile home parks or courts
- 16 Hotels/motels
- 17 Institutional lodging
- 18 All other residential not elsewhere coded
- 19 Vacation and cabin

MANUFACTURING

- 21 Food and kindred products
- 22 Textile mill products
- 23 Apparel and other finished products made from fabrics, leather, and similar materials

- 24 Lumber and wood products (except furniture)
- 25 Furniture and fixtures
- 26 Paper and allied products
- 27 Printing and publishing
- 28 Chemicals
- 29 Petroleum refining and related industries
- 30 Rubber and miscellaneous plastic products
- 31 Leather and leather products
- 32 Stone, clay and glass products
- 33 Primary metal industries
- 34 Fabricated metal products
- 35 Professional scientific, and controlling instruments; photographic and optical goods; watches and clocks-manufacturing
- 36 Not presently assigned
- 37 Not presently assigned
- 38 Not presently assigned
- 39 Miscellaneous manufacturing

TRANSPORTATION, COMMUNICATION, AND UTILITIES

- 41 Railroad/transit transportation
- 42 Motor vehicle transportation
- 43 Aircraft transportation
- 44 Marine craft transportation
- 45 Highway and street right of way
- 46 Automobile parking
- 47 Communication
- 48 Utilities
- 49 Other transportation, communication, and utilities not classified elsewhere

TRADE

- 50 Condominiums - Other than residential condominiums
- 51 Wholesale trade
- 52 Retail trade - Building materials, hardware, and farm equipment
- 53 Retail trade - General merchandise
- 54 Retail trade - Food
- 55 Retail trade - Automotive, marine craft, aircraft, and accessories
- 56 Retail trade - Apparel and accessories
- 57 Retail trade - Furniture, home furnishings and equipment
- 58 Retail trade - Eating and drinking
- 59 Other retail trade

SERVICES

- 61 Finance, insurance, and real estate services
- 62 Personal services
- 63 Business services
- 64 Repair services

- 65 Professional services
- 66 Contract construction services
- 67 Governmental services
- 68 Educational services
- 69 Miscellaneous services

CULTURAL, ENTERTAINMENT AND RECREATIONAL

- 71 Cultural activities and nature exhibitions
- 72 Public assembly
- 73 Amusements
- 74 Recreational activities
- 75 Resorts and group camps
- 76 Parks
- 77 Not presently assigned
- 78 Not presently assigned
- 79 Other cultural, entertainment, and recreational

RESOURCE PRODUCTION AND EXTRACTION

- 81 Agriculture (not classified under current use law)
- 82 Agriculture related activities
- 83 Agriculture classified under current use chapter 84.34 RCW
- 84 Fishing activities and related services
- 85 Mining activities and related services
- 86 ((~~Marijuana~~)) Cannabis grow operations
- 87 Not presently assigned
- 88 Designated forest land under chapter 84.33 RCW
- 89 Other resource production

UNDEVELOPED LAND AND WATER AREAS

- 91 Undeveloped land
- 92 Noncommercial forest
- 93 Water areas
- 94 Open space land classified under chapter 84.34 RCW
- 95 Timberland classified under chapter 84.34 RCW
- 96 Not presently assigned
- 97 Not presently assigned
- 98 Not presently assigned
- 99 Other undeveloped land

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.48.075. WSR 16-11-031, § 458-53-030, filed 5/10/16, effective 6/10/16; WSR 02-14-031, § 458-53-030, filed 6/24/02, effective 7/25/02; WSR 96-05-002, § 458-53-030, filed 2/8/96, effective 3/10/96. Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 91-01-008, § 458-53-030, filed 12/6/90, effective 1/6/91. Statutory Authority: RCW 84.48.075 and 84.08.010(2). WSR 89-09-021 (Order PT 89-5), § 458-53-030, filed 4/12/89. Statutory Authority: RCW 84.48.075. WSR 86-21-004 (Order PT 86-6), § 458-53-030, filed 10/2/86; WSR 84-14-039 (Order PT 84-2), § 458-53-030, filed 6/29/84; WSR 79-11-029 (Order PT 79-3), § 458-53-030, filed 10/11/79. Formerly WAC 458-52-030.]

WSR 23-01-007

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 7, 2022, 3:25 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1st because, per statute, these rules provide rates used for refunds and property valuations during 2023.

Purpose: The department is amending:

WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2022, which is used when refunding property taxes paid in 2023, as required by RCW 84.69.100.

WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2023 assessment year, as required by RCW 84.34.065.

WAC 458-30-590 to provide the rate of inflation published in 2022, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2023, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Adopted under notice filed as WSR 22-20-104 on October 4, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: December 7, 2022.

Atif Aziz
Rules Coordinator

OTS-4133.1

AMENDATORY SECTION (Amending WSR 22-04-028, filed 1/24/22, effective 1/1/22)

WAC 458-18-220 Refunds—Rate of interest. (1) **Introduction.** Interest applies to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. Interest also applies to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.

(2) **Calculation of interest rate.** The interest rate is calculated from the equivalent coupon issue yield of the average bill rate for (~~twenty-six week~~) 26-week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid.

(3) **Interest rates.** The following rates are applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%
2015	2014	0.060%
2016	2015	0.085%

Year tax paid	Auction Year	Rate
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%
2021	2020	0.165%
2022	2021	0.050%
<u>2023</u>	<u>2022</u>	<u>2.50%</u>

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 22-04-028, § 458-18-220, filed 1/24/22, effective 1/1/22; WSR 21-01-210, § 458-18-220, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-18-220, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-18-220, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-18-220, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-18-220, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-18-220, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-18-220, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-18-220, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-18-220, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-18-220, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.69.100. WSR 11-02-017, § 458-18-220, filed 12/29/10, effective 1/1/11; WSR 10-07-038, § 458-18-220, filed 3/10/10, effective 4/10/10; WSR 08-24-094, § 458-18-220, filed 12/2/08, effective 1/2/09; WSR 07-24-037, § 458-18-220, filed 11/30/07, effective 12/31/07; WSR 06-21-059, § 458-18-220, filed 10/16/06, effective 11/16/06; WSR 05-22-096, § 458-18-220, filed 11/1/05, effective 12/2/05; WSR 04-24-101, § 458-18-220, filed 12/1/04, effective 1/1/05; WSR 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; WSR 02-23-081, § 458-18-220, filed 11/19/02, effective 12/20/02; WSR 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; WSR 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; WSR 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. WSR 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; WSR 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; WSR 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; WSR 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; WSR 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; WSR 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. WSR 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; WSR 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; WSR 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). WSR 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; WSR 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). WSR 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

OTS-4132.1

AMENDATORY SECTION (Amending WSR 22-04-028, filed 1/24/22, effective 1/1/22)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year (~~(2022)~~) 2023, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is (~~(5.62)~~) 5.53 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.25)) <u>1.19</u>	Lewis	((0.97)) <u>0.93</u>
Asotin	((1.15)) <u>1.12</u>	Lincoln	((1.15)) <u>1.10</u>
Benton	((1.09)) <u>1.06</u>	Mason	((1.04)) <u>0.98</u>
Chelan	((0.99)) <u>0.93</u>	Okanogan	((1.17)) <u>1.13</u>
Clallam	((1.03)) <u>0.98</u>	Pacific	((1.10)) <u>1.03</u>
Clark	((1.08)) <u>1.02</u>	Pend Oreille	((0.98)) <u>0.94</u>
Columbia	((1.16)) <u>1.15</u>	Pierce	((1.22)) <u>1.11</u>
Cowlitz	((1.07)) <u>0.99</u>	San Juan	((0.72)) <u>0.71</u>
Douglas	((1.11)) <u>1.03</u>	Skagit	((1.06)) <u>0.99</u>
Ferry	((1.06)) <u>0.96</u>	Skamania	((1.04)) <u>1.01</u>
Franklin	((0.99)) <u>0.89</u>	Snohomish	((0.97)) <u>0.93</u>
Garfield	((1.25)) <u>1.05</u>	Spokane	((1.17)) <u>1.13</u>
Grant	((1.10)) <u>1.03</u>	Stevens	0.91
Grays Harbor	((1.19)) <u>1.08</u>	Thurston	((1.24)) <u>1.14</u>
Island	((0.90)) <u>0.91</u>	Wahkiakum	((0.79)) <u>0.74</u>
Jefferson	((0.99)) <u>0.94</u>	Walla Walla	((1.24)) <u>1.16</u>
King	((1.01)) <u>0.95</u>	Whatcom	((1.01)) <u>0.94</u>
Kitsap	((1.02)) <u>0.96</u>	Whitman	((1.42)) <u>1.41</u>
Kittitas	((0.91)) <u>0.86</u>	Yakima	((1.14)) <u>1.09</u>
Klickitat	((0.97)) <u>0.98</u>		

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 22-04-028, § 458-30-262, filed 1/24/22, effective 1/1/22; WSR 21-01-210, § 458-30-262, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-262, filed 12/24/19, effective 1/1/20; WSR

19-02-058, § 458-30-262, filed 12/27/18, effective 1/1/19; WSR
 18-01-147, § 458-30-262, filed 12/20/17, effective 1/1/18; WSR
 17-01-162, § 458-30-262, filed 12/21/16, effective 1/1/17; WSR
 16-01-035, § 458-30-262, filed 12/9/15, effective 1/1/16; WSR
 15-01-166, § 458-30-262, filed 12/23/14, effective 1/1/15; WSR
 14-01-059, § 458-30-262, filed 12/13/13, effective 1/1/14; WSR
 13-02-053, § 458-30-262, filed 12/26/12, effective 1/1/13; WSR
 12-01-040, § 458-30-262, filed 12/13/11, effective 1/1/12. Statutory
 Authority: RCW 84.34.065 and 84.34.141. WSR 11-02-015, § 458-30-262,
 filed 12/29/10, effective 1/1/11. Statutory Authority: RCW 84.34.055
 and 84.34.141. WSR 10-09-049, § 458-30-262, filed 4/15/10, effective
 5/16/10. Statutory Authority: RCW 84.34.065 and 84.34.141. WSR
 10-02-025, § 458-30-262, filed 12/29/09, effective 1/1/10; WSR
 08-24-093, § 458-30-262, filed 12/2/08, effective 1/2/09; WSR
 08-04-051, § 458-30-262, filed 1/31/08, effective 3/2/08; WSR
 07-01-011, § 458-30-262, filed 12/7/06, effective 1/1/07; WSR
 05-24-028, § 458-30-262, filed 11/30/05, effective 1/1/06; WSR
 05-01-051, § 458-30-262, filed 12/7/04, effective 1/1/05; WSR
 03-24-013, § 458-30-262, filed 11/20/03, effective 12/21/03; WSR
 02-23-080, § 458-30-262, filed 11/19/02, effective 12/20/02; WSR
 02-03-040, § 458-30-262, filed 1/8/02, effective 2/8/02. Statutory Au-
 thority: RCW 84.34.065, 84.34.360. WSR 00-24-105, § 458-30-262, filed
 12/6/00, effective 1/1/01; WSR 99-24-034, § 458-30-262, filed
 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065,
 84.34.360 and 84.08.010. WSR 99-01-067, § 458-30-262, filed 12/14/98,
 effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and
 84.08.010. WSR 98-01-178, § 458-30-262, filed 12/23/97, effective
 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.34.070. WSR 97-02-066, § 458-30-262, filed 12/31/96, effective
 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.34.070. WSR 96-01-095, § 458-30-262, filed 12/19/95, effective
 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and
 84.08.070. WSR 95-09-041, § 458-30-262, filed 4/14/95, effective
 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065.
 WSR 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statu-
 tory Authority: RCW 84.08.010 and 84.08.070. WSR 93-07-067, §
 458-30-262, filed 3/17/93, effective 4/17/93; WSR 92-03-068, §
 458-30-262, filed 1/14/92, effective 2/14/92; WSR 91-04-001, §
 458-30-262, filed 1/24/91, effective 2/24/91; WSR 90-24-087, §
 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW
 84.08.010(2) and 84.34.141. WSR 90-02-080 (Order PT 90-1), §
 458-30-262, filed 1/2/90, effective 2/2/90.]

AMENDATORY SECTION (Amending WSR 22-04-028, filed 1/24/22, effective
 1/1/22)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—
 Calculation.** (1) **Introduction.** This rule provides the rates of infla-
 tion discussed in RCW 84.34.330 and WAC 458-30-550 Exemption—Removal
 or withdrawal. It also explains the department of revenue's
 (department) obligation to annually publish a rate of inflation and
 the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each
 year the department determines and publishes a rule establishing an

annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 2010 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 2017, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 2010 through 2017. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08

YEAR	PERCENT	YEAR	PERCENT
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251
2016	0.953	2017	1.553
2018	2.169	2019	1.396
2020	0.602	2021	3.860
<u>2022</u>	<u>6.457</u>		

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 22-04-028, § 458-30-590, filed 1/24/22, effective 1/1/22; WSR 21-01-210, § 458-30-590, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-590, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-30-590, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-30-590, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-30-590, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-30-590, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-30-590, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-30-590, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-30-590, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-30-590, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.34.360. WSR 11-02-016, § 458-30-590, filed 12/29/10, effective 1/1/11; WSR 10-02-027, § 458-30-590, filed 12/29/09, effective 1/1/10; WSR 08-24-115, § 458-30-590, filed 12/3/08, effective 1/3/09; WSR 08-04-050, § 458-30-590, filed 1/31/08, effective 3/2/08. Statutory Authority: RCW 84.34.360 and 84.34.310. WSR 07-01-012, § 458-30-590, filed 12/7/06, effective 1/1/07; WSR 05-24-119, § 458-30-590, filed 12/7/05, effective 1/1/06; WSR 05-01-052, § 458-30-590, filed 12/7/04, effective 1/1/05; WSR 03-24-076, § 458-30-590, filed 12/2/03, effective 1/2/04; WSR 02-24-058, § 458-30-590, filed 12/3/02, effective 1/3/03; WSR 02-03-041, § 458-30-590, filed 1/8/02, effective 2/8/02; WSR 00-24-107, § 458-30-590, filed 12/6/00, effective 1/1/01; WSR 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; WSR 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; WSR 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; WSR 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; WSR 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; WSR 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. WSR 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; WSR 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. WSR 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. WSR 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; WSR 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

WSR 23-01-013

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed December 8, 2022, 10:06 a.m., effective January 8, 2023]

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

Purpose: The agency amended WAC 182-550-3830 to align with ESSB 5693 by extending the rate for an additional year and added language for an additional increased rate for providers who take single bed certifications. Language was also updated for readability.

Citation of Rules Affected by this Order: Amending WAC 182-550-3830.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other authority: ESSB 5693, section 211(52), chapter 297, Laws of 2022.

Adopted under notice filed as WSR 22-22-051 on October 27, 2022.

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

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

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

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

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

Date Adopted: December 8, 2022.

Wendy Barcus
Rules Coordinator

OTS-4151.1

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

WAC 182-550-3830 Adjustments to inpatient rates. (1) The medic-aid agency updates all of the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates at rebase:

- (a) Wage index adjustment;
- (b) Direct graduate medical education (DGME); and
- (c) Indirect medical education (IME).

(2) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(3) The agency does not update the statewide average DRG factor between rebasing periods, except:

- (a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and
- (b) When directed by the legislature.

(4) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the Centers for Medicare and Medicaid Services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(5) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of ~~((twelve))~~ 12 consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) If a hospital has not submitted a CMS medicare cost report in more than ~~((eighteen))~~ 18 months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(6) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file on CMS's website as of May 1st of the rate-setting year.

~~(7) ((The agency considers an in-state hospital to qualify for a rate enhancement if all of the following conditions apply. The hospital must:~~

~~((a-))~~ Sole community hospitals.

~~(a) For sole community hospitals' rate enhancements, the agency multiplies an in-state hospital's specific conversion factor and per diem rates by a multiplier if the hospital meets all the following criteria per RCW 74.09.5225:~~

~~(i) Be certified by CMS as a sole community hospital as of January 1, 2013;~~

~~((b-))~~ ~~(ii) Have a level III adult trauma service designation from the Washington state department of health (DOH) as of January 1, 2014;~~

~~((c-))~~ ~~(iii) Have less than ~~((one hundred fifty))~~ 150 acute care licensed beds in fiscal year 2011;~~

~~((d-))~~ ~~(iv) Be owned and operated by the state or a political subdivision; and~~

~~((e-))~~ ~~(v) Not participate in the certified public expenditures (CPE) payment program defined in WAC 182-550-4650 (~~;~~ and~~

~~(f) Accept single bed certification patients as of July 1, 2021, according to RCW 71.05.745.~~

~~(8) If an in-state hospital qualifies for the rate enhancement in subsection (7) of this section, effective:~~

~~(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25.~~

~~(b) July 1, 2018, through June 30, 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.50.~~

~~(c) July 1, 2023, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25).~~

(b) As of July 1, 2021, an additional increase is applied for hospitals that accept single bed certifications per RCW 71.05.745.

Enhancement Multiplier by Year				
Provider Category	Effective For the Dates			
	<u>07/01/2015 - 06/30/2020</u>	<u>07/01/2020 - 06/30/2021</u>	<u>07/01/2021 - 06/30/2022</u>	<u>07/01/2022 - 06/30/2023</u>
<u>Sole community hospital</u>	<u>1.25</u>	<u>1.5</u>	<u>N/A</u>	<u>1.25</u>
<u>Sole community hospital accepting single bed certifications</u>	<u>N/A</u>	<u>N/A</u>	<u>1.5</u>	<u>1.5</u>

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-3830, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160, and 2019 c 415 § 211(14). WSR 20-01-075, § 182-550-3830, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-09-022, § 182-550-3830, filed 4/11/18, effective 5/12/18; WSR 15-10-014, § 182-550-3830, filed 4/23/15, effective 5/24/15; WSR 14-22-003, § 182-550-3830, filed 10/22/14, effective 11/22/14.]

WSR 23-01-014

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed December 8, 2022, 10:27 a.m., effective January 8, 2023]

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

Purpose: The agency amended WAC 182-550-7500 to remove duplicate language found in subsections (6), (7), and (8). The same language is found in WAC 182-550-7550. The agency amended WAC 182-550-7550 to align with ESSB 5693 by extending the rate for an additional year and added language for an additional increased rate for providers who take single bed certifications. Language was also updated for readability.

Citation of Rules Affected by this Order: Amending WAC 182-550-7500 and 182-550-7550.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: ESSB 5693, section 211(52), chapter 297, Laws of 2022.

Adopted under notice filed as WSR 22-22-052 on October 27, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: December 8, 2022.

Wendy Barcus
Rules Coordinator

OTS-4152.1

AMENDATORY SECTION (Amending WSR 22-03-008, filed 1/6/22, effective 2/6/22)

WAC 182-550-7500 OPPTS rate. (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

- (a) A base conversion factor established by the agency;
- (b) An adjustment for direct graduate medical education (DGME);

and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hos-

pital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its website.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4) / (1 - \text{DGME})$$

~~((6) The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:~~

~~(a) Be certified by CMS as a sole community hospital as of January 1, 2013.~~

~~(b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.~~

~~(c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.~~

~~(d) Be owned and operated by the state or a political subdivision.~~

~~(e) Accept single bed certification patients as of July 1, 2021, according to RCW 71.05.745.~~

~~(7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:~~

~~(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;~~

~~(b) July 1, 2018, through June 30, 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;~~

~~(c) July 1, 2023, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.~~

~~(8) The formula for calculating a sole community hospital's final conversion factor is:~~

~~(EAPG base rate × (.6(wage index) + .4)/(1-DGME)) × SCH Factor))~~

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2021 c 334 §§ 211(46) and 215(66). WSR 22-03-008, § 182-550-7500, filed 1/6/22, effective 2/6/22. Statutory Authority: RCW 41.05.021, 41.05.160, and 2019 c 415 § 211(14). WSR 20-01-075, § 182-550-7500, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.05.021, 41.05.160, and 2018 c 299 § 213 (1)(fff). WSR 18-16-059, § 182-550-7500, filed 7/26/18, effective 8/26/18. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 14-22-003, § 182-550-7500, filed 10/22/14, effective 11/22/14. Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7500, filed 6/25/14, effective 7/26/14. WSR 11-14-075, recodified as § 182-550-7500, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-062, § 388-550-7500, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-13-100, § 388-550-7500, filed 6/20/07, effective 8/1/07; WSR 04-20-061, § 388-550-7500, filed 10/1/04, effective 11/1/04.]

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

WAC 182-550-7550 OPSS payment enhancements. (1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age (~~(eighteen)~~) 18 years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals (~~((SCH))~~).

(a) (~~(To qualify as an SCH, a hospital must meet all of the following criteria. The hospital must)~~) For sole community hospital's rate enhancements, the agency multiplies the in-state hospital's specific EAPG conversion factor by a multiplier if the hospital meets all of the following criteria per RCW 74.09.5225:

(i) Be certified ((as an SCH by the Centers for Medicare and Medicaid Services (CMS)) by CMS as a sole community hospital as of January 1, 2013;

(ii) Have a level III adult trauma service designation ((by)) from the Washington state department of health (DOH) as of January 1, 2014;

(iii) Have less than ((one hundred fifty acute care licensed)) 150 acute care licensed beds in ((state)) fiscal year 2011; and

(iv) Be owned and operated by the state or ((one of its)) a political subdivisions.

(b) (~~Effective January 1, 2015, the agency will apply an adjuster of one point twenty five (1.25) to the EAPG conversion factor for any hospital that meets the conditions in (a) of this subsection.~~) As of July 1, 2021, an additional increase may be applied for hospitals that accept single bed certifications per RCW 71.05.745.

Enhancement Multiplier by Year				
Provider Category	Effective For the Dates			
	<u>07/01/2015 - 06/30/2020</u>	<u>07/01/2020 - 06/30/2021</u>	<u>07/01/2021 - 06/30/2022</u>	<u>07/01/2022 - 06/30/2023</u>
<u>Sole community hospital</u>	<u>1.25</u>	<u>1.5</u>	<u>N/A</u>	<u>1.25</u>
<u>Sole community hospital accepting single bed certifications</u>	<u>N/A</u>	<u>N/A</u>	<u>1.5</u>	<u>1.5</u>

[Statutory Authority: RCW 41.05.021 and chapter 74.60 RCW. WSR 14-14-049, § 182-550-7550, filed 6/25/14, effective 7/26/14.]

WSR 23-01-020
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 8, 2022, 2:33 p.m., effective January 8, 2023]

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

Purpose: The department is adopting amendments to WAC 388-484-0006 TANF/SFA time limit extensions, to expand temporary assistance for needy families (TANF) time limit extension (TLE) hardship criteria under RCW 74.08A.10 (5) (a) (1) by adding a temporary TLE category related to COVID-19 pandemic recovery (effective July 1, 2022, through June 30, 2023) and a TLE category related to HB 1755 (chapter 297, Laws of 2022) effective July 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: Amending RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010, and 74.08A.015.

Other Authority: ESSB 5693 and HB 1755.

Adopted under notice filed as WSR 22-20-108 on October 5, 2022.

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

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

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

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

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

Date Adopted: December 8, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4924.4

AMENDATORY SECTION (Amending WSR 21-22-053, filed 10/28/21, effective 11/28/21)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive ((sixty)) 60 or more months of TANF/SFA cash assistance?

After you receive ((sixty)) 60 or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received (~~sixty~~) 60 cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least (~~sixty-five~~) 65 years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for (~~thirty-two~~) 32 hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42, U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or

(vii) Are an active TANF recipient from July 1, 2021, through June 30, (~~2022~~) 2023; or

(viii) Are an active TANF recipient, beginning July 1, 2022, when Washington state employment security department's most recently published unemployment rate is seven percent or above.

~~((viii))~~ (ix) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the (~~state's~~) Washington state employment security department's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b) (~~((viii))~~) (ix) is equal to the number of months that you received TANF on or after March 1, 2020, when the (~~state's~~) Washington state employment security department's unemployment rate was at seven percent or above.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least (~~fifty-two~~) 52 months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every ((twelve)) 12 months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.010 and 2021 c 334, 2021 c 239. WSR 21-22-053, § 388-484-0006, filed 10/28/21, effective 11/28/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 2020 c 320 and C.F.R. 20 § 416.2095 through 416.2099. WSR 21-12-077, § 388-484-0006, filed 5/28/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-484-0006, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-484-0006, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapters 74.08A and 74.12 RCW, 2011 1st sp.s. c 42, and 2011 1st sp.s. c 2. WSR 12-05-039, § 388-484-0006, filed 2/10/12, ef-

fective 3/12/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-484-0006, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapter 74.08A RCW. WSR 06-10-034, § 388-484-0006, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 03-24-057, § 388-484-0006, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-484-0006, filed 5/31/02, effective 6/1/02.]

WSR 23-01-022
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
[Filed December 9, 2022, 9:06 a.m., effective January 9, 2023]

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

Purpose: The department is adopting WAC 388-71-0837, 388-71-0839, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0875, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0932, 388-71-0936, 388-71-0941, 388-71-0946, 388-71-0970, 388-71-0971, 388-71-0973, 388-71-0980, 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026, 388-71-1031, 388-71-1045, 388-71-1050, 388-71-1051, 388-71-1055, 388-71-1060, 388-71-1064, 388-71-1076, 388-71-1091, 388-71-1096, 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130, 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120, 388-112A-0125, 388-112A-0130, 388-112A-0200, 388-112A-0210, 388-112A-0220, 388-112A-0310, 388-112A-0320, 388-112A-0330, 388-112A-0520, 388-112A-0550, 388-112A-0560, 388-112A-0580, 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-0920, 388-112A-0940, 388-112A-0950, 388-112A-1010, 388-112A-1020, 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1270, 388-112A-1285, 388-112A-1292, 388-112A-1300 and 388-112A-1310; repealing WAC 388-71-05833, 388-71-05834, 388-71-0921, 388-71-0931, 388-71-0951, 388-71-1006, 388-71-1021, 388-71-1083, 388-112A-0240, 388-112A-0350, 388-112A-0480, 388-112A-0530, 388-112A-0540, 388-112A-0585, 388-112A-0620 and 388-112A-0840; and new WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training?, 388-71-0961 What knowledge and skills must nurse delegation core training include?, 388-71-0962 What knowledge and skills must nurse delegation specialized diabetes training include?, 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training?, 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training?, 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings?, and 388-112A-0118 What documentation is required for completion of each training?

Citation of Rules Affected by this Order: New WAC 388-71-0958 Is there a challenge test for nurse delegation core or specialized diabetes training?, 388-71-0961 What knowledge and skills must nurse delegation core training include?, 388-71-0962 What knowledge and skills must nurse delegation specialized diabetes training include?, 388-71-1067 What are the minimum qualifications for community instructors for mental health specialty training?, 388-71-1068 What are the minimum qualifications for community instructors for dementia specialty training?, 388-71-1069 What are the minimum qualifications for community instructors to teach expanded specialty trainings? and 388-112A-0118 What documentation is required for completion of each training?; repealing WAC 388-71-05833, 388-71-05834, 388-71-0921, 388-71-0931, 388-71-0951, 388-71-1006, 388-71-1021, 388-71-1083, 388-112A-0240, 388-112A-0350, 388-112A-0480, 388-112A-0530, 388-112A-0540, 388-112A-0585, 388-112A-0620 and 388-112A-0840; and amending WAC 388-71-0837, 388-71-0839, 388-71-0841, 388-71-0846, 388-71-0850, 388-71-0855, 388-71-0860, 388-71-0875, 388-71-0906, 388-71-0911, 388-71-0916, 388-71-0932, 388-71-0936, 388-71-0941,

388-71-0946, 388-71-0970, 388-71-0971, 388-71-0973, 388-71-0980,
 388-71-0985, 388-71-0990, 388-71-0991, 388-71-1001, 388-71-1026,
 388-71-1031, 388-71-1045, 388-71-1050, 388-71-1051, 388-71-1055,
 388-71-1060, 388-71-1064, 388-71-1076, 388-71-1091, 388-71-1096,
 388-71-1106, 388-71-1111, 388-71-1120, 388-71-1125, 388-71-1130,
 388-112A-0105, 388-112A-0110, 388-112A-0115, 388-112A-0120,
 388-112A-0125, 388-112A-0130, 388-112A-0200, 388-112A-0210,
 388-112A-0220, 388-112A-0310, 388-112A-0320, 388-112A-0330,
 388-112A-0520, 388-112A-0550, 388-112A-0560, 388-112A-0580,
 388-112A-0610, 388-112A-0611, 388-112A-0612, 388-112A-0920,
 388-112A-0940, 388-112A-0950, 388-112A-1010, 388-112A-1020,
 388-112A-1230, 388-112A-1240, 388-112A-1250, 388-112A-1270,
 388-112A-1285, 388-112A-1292, 388-112A-1300, and 388-112A-1310.

Statutory Authority for Adoption: RCW 18.20.270, 70.128.230,
 74.08.090, 74.39A.070, and 74.39A.074.

Adopted under notice filed as WSR 22-22-102 on November 2, 2022.

Changes Other than Editing from Proposed to Adopted Version: The original proposal was filed under WSR 22-17-073 on August 16, 2022, and a continuance notice was filed due to a service-wide network outage under WSR 22-22-102 on November 2, 2022. The proposed language was filed under SHS-4921.5. This version had a technical spacing issue change per code reviser's office that was changed from SHS-4921.4 filed by the department. The other changes from SHS-4921.5 to SHS-4921.7 include adding rules from chapter 388-71 WAC that are already in chapter 388-112A WAC, language added from interested parties that clarified language, and the adopted language version included the department of health reference of chapter 246-980 WAC in the rule.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 71, Repealed 16.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 71, Repealed 16.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 71, Repealed 16.

Date Adopted: December 7, 2022.

Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 23-03 issue of the Register.

WSR 23-01-023

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed December 9, 2022, 11:17 a.m., effective January 9, 2023]

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

Purpose: Repeal WAC 516-38-115, 516-38-116, 516-38-118 and 516-38-119, placement services or reciprocal services are no longer provided. Amend WAC 516-38-117 for minor updates to better reflect current processes, define discrimination, and direct readers to the career services center website.

Citation of Rules Affected by this Order: Repealing 4; and amending 1.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-18-021 on August 29, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 4; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 9, 2022.

Jennifer L. Sloan
Rules Coordinator

OTS-3919.1

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-38-117 Recruitment activities. (1) Employers ~~((r))~~ or organizations (hereafter called employers) interested in hiring ~~((graduating))~~ students or alumni, and recruiting personnel from college or university graduate schools may conduct recruitment activity on campus ~~((and))~~. These activities shall be coordinated by the ~~((placement center))~~ career services center subject to the following conditions:

~~(a) Employers shall not ((be eligible to recruit on campus unless they comply with all federal and state laws against discrimination.~~

~~(b) All interviewing arranged by the placement center shall be conducted in offices or space provided by the placement center.~~

~~(c) Recruiters for school districts, business and industrial firms and government agencies may be assigned individual rooms and eligible persons required to adhere to prearranged interview schedules.~~

~~(d) Recruiters for the military, Peace Corps and Vista may be assigned individual rooms and students may be interviewed on a "drop-in" basis.~~

~~(e) All company literature and brochures shall be displayed either within the interviewing room or on placement center literature tables.~~

~~(f) Poster boards and signs related to campus interviews may be posted on bulletin boards or other designated areas upon the approval of the placement center, in compliance with university policy.) discriminate on the basis of race, ethnicity, color, national origin, sex, sexual orientation, gender identity or expression, marital status, pregnancy or parenting status, age, creed, religion, disability (including the use of a trained guide dog or service animal), veteran or military status, citizenship or immigration status (except as authorized by federal or state law, regulation, or government contract), and/or genetic information.~~

~~(b) Employers must comply with all university recruitment policies as listed on the career services center website.~~

(2) All prospective employers shall be free to present their points of view, and all students shall be free to determine whether they desire to listen to their presentations.

~~((3) To be eligible to sign up for recruitment interviews, candidates must meet the qualifications stipulated by the prospective employer. First priority on sign-up schedules shall be given students currently enrolled and eligible for placement services (provided they have established complete placement credentials with the placement center) and second priority shall be given alumni eligible for placement services (provided they have established complete placement credentials with the placement center).))~~

[Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-38-117, filed 4/27/90, effective 5/1/90; Order 72-10, § 516-38-117, filed 11/17/72.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 516-38-115	Career planning and placement center.
WAC 516-38-116	Career planning and placement center— Placement credentials—Fees.
WAC 516-38-118	Job notification.
WAC 516-38-119	Reciprocal services.

WSR 23-01-026

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 9, 2022, 12:37 p.m., effective January 9, 2023]

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

Purpose: The department is updating this rule for a number of reasons, including: (a) Incorporating existing provisions for sourcing sales of tangible personal property found in WAC 458-20-193 (Part 2); (b) incorporating provisions and examples that clarify the department's existing historical policies for use tax sourcing; (c) reorganizing and reformatting to current standards; (d) clarifying existing provisions and examples in the rule to ensure the department's existing historical policies are clearly represented; (e) retitling the rule to better represent the content and scope of the rule; and (f) clarifying or incorporating any other relevant or related information based on external stakeholder comments.

Citation of Rules Affected by this Order: Amending WAC 458-20-145.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060.

Adopted under notice filed as WSR 22-13-151 on June 21, 2022.

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

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

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

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

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

Date Adopted: December 9, 2022.

Atif Aziz
Rules Coordinator

OTS-3481.5

AMENDATORY SECTION (Amending WSR 08-12-035, filed 5/30/08, effective 6/30/08)

WAC 458-20-145 ((Local sales and use tax.)) Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers.

Part 1. General Information.

~~((1)) (101) Introduction. ((Effective July 1, 2008, Washington implements new rules governing how local retail sales taxes are sourced within Washington. See RCW 82.32.730 and 82.14.490. These rules govern where the local retail sales tax attributable to the sale of tangible personal property, retail services, extended warranties,~~

and the lease of tangible personal property is sourced.)) This rule explains how to determine where sales of tangible personal property, retail services, extended warranties, digital products, digital codes, and leases of tangible personal property are sourced for purposes of the business and occupation (B&O) tax and the combined state and local retail sales tax. See RCW 82.32.730. This rule also explains how to determine where use occurs for purposes of sourcing combined state and local use tax.

(102) **Organization of rule.** This rule is divided into five parts as follows:

Part 1. General information.

Part 2. General sourcing rules for most retail sales of tangible personal property, extended warranties, digital products, digital codes, and other retail services.

Part 3. Special sourcing rules for retail sales of certain goods and services.

Part 4. Sourcing rules for leases and rentals of tangible personal property.

Part 5. Sourcing rules for use tax purposes - Purchasers.

(103) **Other rules may apply.** Readers may also want to refer to the following rules:

(a) WAC 458-20-153 Funeral establishments.

(b) WAC 458-20-15502 Taxation of computer software.

(c) WAC 458-20-15503 Digital products.

(d) WAC 458-20-158 Florists and nurserymen.

(e) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(f) WAC 458-20-245 Taxation of competitive telephone service, telecommunications service, and ancillary service.

(104) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(105) **Definitions.** The following definitions apply to this rule:

(a) "**Extended warranty**" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).

(b) "**Florist**" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes. See RCW 82.32.730 (9)(e). "Primary business activity" means more than 50 percent of a person's gross sales revenue is derived from the activity.

(c) "**Lease**" and "**rental**" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. See RCW 82.04.040 for a complete definition of the term "lease or rental."

(d) "**Motor vehicle**" generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power ob-

tained from overhead trolley wires, but not operated upon rails. See RCW 46.04.320. A vehicle is a device capable of being moved upon a public highway. See RCW 46.04.670.

(e) **"Primary property location"** means the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.

(f) **"Purchaser"** has the same meaning as in RCW 82.08.010 and 82.12.010, and includes the purchaser's agent.

(g) **"Purchaser's donee"** means a person, other than the purchaser, to whom the purchaser directs shipment of goods (e.g., a gift recipient).

(h) **"Receive"** and **"receipt"** mean taking possession of, or having dominion and control over, tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730

(9)(f). The term also means making first use of digital automated services, or taking possession or making first use of digital goods or digital codes, whichever comes first.

(i) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes, but is not limited to, sales and leases of tangible personal property, sales of retail services, sales of extended warranties, digital goods, digital codes, and digital automated services.

(j) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.

(k) **"Semi-trailer"** means every vehicle without motive power designed to be drawn by a vehicle, motor vehicle, or truck tractor and so constructed that an appreciable part of its weight and that of its load rests upon and is carried by such other vehicle, motor vehicle, or truck tractor. See RCW 46.04.530.

(l) **"Shipping company"** means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated or unaffiliated with the seller or purchaser. A "shipping company" is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively.

(m) **"Source," "sourced,"** or **"sourcing"** refer to the location (as in a local taxing district, jurisdiction, or authority) where a sale or lease is deemed to occur and is subject to retail sales tax. It also, for purposes of this rule, refers to the location where "use" is deemed to occur for purposes of use tax paid by purchaser as a consumer. The department assigns location codes to identify the specific taxing locations that receive the local taxes. These location codes are used on tax returns to accurately identify the correct taxing location and tax rate.

Sellers and their agents are responsible for determining the appropriate tax rate for all their taxable retail sales (~~(taxable)~~) in Washington. Sellers and their agents are also responsible for collecting from their purchasers the correct amount of tax due upon each sale and remitting that tax to the department.

(Throughout this section the department provides a number of examples that identify facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined separately after a review of all of the facts and circumstances.)

This section is divided into four subsections. Subsection (1) contains this introduction, a description of department resources available to assist taxpayers in performing local sales tax sourcing, and certain key terms. Subsection (2) describes Washington's sourcing rules that become effective July 1, 2008. Subsection (3) provides information relating to the sourcing of telecommunication services. Finally, subsection (4) briefly explains Washington's use tax rule.

~~(a) **What resources does the department offer to help sellers determine their local retail sales tax sourcing?** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:~~

~~(i) **The "Local Sales & Use Tax Flyer."** This publication is updated every quarter and is mailed to select taxpayers reporting on paper returns. It is also available online on the department's website at www.dor.wa.gov under "get a form or publication." It provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.~~

~~(ii) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can incorporate into their own systems to retrieve the proper tax rate for a specific address.~~

~~(iii) **Taxing jurisdiction maps.** The department has a selection of maps of various taxing jurisdictions that identify the boundaries of a specific taxing jurisdiction.~~

~~(b) **Of what key terms should I be aware when reading this section?**~~

~~(i) **"Receipt"** and **"receive"** mean taking possession of tangible personal property and making first use of services. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser. See RCW 82.32.730 (8) (d).~~

~~(ii) **"Retail sale"** has the same meaning as provided in RCW 82.04.050 and includes the following three types of retail sales: Sales and leases of tangible personal property; sales of retail services; and sales of extended warranties.~~

~~(iii) **"Retail service"** means those services described in RCW 82.04.050 as retail sales. This definition includes retail sales of labor and services rendered with respect to tangible personal property.~~

The following is a nonexclusive list of retail services, many of which are addressed in detail in other rules adopted by the department:

- ~~• Constructing, remodeling, or painting buildings (e.g., see WAC 458-20-170);~~
- ~~• Land clearing and earth moving (e.g., see WAC 458-20-172);~~
- ~~• Landscape maintenance and horticultural services (e.g., see WAC 458-20-226);~~
- ~~• Repairing or cleaning equipment (e.g., see WAC 458-20-173);~~
- ~~• Lodging provided by hotels and motels (e.g., see WAC 458-20-166);~~

- ~~• Amusement and recreation services such as golf, bowling, swimming, and tennis (e.g., see WAC 458-20-183);~~
- ~~• Physical fitness services such as exercise classes, personal trainer services, and the use of exercise equipment (e.g., see WAC 458-20-183); and~~
- ~~• Abstract, title insurance, or escrow services (e.g., see WAC 458-20-156).~~

~~(iv) "**Tangible personal property**" means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.~~

~~(v) "**Extended warranty**" is an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. See RCW 82.04.050(7).~~

~~(vi) "**Motor vehicle**" generally means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. Motor vehicles are vehicles capable of being moved upon public ways. "Motor vehicle" includes a neighborhood electric vehicle as defined in RCW 46.04.357. "Motor vehicle" includes a medium-speed electric vehicle as defined in RCW 46.04.295. An electric personal assistive mobility device is not considered a motor vehicle. A power wheelchair is not considered a motor vehicle. For more information see RCW 46.04.320 "Motor vehicle" and RCW 46.04.670 "Vehicle."~~

~~(vii) "**Primary property location**" is the property's physical address as provided by the lessee and kept in the lessor's records maintained in the ordinary course of business, provided use of this address does not constitute bad faith. The primary property location will not change merely by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple jurisdictions.~~

~~(viii) "**Transportation equipment**" refers to:~~

~~(A) Locomotives and railcars used to carry people or property in interstate commerce; and~~

~~(B) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses registered through an international registration plan and operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions); and~~

~~(C) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and~~

~~(D) Containers designed for use on and component parts attached or secured on the items described in (b) (viii) (A) through (C) of this subsection (1). RCW 82.32.730 (8) (e).~~

~~(2-)) (n) **"Tangible personal property"** means property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses and, for sales and use tax purposes, includes prewritten software. See RCW 82.08.010(7), 82.08.950, and 82.12.950 for more information.~~

~~(o) **"Trailer"** means every vehicle without motive power designed for being drawn by or used in conjunction with a motor vehicle constructed so that no appreciable part of its weight rests upon or is carried by such motor vehicle, but does not include a municipal transit vehicle, or any portion thereof. See RCW 46.04.620.~~

~~(p) **"Transportation equipment"** means:~~

~~(i) Locomotives and railcars used to carry people or property in interstate commerce;~~

~~(ii) Trucks and truck tractors with gross vehicle weight ratings of 10,000 pounds or greater, trailers, and semi-trailers, or passenger buses that are:~~

~~(A) Registered through an International Registration Plan (International Registration Plan is a reciprocity agreement among states of the United States and provinces of Canada providing for payment of license fees on the basis of total distance operated in all jurisdictions);~~

~~(B) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation (or other federal authority) to engage in carrying people or property in interstate commerce;~~

~~(iii) Aircraft operated by air carriers authorized and certificated by the U.S. Department of Transportation (or other federal or foreign authority) to carry people or property by air in interstate or foreign commerce; and~~

~~(iv) Containers designed for use on, and component parts attached or secured on, the items described in (p) (i) through (iii) of this subsection. RCW 82.32.730 (8) (e).~~

~~(106) **Other resources.** The department offers a number of resources to assist taxpayers in sourcing retail sales. These resources include:~~

~~(a) **The "Local Sales & Use Tax Flyer."** This publication is updated every quarter and is available online on the department's website at www.dor.wa.gov. The publication provides a listing of all local taxing jurisdictions, location codes, and their corresponding tax rates.~~

~~(b) **The online sales and use tax rate look up application (GIS).** This is an online application that provides current and past sales and use tax rates and location codes based on an address or a selected location on a map. It also allows users to download data that they can incorporate into their own systems to retrieve the proper tax rate for a specific address. Visit the department's website at dor.wa.gov for more information on this topic.~~

Part 2. General Sourcing Rules for Most Retail Sales.

~~(201) **State and local retail sales tax sourcing rules for most retail sales.** ((This subsection)) Part 2 of this rule describes Washington's retail sales tax general sourcing rules ((. Subsection (2) (a) of this section lists the general sourcing rules applicable to the sale of tangible personal property, retail services, and extended war-~~

ranties. Subsection (2)(b) of this section provides special sourcing rules related to certain "florist sales" and the sale of watercraft; mobile, modular, and manufactured homes; and motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. Subsection (2)(c) of this section addresses the sourcing rules applicable to leases of tangible personal property.

(a) **~~Sales of tangible personal property, retail services, and extended warranties.~~** This subsection describes the sourcing rules applicable to the sale of tangible personal property, retail services, and extended warranties.

~~These))~~ for sales of tangible personal property, extended warranties, other retail services, and transportation equipment. The sourcing provisions for Washington's retail sales tax in this Part 2 also apply to retailing B&O tax for retail sales. Part 3 of this rule details exceptions to the general sourcing guidance in this Part 2.

This part also generally applies to retail sales of digital products and digital codes. Readers should refer to WAC 458-20-15503, which extensively addresses the sourcing of digital products and codes. This rule does not address sourcing under facts that are unique to sales of digital products and codes.

General sourcing rules apply in a descending order of priority(= This means that the seller first should determine if (a)(i) of this subsection (Rule 1 below) applies. If it does apply, then the seller must source the sale under Rule 1. If Rule 1 does not apply, then the seller must source the sale to the location required under sourcing Rule 2 (below), and so forth until the applicable sourcing rule is determined.

If the seller ships or delivers tangible personal property to a customer who receives that property outside Washington, the sale is deemed to have taken place outside Washington and is not subject to Washington state or local retail sales tax.

The following rules apply when sourcing retail sales in Washington:

(i) **~~Rule 1: Seller's business location.~~** If a purchaser receives tangible personal property, a retail service, or an extended warranty at the seller's business location, the sale is sourced to that business location.

In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop, a hotel or motel, a health club providing physical fitness services, an auto parking service, a dry-cleaning service, and a storage garage. While these types of retail services are usually received at the seller's place of business, if services are received at a location other than the seller's place of business, then alternate sourcing rules will apply.

(A) **~~Examples: Rule 1 - Tangible Personal Property.~~**

(1) ~~Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location. The seller must source the sale to the Renton location.~~

(2) ~~Mary, a Walla Walla resident, buys a prewritten software program from a store located in Cheney. Mary receives a compact disc containing the software at the Cheney location. The seller must source the sale to the Cheney location.~~

(3) ~~Trains, Inc., an Auburn business, buys a locomotive that qualifies as transportation equipment. Trains, Inc. receives the loco-~~

motive in Fife at the seller's place of business. The seller must source the sale to the Fife location.

~~(B) **Examples: Rule 1 – Retail Services.**~~

~~(1) Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location. The services are received in Centralia. The mechanic must source the sale to the Centralia location.~~

~~(2) Rex, a Seattle resident, drops off a roll of film at a photo developer located in Bellevue. Rex picks up the developed film from the Bellevue location. The services are received in Bellevue. The developer must source the sale to the Bellevue location.~~

~~(3) Bob, a Pasco resident, takes shirts to a drycleaner located in Kennewick. The drycleaner cleans and presses the shirts. Bob then picks up the shirts in Kennewick the following week. The services are received in Kennewick. The seller must source the sale to the Kennewick location.~~

~~(C) **Example: Rule 1 – Extended Warranties.**~~

~~(1) Saffron, a Des Moines resident, buys a computer from a Burien computer outlet. When purchasing the computer Saffron also purchases and receives a five-year extended warranty for the computer at the Burien outlet. The seller must source the sale of the extended warranty and computer to the Burien location.~~

~~(ii) **Rule 2: Tangible personal property, retail services, or extended warranties received at a location other than the seller's place of business.** If the purchaser receives tangible personal property, retail services, or an extended warranty at a location other than the seller's place of business (and sourcing Rule 1 therefore does not apply), then the sale must be sourced to the location where the purchaser, or the purchaser's donee (e.g., a gift), receives such property, retail service, or extended warranty. This location can be a location indicated in instructions, known to the seller, for delivery to the purchaser or donee.~~

~~Construction contractors, painters, plumbers, carpet layers (retailers who install what they sell), earth movers, and house wreckers are the types of retail service providers that typically will source sales under this sourcing Rule 2 (presuming they provide their services at a location other than their place of business).~~

~~(A) **Examples: Rule 2 – Tangible Personal Property.**~~

~~(1) Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence. Wade receives the furniture at his location in Seattle. The seller must source the sale to Wade's Seattle residence.~~

~~(2) Joanne, a Port Angeles business owner, purchases a prewritten software program online from a store located in Sequim. Joanne receives the software at her home address in Port Angeles. The seller has information identifying the location where the software is electronically received by Joanne in Port Angeles. The seller must source the sale to Joanne's Port Angeles home location.~~

~~(3) Jean, a Tumwater resident, buys prewritten software to detect online security threats. The seller is a store located in Bothell. As part of the purchase price, Jean receives prewritten software updates. All software is electronically delivered. The seller does not know where the software is electronically delivered. However, the purchase order discloses a ship-to address where the software will be received in Tumwater. The seller must source the sale to Jean's ship-to address as this address represents a delivery location indicated in instruc-~~

tions for delivery to Jean. The seller must source the sale to the Tumwater location according to the ship-to address.

(4) Karl, a Spokane Valley resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Karl's home in Spokane Valley. Karl receives the mattress at his home location in Spokane Valley. The seller must source the sale to the Spokane Valley home location.

(5) George, an Olympia resident, orders a pizza from a restaurant located in Tumwater. The restaurant obtains George's Olympia address when taking the order. George receives the pizza at the Olympia address. The seller must source the sale to Olympia according to George's Olympia address.

(6) Gunther, a Sumner resident, places an order for towels with a catalog mail order outlet located in Tacoma. The seller delivers the towels to Gunther's home at a Sumner location from a warehouse in Fife. Gunther receives the towels at the Sumner location. The seller must source the sale to Gunther's Sumner home location.

(B) Examples: Rule 2 - Retail Services.

(1) Brett, a Tacoma resident, contracts with an Olympia painting firm to have his house repainted. The Olympia firm sends employees to Brett's home in Tacoma where they perform the painting. Brett receives the painting services at his home in Tacoma. The painting firm must source the sale of painting services to Brett's Tacoma home location.

(2) Julie, an Aberdeen resident, hires a construction contractor to build a new business facility in Kelso. Julie receives the construction services at the Kelso location. The contractor must source the services to the Kelso construction location.

(3) Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline. Gabe receives the services at the Shoreline location. The repair service must source the sale to Gabe's Shoreline home location.

(C) Example: Rule 2 - Extended Warranties.

(1) Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan. The sale of the extended warranty is sourced to the Chelan home location where Tara receives the warranty documents.

(D) Additional Examples: Rule 2 - Delivery Outside Washington, Gifts, and Receipt by a Shipping Company.

(1) Alan, a Spokane resident, buys a mattress at a store in Spokane. The merchant delivers the mattress from its warehouse located in Deer Park to Alan's vacation home in Idaho. The mattress was received outside of Washington and is not subject to Washington state and local sales tax. The seller does not source the sale to Washington.

(2) Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location. The merchant will source the sale based on the ship-to address in Pullman.

(3) Martha, a Wenatchee resident, travels to a gift shop in Leavenworth. Martha buys five (5) items for herself and five (5) gifts for friends. Martha takes possession of the five (5) items for herself at the gift shop. Martha then has the gift shop deliver the five (5) gifts to addresses located in Wenatchee. The seller will source the

sale of the five (5) items purchased by Martha for herself to Leavenworth. The seller must source the five (5) gifts to Wenatchee according to the ship-to address where each donee receives its gift.

(4) Sheila, a Yakima resident, buys equipment from a Pasco retailer. Sheila arranges to have a shipping company pick up the equipment and deliver that equipment to Sheila in Yakima. In the purchase order Sheila notifies the seller that the equipment will be received at a ship-to address in Yakima. Tangible personal property is not considered received at the seller's place of business in cases where the purchaser arranges to have the goods picked up by a shipping company on its behalf. The seller must source this sale to Sheila's ship-to Yakima location where the equipment is received.

(iii) **Rule 3: Purchaser's address maintained in the seller's ordinary business records.** If neither sourcing Rule 1 nor Rule 2 apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example - Rule 3.

(1) Shannon buys prewritten software from a Bellevue seller by downloading the software from the seller's website. Shannon's location is unknown at the time of sale. However, the seller maintains a Seabeek address for Shannon in its business records. Because Shannon does not receive the software at the seller's place of business and the location of receipt is unknown, sourcing Rules 1 and 2 do not apply. The seller must source the sale to the address maintained in its ordinary business records for Shannon (the Seabeek address).

(iv) **Rule 4: Purchaser's address obtained at the consummation of sale.** If any of sourcing Rules 1 through 3 do not apply, the sale is sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example - Rule 4.

(1) Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed. Sourcing Rules 1 and 2 do not apply because Eric does not receive the software at the seller's business location and the seller does not know where the software is being received. Sourcing Rule 3 does not apply because the retail outlet does not have Eric's address on file in its ordinary business records. Therefore, the retail outlet must source the sale to the address related to the customer's credit card information given during the consummation of the sale. The retail outlet must source the sale to Eric's Port Angeles location.

(v) **Rule 5: Origin sourcing default rule.** If a seller is unable to source a sale under any of the sourcing Rules 1 through 4 above, or the seller has insufficient information to apply those rules, the default origin sourcing rule applies. Subsection (2)(b)(v)(A) through (C) of this section describes sourcing Rule 5 as it applies to the sale of tangible personal property, retail services, and extended warranties.

(A) **Origin sourcing: Tangible personal property.** If any of sourcing Rules 1 through 4 do not apply, the seller must source sales of

tangible personal property to the address from which the property was shipped.

~~(B) **Origin sourcing: Electronically delivered prewritten software.** If any of the sourcing Rules 1 through 4 do not apply, the seller must source sales of electronically delivered prewritten computer software to the address location from which the computer software was first available for transmission by the seller. Locations that merely provide for the transfer of computer software are not address locations from which the computer software is first available for transmission.~~

~~(C) **Origin sourcing: Retail services and extended warranties.** If any of sourcing Rules 1 through 4 do not apply, the seller must source retail services and extended warranties to the address from which it provides the service or warranty.~~

~~(D) **Examples: Rule 5 – Prewritten Software.**~~

~~(1) Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale. Thus, none of sourcing Rules 1 through 4 apply. This sale must be sourced under the default sourcing rule. The seller first made the prewritten software available for transmission at its Tacoma location. The seller will source the sale to that Tacoma location from which the prewritten software was first available for transmission. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of the Tacoma location. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.~~

~~(2) Assume the facts in Example (1) directly above, except that Rebecca's order is submitted to the Tacoma location and the prewritten software is first available for transmission from a Bellevue location. The seller will source the sale to the Bellevue location.~~

~~(b) **Special sourcing rule: Florist sales and**), meaning that if the seller has information necessary to satisfy the requirement in (a) of this subsection, then those sourcing provisions must be applied. If the requirement in (a) of this subsection does not apply, the seller must consider whether the requirement in (b) of this subsection applies, and apply those sourcing provisions to the sale. If the requirement in (b) of this subsection does not apply, then the seller must use the same method in determining whether the requirements first in (c), second (d), or third (e) of this subsection apply respectively, and then apply the applicable sourcing provision. Retail sales must be sourced in this manner as follows:~~

~~(a) Business location of the seller;~~

~~(b) Other location of receipt by the purchaser;~~

~~(c) Purchaser's address maintained in the seller's ordinary business records;~~

~~(d) Purchaser's address obtained at the consummation (i.e., completion) of the sale;~~

~~(e) Origin sourcing.~~

(202) **Business location of the seller.** If a purchaser or a purchaser's donee receives tangible personal property, a retail service, an extended warranty, or a digital product at the seller's business location, the sale is sourced to that business location.

In the case of retail services, this sourcing rule will generally apply where a purchaser receives retail services at the seller's place of business, e.g., an auto repair shop where purchasers pick up the repaired goods at the repair shop location.

Example 1. Tangible personal property received at seller's Washington business location.

Facts: Bill, a Tacoma resident, travels to Renton and purchases a ring from a jeweler located in Renton. Bill receives the ring at the Renton location.

Conclusion: The seller must source the sale to its Renton business location.

Example 2. Tangible personal property received at seller's Washington business location, purchaser is a resident of another state.

Facts: Jane, an Idaho resident, purchases and takes receipt of a mattress at a retailer's physical store in Spokane, Washington.

Conclusion: Even though Jane takes the mattress back to Idaho for her use, the seller must source the sale to its Spokane business location.

Example 3. Tangible personal property received at seller's out-of-state business location, purchaser is a Washington resident.

Facts: Luggage Retailer has retail stores located in Washington and Oregon. John, a Washington resident, goes to Luggage Retailer's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store.

Conclusion: The seller must source the sale to its Portland business location where John took possession of the luggage. John is subject to use tax on the luggage upon his use of the luggage in Washington. Refer to Part 5 of this rule for more information regarding sourcing requirements for use tax imposed on the purchaser as a consumer.

Example 4. Tangible personal property received at seller's Washington business location using purchaser's own trucks, purchaser is an out-of-state business.

Facts: An out-of-state purchaser takes possession of tangible personal property in Vancouver, Washington and immediately delivers the tangible personal property to the purchaser's out-of-state location.

Conclusion: The sale is sourced to Washington because the purchaser received the tangible personal property in Washington.

Example 5. Tangible personal property received at seller's Washington business location by an affiliated shipping company (separate legal entity), receipt by purchaser is outside of Washington.

Facts: The purchaser in Example 4 uses a wholly owned "shipping company" (a legal entity separate from the purchaser) to receive purchased goods in Vancouver, Washington and immediately deliver them to the purchaser's out-of-state location.

Conclusion: Because "receive" and "receipt" do not include possession by the "shipping company," including a "shipping company" that is affiliated with the purchaser, the sale is sourced to the location where the purchaser receives the goods outside of Washington. The seller should maintain records that support the sourcing of the sale outside of Washington. See subsection (203)(b) of this rule for more details on recordkeeping requirements.

Example 6. Retail service received at seller's Washington business location.

Facts: Barbara, a Longview resident, takes her car to a mechanic shop located in Centralia. The mechanic services the car at the Centralia location. Several days later Barbara picks up the car from the Centralia location.

Conclusion: The seller must source the sale to its Centralia business location.

Example 7. Extended warranty received at seller's Washington business location.

Facts: Saffron, a Des Moines resident, buys a computer from a Burien computer retailer. When purchasing the computer, Saffron also purchases and receives a five-year extended warranty for the computer at the Burien location.

Conclusion: The seller must source the sale of the extended warranty and computer to its Burien business location.

(203) Other location of receipt by the purchaser. If the purchaser receives tangible personal property, retail services, digital products or codes, or an extended warranty at a location other than the seller's place of business, then the sale must be sourced to the location where the purchaser, or the purchaser's donee, receives the property, retail service, digital product or code, or extended warranty. This location may be indicated in instructions, known to the seller, for delivery to the purchaser or the purchaser's donee.

(a) Delivery terms, such as "FOB shipping point" and "FOB origin," and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(b) The seller must retain documents used in the ordinary course of the seller's business to show how the seller knows the location where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(i) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(ii) If shipped by a shipping company, a waybill, bill of lading, or other contract of carriage indicating where delivery occurs; or

(iii) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

(A) The seller's name and address;

(B) The purchaser's name and address;

(C) The place of delivery, if different from the purchaser's address; and

(D) The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 8. Tangible personal property delivered to purchaser's address.

Facts: Wade, a Seattle resident, buys furniture from a store located in Everett. Wade has the furniture delivered to his Seattle residence, where he will receive it.

Conclusion: The seller must source the sale to Seattle, the location where the purchaser received the furniture.

Example 9. Remotely accessed prewritten software.

Facts: Joanne, a Port Angeles business owner, purchases a pre-written software program online from a store located in Sequim. Joanne receives access to the software remotely, at her home address in Port Angeles. The seller has information identifying Port Angeles as the location where the software is accessed by the customer.

Conclusion: The seller must source the sale to Joanne's Port Angeles home location.

Example 10. Tangible personal property delivered to purchaser via third-party shipping company.

Facts: An out-of-state seller uses a third-party shipping company to ship goods to a customer located in Ellensburg. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. The shipping company delivers the goods to Ellensburg.

Conclusion: The seller must source the sale to Ellensburg, the location of receipt by the purchaser. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes.

Example 11. Tangible personal property received by purchaser's affiliated shipping company outside Washington then delivered to purchaser.

Facts: A purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller's business location and deliver the goods to the purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer.

Conclusion: The seller must source the sale to Yakima, the location of receipt by the purchaser. Possession by a shipping company on behalf of a purchaser, including a shipping company affiliated with the purchaser, is not receipt for purposes of this rule. A shipping company's authority to accept and inspect goods on behalf of a buyer does not constitute receipt by the buyer.

Example 12. Purchaser exercises dominion and control over tangible personal property outside Washington, prior to receiving the tangible personal property in Washington.

Facts: An out-of-state manufacturer with nexus in Washington sells coffee mugs to a Washington-based purchaser in the business of selling small quantities of the goods under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant.

Conclusion: The purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The seller must source the sale to the location of the out-of-state packaging plant.

Example 13. Retail service received at location of the purchaser.

Facts: Brett, a Tacoma resident, hires ABC Painting Co., located in Olympia, to paint his home. ABC's employees perform the painting services at Brett's home in Tacoma.

Conclusion: The seller must source the sale to Tacoma, the location where the customer received the retail service.

Example 14. Retail repair service received at the location where repaired goods are received.

Facts: Gabe, a Shoreline resident, sends a clock to a repair business located in Auburn. The business repairs the clock and then delivers the clock to Gabe's home in Shoreline.

Conclusion: The seller must source the sale to Shoreline, the location where the customer received the repaired clock.

Example 15. Retail repair service received at the location where repaired goods are received (repair service in state, receipt of repaired goods out-of-state).

Facts: Assume the facts in Example 14, except that Gabe is a resident of Nevada, and that the repaired clock will be delivered by the seller to Gabe's home in Las Vegas.

Conclusion: The seller must source the sale to Las Vegas, NV, the location where the customer received the repaired clock.

Example 16. Extended warranty delivered to location of the purchaser.

Facts: Tara, a Chelan resident, buys a computer over the internet. The retailer offers a five-year extended warranty. Tara decides to purchase the extended warranty and sends the seller the appropriate paperwork. The seller then sends the extended warranty documents to Tara's home in Chelan.

Conclusion: The seller must source the sale to Chelan, the location where the customer received the extended warranty documents.

Example 17. Tangible personal property delivered to location of purchaser's donee.

Facts: Sandra, a Vancouver, Washington resident, buys a computer online from a merchant in Seattle. The computer is a gift for Tim, a student attending college in Pullman. The purchaser directs the seller to ship the computer to Tim's home address in Pullman. Tim receives the computer at the Pullman location.

Conclusion: The seller must source the sale to Pullman, the location of receipt by the purchaser's donee.

(204) Purchaser's address maintained in the seller's ordinary business records. If the sourcing rules described in subsections (202) and (203) of this rule do not apply, a retail sale is sourced to the purchaser's address as indicated in the seller's records maintained in the ordinary course of the seller's business, provided use of this address does not constitute bad faith.

Example 18. Tangible personal property picked up by unaffiliated shipping company from seller's business location, no delivery information available.

Facts: A hotel located in Shelton purchases bathroom towels from a seller located in Bremerton. Rather than having the towels delivered by the seller, the purchaser uses an unaffiliated shipping company to pick up the towels at the seller's business location and deliver them to the purchaser in Shelton. The seller is not able to obtain delivery information for the purchase; however, the seller maintains the address of the purchaser for billing purposes.

Conclusion: The seller must source the sale to Shelton using the purchaser's address information retained in the seller's ordinary business records.

(205) Purchaser's address obtained at the consummation of sale. If the sourcing rules described in subsections (202), (203), and (204) of this rule do not apply, the sale must be sourced to the purchaser's address obtained during the consummation of sale. If no other address is available, this address may be the address included on the purchaser's payment instrument (e.g., check, credit card, or money order), provided use of this address does not constitute bad faith.

Example 19. Prewritten software delivered electronically, location of purchaser's receipt is unknown, billing address information available to seller.

Facts: Eric buys prewritten software over the internet from a retail outlet located on Vashon Island. The seller transmits the prewritten software to an email address designated by Eric. The email address does not disclose Eric's location. Eric pays for the software by credit card. When entering the relevant credit card information, Eric discloses a residential address in Port Angeles to which the credit card is billed.

Conclusion: The seller must source the sale to Port Angeles, the purchaser's credit card billing address obtained by the seller at the consummation of the sale.

(206) Origin sourcing. If the sourcing rules described in subsections (202), (203), (204), and (205) of this rule do not apply, the sale must be sourced to the physical address from which the:

- (a) Tangible personal property was shipped;**
- (b) Digital product, digital code, or computer software was first available for transmission by the seller; or**
- (c) Extended warranty, digital automated service, or other retail service was provided, disregarding any location that merely provided the digital transfer of the product sold.**

Example 20. Prewritten software delivered electronically, location of purchaser's receipt is unknown, purchaser address information is not available.

Facts: Rebecca purchases prewritten computer software electronically and requests that the software be delivered to a specified email address. The seller operates from a retail store located in Tacoma. The seller does not know the location where the software will be received and further does not have information about Rebecca's location in its ordinary business records. Additionally, Rebecca does not supply the seller with address information during the consummation of the sale.

Conclusion: The seller must source the sale to Tacoma, the location where the computer software was first available for transmission by the seller. This result will not change if the software is routed from a Tacoma server through a second server (either operated by the seller or some third party) located outside of Tacoma. Routing as used in this context refers to the transfer of prewritten software from one location to another location for retransmission to a final destination, and does not include transfers to another location where additional services or products may be added.

Part 3. Special Sourcing Rules for Retail Sales of Certain Goods and Services.

(301) Sales of watercraft; sales of modular, mobile, and manufactured homes; and sales of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment. ((If you are a "florist" making sales or you are making a retail sale of watercraft; modular, mobile, or manufactured homes; or motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment (excluding leases and rentals), you must source the sale to the location at or from which delivery is made. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules see RCW 82.32.730 (6) (d) and (8) (c) as amended by Senate Bill No. 6799, chapter 324, Laws of 2008.

When the sale of goods is delivered into Washington from a point outside the state and a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, then the location of the local facility, etc., will determine the place of sale for purposes of the local sales tax. However, if the seller, the seller's agent or the seller's representative maintains no local in-state facility, office, outlet or residence from which business in some manner is conducted, the local tax must be determined by the location of the customer.

Example: Special Sourcing Rule.

(1) Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location. The dealer must source the sale of the car to the dealer's location in Fife from which the car was delivered.

(c) **Leases of tangible personal property.** "Lease" and "rental" mean any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. For more information concerning "leases" and "rentals" see RCW 82.04.040.)

(a) **Seller's location within Washington.** Sales of the types of tangible personal property described in this subsection must be sourced to the location at or from which delivery is made in cases where the seller's location is within Washington.

(b) **Seller's location outside Washington, participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into Washington from a point outside the state, where a local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction in some way, such as by taking the order, must be sourced to the location of the local facility, etc., for purposes of the local sales tax.

(c) **Seller's location outside Washington, no participating seller representative within Washington.** Sales of the types of tangible personal property described in this subsection that are delivered into Washington from a point outside the state, where no local in-state facility, office, outlet, agent or other representative (even though not formally characterized as a "salesperson") of the seller participates in the transaction, must be sourced to the location of the customer for purposes of the local sales tax.

Example 21. Motor vehicle delivered to the location of the purchaser.

Facts: Ben, a Federal Way purchaser, buys a car from a dealer in Fife. The customer has the option of picking up the car on the lot in Fife or having it delivered to his residential address in Federal Way. Ben asks to have the car delivered to the Federal Way location.

Conclusion: The seller must source the sale to Fife, the dealer's location from which the car was delivered.

(302) **Florist sales.**

(a) **Florist sales must be sourced in a manner consistent with:**

(i) The sourcing requirements described in subsection (301)(a) and (b) of this section; or

(ii) In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the cus-

tomer, the location at or from which the delivery is made to the customer is deemed to be the location of the florist originally taking the order. See RCW 82.32.730 (7) (d).

(b) **Collection of retail sales tax:** On all orders taken by a Washington florist and communicated to a second florist, either in Washington or at a point outside the state, the florist taking the order will be responsible for the collection of the retail sales tax from the customer placing the order. See WAC 458-20-158.

Example 22. Floral arrangement delivered to a purchaser's donee in Washington, seller located in Washington.

Facts: Wade, an out-of-state resident, purchases a floral arrangement directly from a florist in Renton. The purchase arrangement does not involve multiple florists. Wade arranges for the florist to deliver the arrangement to a hospital located in Seattle, where his brother Frank is a patient.

Conclusion: The seller must source the sale to Renton, the location at or from which delivery is made. Because the seller is physically located in Washington and the purchase was made directly between the buyer and the florist, the sale is sourced to the location from which delivery was made.

Example 23. Floral arrangement delivered to a purchaser in Washington, originating florist located in Washington, delivering florist located out-of-state.

Facts: Michelle, a Tacoma resident, purchases a floral arrangement from an online florist, Beautiful Flowers, LLC. Beautiful Flowers, LLC is located in Seattle, but has contractual agreements with florists throughout the country, whereby the contracted florist will prepare and deliver floral arrangements to Beautiful Flowers LLC's customers as a subcontractor. Michelle arranges for the flowers to be delivered to her brother in Camas. The floral arrangement is prepared and delivered by a florist located in Portland, Oregon.

Conclusion: The seller would source the sale to Seattle and collect retail sales tax as the location at which the florist originally took the order was in Washington. RCW 82.32.730 (7) (d) specifies that the sale is sourced to the location of the florist originally taking the order.

(303) **Telecommunications service and ancillary services.** Sales of telecommunications service and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located in RCW 82.32.520. See RCW 82.04.065, 82.04.530, and 82.04.535 for more information about telecommunication services and ancillary services, and the calculation of gross proceeds for purposes of B&O tax.

Part 4. Sourcing Rules for Leases and Rentals of Tangible Personal Property.

(401) The terms "lease" and "rental" are used interchangeably throughout this subsection ((2)(e)). This subsection ((2)(e)) provides state and local retail sales tax sourcing guidance for lessors ((who lease)) of tangible personal property. Persons who rent or lease tangible personal property to consumers are required to collect retail sales tax on the amount of each rental or lease payment at the time the payment becomes due. In addition, persons who rent or lease tangible personal property are generally subject to Washington's B&O tax. See WAC 458-20-211.

((i)) (a) **How do I source lease payments attributable to the lease of transportation equipment?** If you are leasing transportation

equipment, you must source the lease payments attributable to that transportation equipment (~~under sourcing Rules 1 through 5 above as a retail sale. See subsection (1)(b)(viii) of this section for a description of transportation equipment.~~

~~(ii))~~ as follows:

(i) For purposes of retail sales tax, you must source the lease payments attributable to the lease of transportation equipment following the sourcing requirements for retail sales discussed in Part 2 of this rule. The sourcing requirements for retail sales discussed in Part 2 of this rule apply to both single payment leases and periodic payment leases of transportation equipment. See RCW 82.32.730(4).

(ii) For purposes of B&O tax, you must source the lease payments attributable to the lease of transportation equipment as described in Excise Tax Advisory 3185.2014.

(b) How should I source lease payments attributable to the lease of motor vehicles, trailers, semi-trailers, and aircraft that do not qualify as transportation equipment? If you are leasing a motor vehicle, trailer, semi-trailer, or aircraft that does not qualify as transportation equipment, you must source the lease payments (~~under this subsection (2)(c)(ii).~~

~~(A))~~ as follows:

(i) Leases that require recurring periodic payments. If the lease requires recurring periodic payments, you must source each periodic payment to the "primary property location" of the leased property. (~~(See subsection (1)(b)(vii) of this section for a description of primary property location.)~~) The "primary property location" will not change by intermittent use of the leased property in different jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

~~((B))~~ (ii) Leases that do not require recurring periodic payments. If the lease does not require recurring periodic payments, you must source the single lease payment (~~under sourcing Rules 1 through 5 above as a retail sale.~~

~~(C) Examples:~~

~~(1) Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The periodic lease payments will be sourced to the residential primary property location in Fall City. If Rich were to move to Seattle during the term of the lease and notify the dealer of a change in the car's primary property location, the dealer would source any lease payments subsequent to that change in primary property location to Seattle.~~

~~(2) Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma. The seller will source the sale to the Tacoma business location.~~

~~(iii))~~ following the sourcing requirements discussed in Part 2 of this rule.

Example 24. Motor vehicle lease with recurring periodic payments.

Facts: Rich, a Fall City customer, leases a car from a dealer in Duvall. Rich leases the car for a period of one year. The car does not

qualify as transportation equipment. Rich provides the dealer with his residential address in Fall City where he keeps the car. Rich makes monthly periodic payments throughout the term of the lease. Rich indicates the primary property location for the car is his residence in Fall City. The Fall City location is recorded in the store's business records. The first monthly lease payment is due at the end of the month following the date in which Rich acquired the vehicle.

Conclusion: The seller (lessor) must source the periodic lease payments to Fall City, the residential primary property location of the purchaser (lessee). If Rich changes the vehicle's primary location during the term of the lease and notifies the lessor, the lessor must source any subsequent lease payments to the primary location of the vehicle.

Example 25. Vehicle trailer lease that does not involve recurring periodic payments.

Facts: Amanda, a Tacoma business owner, rents a trailer for a period of one week and no periodic payments are required under the lease. The trailer does not qualify as transportation equipment. Amanda receives the trailer at a business location in Tacoma.

Conclusion: The seller (lessor) must source the sale to Tacoma, the seller's business location where the trailer was received by the purchaser (lessee).

(c) How do I source lease payments for all other tangible personal property? ~~((If you lease))~~ For leases of tangible personal property not described in (a) or (b) of this subsection ((2)(e)(i) or (ii) of this section, you), sellers must source ((your)) lease payments ((under this subsection (2)(c)(iii)).

~~(A))~~ as follows:

(i) Lease that requires recurring periodic payments. ~~If ((the)) a lease of tangible personal property requires recurring periodic payments, ((you)) sellers must source the first periodic lease payment ((on that lease under sourcing Rules 1 through 5 as a retail sale. You must then source all)) following the sourcing requirements discussed in Part 2 of this rule. Sellers must source subsequent periodic payments to the primary property location for ((each period covered by such periodic payments. See subsection (1)(b)(vii) of this section for a description of primary property location)) the relevant payment period.~~ The primary property location will not change by intermittent use of the leased property in different local jurisdictions, e.g., use of leased business property on business trips or service calls to multiple local jurisdictions.

~~((B))~~ **(ii) Leases that do not require recurring periodic payments.** ~~If ((the)) a lease of tangible personal property does not require recurring periodic payments, ((you)) sellers must source the single payment ((under sourcing Rules 1 through 5 as a retail sale.~~

~~(C)~~ **Examples:**

~~(1) Mark, a Gig Harbor resident, leases furniture from a store in Bremerton. The furniture will be leased for twelve months. The store delivers the furniture to Mark's home address in Gig Harbor. Mark indicates the primary property location for the equipment is his home address in Gig Harbor. The Gig Harbor location is recorded in the store's business records. The customer makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Gig Harbor where Mark receives the furniture. The store must then source all subsequent periodic payments to Gig Harbor, which represents the primary property location recorded in the store's ordinary business records.~~

~~(2) Brad, a Pasco business owner, leases furniture from a store in Spokane. Brad picks up the furniture in Spokane and makes the initial periodic payment on the lease. The furniture is leased for a period of twelve months. Brad indicates the primary property location for the equipment is a business address in Pasco. The Pasco location is recorded in the store's business records. Brad then makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Spokane where Brad received the furniture. The store must source the subsequent periodic payments to the Pasco primary property location.~~

~~(3) Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used in work primarily performed in Washington, but the equipment is also taken out intermittently on a number of service calls made in Oregon. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year. Alison makes monthly periodic payments for the term of the lease. The first periodic payment must be sourced to Issaquah where the equipment is received. The store must source the subsequent periodic payments to Seattle, which represents the primary property location. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.~~

~~(4) Amelia, a Pasco business owner, leases equipment from a store located in Pasco. Amelia picks up the equipment in Pasco, making an initial periodic payment on the lease. The lease is for a period of one year. During the first six months of the lease, Amelia indicates the primary property location for the equipment is a business address in Walla Walla. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records. The store must source the initial periodic payment to Pasco where Amelia received the equipment. The store must source all other periodic lease payments covering the first six months of the lease to the primary property location recorded for Walla Walla. The store must source those periodic lease payments covering the last six months of the lease to the primary property location in Leavenworth.~~

~~(5) Brian, a North Bend business owner, rents a backhoe from Construction Rentals located in Lynnwood. The lease period is 45 days and the lease requires a single lease payment. Brian pays the entire lease amount at the time of pickup. The customer picks up the equipment in Lynnwood and takes it to a job site in DuPont. Construction Rentals must source the sale to the location in Lynnwood where Brian receives the backhoe.~~

~~(6) Lisa, an Olympia business owner, rents a pressure washer from Rental Co. located in Lacey. The rental period is one day and no periodic payments are required under the lease. Lisa picks up the equipment in Lacey and takes it to a job site in Yelm. Sales tax is sourced to the seller's location in Lacey. If Rental Co. delivered the pressure washer directly to Lisa at the job site in Yelm, the sale would have been sourced to the location of the job site in Yelm.~~

~~(3) **Telecommunications services.**~~

~~**Where can I find information related to the sourcing and sale of telecommunication services?** Sales of telecommunication services and ancillary services are defined as retail sales in RCW 82.04.050. Sellers must source these services under the sourcing provisions located~~

in RCW 82.32.520. See RCW 82.04.065 for more information about telecommunication services and ancillary services.

(4)) following the sourcing requirements described in Part 2 of this rule.

Example 26. Lease of tangible personal property with periodic lease payments, tangible personal property picked up at seller's location, tangible personal property intermittently used out-of-state.

Facts: Alison, a Seattle business owner, leases equipment from a store in Issaquah. Alison picks up the equipment in Issaquah and makes an initial periodic payment on the lease. The equipment is used primarily in Washington, but the equipment is intermittently used in Oregon throughout the term of the lease. Alison indicates the primary property location for the equipment is a business address in Seattle. The Seattle location is recorded in the store's business records. The equipment is leased for a period of one year.

Conclusion: The seller (lessor) must source the initial periodic payment to Issaquah, the location where the equipment was received. The seller must source the subsequent periodic payments to Seattle, the primary property location of the equipment. Alison's intermittent use of the equipment in other jurisdictions does not change the primary property location of the equipment.

Example 27. Lease of tangible personal property with periodic lease payments, tangible personal property delivered to purchaser, primary location of property changes during the term of the lease.

Facts: Amelia, a Pasco business owner, leases equipment from a store located in Pasco for a period of one year. The leased equipment is delivered by the lessor to Amelia and received at the primary property location of the equipment in Walla Walla. Amelia indicates this will be the primary property location for a period of six months. For the second six months of the lease, Amelia indicates the primary property location is a business address in Leavenworth. The store records the primary property locations in its business records.

Conclusion: The seller (lessor) must source the initial periodic payment to Walla Walla, the location where Amelia received the equipment. The seller must source subsequent periodic lease payments covering the first six months of the lease to Walla Walla, the primary property location. The seller must source periodic lease payments covering the last six months of the lease to Leavenworth, the primary property location.

Part 5. Sourcing Rules for Use Tax Purposes - Purchasers.

(501) Use tax imposed on the consumer. ((How is use tax sourced in Washington?)) Where a seller does not have an obligation to collect Washington sales tax, the tangible personal property or service sold by that person may be subject to use tax under chapter 82.12 RCW et seq. This use tax is sourced to the place of first use and is payable by the purchaser. The seller may be required to collect use tax pursuant to the requirements of RCW 82.12.040.)) Where an article of tangible personal property, an extended warranty, retail service, pre-written computer software, digital product, or digital code is acquired by a consumer in this state in any manner, including through a casual or isolated sale, or as a by-product used by the manufacturer thereof, use tax is generally due, unless an exemption applies or retail sales tax has been paid. RCW 82.12.020. The rate of use tax is cumulative of a state and local component, where the local component varies by local jurisdiction.

(502) **Sourcing rules.** Sourcing rules for use tax vary depending on the object of use, as follows:

(a) **Tangible personal property,** except for natural gas and manufactured gas, is sourced to the location where the taxpayer makes first taxable use of the article of tangible personal property as a consumer. This includes the location of installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article of tangible personal property within this state. RCW 82.12.010. "First taxable use" is described in the examples below.

Example 28. Use of a motor vehicle by a Washington resident, vehicle registration and location of the vehicle's primary use.

Facts: Sandra, a Spokane resident, purchases a motor vehicle from a private seller located in Seattle. Retail sales tax was not collected by the private seller. Title to the vehicle is transferred in the King County Auditor's office. Sandra will primarily use the vehicle in Spokane and will drive the vehicle to her residence in Spokane upon completion of the sale. Sandra will list the Spokane address on her vehicle registration and new vehicle insurance policy.

Conclusion: The King County Auditor's office will collect use tax from Sandra based on the combined state and local use tax rate for Spokane, as Sandra's use of the vehicle in Seattle is insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 29. Use of a motor vehicle by a Washington resident, purchase of vehicle out-of-state.

Facts: Jerry, a Seattle resident, purchases a motor vehicle from a car dealership located in Oregon. The dealership is not registered with the department and does not collect retail sales tax from Jerry at the time of sale. Jerry drives the vehicle via Interstate 5, from Portland, Oregon to Seattle. Jerry subsequently registers the vehicle with the King County Auditor's office upon returning with the vehicle to Seattle.

Conclusion: The King County Auditor's office will collect use tax from Jerry based on the combined state and local use tax rate for Seattle. Although Jerry drove the vehicle in Clark County, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 30. Use of a personal watercraft in Washington, purchase of watercraft out-of-state.

Facts: Cameron, a Port Townsend resident, purchases a 42-foot sailboat from a boat dealer in Portland, Oregon. Cameron takes possession of the sailboat at the dealer's location in Portland and does not pay Washington's retail sales tax. Cameron navigates the watercraft down the Columbia River and around the Olympic Peninsula, ultimately arriving in Port Townsend. Cameron entered into a long-term moorage agreement and lists the Port Townsend marina as an additional insured party on his current watercraft insurance policy.

Conclusion: The sailboat is subject to use tax based on the combined state and local use tax rate for Port Townsend. Although Cameron sailed the watercraft in Washington on the Columbia River, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 31. Use of a personal aircraft in Washington by a Washington resident, possession taken outside of Washington.

Facts: John, a Bremerton resident, purchases an aircraft from a dealer located in Sacramento, California. John takes possession of the

aircraft in California and flies it back to Washington. Prior to arriving at the Bremerton airport, where John has secured a permanent hangar or storage space for the aircraft, John lands the aircraft in Pullman, Washington. While in Pullman he refuels the aircraft before continuing on to the final destination in Bremerton.

Conclusion: The aircraft is subject to use tax based on the combined state and local use tax rate for Bremerton. Although John fueled the aircraft in Pullman, the use was insufficient to establish first taxable use in that location for purposes of the local portion of the use tax.

Example 32. Use of tangible personal property by a Washington business, purchase of tangible personal property out-of-state.

Facts: Grace, an Issaquah business owner, purchases a trailer-mounted generator from a dealer located in Oregon without paying retail sales tax. Grace tows the generator with her own motor vehicle to the company warehouse located in Issaquah. The company stores the generator at their warehouse throughout the year and operates it at various worksites throughout the state.

Conclusion: The King County Auditor's office will collect use tax based on the combined state and local use tax rate for Issaquah, the location where the taxpayer stores the generator. Although Grace towed the generator through other jurisdictions prior to arriving at the business' Issaquah warehouse, the use was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax. Even though Grace operates the generator in multiple locations, the company warehouse is the location where first taxable use as a consumer occurs.

Example 33. Use of tangible personal property by a Washington resident, purchase of tangible personal property out-of-state.

Facts: Alex, a Wenatchee resident, purchases an electric bicycle from a dealer in Montana, without paying retail sales tax. Alex takes possession of the electric bicycle in Montana and transports it back to Wenatchee in their own motor vehicle where it will be stored in their garage. Alex rides the electric bicycle in Wenatchee and various other locations throughout the state.

Conclusion: The electric bicycle is subject to use tax based on the combined state and local use tax rate for Wenatchee, the location where Alex stores the electric bicycle. Transporting the electric bicycle to Wenatchee was insufficient to establish first taxable use in another location for purposes of the local portion of the use tax.

Example 34. Use of tangible personal property by an out-of-state service provider.

Facts: ABC Testing, an out-of-state medical testing company, provides services to Washington customers. ABC sends a customer of its services, a Sequim resident, a container that the customer uses to provide a saliva sample. The container is shipped to Sequim and back out of Washington using unaffiliated shipping companies. ABC owns the container at all times and its customers are subject to ABC terms and conditions regarding their use of the containers. ABC discards the container upon receipt and testing of the customer's sample at their out-of-state business location.

Conclusion: Use tax is due and sourced to Sequim, the location where the testing company made the tangible personal property available for their customer's use.

(b) **Retail services,** which include the installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property for consumers, are sourced to the location where the taxpayer

takes or assumes dominion or control over the article of tangible personal property upon which the service was performed. Dominion and control includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state.

Example 35. Tangible personal property repaired by out-of-state business who is not required to register or collect Washington taxes.

Facts: Pamela, a resident of Sequim, sends an antique oil painting to an out-of-state business who will refurbish and repair the painting. The out-of-state repairer does not have nexus with Washington and is not required to register with the state or collect Washington's sales tax. Upon completion of the restoration, the repairer sends the painting to Pamela's residence, via a third-party shipping company.

Conclusion: Pamela must report and pay use tax. Pamela must source the repair services to Sequim, the location where first taxable use of the repaired painting occurred as a consumer.

(c) **Extended warranties** are sourced to the location where the taxpayer, after acquiring the extended warranty, first takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies.

Example 36. Extended warranty purchased from an out-of-state business who is not required to register or collect Washington taxes.

Facts: Michael, a resident of Longview, purchases a laptop computer from an online retailer, who is not registered with the state or required to collect Washington's taxes. The retailer sends Michael the laptop computer to his residential address in Longview via a third-party shipping company. At the time of the laptop's purchase, Michael also purchases an extended warranty. The retailer sends Michael an email which contains the extended warranty in electronic form.

Conclusion: Michael must report and pay use tax. Michael must source his use of the laptop computer and the extended warranty to Longview, the location where Michael first assumed dominion and control over the property and extended warranty, establishing first taxable use in this state as a consumer.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 08-12-035, § 458-20-145, filed 5/30/08, effective 6/30/08. Statutory Authority: RCW 82.32.300. WSR 83-07-032 (Order ET 83-15), § 458-20-145, filed 3/15/83; Order ET 75-1, § 458-20-145, filed 5/2/75; Order ET 70-3, § 458-20-145 (Rule 145), filed 5/29/70, effective 7/1/70.]

WSR 23-01-027

PERMANENT RULES

EASTERN WASHINGTON UNIVERSITY

[Filed December 9, 2022, 3:24 p.m., effective January 9, 2023]

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

Purpose: Updates Eastern Washington University's student conduct code to clarify jurisdiction, update types of violations, reorganize sections to make it easier to follow, and provide additional clarification in areas where needed.

Citation of Rules Affected by this Order: New WAC 172-121-118, 172-121-300, 172-121-301, 172-121-302, 172-121-303, 172-121-304, 172-121-305, 172-121-306, 172-121-307, 172-121-308, 172-121-310, 172-121-311, 172-121-312, 172-121-313, 172-121-314, 172-121-315, 172-121-316, 172-121-317, 172-121-318, 172-121-319, 172-121-320, 172-121-321, 172-121-322, 172-121-323 and 172-121-324; repealing WAC 172-121-200; amending WAC 172-121-020, 172-121-040, 172-121-070, 172-121-100, 172-121-110, 172-121-121, 172-121-122, 172-121-130 and 172-121-210[; decodifying WAC 172-121-210; and recodifying WAC 172-121-400].

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-19-028 on September 13, 2022.

Changes Other than Editing from Proposed to Adopted Version: The only change was a technical edit to a cross-referenced RCW that was previously incorrect.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 24, Amended 8, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 25, Amended 9, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 9, 2022.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-4068.2

PART I: ADMINISTRATION, APPLICATION, DEFINITIONS

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-020 Definitions. For purposes of the student conduct code, chapter 172-121 WAC, the definitions in this section apply.

"Appeal authority" refers to the conduct review official presiding over an appeal under WAC 172-121-130.

"Appellant" refers to any respondent or complainant who appeals the decisions or sanctions of a hearing authority under WAC 172-121-130.

"Brief hearing" refers to a brief conduct review hearing before a conduct review officer for allegations that, if substantiated by a preponderance of evidence, would result in a sanction less than a suspension or expulsion, do not involve a Title IX complaint, and that do not involve felony-level crimes.

"Business days" refers to the days and hours the university is open for business. Business days are Monday through Friday, from 8:00 a.m. to 5:00 p.m., excluding holidays as set forth in the university holiday schedule.

"Complainant" means the person who was subjected to the alleged misconduct. The complainant may or may not be the reporting party. If the person who was subjected to the alleged misconduct does not wish to pursue a student conduct case, the university may initiate the student conduct process on its own behalf.

"Conduct review officer" or "CRO" refers to the person designated to serve as the decision maker for a brief hearing or the presiding officer for a full hearing.

"Council" or "the council" refers to the student disciplinary council as described in WAC 172-121-070.

"Council hearing" refers to a full conduct review hearing before the student disciplinary council.

"Dean of students" refers to the dean of students or designee.

"Director of SRR" or "director" refers to the director of student rights and responsibilities or designee.

"Filing" means to actually deliver documents. Documents required to be filed with a specific person under these rules shall be deemed filed upon actual receipt during office hours at EWU. Papers may be filed by delivering them to the (~~dean of student's~~) student rights and responsibilities office, sending them via United States mail, properly addressed, postage prepaid, to 129 Showalter Hall, or emailing them to srr@ewu.edu.

"Full hearing" refers to a full conduct reviewing hearing before the council for allegations that, if substantiated by a preponderance of the evidence, could result in a sanction of a suspension or expulsion, involve a Title IX complaint, or that could constitute felony-level crimes.

"Hearing authority" refers to the decision-maker in a conduct review hearing.

"Interpersonal violence" encompasses domestic violence, dating violence, and stalking.

"Notify" means to provide notice to a person. A person may be notified in person, by telephone, by sending notice to the person's university email account, by leaving a message on (~~his or her~~) their personal telephone, or by sending the notice in the United States mail, properly addressed, postage prepaid, to the person's last known address.

"Off-campus" refers to any location or facility that is not owned, leased, rented, or operated by Eastern Washington University.

"Party/parties" refers to the complainant, respondent, and/or the university.

"Policies" or "university policy" refers to the written regulations of the university, including the standards of conduct for students, residence life handbook, housing contract, university policies, and graduate/undergraduate catalogs and handbooks.

"Recognized student organizations" refers to clubs, organizations, societies or similarly organized groups recognized by the university or the associated students of Eastern Washington University (ASEWU).

"Reporting party" means the person who notifies student rights and responsibilities of alleged misconduct by a student or student organization. The reporting party may also be the complainant, but need not be the complainant.

"Respondent" refers to any student or student organization accused of violating the student conduct code under this chapter.

"Serve" means to post a document in the United States mail, properly addressed, postage prepaid, to a person's last known address, personal service, or electronic service to the person's university email account. Service by mail is complete upon deposit in the United States mail.

"Session council" refers to the student disciplinary council members selected for a specific hearing or appeal.

"Sexual misconduct" encompasses sexual harassment or sexual assault, as defined in WAC 172-121-200.

"Student" includes all of the following:

(a) Any applicant who becomes enrolled, for violations of the code committed as part of the application process or committed following the applicant's submission of the application until the time of official enrollment;

(b) Any person (~~currently~~) who is enrolled or has been enrolled at the university for up to 12 months from the last date they were enrolled;

(c) Nonmatriculated, international students attending institutes or foreign study programs through the university; and

(d) Any person who was previously enrolled at the university for violations of the code committed while enrolled regardless of when they were enrolled. A person who engaged in conduct in violation of the student conduct code while a student remains subject to action under this code even if the person has graduated, withdrawn, or is not currently enrolled for any reason.

"Title IX complaint" means a formal signed complaint from a current student, applicant, employee, or person participating in or seeking to participate in a university program or activity, or by the Title IX coordinator, alleging sexual harassment, sexual assault, domestic violence, dating violence, or stalking for the conduct that occurred on university premises, during a university program or activity

within the United States, or at a building owned or controlled by a student organization that is officially recognized by the university. A complaint of sexual misconduct or interpersonal violence will only be considered a Title IX complaint under this code if it meets this definition. Sexual misconduct or interpersonal violence may still be addressed under this code if it does not meet the definition of a Title IX complaint.

"Title IX coordinator" refers to the Title IX coordinator or designee.

"University" means Eastern Washington University.

"University official" includes any person employed or contracted by the university, performing assigned administrative or professional responsibilities.

"University premises" means buildings and/or property (including adjacent streets and sidewalks) which are owned, leased, rented or operated by the university, to include all satellite campuses affiliated with the university.

"University president" refers to the university president or designee.

"Vice president for student affairs" refers to the vice president for student affairs or designee.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-020, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-020, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-020, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-020, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-020, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-020, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-020, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-020, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 13-24-123, filed 12/4/13, effective 1/4/14)

WAC 172-121-040 Jurisdiction. Eastern Washington University shall have jurisdiction over student behavior which occurs on university premises or during a university-sponsored program or activity. The university may also exercise jurisdiction over student conduct which occurs at off-campus locations if the behavior adversely affects the university (~~((and/or the pursuit of its objectives and the university determines that a significant university interest is affected))~~) or a university community member. The university has sole discretion in determining what conduct adversely impacts the university (~~((and/or the pursuit of its objectives))~~) or a university community member.

The student conduct code shall apply to conduct without regard to a student's academic status at the time the conduct took place. This includes all periods from the time of application for admission through the actual awarding of a degree, including times between academic periods, breaks in enrollment, or outside of normal business hours. The university may continue a student conduct process even after a student withdraws or graduates.

[Statutory Authority: RCW 28B.35.120(12). WSR 13-24-123, § 172-121-040, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-040, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-070 Conduct review officials. (1) **The director of SRR** or designee shall:

- (a) Serve as the primary point of contact for all matters relating to student conduct code violations and proceedings;
- (b) Manage the proceedings as described in this chapter;
- (c) Maintain all records of conduct review proceedings as described in WAC 172-121-080;
- (d) Ensure complaints are promptly investigated and resolved as required by federal and state laws; and
- (e) Review off-campus incidents of alleged misconduct and make determinations as to whether the conduct involved adversely affects the university or university community (~~(and/or the pursuit of its objectives)~~) and whether the conduct process should be initiated.

(2) **Conduct review officer (CRO):** The university president delegates to the vice president of student affairs the authority to designate one or more CRO(s). The director of SRR, dean of students, or any other qualified individual may be designated as a CRO. The CRO(s) shall preside over brief hearings and full conduct hearings under this chapter. For brief hearings, the CRO shall serve as the decision maker. For full hearings, the CRO shall serve as the presiding officer.

As the presiding officer, in full hearings the CRO has authority to:

- (a) Determine the order of presentation of evidence;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas pursuant to RCW 34.05.446;
- (d) Rule on procedural matters, objections, and motions;
- (e) Rule on motions for summary judgment;
- (f) Rule on offers of proof and receive relevant evidence;
- (g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;
- (h) Question witnesses in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;
- (i) Call additional witnesses and request additional exhibits deemed necessary to complete the record and receive such evidence subject to each party's opportunity for cross-examination and rebuttal;
- (j) Take official notice of facts pursuant to RCW 34.05.452(5);
- (k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (l) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (m) Issue an order of default;
- (n) Hold prehearing conferences; and
- (o) Take any other action necessary and authorized by any applicable statute or rule.

(3) **Student disciplinary council:** The council serves as the decision maker for full hearings with respect to a finding of responsibility.

ity. The CRO in full hearings serves as the decision maker with respect to determining appropriate sanction(s) and remedies, upon a finding of responsibility.

(a) Council pool: For each academic year, a pool of council members shall be established. All members of the council pool are appointed by the vice president for student affairs. Appointment of council pool members is as follows:

(i) Faculty and staff members are appointed for three-year terms. Student members are appointed for one-year terms;

(ii) Council chair: (~~The dean of students or designee shall serve as the CRO and chair of~~) Designated CRO who chairs council proceedings;

(iii) Vacancies: Council pool (~~(vacancies)~~) shall be filled as needed through appointment by the vice president for student affairs.

(b) Session council: When a student disciplinary council is needed for a full hearing, the (~~dean of students~~) director or designee, shall (~~(select)~~) identify available members from the council pool to serve as the session council. Each session council must include three members. The council may consist of students, staff, or faculty members. Full hearings are determined by a majority vote of the council.

(4) **Investigator:** For all Title IX, sexual misconduct, and interpersonal violence complaints, and certain other cases at the director's discretion, the director may assign a complaint to an investigator to conduct an investigation. The investigator will provide a written investigative report to the director.

(5) **Presenter in cases of a full hearing**(~~(r)~~): A person will present a case against the respondent on behalf of the university. The presenter will call witnesses, ask questions, and offer evidence during the hearing. The presenter may be the director of SRR, designee, or an assistant attorney general appearing on behalf of the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-070, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-070, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-070, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-070, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-070, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-070, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-070, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-070, filed 5/20/09, effective 6/20/09.]

PART II: COMPLAINTS AND CONDUCT PROCEDURES

AMENDATORY SECTION (Amending WSR 21-01-102, filed 12/11/20, effective 1/11/21)

WAC 172-121-100 Complaints. (1) Filing of complaints.

(a) Any person or the university may file a complaint against a student or student organization for violation of the student conduct code.

(b) A person wishing to file a complaint under the student conduct code must submit the complaint, in writing, to one of the following:

(i) Student rights and responsibilities (~~(†)~~) (www.inside.ewu.edu/srr); or

(ii) Title IX coordinator (~~(†-or~~

~~(iii) The office of the dean of students)~~) (www.inside.ewu.edu/titleix).

(c) Filing a complaint under the student conduct code does not prohibit or limit a person's right to file complaints or charges with other civil and/or criminal authorities for violations of local, county, state, or federal law.

(d) All student conduct code complaints will be forwarded to the director of SRR for further review and action.

(e) In cases where the university is pursuing a student conduct case on its own behalf, an EWU employee shall initiate the complaint. For Title IX complaints, a complaint must either be filed by the person subject to the alleged misconduct or by the Title IX coordinator. If a complaint is filed by the Title IX coordinator, the Title IX coordinator will not be considered a complainant for the purposes of participating in the investigation and hearing process.

(2) Complaint review. Upon receipt of a complaint, the director of SRR shall review the complaint to determine whether it includes allegations of sexual misconduct or interpersonal violence, may lead to suspension or expulsion and/or felony level criminal conduct to determine which student conduct process applies and if appropriate law enforcement or other authorities should be notified. If a complaint falls within such categories, it shall be referred to a hearing under WAC 172-121-122.

(3) Sexual misconduct and interpersonal violence proceedings. Except where specifically stated, this section applies to all allegations the university receives of sexual misconduct or interpersonal violence regardless of the possible level of sanction or whether there is a formal Title IX complaint.

(a) Report to Title IX coordinator. The director of SRR shall report all complaints which may constitute any form of sexual misconduct or interpersonal violence to the university Title IX coordinator within (~~(twenty-four)~~) 24 hours.

(b) Title IX complaints. The Title IX coordinator will determine whether or not the allegation of sexual misconduct or interpersonal violence constitutes a Title IX complaint under this code. Solely in cases of Title IX complaints, the university will not move forward with initiating a Title IX investigation or student conduct hearing unless (~~(SRR has received)~~) a formal complaint from the person alleged to have been subjected to sexual misconduct or interpersonal violence or a complaint from the Title IX coordinator requesting initiation of the student conduct process has been received.

The Title IX coordinator is responsible for determining whether or not the allegations constitute a formal Title IX complaint. If allegations include sexual misconduct or interpersonal violence but do not meet the definition of a Title IX complaint, the Title IX coordinator will inform the complainant and the respondent that the complaint is not considered a Title IX complaint and the reasons it does not fit within the required elements of a formal Title IX complaint.

If the complainant or respondent disagrees with the Title IX coordinator's decision, the party may file an appeal with the dean of students within three calendar days of the Title IX coordinator's decision. The dean of students can affirm, reverse, or remand the Title IX coordinator's decision and such decision must be communicated in writing simultaneously to the parties.

SRR may proceed, however, with pursuing a student conduct case against the respondent for misconduct outside of Title IX including, but not limited to, sexual misconduct or interpersonal violence that does not fit the definition of a Title IX complaint.

(c) Prompt resolution. The university shall investigate any complaint alleging sexual misconduct or interpersonal violence when it is legally required to do so. The university's goal is to have complaints of sexual misconduct or interpersonal violence resolved within (~~nine-~~~~ty~~) 90 days. If the university needs additional time, the investigator or director of SRR should provide written notice to the complainant and respondent of the delay and the reasons for the delay. Delays and extensions beyond the (~~ninety~~) 90 days must be based on good cause.

(d) Investigations. The university will investigate (~~all~~) complaints of sexual misconduct and interpersonal violence (~~allegations~~), including Title IX complaints, and may, at its discretion, ask for an investigation of other alleged misconduct. During the investigation, the investigator is responsible for gathering evidence relating to the complaint. The investigator will contact the complainant, respondent, and other witnesses to ask questions and gather relevant evidence. Parties may be assisted by an advisor during the investigative process. During the investigation, parties will be provided with an equal opportunity to identify witnesses and other evidence that supports their position. Prior to any investigatory interview regarding a Title IX complaint, the investigator will provide written notice of the meeting with the date, time, location, participants, and purpose with sufficient time for the person to prepare to participate in the interview.

Prior to the completion of the investigative report for a Title IX complaint, the investigator will send to each party the evidence obtained during the investigation that is directly related to the allegations raised, including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence. Each party will then have at least (~~ten~~) 10 calendar days to submit a written response for a Title IX complaint. The investigator will consider the written response prior to the completion of the investigative report. At the conclusion of the investigation, the investigator will prepare a final written report that fairly summarizes the relevant evidence. The investigative report, along with any evidence collected during the investigation, shall then be transmitted to the director of SRR at least (~~ten~~) 10 days prior to any hearing or other determination of responsibility. In cases of sexual misconduct or interpersonal violence, a copy of the report must also be provided to the parties for their review and written response.

(e) Confidentiality. To facilitate the investigative process and protect the privacy of those involved, all information will be maintained in a confidential manner to the fullest extent permissible by law. During an investigation, complaint information will be disseminated on a need-to-know basis. If the complainant wishes to remain anonymous, the university will take all reasonable steps to investigate

the allegation without disclosing the name of the complainant to the extent allowed by state and federal law. If the complainant wishes to remain anonymous, the university shall inform them that its ability to investigate and respond to the allegation will be limited. The university cannot ensure confidentiality, as its legal obligations under federal or state law may require investigation of the allegation and possible disclosure of the complainant's name. Reports of crimes to the campus community shall not include the names of the complainants. Files subject to public disclosure will be released to the extent required by law.

(f) Right to file a criminal report. Once the university is notified of an allegation of sexual misconduct or interpersonal violence that could constitute a crime, it will notify the potential complainant of their right to file a criminal complaint with campus or local law enforcement. If the complainant in such circumstances wishes to report the conduct to local law enforcement, the university will assist them in doing so. The university will also notify the complainant that (~~he or she is~~) they are not required to file a report with local law enforcement. The university will report allegations of sexual misconduct or interpersonal violence to law enforcement or other authorities when it is required to do so under federal, state, and local law.

(4) Supportive measures and interim restrictions. During the complaint review, the director of SRR or Title IX coordinator will review whether any supportive measures or interim restrictions are needed. Supportive measures and interim restrictions are addressed in WAC 172-121-140.

(5) SRR will follow up with the parties as described below.

(a) The director of SRR will contact the respondent, and the complainant in cases of sexual misconduct or interpersonal violence, and provide them with the following information:

(i) The respondent's and complainant's rights under the student conduct code;

(ii) A summary of the allegations the complainant has against the respondent;

(iii) The potential conduct code violations related to the allegations; and

(iv) How to report any subsequent problems or retaliation, including intimidation, threats, coercion, or discrimination.

(b) In all cases alleging sexual misconduct or interpersonal violence, the director of SRR will, in addition to the information specified under (a) of this subsection, provide both parties with written information that will include, at a minimum:

(i) The student's rights and options, including options to avoid contact with the other party; a list of available university and community resources for counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other academic and housing services at the university and in the community; and options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;

(ii) The importance of preserving evidence of the alleged incident and procedures to follow to preserve evidence of the alleged incident;

(iii) Who will receive a report of the allegation;

(iv) Their right to file or not file a criminal complaint as detailed above and the ability to be assisted by campus authorities in

notifying law enforcement authorities if the complainant wishes to do so;

(v) A list of resources for obtaining protective, no contact, restraining, or similar orders, if applicable;

(vi) The procedures the university will follow when determining if discipline is appropriate;

(vii) Steps the university will take to ensure confidentiality of complainants and other necessary parties and the limits this may place on the university's ability to investigate and respond, as set forth above; and

(viii) Information regarding the university's policy against retaliation, steps the university will take to prevent and respond to any retaliation, and how the student should report retaliation or new incidents.

(6) Following the complaint review, the director of SRR will either dismiss the matter or arrange a prehearing conference.

(a) Dismiss the matter. If the director of SRR determines the allegations, even if true, would not rise to the level of a conduct violation, ((he/she)) they may dismiss the matter. In such cases, the director of SRR will prepare a written record of the dismissal. The director of SRR will also notify the complainant of their decision, if such notification is permissible under FERPA. The dismissal letter, along with the original complaint and any other related documents, will be maintained as described in WAC 172-121-080. In cases of sexual misconduct or interpersonal violence or for a Title IX complaint, the complainant may request a review of the dismissal by the dean of students by filing a request for review with the director of SRR within seven business days of receiving notice of the dismissal.

(b) Prehearing conference. If the director of SRR does not dismiss the matter ((he/she)) they will arrange a prehearing conference as described in WAC 172-121-110 unless a respondent is opting to admit responsibility under WAC 172-121-118.

[Statutory Authority: RCW 28B.35.120(12). WSR 21-01-102, § 172-121-100, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-100, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-100, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-100, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-100, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-100, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-100, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-100, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-110 Notice of allegations and initial scheduling.

(1) Notice of investigation. If the director of SRR refers a complaint to an investigation, the director shall provide the respondent with a notice of investigation that meets the following requirements:

(a) Is made in writing;

(b) Includes a written list of the allegations against the respondent with sufficient details of the allegations based on current information including, if known, date and time of the incident, de-

scription of the conduct, and the specific sections of this code allegedly violated;

(c) Indicates that the complaint has been assigned to a university investigator and provide the contact information for the investigator;

(d) Provides notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(e) Provides a reminder that the person may have an advisor of their choice throughout the student conduct process;

(f) A statement that students are prohibited from knowingly furnishing false information during the student conduct process; and

(g) Information about supportive measures and resources available to the respondent as well as information about the university's prohibition on retaliation.

(2) Notice of allegations: If the director of SRR decides to send the case to hearing, following a review of the investigative report if any, the director of SRR shall appoint a CRO to the case and notify the respondent of the CRO and the date of a prehearing conference. In cases alleging sexual misconduct or interpersonal violence, the CRO and session council assigned must have completed training on issues relating to sexual misconduct and interpersonal violence, the Violence Against Women Reauthorization Act, and Title IX requirements. Notification of the allegations to the respondent must:

(a) Be made in writing;

(b) Include a written list of the allegations against the respondent with sufficient details of the allegations based on current information, including, if known, date and time of the incident, description of the conduct, and the specific sections of this code allegedly violated;

(c) Provide notice that the respondent is presumed not responsible for the alleged conduct and a determination of responsibility will be made at the end of the hearing;

(d) Provide a reminder that the person may have an advisor of their choice and, for Title IX complaints, that the university will provide them with an advisor upon requests for the purposes of conducting cross-examination;

(e) Provide information about how to review the evidence gathered prior to the hearing;

(f) Provide a statement that students are prohibited from knowingly furnishing false information during the student conduct process; ((and))

(g) Inform them of the option to admit responsibility under WAC 172-121-118; and

(h) Include a date, time, and location of the prehearing conference.

(3) Follow up with complainant. In all cases alleging sexual misconduct or interpersonal violence, the SRR office shall notify the complainant(s) of the date, time, and location of the prehearing conference and of their right to attend the conference. The SRR office shall also follow up with the complainant(s) and respondent(s) to inform them of the process of reporting any retaliation or new incidents. If the complainant or respondent engages in retaliatory behavior, the university shall take immediate steps to protect the complainant or respondent from further harassment or retaliation. The complainant will also be notified that they have a right to an advisor during the hearing process, and, for Title IX complaints, that the

university will provide an advisor upon request for the purposes of conducting cross-examination.

(4) If additional information is learned during the investigation that may rise to additional allegations, the university must provide the respondent with an updated notice of allegations.

(5) The procedures for the prehearing conference for brief hearings is contained in WAC 172-121-121. The procedures for the prehearing conference for full hearings is contained in WAC 172-121-122.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-110, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-110, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-110, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-110, filed 8/9/17, effective 9/9/17; WSR 13-24-123, § 172-121-110, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-110, filed 5/20/09, effective 6/20/09.]

NEW SECTION

WAC 172-121-118 Admission of responsibility. The university encourages respondents to acknowledge harm and accept responsibility for repairing harm, to the extent possible, experienced as a result of a student's conduct. An investigator, CRO, or presiding officer may offer to the respondent at any time the opportunity to admit responsibility for the alleged misconduct. If the respondent decides to admit responsibility, the respondent will sign a document drafted by SRR taking responsibility. The CRO and/or presiding officer, depending on the type of conduct, will schedule a recorded meeting for the respondent to take responsibility on the record and for the CRO and/or presiding officer to determine the appropriate sanctions under WAC 172-121-400. If the alleged misconduct includes sexual misconduct or interpersonal violence, both parties must consent to this alternative process in writing and the complainant will be notified of the meeting and will have an opportunity to provide a statement about the conduct and its impacts prior to any sanctioning determination.

[]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-121 Brief hearing procedures. (1) Applicability: The conduct review officer (CRO) may hold a brief hearing with the respondent if the proposed sanction is less than a suspension and the allegations do not involve a Title IX complaint, or felony level criminal behavior.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO.

(b) Closing hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the hearing authority may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the hearing authority shall decide the case based on the information available, without the respondent's input.

(b) Appearance: The respondent, and complainant in cases of sexual misconduct or interpersonal violence, will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. People may appear at the conduct review hearing in person, through telephone conference, or through any other practical means of communication, subject to the limits set forth below in (e) of this subsection. If a person does not appear at the hearing, the hearing authority will decide the case based on the information available.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. In brief hearings, the advisor is limited to advising the student and cannot speak on behalf of the student.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Electronic appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by telephone, audio tape, written statement, or other means, as appropriate, if the rights of the parties will not be substantially prejudiced by an electronic appearance as determined by the CRO.

(4) Standard of proof. The hearing authority shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office will schedule a prehearing conference with the respondent. Only the respondent and the respondent's advisor may appear at the prehearing conference, unless the case involves alleged sexual misconduct or interpersonal violence. In cases alleging sexual misconduct or interpersonal violence, the respondent and the complainant, along with their advisors, if they choose to have an advisor, may appear at the same or separate prehearing conferences. The purpose of the prehearing conference is to advise the parties regarding the student conduct process. During the prehearing conference, the CRO will:

(a) Review the written list of allegations with the respondent;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent with a copy of the student conduct code and any other relevant university policies;

(d) Explain the respondent's rights under the student code;

(e) Explain the conduct review procedures;

(f) Explain the respondent's and complainant's rights and responsibilities in the conduct review process; (~~and~~)

(g) Review the option for admitting responsibility under WAC 172-121-118; and

(h) Explain possible penalties under the student conduct code.

At the end of the prehearing conference, the CRO will either conduct or schedule a brief hearing with the respondent as set forth in this subsection or arrange for a meeting to take an admission of responsibility under WAC 172-121-118. If proper notice was given of the prehearing conference and the respondent fails to attend the conference, the CRO may either proceed with the brief hearing and decide the case based on the information available, or place a hold on the respondent's academic records as described in WAC 172-121-080 until the respondent cooperates with the student conduct process.

(6) Scheduling. A brief hearing may take place immediately following the prehearing conference or it may be scheduled for a later date or time, except that, in cases of sexual misconduct or interpersonal violence, a brief hearing cannot take place without first notifying the complainant/respondent of the hearing. If the brief hearing will be held at a later date or time, the CRO shall schedule the hearing and notify the respondent and, in the case of sexual misconduct or interpersonal violence, the complainant of the date, time, and place of the hearing. The CRO may coordinate with the parties to facilitate scheduling, but is not required to do so. The CRO has sole discretion as to whether to call witnesses.

(7) If the respondent fails to appear at the brief hearing, the CRO may conduct the hearing without the respondent present. The CRO may also place a hold on the respondent's academic records under WAC 172-121-080 until the respondent cooperates with the student conduct process.

(8) Deliberation. After the hearing, the CRO shall decide whether the respondent violated the student conduct code based on a preponderance of the evidence and issue a decision within seven business days.

(a) If the CRO determines that there is not sufficient information to establish a violation by a preponderance of evidence, the CRO shall dismiss the complaint.

(b) If the CRO determines that the respondent violated the student conduct code, the CRO shall impose any number of sanctions as described in WAC 172-121-210, except suspension or expulsion.

(9) Sanctions. In determining what sanctions shall be imposed, the CRO may consider the evidence presented at the hearing as well as any information contained in the student's disciplinary and academic records. If a student fails to appear for a hearing, then the CRO authority shall review the evidence provided and may consider information available from the student's disciplinary and academic records in determining what sanction should be imposed. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

(10) Notification. The CRO shall serve the respondent with a decision including its findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the CRO's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

- (a) The findings shall be based exclusively on the evidence provided at the hearing. The decision must also include:
- (i) Identification of the section of the code alleged to have been violated;
 - (ii) A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews, methods to gather evidence, and hearings;
 - (iii) Findings of fact supporting the determination;
 - (iv) Conclusions regarding the application of the code to the facts along with the rationale for each determination;
 - (v) Sanctions and remedies;
 - (vi) Respondent's right to appeal.
- (b) In cases of sexual misconduct or interpersonal violence, the complainant shall be provided with written notice of:
- (i) The university's determination as to whether such sexual misconduct or interpersonal violence occurred;
 - (ii) The complainant's right to appeal;
 - (iii) Any change to the results that occurs prior to the time that such results become final; and when such results become final (20 U.S.C. 1092(f)).
- (c) Information regarding the discipline of the respondent will not be released unless:
- (i) The information contained in the record directly relates to the complainant, such as an order requiring the respondent to not contact the complainant; or
 - (ii) The misconduct involves a crime of violence or other crime as defined in 42 U.S.C. Sec. 13925(a).
- (11) Finality. The CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be timely.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-121, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-121, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-121, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-121, filed 8/9/17, effective 9/9/17.]

AMENDATORY SECTION (Amending WSR 22-01-090, filed 12/12/21, effective 1/12/22)

WAC 172-121-122 Full hearing procedures. (1) Scheduling and notification. Full hearings are used for allegations which, if substantiated by a preponderance of the evidence, could be a felony-level crime, involve a Title IX complaint, or could result in a sanction of suspension or expulsion. Following provision of the notice of allegations to the respondent, as set forth in WAC 172-121-110, the SRR office shall arrange for a prehearing conference unless the respondent has admitted responsibility under WAC 172-121-118.

(2) General provisions.

(a) Hearing authority: The CRO exercises control over hearing proceedings. All procedural questions are subject to the final decision of the CRO. The CRO chairs the disciplinary council.

(b) Closed hearings: All conduct review hearings will be closed. Admission of any person to a conduct review hearing shall be at the discretion of the CRO.

(c) Consolidation of hearings: In the event that one or more students are charged with the same misconduct arising from the same occurrence, the council may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance.

(a) Failure to appear: In cases where proper notice has been given but the respondent fails to attend a conduct review hearing, the council shall decide the case based on the information available, without the respondent's input. The council may not make an inference about the determination regarding responsibility based solely on a party's or witness's failure to appear at the hearing. However, nonappearance by a party may impact the evidence available for the council to make a decision.

(b) Appearance: The parties will be provided options for reasonable alternative arrangements if they do not wish to be present in the same room as the other student during the hearing. The parties may appear at the conduct review hearing in person via a method that allows the council to hear the parties and physically observe them while testifying, subject to the limits set forth below in (e) of this subsection. If a party does not appear at the hearing, the council will decide the case based on the information available. Solely for Title IX complaints, if a party or witness does not appear at the hearing and submit to cross-examination, the council must not rely on any statement of that party or witness in reaching a determination regarding responsibility; additionally, the council cannot draw an inference regarding responsibility based on the failure to appear or refusal to answer cross-examination or other questions.

(c) Advisors: The complainant and the respondent may be assisted by one advisor during conduct review hearings as described in WAC 172-121-105. For Title IX complaints, the university will provide an advisor to a party upon request for the purposes of conducting cross-examination.

(d) Disruption of proceedings: Any person, including the respondent or advisor, who disrupts a hearing, may be excluded from the proceedings.

(e) Remote appearance. In the interest of fairness and expedience, the CRO may permit any person to appear by a method that allows the person to be seen and heard by the council.

(4) Standard of evidence. The council shall determine whether the respondent violated the student conduct code, as charged, based on a preponderance of the evidence. A preponderance means, based on the evidence admitted, whether it is more probable than not that the respondent violated the student conduct code.

(5) Prehearing conference. The SRR office or designee will arrange for a prehearing conference with the parties to advise them about the student conduct process. During the prehearing conference, the SRR office or designee will:

(a) Review the written list of allegations;

(b) Inform the respondent who is bringing the complaint against them;

(c) Provide the respondent and complainant with a copy of the student conduct code and any other relevant university policies;

- (d) Explain the respondent's and complainant's rights and responsibilities under the student code;
- (e) Explain the conduct review procedures;
- (f) Explain possible penalties under the student conduct code;
- (g) Review the option for admitting responsibility under WAC 172-121-118;

(h) Schedule a date for the full hearing; and

~~((h))~~ (i) Address any preliminary matters or motions.

(6) Notice of hearing. Following the prehearing conference, the director shall schedule the hearing and notify the respondent and complainant of the date, time, location, participants, and purpose of the hearing. At the discretion of the hearing officer, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing may be conducted by telephone or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. The notices will include information about how to request accommodations or interpreters for any parties or witnesses. Any request for the presence of an emotional support animal or any other accommodation must be directed to disability support services and approved as a reasonable accommodation in advance of the hearing. A person may bring a certified therapy animal with a handler to a hearing. The notice of hearing must be served on the respondent and complainant at least seven business days prior to the hearing. The director may coordinate with the parties to facilitate scheduling, but is not required to do so.

(7) Evidence.

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the council in accordance with RCW 34.05.452. Any investigation conducted by the university will be admitted into evidence as long as the investigator testifies at the hearing. Evidence, including hearsay evidence, is admissible if in the judgment of the CRO it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. ~~((Solely for Title IX complaints, a party or witness's statement made outside of the hearing should not be considered by the board unless: (i) The statement itself is the alleged misconduct (such as a text message, video, or verbal statement); (ii) the party or witness who made the statement appears at the hearing and is willing to answer questions from the parties; or (iii) the statement is adverse to the party who does not appear or is not willing to answer questions (such as a confession of responsibility or admission of providing false information).))~~ The CRO shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized by Washington courts. The CRO may exclude irrelevant material. If not inconsistent with this section, the CRO shall refer to the Washington rules of evidence as guidelines for evidentiary rulings. Prior or subsequent conduct of the respondent may be considered in determining opportunity, intent, preparation, plan, identity, or absence of mistake. For Title IX complaints, prior to allowing a question to be answered during cross-examination, the CRO must determine that the question is relevant, and, if excluded, the CRO must explain on the record the reason for the exclusion.

(b) The respondent and complainant have the right to view all material presented during the course of the hearing ~~((, except a respondent's previous disciplinary history which shall be used solely for the purpose of determining the appropriate sanction)).~~ If a respon-

dent's disciplinary history is considered solely for sanctioning purposes, the complainant does not have a right to review the history.

(c) All testimony of parties and witnesses shall be made under oath or affirmation. Any interpreter shall be proscribed the oath set forth in WAC 10-08-160.

(d) Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

(e) Official notice may be taken of (i) any easily verifiable facts such as dates or weather conditions, (ii) technical or scientific facts within EWU's specialized knowledge, such as enrollment status or class schedules, and (iii) codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed and the sources thereof, including any staff memoranda and data, and they shall be afforded an opportunity to contest the facts and material so noticed. A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

(f) All rulings upon objections to the admissibility of evidence shall be made in accordance with the provisions of RCW 34.05.452, except for the additional restrictions on the admission of evidence required by Title IX.

(8) Discovery. Discovery is not permitted under the code, except for requests for documentary information from the university. Either party may request the university to produce relevant documents in the university's possession as long as such request is submitted at least five business days prior to the hearing, absent extenuating circumstances. If the CRO determines the request is not relevant to the present allegation, the CRO may deny the request. The university will provide the requested information prior to the hearing to the extent permitted by state and federal law.

(9) Subpoenas.

(a) Subpoenas may be issued by the presiding officer or an attorney consistent with RCW 34.05.446. However, for the protection of both parties, a party cannot subpoena the other party. A party may request an exemption from this rule by filing a written request with the presiding officer at least (~~ten~~) 10 days prior to the hearing. The presiding officer will provide a copy of the request to the other party and give them three days to respond. The presiding officer will then decide whether or not sufficient cause exists to grant an exemption to this rule and will inform the parties of the decision. Any subpoena issued must conform to EWU's subpoena form. Every subpoena shall identify the party causing issuance of the subpoena and shall state EWU's name and the title of the proceeding and shall direct the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under (~~his or her~~) their control.

A subpoena to a person to provide testimony at a hearing shall specify the time and place set for hearing.

(b) A subpoena may be served by any suitable person over (~~eighteen~~) 18 years of age, by exhibiting and reading it to the witness, or by giving (~~him or her~~) them a copy thereof, or by leaving such copy at the place of (~~his or her~~) their abode. When service is made by any other person than an officer authorized to serve process, proof of service shall be made by affidavit or declaration under penalty of perjury.

(c) The CRO, upon motion by a party or at (~~his or her~~) their own discretion, may quash or modify the subpoena if it is unreasonable or oppressive. Subpoenas may not be used to threaten or intimidate parties or witnesses.

(10) Summary judgment. A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A motion for summary judgment is not permitted for Title IX complaints.

(11) Witnesses.

(a) The complainant, respondent, and the university's presenter may call witnesses at full hearings.

(b) The person who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing. An attorney may subpoena a witness to appear at the hearing. Nonattorneys may request the CRO to subpoena witnesses in accordance with subsection (4) of this section. The CRO has the discretion to deny a request to issue a subpoena or to quash a subpoena issued by an attorney if the subpoena is unreasonable, oppressive, or does not conform to EWU's subpoena form.

(c) The CRO may exclude witnesses from the hearing room when they are not testifying. The CRO is not required to take the testimony of all witnesses called by the parties if such testimony may be irrelevant. For Title IX complaints, any decision to exclude a witness shall be explained on the record.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(e) The parties should inform the CRO of any possible need for an interpreter or any accommodation requests at least five business days prior to the hearing. The CRO will comply with WAC 10-08-150.

(12) Questioning:

(a) The complainant's advisor, the respondent's advisor, and the university's presenter may ask questions of any witness, or party, including cross-examination questions. For cases that do not involve Title IX complaints, if the student does not have an advisor, the complainant and respondent may submit questions in writing to the CRO and the CRO may ask the questions. For Title IX complaints, if a party does not have an advisor, the university will provide the party with an advisor aligned with that party for the purposes of conducting cross-examination as long as the party requests such an advisor at least five business days in advance of the hearing. The CRO may also ask questions, but is not required to do so. The CRO may preclude any questions which they consider irrelevant, and for Title IX cases such decision must be explained on the record. The CRO must exclude and the council shall not consider any questions or evidence pertaining to the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The CRO will explain to the parties the reason for rejecting any questions and will maintain a record of the questions submitted and rulings made.

(b) The council may ask their own questions of any witness or party called before them.

(13) Remote appearance. The CRO may accommodate concerns for personal safety, well-being, or fears of confrontation of any person appearing at the hearing by providing separate facilities, or by permitting participation by video conferencing, or other means that allows the council and parties to see and hear the party answering questions, as determined appropriate, subject to subsection (3)(b) of this section.

(14) Deliberations and sanctions. Following the hearing, the council will determine in closed session whether, by a preponderance of the evidence, the respondent violated the student conduct code based on the evidence presented at the hearing. If a student fails to appear, the council shall make a decision based on the information available. The council shall make its decisions based on a majority vote. If the council determines the respondent violated the student conduct code, the CRO shall then decide what sanctions and remedies shall be imposed. The CRO may review the respondent's previous disciplinary history (~~solely~~) for purposes of determining the appropriate sanction. In addition to sanctions under this code, if the student is also an employee of the university, the CRO's decision may be forwarded to the student's supervisor to determine whether any employment actions outside of this code should be taken in accordance with university policy.

The council shall issue a decision including their findings, conclusions, and rationale. The decision shall address credibility issues if credibility or witness demeanor was a substantial factor in the council's decision. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness. The findings shall be based exclusively on the evidence provided at the hearing. If the council finds the respondent violated the code, the CRO shall add the decision regarding sanctions and remedies to the council's decision. Such decisions should be issued within (~~ten~~) 10 business days from the date of the hearing. The written decision shall also:

- (a) Be correctly captioned identifying EWU and the name of the proceeding;
- (b) Designate all parties and representatives participating in the proceeding;
- (c) Identify the allegations at issue;
- (d) A description of the procedural steps taken, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (e) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (f) Contain appropriately numbered conclusions regarding the application of university policies and this code to the facts;
- (g) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed, and if any remedies are necessary to provide to the complainant in a Title IX complaint to restore or preserve equal access to the university's educational programs or activities;
- (h) Contain a statement describing rights to appeal and the procedures for appealing.

(15) Finality. The council's and CRO's decision becomes final at either the conclusion or the appeal process under this code, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be timely.

(16) Notification to the respondent. The CRO shall serve the respondent with a copy of the decision and notice of the right to appeal.

(17) Notification to the complainant. In cases of sexual misconduct or interpersonal violence, simultaneous with notification of the decision to the respondent, the complainant shall be provided with written notice of:

(a) The university's determination as to whether sexual misconduct or interpersonal violence occurred;

(b) The complainant's right to appeal;

(c) Any change to the results that occurs prior to the time that such results become final and when such results become final (20 U.S.C. 1092(f));

(d) Information regarding the discipline of the respondent will not be released unless:

(i) The information contained in the record directly relates to the complainant, such as an order requiring the student harasser to not contact the complainant; or

(ii) The misconduct involves a crime of violence or a sexual assault, including rape, dating violence, domestic violence or stalking as defined in 42 U.S.C. Sec. 13925(a).

(e) Any remedies provided to the complainant. For Title IX complaints, the complainant shall receive a copy of the decision provided to the respondent under subsection (14) of this section.

(18) **Notification to Title IX coordinator.** For Title IX complaints, the Title IX coordinator must be provided with notice of the decision as the Title IX coordinator is responsible for effective implementation of any remedies.

[Statutory Authority: RCW 28B.35.120(12). WSR 22-01-090, § 172-121-122, filed 12/12/21, effective 1/12/22; WSR 21-01-102, § 172-121-122, filed 12/11/20, effective 1/11/21; WSR 20-19-046, § 172-121-122, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-122, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-122, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-122, filed 8/9/17, effective 9/9/17.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-130 Appeals. (1) Basis: Appeals following a brief hearing or full hearing may be filed by the respondent under this section. In cases of sexual misconduct, interpersonal violence, or a Title IX complaint, the complainant may also file an appeal following dismissal of a complaint or a full hearing. Appeals of interim restrictions are governed by WAC 172-121-140. Appeals may be filed for one or more of the following reasons:

(a) To determine whether the hearing was conducted according to established procedures that affected the outcome of the matter.

(b) The hearing authority misinterpreted the student conduct code.

(c) To determine whether the decision reached by the hearing authority, or the director of SRR's decision to not proceed with a hearing, was based on the information presented and that information was

sufficient to reasonably establish that a violation of the conduct code did or did not occur based on a preponderance of the evidence.

(d) To determine whether the sanction(s) imposed were reasonable and appropriate for the associated conduct code violation(s).

(e) To consider newly discovered, material information that was not reasonably available at the time the determination finding responsibility or dismissal was made that could affect the outcome of the matter. It is the party's obligation to present all evidence at the time of the original hearing. The university is not obligated to grant an appeal and conduct a new hearing when parties do not take reasonable efforts to prepare their cases for the original hearing.

(f) The Title IX coordinator, investigator, or hearing authorities had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(2) Filing: Appeals may be filed following a brief hearing, full hearing, or dismissal of a complaint, subject to the following provisions:

(a) The appeal must be submitted to the director of student rights and responsibilities within ~~((ten))~~ 10 business days from service of the council's decision following a full hearing or dismissal of a complaint, or within ~~((twenty-one))~~ 21 calendar days from service of a decision from a brief hearing conducted by the CRO;

(b) The appeal shall be in writing and shall include:

(i) The appellant's name;

(ii) The nature of the decision and sanctions reached by the hearing official;

(iii) The basis, as described in subsection (1) of this section, for the appeal; and

(iv) What remedy the appellant is seeking.

(c) In cases of sexual misconduct or interpersonal violence, the other party must be given a copy of the appeal and provided with an opportunity to provide his/her own written response to the appeal within three business days.

(3) Stay of sanctions: Sanctions go into effect immediately after the hearing decision is issued. If the respondent wishes to have a sanction stayed during the appeal process, a request for a stay must be filed with SRR within five calendar days of the decision. The request for the stay will be reviewed by the CRO or presiding officer who presided over the hearing. The stay may be granted in part or in its entirety, at the discretion of the CRO/presiding officer. The decision will be communicated to the respondent and, for sexual misconduct and interpersonal cases, the complainant. This decision is not subject to appeal.

(4) Appeal authorities:

(a) For dismissal of a complaint, appeals are determined by the dean of students.

(b) For brief hearings, appeals are determined by the dean of students or designee.

(c) For full hearings, appeals are determined by the vice president for student affairs or designee.

~~((4))~~ (5) Forwarding of appeals: The director of SRR shall forward the appeal to the appropriate appeal authority. The submitted appeal will include, at a minimum, the appellant's written appeal and the written report of the case. The director of SRR may also forward any other written records related to the case.

~~((5))~~ (6) Review of appeals:

(a) Before rendering a decision, the appeal authority may request additional information or explanation from any of the parties to the proceedings.

(b) Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the conduct review hearing and supporting documents.

(c) In making its decision, the appeal authority will only consider the written record before it, the appellant's notice of appeal, the other party's response, and other information and/or explanation it has requested from the parties to the proceedings.

~~((6))~~ (7) Decisions: After reviewing the appeal, the appeal authority may affirm, reverse, modify, or remand the decision(s) of the hearing authority. The appeal decision shall include an explanation of the appeal authority's decision and rationale. The appeal decision must be issued within ~~((thirty))~~ 30 calendar days of the appeal authority receiving all necessary documentation.

~~((7))~~ (8) Remanded cases: In cases where the appeal authority remands the decision or sanction(s) of the hearing authority, the case will be returned to the hearing authority for reconsideration or other action as specified by the appeal authority. Following such reconsideration, the hearing authority will return the case to the appeal authority for further review/action. The appeal authority will then complete the appeal process or remand the case again. No appeal may, however, be remanded more than two times. After a case has been remanded twice, the appeal authority must affirm or reverse the decision and affirm, reverse, or modify the sanctions.

~~((8))~~ (9) Sanctions: The appeal authority may affirm, reverse, remand, or modify the sanctions assigned to the respondent. When determining sanctions, the appeal authority may consider the complete record of the respondent's prior conduct and academic performance in addition to all other information associated with the case.

~~((9))~~ (10) Notification: Once the appeal authority has made a final decision to affirm or reverse and/or to modify the sanctions assigned, the appeal authority shall forward the decision to the director of SRR. The director of SRR shall serve the respondent, and, in cases of sexual misconduct or interpersonal violence, notify the complainant, with a brief written statement setting forth the outcome of the appeal. The notification shall also inform the recipient that judicial review of the decision may be available under chapter 34.05 RCW.

~~((10))~~ (11) Further proceedings. The appeal authority's decision is final and no further appeals may be made under the student conduct code. Judicial review of the university's decision may be available under chapter 34.05 RCW.

~~((11))~~ (12) Appeals standards:

(a) Appeal authorities must weigh all pertinent information presented to them in determining whether sufficient evidence exists to support reversal or modification of decisions or sanctions.

(b) For appeals based on a deviation from established procedures, such deviations will not be a basis for sustaining an appeal unless the alleged deviation materially changed the outcome of the case or the sanctions imposed.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-130, filed 9/10/20, effective 10/11/20; WSR 20-01-032, § 172-121-130, filed 12/6/19, effective 1/6/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 19-01-047, § 172-121-130, filed

12/13/18, effective 1/13/19. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-130, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-130, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-130, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-130, filed 5/20/09, effective 6/20/09.]

AMENDATORY SECTION (Amending WSR 20-19-046, filed 9/10/20, effective 10/11/20)

WAC 172-121-210 Sanctions and remedies. If any student or student organization is found to have committed any of the offenses described in WAC (~~(172-121-200)~~) 172-121-300 through 172-121-324, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions. In addition to the sanction imposed by this code, if a student is also an employee of the university, the university may impose additional discipline in accordance with its policies and procedures pertaining to employees.

(1) **Individual student sanctions:**

(a) Admonition: An oral statement to a student that (~~he/she has~~) they have violated university rules and regulations.

(b) Warning: A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) Censure: A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or student organization is found in violation of any regulation within a stated period of time.

(d) Disciplinary probation: A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) Restitution: Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) Fines: The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of ~~((four hundred dollars))~~ \$400 against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) Discretionary sanctions: Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) Loss of financial aid: In accordance with RCW ~~((28B.30.125))~~ 28B.10.902, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time determined by the university.

(i) Assessment: Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) Suspension: Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspensions may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) **Student organizations and/or group sanctions:** Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any

restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Per RCW 28B.10.902, any organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of recognition by the university;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

(i) Exclusion from intramural competition as a group;

(ii) Denial of use of university facilities for meetings, events, etc.;

(iii) Restitution; and/or

(iv) Fines.

(3) **Remedies.** For Title IX complaints, if the respondent is found responsible for violating the code, the university may provide remedies to the complainant designed to restore or preserve equal access to the university's educational programs or activities.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-19-046, § 172-121-210, filed 9/10/20, effective 10/11/20. Statutory Authority: RCW 28B.35.120(12) and 42.56.070. WSR 18-06-021, § 172-121-210, filed 2/27/18, effective 3/30/18. Statutory Authority: RCW 28B.35.120(12). WSR 17-17-031, § 172-121-210, filed 8/9/17, effective 9/9/17; WSR 15-24-050, § 172-121-210, filed 11/23/15, effective 12/24/15; WSR 13-24-123, § 172-121-210, filed 12/4/13, effective 1/4/14; WSR 09-12-001, § 172-121-210, filed 5/20/09, effective 6/20/09.]

PART III: VIOLATIONS

NEW SECTION

WAC 172-121-300 Violations. The university prohibits students from engaging in the conduct described in this section, WAC 172-121-301 through 172-121-324, chapter 172-90 WAC, and relevant university policies. Clubs, organizations, societies, or similarly organized groups in or recognized by the university and/or the associated students of Eastern Washington University are also subject to all of these standards. Violations of these rules and policy may subject a student or student group to disciplinary action by the university. Groups may also be subject to disciplinary action for knowingly failing to exercise preventive measures relative to violations of this code by their members.

[]

NEW SECTION

WAC 172-121-301 Acts of academic dishonesty. Acts violating WAC 172-90-100 are addressed by the academic integrity code, chapter 172-90 WAC, but may also be addressed as violations of this student conduct code.

[]

NEW SECTION

WAC 172-121-302 Abuse, threats, bullying, and harassment. (1) Abuse. Assault and other forms of physical abuse.

(2) Threats. Any conduct or statement that, when viewed objectively, threatens bodily harm to another person or that endangers the health or safety of another person.

(3) Bullying. Bullying is behavior that is:

(a) Intentional;

(b) Targeted at an individual or group; and

(c) Creates an intimidating and/or threatening environment that is so severe or pervasive, and objectively offensive, that it substantially interferes with another's ability to work, study, participate in, or benefit from the university's programs and activities.

(4) Discriminatory harassment. Physical, verbal, electronic, or other conduct based on an individual's race, color, religion, national origin, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, citizenship or immigration status, disability, or veteran status when one of the conditions outlined in subsection (3) (a) or (b) of this section are present:

(a) Submission to, or rejection of such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any university program, activity, or benefit, or is used as a basis for evaluation in making academic or personnel decisions; or

(b) Such conduct creates a hostile environment. A hostile environment is created when the conduct is sufficiently severe or pervasive, and objectively offensive, that it unreasonably interferes with an individual's academic or work performance, ability to participate in or benefit from the university's programs, services, opportunities, or activities. Unreasonable interference is viewed from both a subjective and objective standard.

[]

NEW SECTION

WAC 172-121-303 Domestic violence, dating violence, and stalking. (1) **Domestic violence** means a felony or misdemeanor crime of violence committed by: A current or former spouse or intimate partner of the complainant; a person with whom the complainant shares a child in common; a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; adult persons related by blood or marriage; adult persons who are presently residing together

or who have resided together in the past; and, persons who have a biological or legal parent-child relationship. "Domestic violence" is further defined by 34 U.S.C. Sec. 12291(a)(8).

(2) **Dating violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. In determining whether such a relationship exists, the following factors are considered:

(a) The length of time the relationship has existed;

(b) The type of relationship; and

(c) The frequency of interaction between the parties involved in the relationship.

(3) **Stalking**. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(a) Fear for their health and/or safety or the health/safety of others; or

(b) Suffer substantial emotional distress.

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NEW SECTION

WAC 172-121-304 Sexual misconduct. Sexual misconduct includes, but is not limited to:

(1) **Sexual harassment.** Sexual harassment is conduct that meets one or more of the following:

(a) An EWU employee conditioned the provision of an aid, benefit, or service of the university on the complainant's participation in unwelcome sexual conduct; or

(b) Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the complainant equal access to the university's programs or activities.

In determining whether conduct is severe or pervasive, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the complainant; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(2) **Sexual assault.** Any sexual act directed against another person, without a person's consent, including instances where a person is not capable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when one person is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, age, or physical condition. Incapacitation due to drugs or alcohol refers to an individual who is in a state of intoxication such that the individual is incapable of making rational, reasonable decisions because the person lacks the capacity to give knowing consent.

Sexual assault includes:

(a) Rape: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without a person's consent.

(b) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the person's consent. Private body parts include, but are not limited to, breasts, genitalia, thighs, and buttocks.

(c) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by state law.

(d) Statutory rape: Sexual intercourse with a person who is under the age of consent as defined by state law.

(3) **Other forms of inappropriate sexual behavior.** Other forms of inappropriate sexual behavior that do not fall under Title IX or the definition of sexual harassment or interpersonal violence, such as indecent liberties; indecent exposure; sexual exhibitionism; prostitution or the solicitation of a prostitute; peeping or other voyeurism; sexual misconduct with a minor; or going beyond the boundaries of consent, such as by allowing others to view consensual sex or the nonconsensual recording of sexual activity.

[]

NEW SECTION

WAC 172-121-305 Retaliation. Any intimidation, threat, coercion, or discrimination against a person for the purpose of interfering with a person's rights under this code or because a person has made a report, complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing under this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation is prohibited and is a separate violation of this code.

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NEW SECTION

WAC 172-121-306 Unauthorized use of electronic or other devices. Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

[]

NEW SECTION

WAC 172-121-307 Property theft or damage. Theft of, damage to, or misuse of another person's or entity's property. This also includes any conduct or statement that, when viewed objectively, threatens to damage another's property.

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NEW SECTION

WAC 172-121-308 Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in subsections (1) through (4) of this section. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(1) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must inform the university police of their presence on campus upon arrival.

(2) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(3) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(4) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

[]

NEW SECTION

WAC 172-121-310 Failure to comply. (1) Failure to comply with lawful and/or reasonable directions of university officials, public health officials, or law enforcement officers;

(2) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(3) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

[]

NEW SECTION

WAC 172-121-311 Trespassing/unauthorized use of access devices.

(1) Trespass. Entering or remaining on university property without authorization.

(2) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

[]

NEW SECTION

WAC 172-121-312 Deception, forgery, fraud, unauthorized representation. (1) Knowingly furnishing false information to the university or a university official.

(2) Forgery, alteration, or misuse of documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose. It also includes situations where a student knowingly obtains, possesses, or uses another person's identification or financial information with the intent to commit a crime.

(3) Forgery, issuing a bad check, or use of another person's access device, such as a debit card, credit card, EBT, or gift card, with intent to defraud.

(4) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

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NEW SECTION

WAC 172-121-313 Campus safety. (1) Intentionally activating a false fire alarm.

(2) Making a bomb threat.

(3) Tampering with fire extinguishers, alarms, or safety equipment.

(4) Tampering with elevator controls and/or equipment.

(5) Failure to evacuate during a fire, fire drill, or false alarm.

[]

NEW SECTION

WAC 172-121-314 Alcohol, drugs, and controlled substances. (1) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of 21 consume, possess, distribute, manufacture or sell alcoholic beverages, except as permitted under WAC 172-64-035. Public intoxication is prohibited.

(2) Drugs and paraphernalia.

(a) Use, possession, distribution, manufacture, or sale of illegal drugs, paraphernalia, narcotics or controlled substances, is prohibited.

(b) Consumption, possession, distribution, manufacture, or sale of marijuana or cannabis is prohibited except for reasons permitted under EWU Policy 602-01 (drug and alcohol abuse prevention). Regardless of age, students and their guests are prohibited from consuming or possessing marijuana (including medical marijuana) or cannabis while on university property or while participating in any university-sponsored activity. Cannabidiol (CBD) is permitted if it contains 0.3 percent tetrahydrocannabinol (THC) or less.

(c) Being under the influence of marijuana or cannabis in public is prohibited. Consumption of marijuana or cannabis by any person under the age of 21 is prohibited.

(d) Being under the influence of any illegal substance, other than marijuana, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

[]

NEW SECTION

WAC 172-121-315 Hazing. (1) Hazing: Is any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm to any student at the university.

(2) Examples of hazing include, but are not limited to, causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of the harm identified in subsection (1) of this section, regardless of the person's willingness to participate.

(3) Hazing does not include customary athletic events or other similar contests or competitions.

(4) Students may be held responsible for participating in hazing and/or for conspiring to engage in hazing.

(5) Student organizations, associations, athletic teams, or living groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control violate this rule.

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NEW SECTION

WAC 172-121-316 Disruptive conduct. (1) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(2) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

[]

NEW SECTION

WAC 172-121-317 Violations of other laws, regulations, and policies. (1) Any other local, county, state, or federal law that governs a student's behavior that is not specifically included in this code. The decision-maker determines whether or not the violation has occurred based on a preponderance of the evidence. A criminal conviction is not required.

(2) Any other university policies, regulations, contracts, or handbook provisions that are not specifically included in this code.

[]

NEW SECTION

WAC 172-121-318 Public nuisance. In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university has the authority to hold students accountable under this code for misconduct within the communities adjacent to a university campus. It is a violation of this code to engage in conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to, creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

[]

NEW SECTION

WAC 172-121-319 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to self, another person, or property, regardless of whether or not a person or property is actually harmed. This includes, but is not limited to, operating a motor vehicle or having control over a motor vehicle while under the influence of alcohol, drugs, or both.

[]

NEW SECTION

WAC 172-121-320 Computer abuses. Computer abuses include, but are not limited to:

- (1) Unauthorized use of university computer resources;
- (2) Use of another person's university user name and/or password;
- (3) Use of university computing facilities or resources to interfere with the work of another student, instructor, or university employee;
- (4) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;
- (5) Use of a computer or software to interfere with normal operations of the university's computing systems;
- (6) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and
- (7) Any violation of the university's computer use policies.

[]

NEW SECTION

WAC 172-121-321 Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

[]

NEW SECTION

WAC 172-121-322 Acts against administration of this code. (1) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(2) Interference with or attempt to interfere with the enforcement of this code including, but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(3) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

[]

NEW SECTION

WAC 172-121-323 Responsibilities for guests. A student, student group, or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

[]

NEW SECTION

WAC 172-121-324 Students studying abroad. Students who participate in any university-sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
- (3) Any other agreements related to the student's study program in the foreign country; and
- (4) The student conduct code.

[]

PART IV: SANCTIONSNEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

Old WAC Number	New WAC Number
172-121-210	172-121-400

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 172-121-200 Violations.

WSR 23-01-032

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 11, 2022, 12:44 p.m., effective January 11, 2023]

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

Purpose: WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645 in chapter 246-335 WAC, In-home services agencies. The adopted rules expand the use of telemedicine for home health and hospice agencies. In an effort to align with recent telemedicine legislation, ESHB 1196 (chapter 157, Laws of 2021) and ESHB 1821 (chapter 213, Laws of 2022), the rule amends the definition of telemedicine to include supervision activities and creates new definitions for "audio-only telemedicine" and "established relationship." Home health and hospice agencies will have the option to conduct supervisory visits either on-site or via telemedicine. These rule amendments are also consistent with the intent of the federal government's "Patients over Paperwork" initiative.

When effective, these permanent rules will supersede emergency rules filed under WSR 22-23-166 on November 23, 2022.

Citation of Rules Affected by this Order: Amending WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645.

Statutory Authority for Adoption: RCW 70.127.120, 43.70.250.

Other Authority: RCW 70.12.120, 43.70.250; ESHB 1196 (chapter 157, Laws of 2021); and ESHB 1821 (chapter 213, Laws of 2022).

Adopted under notice filed as WSR 22-17-139 on August 23, 2022.

A final cost-benefit analysis is available by contacting John Hilger, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2929, TTY 711, email john.hilger@doh.wa.gov, www.doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: December 9, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3165.5

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Audio-only telemedicine" means the delivery of health care services through the use of HIPAA-compliant audio-only technology (including web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(4) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW;

(c) A physician assistant licensed under chapter 18.71A (~~or 18.57A~~) RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

~~((4))~~ (5) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

~~((5))~~ (6) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((6))~~ (7) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

~~((7))~~ (8) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the

agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

~~(9)~~ (9) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

~~((8))~~ (10) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

~~((9))~~ (11) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

~~((10))~~ (12) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

~~((11))~~ (13) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

~~((12))~~ (14) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((13))~~ (15) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

~~((14))~~ (16) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

~~((15))~~ (17) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((16))~~ (18) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along

with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((17))~~ (19) "Patient" means an individual receiving home health services.

~~((18))~~ (20) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

~~((19))~~ (21) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((20))~~ (22) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((21))~~ (23) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((22))~~ (24) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient (~~at the originating site~~) and the agency provider, for the purpose of consultation, education, supervision, diagnosis, (consultation,) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, ~~((or))~~ electronic mail, or text messages.

~~((23))~~ (25) "Therapist" means an individual who is:

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

~~((24))~~ (26) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

- WAC 246-335-545 Supervision of home health services.** (1) A licensee must employ a director of clinical services ~~((†))~~.
- (2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence ~~((†))~~.
- (3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ~~((ten))~~ 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:
- (a) Agency sponsored in-services;
 - (b) Community venues;
 - (c) Community classes;
 - (d) Conferences;
 - (e) Seminars;
 - (f) Continuing education related to the director's health care professional credential, if applicable; and
 - (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available during all hours patient care is being provided ~~((†))~~.
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;
 - (b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
 - (c) Evaluation of services provided by contractors;
 - (d) Coordination of services when one or more licensed agencies are providing care to the patient;
 - (e) Compliance with the plan of care;
 - (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
 - (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and
 - (b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.
- (7) For patients receiving acute care services, supervision of the home health aide services ~~((during an on-site visit))~~ with or without the home health aide present must occur once a month to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts ((†)).

~~((e))~~ (8) For patients receiving maintenance care or home health aide only services, supervision of the home health aide services ~~((during an on-site visit))~~ with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts ~~((; and~~

~~(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts))~~.

~~((7))~~ (9) A supervisory visit conducted via audio-only telemedicine in subsection (7) or (8) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-510(8).

(10) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) or (8) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-525(16).

(11) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Audio-only telemedicine" means the delivery of health care services through the use of HIPAA-compliant audio-only technology (including web-based applications), permitting real-time communication between the patient and the agency provider for the purpose of consultation, education, diagnosis, or treatment, as appropriate per scope of practice. "Audio-only telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Audio-only telemedicine" does not include the use of facsimile, electronic mail, or text messages.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW; or

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

~~((3))~~ (4) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

~~((4))~~ (5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

~~((5))~~ (6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home health and hospice agencies.

~~((6))~~ (7) "Established relationship" means the patient has had, within the past two years, at least one in-person appointment with the agency provider providing audio-only telemedicine or with a provider employed at the same agency as the provider providing audio-only telemedicine; or the patient was referred to the agency provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment with the patient and has provided relevant medical information to the provider providing audio-only telemedicine.

(8) "Home health aide" means an individual who is a nursing assistant certified under chapter 18.88A RCW.

~~((7))~~ (9) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

~~((8))~~ (10) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

~~((9))~~ (11) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

~~((10))~~ (12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

~~((11))~~ (13) "Medication administration" means assistance in the application, instillation or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW, 246-840 WAC, and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

~~((12))~~ (14) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

~~((13))~~ (15) "Patient" means an individual receiving hospice services.

~~((14))~~ (16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

~~((15))~~ (17) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

~~((16))~~ (18) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

~~((17))~~ (19) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

~~((18))~~ (20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

~~((19))~~ (21) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

~~((20))~~ (22) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

~~((21))~~ (23) "Telemedicine" means the delivery of health care services through the use of HIPAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient ~~((at the originating site))~~ and the agency provider~~((r))~~ for the purpose of consultation, education, supervision, diagnosis, ((consultation,)) or treatment, as appropriate per scope of practice. "Telemedicine" also includes supervision of home health aide services to evaluate compliance with the plan of care and patient satisfaction with care. "Telemedicine" does not include the use of audio-only telephone, facsimile, ~~((e))~~ electronic mail, or text messages.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of (~~ten~~) 10 hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

(f) Continuing education related to the director's health care professional credential, if applicable; and

(g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.

(4) The director of clinical services or designee must be available (~~twenty-four~~) 24 hours per day, seven days per week.

(5) The director of clinical services or designee must ensure:

(a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;

(b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;

(c) Evaluation of services provided by contractors;

(d) Coordination of services when one or more licensed agency is providing care to the patient and family;

(e) Compliance with the plan of care;

(f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and

(g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.

(6) The licensee must document supervision including, but not limited to:

(a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW; and

(b) Licensed therapist supervision when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) Licensed nurse supervision of home health aide services (~~during an on-site visit~~) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care (~~and~~

~~(c) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts)).~~ The supervisory visit may be conducted on-site, via telemedicine, or via audio-only telemedicine.

~~((7))~~ (8) A supervisory visit conducted via audio-only telemedicine in subsection (7) of this section is only permitted for patients that have an established relationship with the provider consistent with WAC 246-335-610(7).

(9) A supervisory visit conducted via telemedicine or via audio-only telemedicine in subsection (7) of this section may not be used to fulfill the annual performance evaluations and on-site observation of care and skills requirements in WAC 246-335-625(15).

(10) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]

WSR 23-01-052
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed December 14, 2022, 8:30 a.m., effective January 14, 2023]

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

Purpose: Changes to chapter 196-25 WAC were necessary due to updates to RCW 18.43.130 in 2019. Changes clarified requirements for licensure and reflect current licensing processes. Rule amendments impact all businesses applying for or renewing a certificate of authorization with the board, but they have no additional costs to implement and comply.

Citation of Rules Affected by this Order: New WAC 196-25-003, 196-25-045, 196-25-046 and 196-25-047; repealing WAC 196-25-050; and amending WAC 196-25-002, 196-25-005, 196-25-010, 196-25-040, 196-25-060, 196-25-070, and 196-25-080.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 22-21-033 on October 7, 2022.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 7, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 7, Repealed 1.

Date Adopted: December 8, 2022.

Ken Fuller
Director

OTS-3591.1

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-002 Definitions. Board. The Washington state board of registration for professional engineers and land surveyors.

Business. A corporation, professional service corporation (PSC), limited liability company (LLC), professional limited liability company (PLLC), partnership or sole proprietorship that is practicing or offering to practice, engineering or land surveying or both in this state.

Certificate of authorization. A certificate issued by the board, pursuant to chapter 18.43 RCW, to a corporation or limited liability company (LLC), authorizing it to practice engineering or land surveying or both in this state. (Note: This is a different certificate than

the certificate of authorization that may be filed with the secretary of state.)

Designee, designated engineer, designated land surveyor. A currently registered professional engineer designated by a corporation or LLC to be in responsible charge of engineering activities for the corporation or LLC in Washington, or, a currently registered professional land surveyor designated by a corporation or LLC to be in responsible charge of land surveying activities for the business in Washington.

Employee. A person in the service of another under any contract of hire, expressed or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule, and location of employment.

Professional engineer. A person registered by the board under chapter 18.43 RCW to practice engineering in this state.

Professional land surveyor. A person registered by the board under chapter 18.43 RCW to practice land surveying in this state.

~~(**Resident engineer or resident land surveyor.** A currently registered professional engineer or land surveyor who maintains a business headquarters or branch office as his/her normal place of employment, and is in responsible charge of the engineering and/or land surveying services.)~~

~~**Business.** A corporation, professional service corporation (PS), joint stock association (JSA) or limited liability company (LLC) or professional limited liability company (PLLC) that is practicing or offering to practice, engineering or land surveying or both in this state.~~

~~**Designee, designated engineer, designated land surveyor.** A currently registered professional engineer designated by the business to be in responsible charge of engineering activities for the business in Washington, OR, a currently registered professional land surveyor designated by the business to be in responsible charge of land surveying activities for the business in Washington.~~

~~**Employee.** A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the right to control and direct the employee in the material details of the scope, schedule and location of employment.~~

~~**Branch office.** One or more alternate locations in Washington of a business, not recognized as the business' main office or headquarters, which is established to offer and provide engineering and/or land surveying services from that location.~~

~~**Project office.** A temporary remote location of an engineering and/or land surveying business that is a convenient workplace for providing specific engineering and/or land surveying services only in support of a project.~~

~~**Certificate of authorization.** A certificate issued by the board, pursuant to chapter 18.43 RCW, to a business authorizing it to practice engineering or land surveying or both in this state. (Note: This is a different certificate than the certificate of authorization that may be filed with the secretary of state.))~~

Responsible charge. To be in responsible charge means to have the authority to make all engineering or land surveying decisions pertaining to engineering or land surveying activities in the state of Washington on behalf of a corporation or LLC. RCW 18.43.130 (8) (b) and (10) (b).

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-002, filed 8/9/05, effective 9/9/05. Statutory Authority: RCW 18.43.035 and

18.43.130. WSR 98-12-053, § 196-25-002, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-003 Business licenses. Businesses must obtain a business license from the department of revenue prior to offering services to the public pursuant to chapter 82.32 RCW.

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AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-005 (~~(Businesses that must be authorized by the board.)~~) Corporation and LLC certificates of authorization. (~~(Except for professional service (PS) corporations and professional service limited liability companies (PLLC's), all)~~) Corporations (~~(, joint stock associations)~~) and limited liability companies (~~((LLC's))~~) that offer engineering or land surveying services must obtain from the board a certificate of authorization to practice engineering or land surveying or both in the state of Washington.

~~((A general partnership must employ at least one person currently registered pursuant to chapter 18.43 RCW for each profession for which services are offered.))~~ Corporations and LLCs must be registered with the secretary of state and the department of revenue and have a unified business identifier (UBI) number prior to applying for a certificate of authorization.

Professional service corporations and professional limited liability companies, sole proprietorships, and partnerships are exempt from applying for certificates of authorization.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-005, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-005, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-25-010 Applications for certificates of authorization. All applications by corporations and LLCs for certificates of authorization must be completed on forms provided by the board and submitted to the offices of the board. A complete application requires the following: Payment of the appropriate fee as listed in chapter 196-26A WAC; affidavit of designated professional engineer and/or land surveyor; and, (~~(certified)~~) a copy of resolution naming the designated engineer, or land surveyor, or both.

[Statutory Authority: Chapters 18.43 and 18.235 RCW. WSR 04-04-001, § 196-25-010, filed 1/21/04, effective 2/21/04. Statutory Authority: RCW

18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-010, filed 5/29/98, effective 7/1/98.]

AMENDATORY SECTION (Amending WSR 05-17-053, filed 8/9/05, effective 9/9/05)

WAC 196-25-040 (~~(Provisions pertaining to only corporations, joint stock associations)~~) Corporation and limited liability (companies) company designees. (1) Each corporation or LLC must designate a registered engineer or land surveyor respectively to be in responsible charge.

(2) If the business offers both engineering and land surveying services, there must be a designee for each profession. If a person is licensed in both engineering and land surveying, that person may be designated for both professions.

~~((2))~~ (3) An affidavit must be signed by the designee(s) stating that ~~((he or she))~~ they know~~((s))~~ they have been designated by the ~~((business))~~ corporation or LLC as being in responsible charge for the engineering and/or land surveying activities in the state of Washington.

~~((3))~~ (4) The designated engineer and/or designated land surveyor must be an employee of the ~~((business))~~ corporation or LLC.

~~((4))~~ (5) No person may be the designated engineer or designated land surveyor at more than one ~~((business))~~ corporation or LLC at any one time.

~~((5))~~ (6) When there is a change in the designee(s), the business must notify the board in writing no later than ~~((thirty))~~ 30 days after the effective date of the change and submit a new affidavit.

~~((6))~~ ~~If the business changes its name, the business must submit a copy of its amended certificate of authority or amended certificate of incorporation (for corporations) or a copy of the certificate of amendment (for LLC's), as filed with the secretary of state within thirty days of the name change.~~

~~(7) At the time of renewal, the corporation or limited liability company must submit a copy of the document issued to their company by the state of Washington master license service which states that the corporation or limited liability company has been "renewed by the authority of the secretary of state" and shows a current expiration date.~~

~~(8) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any business that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035, 18.43.105, 18.43.110, and 18.43.120.)~~

[Statutory Authority: RCW 18.43.035. WSR 05-17-053, § 196-25-040, filed 8/9/05, effective 9/9/05; WSR 99-15-057, § 196-25-040, filed 7/15/99, effective 8/15/99. Statutory Authority: RCW 18.43.035 and 18.43.130. WSR 98-12-053, § 196-25-040, filed 5/29/98, effective 7/1/98.]

NEW SECTION

WAC 196-25-045 Changes and renewals. (1) If the business changes its name with the secretary of state, the business must notify the board within 30 days of the name change.

(2) At the time of renewal, the corporation or limited liability company must have a current license with the secretary of state and the department of revenue.

(3) The filing of the resolution shall not relieve the business of any responsibility or liability imposed upon it by law or by contract. Any corporation or LLC that is certified under chapter 18.43 RCW and this chapter is subject to the authority of the board as provided in RCW 18.43.035 18.43.105, 18.43.110, and 18.43.120.

[]

NEW SECTION

WAC 196-25-046 Professional service corporation. (1) Professional service corporations lawfully organized under chapter 18.100 RCW are not required to obtain certificates of authorization under this chapter.

(2) All engineering services provided by a professional service corporation, must be provided by a duly licensed professional engineer pursuant to RCW 18.100.060.

(3) A registered engineer may own stock in and render individual professional services through only one professional service corporation at any time pursuant to RCW 18.100.050(2).

(4) The standards of professional conduct for engineers under chapter 18.43 RCW and this Title 196 WAC apply to any professional services performed by a PSC or its individual member licensees pursuant to RCW 18.100.070.

(5) A PSC that performs engineering services must comply with chapters 18.43 and 18.100 RCW.

[]

NEW SECTION

WAC 196-25-047 Professional limited liability company. (1) A group of licensed professional engineers or land surveyors legally authorized to render the same professional services within this state may form and become members of a professional limited liability company for the purposes of rendering professional engineering or land surveying pursuant to RCW 25.15.046.

(2) A professional limited liability company and its members are subject to all the provisions of chapter 18.100 RCW.

(3) No engineering or land surveying services may be performed by a PLLC unless those services are performed by a licensed engineer or land surveyor, respectively.

(4) Formation of a professional limited liability company under RCW 25.15.046 does not restrict the application of the Uniform Disciplinary Act under chapter 18.235 RCW.

[]

AMENDATORY SECTION (Amending WSR 99-15-054, filed 7/15/99, effective 8/15/99)

WAC 196-25-060 Offer to practice by all businesses. The offer to practice or provide engineering or land surveying services to the public must be made by or under the direct supervision of a licensee qualified to offer said services under the provisions of chapter 18.43 RCW.

The practice of engineering or land surveying by a partnership offering engineering or land surveying services must employ at least one licensed engineer or land surveyor that can provide professional services and/or direct supervision over said services.

[Statutory Authority: RCW 18.43.035. WSR 99-15-054, § 196-25-060, filed 7/15/99, effective 8/15/99.]

AMENDATORY SECTION (Amending WSR 10-05-017, filed 2/4/10, effective 3/7/10)

WAC 196-25-070 Providing direct supervision. Direct supervision ((means the actions by which)) by a licensee ((maintains)) is described as follows:

(1) Maintaining control over those decisions that are the basis for the findings, conclusions, analyses, rationale, details, and judgments required for the preparation of engineering or land surveying plans, specifications, plats, surveys, land descriptions as defined by WAC 332-130-020, reports, as-built documents prepared by the licensee, and related activities. ((**Direct supervision**))

(2) Requires providing personal direction, oversight, inspection, observation and supervision of the work being certified.

(3) These actions may include, but are not limited to: Direct face-to-face communications; written communications; U.S. mail; electronic mail; facsimiles; telecommunications, or other current technology.

(4) Contractual or employment relations must be in place between the licensee and unlicensed preparer to qualify as direct supervision.

(5) Mentoring is not direct supervision. ((Drawing or other)) Reviewing documents ((review)) as defined by WAC 196-23-020, after preparation without involvement in the design and development process as described above cannot be accepted as direct supervision.

[Statutory Authority: RCW 18.43.035. WSR 10-05-017, § 196-25-070, filed 2/4/10, effective 3/7/10; WSR 06-22-033, § 196-25-070, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-030.]

AMENDATORY SECTION (Amending WSR 06-22-033, filed 10/25/06, effective 11/25/06)

WAC 196-25-080 Practice by businesses, organizations or public agencies. When a business, organization or public agency offers or performs engineering or land surveying services as defined in RCW 18.43.020, the business, organization or public agency shall perform its duties and responsibilities in the same manner as an individual, in accordance with RCW 18.43.130 (8)(f) and (10)(f), chapters 18.43, 18.100, and 18.235 RCW, and other applicable statutes and rules.

[Statutory Authority: RCW 18.43.035. WSR 06-22-033, § 196-25-080, filed 10/25/06, effective 11/25/06. Formerly WAC 196-23-050.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 196-25-050 Branch offices.

WSR 23-01-056

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 14, 2022, 11:10 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this rule making is to remove districts within the alfalfa seed marketing order due to the decreasing numbers of alfalfa seed growers and handlers in the state and to increase the assessment rate from 50 cents per hundredweight of cleaned seed to 75 cents per hundredweight of cleaned seed.

Citation of Rules Affected by this Order: Amending WAC 16-529-030, 16-529-060, 16-529-070, and 16-529-140.

Statutory Authority for Adoption: RCW 15.65.047.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 22-17-038 on August 10, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: December 14, 2022.

Derek I. Sandison
Director

OTS-3926.1

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-030 Board membership. (~~((1))~~) The board shall consist of eight members. Six members shall be affected producers appointed or elected as provided in WAC 16-529-020 through 16-529-120. One member shall be an affected handler appointed as provided in WAC 16-529-020 through 16-529-120. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

~~((a))~~ (1) Director-appointed positions on the board shall be designated as position 2, position 4, position 6, and position 7. The affected handler member of the board shall be position 7.

~~((b))~~ (2) Elected affected producer positions on the board shall be designated as position 1, position 3, and position 5.

~~((e))~~ (3) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

~~((2) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into three representative districts as follows:~~

~~(a) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Adams, Chelan, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens.~~

~~(b) District II shall have one board member, being Position 3, and shall include the counties of Benton, Kittitas, Klickitat, and Yakima.~~

~~(c) District III shall have three board members, being Positions 4, 5, and 6, and shall include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.~~

~~(d) If no nominations are received or there are fewer than three affected producers within a district, the position(s) shall be deemed "at large" and shall be filled by a producer from any district in the state. Nominations may be made by producers from any district in the state pursuant to the provisions of WAC 16-529-060.)~~

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-030, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-030, filed 3/25/05, effective 4/25/05. Statutory Authority: Chapter 15.65 RCW. WSR 85-10-015 (Order 1850), § 16-529-030, filed 4/22/85, effective 6/1/85; Order 1, Article II, § B, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-060 Nomination of elected or director-appointed board members. (1) For the purpose of nominating candidates for appointment or election to board membership, the director shall call a separate nomination meeting of affected producers and affected handlers.

(2) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer and affected handler board members ~~((in those districts))~~ whose board members' terms are about to expire. The meeting(s) shall be held at least ~~((thirty))~~ 30 days in advance of the date set by the director for the election or advisory vote of board members.

(a) ~~((Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and, in addition,))~~ Written notice of every such meeting shall be given to all affected producers ~~((within such affected district)),~~ and to all handlers, according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer or affected handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the nomination

meeting by written petition filed with the director, signed by not less than three affected producers or affected handlers.

(d) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-060, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-060, filed 3/25/05, effective 4/25/05; Order 1, Article II, § E, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

WAC 16-529-070 Election or advisory vote of board members. (1)

An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer and affected handler shall be entitled to one vote.

(2) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers (~~within the affected district or, in the case of an election for an "at large" position, by a majority of the votes cast by affected producers from any district~~) statewide.

If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(3) An advisory vote shall be conducted for affected producer or affected handler board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(4) (~~Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the election or advisory vote.~~) Not less than (~~ten~~) 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers as maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(5) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the election or advisory vote of any board member.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-070, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-070, filed 3/25/05, effective 4/25/05; Order 1, Article II, § F, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 79-07-061, filed 6/27/79, effective 8/1/79)

WAC 16-529-140 Assessments. (1) The fixed annual assessment on all varieties of alfalfa seed subject to this marketing order shall be ((fifty)) 75 cents per hundredweight of cleaned seed, which shall be paid by the producer thereof upon each and every unit sold, marketed, or delivered for sale by him.

(2) First handlers or purchasers shall collect assessments at time of payment for seed from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board.

Producers and producer-handlers who ship their alfalfa seed direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.

[Statutory Authority: Chapter 15.65 RCW. WSR 79-07-061 (Order 1639), § 16-529-140, filed 6/27/79, effective 8/1/79; Order 1, Article IV, § A, filed 3/13/75, effective 7/1/75.]

WSR 23-01-057
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 14, 2022, 11:15 a.m., effective January 14, 2023]

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

Purpose: The department is adopting amendments to WAC

388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance?, 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-434-0005 How often does the department review my eligibility for benefits?, 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end?, 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?, 388-452-0005 Do I have to be interviewed in order to get cash and basic food benefits?, 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance, and 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance?

These amendments are necessary to implement ABD eligibility changes funded within the supplemental operating budget (chapter 297, Laws of 2022). Effective September 1, 2022, individuals age 21-64 residing in a public mental institution are potentially eligible for the ABD program if they meet all other eligibility criteria.

Citation of Rules Affected by this Order: Amending WAC

388-400-0060, 388-400-0070, 388-434-0005, 388-449-0001, 388-449-0150, 388-449-0200, 388-452-0005, 388-478-0006, and 388-478-0033.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.0052, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, and 74.62.030.

Other Authority: 2022 Supplemental operating budget (section 205 (22), chapter 297, Laws of 2022).

Adopted under notice filed as WSR 22-22-071 on October 31, 2022.

Changes Other than Editing from Proposed to Adopted Version:

None; however, some proposed changes had been amended under WSR 22-17-080 but had not yet been codified when the proposal was filed. The department inadvertently used the wrong base text for the proposal.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

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

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

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

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

Date Adopted: December 14, 2022.

Katherine I. Vasquez

SHS-4941.5

AMENDATORY SECTION (Amending WSR 22-17-080, filed 8/17/22, effective 9/17/22)

WAC 388-400-0060 Who is eligible for aged, blind, or disabled (ABD) cash assistance? (1) The aged, blind, or disabled (ABD) cash assistance program provides a state-funded cash stipend and a referral to the housing and essential needs (HEN) program under WAC 388-400-0065 to eligible low-income individuals.

(2) You are eligible for ABD if you:

(a) Are:

(i) At least 65 years old;

(ii) Blind as defined by the Social Security Administration (SSA); or

(iii) Likely to be disabled as defined in WAC 388-449-0001 through 388-449-0100; and

(b) Are at least 18 years old or, if under 18, a member of a married couple;

(c) Are in financial need according to ABD cash income and resource rules in chapters 388-450, 388-470, and 388-488 WAC. We determine who is in your assistance unit according to WAC 388-408-0060;

(d) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(e) Meet the citizenship and alien status requirements under WAC 388-424-0015;

(f) Provide a Social Security number as required under WAC 388-476-0005;

(g) Reside in the state of Washington as required under WAC 388-468-0005;

(h) Sign an interim assistance reimbursement authorization agreeing to repay the monetary value of general assistance, disability lifeline, or aged, blind, or disabled benefits subsequently duplicated by supplemental security income benefits as described under WAC 388-449-0200, 388-449-0210, and 388-474-0020; and

(i) Report changes of circumstances as required under WAC 388-418-0005.

(3) You aren't eligible for ABD if you:

(a) Are eligible for temporary assistance for needy families (TANF) benefits;

(b) Are eligible for state family assistance (SFA) benefits;

(c) Refuse or fail to meet a TANF or SFA eligibility rule;

(d) Refuse or fail to pursue federal aid assistance, including but not limited to medicaid, without good cause;

(e) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-449-0220 without good cause;

(f) Refuse or fail to follow through with the SSI application as required in WAC 388-449-0200 without good cause;

(g) Refuse or fail to participate in vocational rehabilitation services as required in WAC 388-449-0225 without good cause;

(h) Are eligible for supplemental security income (SSI) benefits;

(i) Are an ineligible spouse of an SSI recipient; or
 (j) Failed to follow a Social Security Administration (SSA) program rule or application requirement and SSA denied or terminated your benefits.

(4) If you reside in a public institution, as defined in WAC 182-500-0050, and meet all other requirements, your eligibility for ABD depends on the type of institution. ~~((A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.))~~

(a) You may be eligible for ABD if you are ~~((~~
~~((i) A))~~ a patient in a public ~~((medical))~~ institution ~~((; or))~~.
~~((ii) A patient in a public mental institution and:~~
~~(A) 65 Years of age or older; or~~
~~(B) 20 Years of age or younger.~~

~~(5))~~ (b) You aren't eligible for ABD ~~((when))~~ if you are in the custody of or confined in a public ~~((institution))~~ correctional facility such as a state ~~((penitentiary))~~ prison, or city, county, or tribal jail including placement in a work release program.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.530, 74.62.030, and 2022 c 297 § 205(21). WSR 22-17-080, § 388-400-0060, filed 8/17/22, effective 9/17/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030, and 2020 c 322. WSR 20-19-006, § 388-400-0060, filed 9/3/20, effective 10/4/20. Statutory Authority: RCW 74.04.050, 74.04.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-400-0060, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-040, § 388-400-0060, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-400-0060, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 20-19-006, filed 9/3/20, effective 10/4/20)

WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program? (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

- (a) Apply for cash assistance as detailed in WAC 388-406-0010;
- (b) Complete an interview with the department;
- (c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;
- (d) Are at least ~~((eighteen))~~ 18 years old or, if under ~~((eighteen))~~ 18, legally emancipated or a member of a married couple;
- (e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

- (f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;
- (g) Meet the citizenship and alien status requirements for ABD cash assistance under WAC 388-424-0015;
- (h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;
- (i) Meet the residency requirement for cash assistance under WAC 388-468-0005;
- (j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.
- (k) To remain eligible for HEN referral, you must also:
- (i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and
- (ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.
- (2) You are not eligible for referral to the HEN program if you:
- (a) Are eligible for temporary assistance for needy families (TANF) program;
- (b) Refuse or fail to meet a TANF rule without good cause;
- (c) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;
- (d) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;
- (e) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;
- (f) Are an ineligible spouse of an SSI recipient;
- (g) Refuse or fail to follow a Social Security Administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;
- (h) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060;
- (i) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010; or
- (j) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.
- (3) If you reside in a public institution, as defined in WAC 182-500-0050, and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. (~~(A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.)~~)
- (a) You may be eligible for referral to the HEN program if you are ~~((÷))~~ a patient in a public institution.
- ~~((i) A patient in a public medical institution; or~~
- ~~(ii) A patient in a public mental institution and are sixty-five years of age or older.))~~
- (b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public ~~((institution))~~ correc-tional facility such as a state ~~((penitentiary))~~ prison, or city, county, or tribal jail, including placement in a work release program.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.805, 74.08.043, 74.08.090,

74.08.335, 74.08A.100, 74.62.030, and 2020 c 322. WSR 20-19-006, § 388-400-0070, filed 9/3/20, effective 10/4/20. Statutory Authority: RCW 74.04.050, 74.040.055 [74.04.055], 74.04.057, 74.08.090, and 2018 c 48. WSR 18-18-007, § 388-400-0070, filed 8/23/18, effective 9/23/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-400-0070, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 21-07-082, filed 3/17/21, effective 4/17/21)

WAC 388-434-0005 How often does the department review my eligibility for benefits? (1) If you receive cash assistance, the department reviews your eligibility for assistance at least once every (~~twelve~~) 12 months.

(2) If you receive ABD cash assistance and reside in a public institution, as defined in WAC 182-500-0050, the department reviews your eligibility at least once every 24 months.

(~~(2)~~) (3) When it is time for your eligibility review, the department requires you to complete a review. We use the information you provide to determine your eligibility for all assistance programs.

(~~(3)~~) (4) If you complete an interview for assistance with a department representative and sign the printed interactive interview declaration (IID) form, you do not have to complete a separate review form.

(~~(4)~~) (5) For cash assistance, an eligibility review form or the IID must be dated and signed by both spouses, or both parents of a child in common when the parents live together.

(~~(5)~~) (6) We may review your eligibility at any time if we decide your circumstances need to be reviewed sooner.

(~~(6)~~) (7) At your review, we look at:

(a) All eligibility requirements under WAC 388-400-0005 through 388-400-0030;

(b) Changes since we last determined your eligibility; and

(c) Changes that are anticipated for the next review period.

(~~(7)~~) (8) You are responsible for attending an interview if one is required under WAC 388-452-0005.

(~~(8)~~) (9) If you do not complete the eligibility review for cash assistance, we consider you to be withdrawing your request for continuing assistance and your cash assistance benefits will end.

(~~(9)~~) (10) We will send you written notice as described under chapter 388-458 WAC before assistance is suspended, terminated, or a benefit error is established as a result of your eligibility review.

(~~(10)~~) (11) When you need a supplemental accommodation under WAC 388-472-0010, we will help you meet the requirements of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.04.510. WSR 21-07-082, § 388-434-0005, filed 3/17/21, effective 4/17/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-434-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. WSR 04-19-134, § 388-434-0005, filed 9/21/04, effective 10/1/04. Statutory

Authority: RCW 74.08.090, 74.09.530, and 2003 c 10. WSR 04-03-019, § 388-434-0005, filed 1/12/04, effective 2/12/04. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-23-083, § 388-434-0005, filed 11/16/99, effective 1/1/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-434-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-522-2230.]

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than (~~twelve~~) 12 months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last (~~twelve~~) 12 months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last (~~twelve~~) 12 months or more or result in death; (~~or~~)

(f) You have been civilly committed to eastern or western state hospital;

(g) You have been placed in eastern or western state hospital for an offense you have been found not guilty by reason of insanity; or

(~~(f)~~) (h) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Se-

curity's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by a substance use disorder and do not meet the other disability criteria in subsections (2) (a) ~~((through))~~ - (d) ~~((above))~~ of this section, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last ~~((twelve))~~ 12 months unless:

- (a) You file a timely appeal with SSA;
- (b) SSA decides you have good cause for a late appeal; or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, and 41.05.021. WSR 22-07-020, § 388-449-0001, filed 3/8/22, effective 4/8/22. Statutory Authority: 2014 c 218, 2011 1st sp.s. c 15, RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530. WSR 15-03-031, § 388-449-0001, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-040, § 388-449-0001, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0001, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0150 When does my eligibility for aged, blind, or disabled (ABD) cash benefits end? (1) The maximum period of eligibility for ABD cash is ~~((twenty-four))~~ 24 months before we must review additional medical evidence. If you remain on ABD cash at the end of

the ((~~twenty-four~~)) 24 month period, we determine your eligibility using current medical evidence.

(2) If your application for SSI is denied:

(a) We review your eligibility for the ABD cash program;

(b) We stop your benefits if you do not provide proof you have filed an appeal with SSA within ((~~sixty~~)) 60 days of a SSI denial for not being disabled.

(3) We stop your benefits after the final decision on your application for SSI/SSA benefits or if you fail to follow through with any part of the SSI/SSA application or appeals process.

(4) We review your eligibility for the ABD cash program when you discharge from a public institution, as defined in WAC 182-500-0050.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0150, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 22-07-020, filed 3/8/22, effective 4/8/22)

WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)? (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you have a good cause. Good cause includes, but is not limited to, the following reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

(4) ABD recipients who reside in a public institution as defined in WAC 182-500-0050, are not subject to the requirements of subsections (1)(a)-(b) of this section. The requirements to apply for and

assign SSI benefits will be addressed after discharge once an ABD recipient no longer resides in a public institution.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, and 41.05.021. WSR 22-07-020, § 388-449-0200, filed 3/8/22, effective 4/8/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0200, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 20-14-090, filed 6/30/20, effective 8/1/20)

- WAC 388-452-0005 Do I have to be interviewed in order to get cash and basic food benefits?** (1) You or your authorized representative must have an interview with the department:
- (a) At initial certification, unless you meet requirements in subsection (9) of this section; and
 - (b) At least once every (~~twelve~~) 12 months, unless you meet the requirements in subsections (8)(b) or (9) of this section.
- (2) You will have just one interview even if you are applying for or are having a review for benefits from more than one program.
- (3) We hold interviews either in person or over the phone.
- (4) If we do not interview you on the same day that we receive your application, we will schedule an interview appointment for you or have you contact us by phone during our business hours to complete your interview.
- (5) If we schedule an interview, we will set your appointment to allow you at least (~~ten~~) 10 days after the interview to provide needed verification:
- (a) Before the end of the (~~thirty~~) 30-day processing period for applications; or
 - (b) Before your certification period ends for eligibility reviews or recertifications.
- (6) If you miss your first interview and ask for another interview within (~~thirty~~) 30 days of the date you applied for benefits, we schedule a second interview or have you call us and complete the interview over the phone.
- (7) If you must have an interview for benefits, you or someone who can give us the information we need about your AU must participate in the interview. You may ask any person you choose to help with your interview.
- (8) For basic food only:
- (a) Your authorized representative as described in WAC 388-460-0005 may take your place during your interview.
 - (b) We may waive the interview requirement at recertification if the household meets the elderly simplified application project (ESAP) criteria:
 - (i) All members of the household are elderly or disabled, as defined in WAC 388-400-0040;
 - (ii) No mandatory or applying household members have earned income;
 - (iii) The paper or electronic eligibility review is complete;

(iv) The household has provided all necessary verification or the verification is available through interfaces available to the department; and

(v) No information provided is unclear or incomplete requiring a request for verification.

(9) For ABD cash assistance, we waive the interview requirement at application and recertification if you reside in a public institution, as defined in WAC 182-500-0050.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 20-14-090, § 388-452-0005, filed 6/30/20, effective 8/1/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-006, § 388-452-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.120, 74.08A.903, and 7 C.F.R. 273.9. WSR 10-01-165, § 388-452-0005, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-10-102, § 388-452-0005, filed 5/4/04, effective 7/1/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 7 C.F.R. 273.2(e). WSR 03-18-113, § 388-452-0005, filed 9/2/03, effective 11/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 02-14-023, § 388-452-0005, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530. WSR 01-14-060, § 388-452-0005, filed 6/29/01, effective 8/1/01; WSR 00-22-087, § 388-452-0005, filed 10/31/00, effective 12/1/00. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530 and 42 C.F.R. 435.907. WSR 99-11-075, § 388-452-0005, filed 5/18/99, effective 6/18/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-452-0005, filed 7/31/98, effective 9/1/98. Formerly WAC 388-504-0420.]

AMENDATORY SECTION (Amending WSR 20-20-007, filed 9/24/20, effective 10/25/20)

WAC 388-478-0006 The clothing, personal maintenance, and necessary incidentals (CPI) payment standard for cash assistance. Payment standards for assistance units (AU) in certain facilities and medical institutions are based on the need for clothing, personal maintenance, and necessary incidentals (CPI).

(1) The CPI (~~cash assistance~~) payment standard for recipients of cash assistance is:

(a) (~~Forty one dollars and 62 cents~~) \$41.62 for eligible persons in medical institutions as defined in WAC 182-500-0050; or

(b) (~~Thirty eight dollars and 84 cents~~) \$38.84 for eligible persons in one of the following facilities as defined in WAC 182-513-1100:

(i) Adult residential care (ARC) facility;

(ii) Adult residential rehabilitation centers (ARRC);

(iii) Adult residential treatment facility (ARTF);

(iv) Enhanced adult residential care facility (EARC); or

(v) Developmental disability administration (DDA) group home facilities.

(2) The CPI payment standard for recipients of ABD cash assistance who reside in a public institution as defined in WAC 182-500-0050, is \$41.62.

~~((2))~~ (3) When a person's living situation is other than ((the medical institutions defined in WAC 182-500-0050 and group facilities defined in WAC 182-513-1100)) what is listed in subsections (1) or (2) of this section, refer to the following:

- (a) WAC 388-478-0020 for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA);
- (b) WAC 388-478-0027 for pregnant women assistance (PWA); or
- (c) WAC 388-478-0033 for aged, blind, or disabled (ABD).

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0006, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.770, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, and 74.62.030. WSR 15-12-021, § 388-478-0006, filed 5/22/15, effective 7/1/15.]

AMENDATORY SECTION (Amending WSR 22-16-082, filed 8/1/22, effective 9/1/22)

WAC 388-478-0033 What are the payment standards for aged, blind, or disabled (ABD) cash assistance? (1) The maximum monthly payment standards for aged, blind, or disabled (ABD) cash assistance program assistance units are:

Assistance Unit Size	Payment Standard
1	\$417
2	\$528

(2) ABD clothing, personal maintenance, and necessary incidentals (CPI) payment standards are listed in WAC 388-478-0006.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.04.0052, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.08A.120, 74.08A.230, 74.62.030 and 2020 c 357. WSR 20-20-007, § 388-478-0033, filed 9/24/20, effective 10/25/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-478-0033, filed 4/27/12, effective 6/1/12.]

WSR 23-01-086
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed December 16, 2022, 8:53 a.m., effective January 16, 2023]

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

Purpose: To update certification, basic academies, and other miscellaneous WAC, including updating definitions, providing clarity to stakeholders, and matching WAC language to our current processes.

Citation of Rules Affected by this Order: New 1; repealing 1; and amending 12.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 22-22-079 on December 14, 2022 [November 1, 2022].

Changes Other than Editing from Proposed to Adopted Version: Amended WAC 139-05-250 to reorder the curriculum to better suit stakeholder and legislative staff expectations and add "full-time" to WAC 139-10-230 [so] that the correction officer academy duration is 10 "full-time" weeks.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 12, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 12, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 12, Repealed 1.

Date Adopted: December 14, 2022.

Derek Zable
Records Manager

OTS-4138.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-01-310 Definitions for Title 139 WAC. The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, tribal police officer with a recognized certified tribe, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

(4) **Commission** means the Washington state criminal justice training commission.

(5) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(6) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(7) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(8) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(9) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(10) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(11) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race,

color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(12) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(13) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(14) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(15) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(16) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(17) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

(18) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(19) **Petitioner** means the commission's certification division.

(20) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

(21) **Recruit** means an individual registered for, selected for, accepted to, enrolled in, or required to complete a basic training academy.

(22) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

~~((22))~~ (23) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

~~((23))~~ (24) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

~~((24))~~ (25) **Revocation** means to cancel a certified officer's certification.

~~((25))~~ (26) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4)(b) and (c).

~~((26))~~ (27) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

~~((27))~~ (28) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

~~((28))~~ (29) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-01-310, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-4135.4

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-05-210 Process for equivalency. (1) An officer whose certification, commission, or licensing has been revoked or suspended, or is under review by this state or any other state or territory is not eligible to receive certification through an equivalency academy, regardless of the officer's prior years of service.

(2) A diploma of equivalent basic law enforcement academy or corrections officers academy is issued to ~~((applicants))~~ recruits who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (9) of this section and

successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

(b) Fully commissioned officers of a general authority or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy;

(c) Fully commissioned officers who have been certified by completing a basic training program in Washington or another state;

(d) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(e) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(f) Persons who have not attained commissioned officer status but have successfully completed a basic law enforcement academy recognized as fully equivalent to Washington's basic law enforcement academy by the commission and within 12 months of the date of completion has received a conditional offer of employment as a fully commissioned officer in Washington state.

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) (~~(Applicants)~~) Recruits who must participate in the equivalency academy to become a certified officer must attend an academy within six months of hire as a condition of employment.

(6) It is the responsibility of (~~(an applicant's)~~) a recruit's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner and all requirements within this section are met.

(7) The decision to request an officer's participation in the equivalency process is at the discretion of the sheriff or chief of the officer's employing agency who must advise the commission of that decision. The commission has final approval of the officer's acceptance into the equivalency academy.

(8) The commission shall have authority to approve (~~(an applicant)~~) a recruit for participation in the equivalency process.

(9) The (~~(applicant's)~~) recruit's employing agency must submit to the commission the following documentation as a condition of participating in the equivalency process:

(a) A statement of the (~~(applicant's)~~) recruit's health and physical condition including a physician signature;

(b) A liability release agreement by the (~~(applicant)~~) recruit;

(c) Previous employment agencies with dates of employment;

(d) Documentation of completion of the previous training program;

(e) Written syllabus detailing specific areas of training and hours of training;

(f) Documentation of current certification status; and

(g) For peace and tribal officers:

(i) A record of the (~~(applicant's)~~) recruit's firearms qualification;

(ii) Verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the (~~(applicant)~~) recruit must complete the commission's current basic law enforcement

EVOC, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

(10) Upon completion of the equivalency process and review and evaluation of the ~~((applicant's))~~ recruit's performance, the commission shall issue a diploma and a certificate of certification.

(11) If the ~~((officer))~~ recruit has not met the qualifications to satisfactorily complete ~~((the))~~ an equivalency academy, the commission shall:

(a) Issue a diploma and certificate of certification upon satisfactory completion of any required additional training; or

(b) Require the ~~((officer))~~ recruit to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-05-210, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-220 Backgrounding requirement for admission ~~((to))~~ in the basic law enforcement ((academy)) academies. It is the responsibility of each ~~((sponsoring or applying))~~ agency to conduct a ~~((complete criminal records check to include a search of state and national criminal history records information regarding its applicant through the submission of the applicant's fingerprints to an appropriate agency or agencies. No individual will be granted academy admission or allowed continued participation if the individual is not otherwise eligible for certification or has been convicted of a crime that would make him or her ineligible for certification.~~

Each application for academy attendance must be accompanied by a written attestation by the applying agency that (1) the criminal records check has been completed, and (2) there are no disqualifying ~~((convictions))~~ background investigation of its applicant, as outlined by RCW 43.101.095 and WAC 139-06-010, as a precondition of academy admission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-220, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-220, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-220, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-230 Physical requirements for admission to the basic law enforcement academy. ~~((Each successful applicant))~~ (1) For admission to ((a)) the basic law enforcement academy, ((sponsored or conducted by the commission)) each recruit must possess good health and physical capability to actively and fully participate in defensive tactics training and other required physical activities.

(2) In order to minimize risk of injury and maximize the benefit of such participation, each recruit in any academy session must, as a precondition of ((his or her)) their academy ((attendance)) admission, demonstrate a requisite level of physical fitness, as established by the commission.

~~((For this purpose, each academy applicant will be assessed in the areas of aerobic capacity, strength, and flexibility,))~~ (3) Each recruit must be evaluated in accordance with the ~~((requirements))~~ pol-
icies and procedures established by the commission.

(4) Failure to demonstrate a requisite level of fitness will result in ineligibility for academy ((admissions and/or attendance)) ad-
mission.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-230, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 91-14-011, § 139-05-230, filed 6/24/91, effective 7/25/91; WSR 91-01-043, § 139-05-230, filed 12/12/90, effective 7/1/91; WSR 89-13-023 (Order 12C), § 139-05-230, filed 6/13/89; WSR 86-19-021 (Order 1-B), § 139-05-230, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-240 Completion requirements of basic law enforcement ((academy)) academies. Each recruit in a basic law enforcement academy will receive a ~~((certificate of completion))~~ diploma only upon full and successful completion of the academy ~~((process))~~ as prescribed by the commission. The performance of each recruit ~~((will))~~ shall be evaluated as follows:

(1) Academic performance.

(a) A standardized ((examination)) evaluation process will be utilized ~~((by))~~ in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of scholastic achievement of each recruit.

(b) Such process ((will)) shall include the application of a designated minimum passing score ~~((to each subject area))~~ for written examinations and the availability of a retesting procedure.

(c) Failure to achieve the required minimum passing score will result in termination of academy ((assignment)) enrollment.

(2) Practical skills.

(a) A standardized evaluation process will be utilized ~~((by))~~ in all basic law enforcement academies sponsored or conducted by the commission in evaluating the level of ~~((practical performance))~~ skill proficiency of each recruit.

~~(b) Such process ((will)) shall include the application of ((pass/fail grading to)) a designated ((instructional objectives for physical performance)) minimum passing score of all skill proficiencies identified by the commission and the availability of a retesting procedure.~~

~~(c) Failure to achieve a final passing grade in each practical skills dimension will ((preclude a certificate of completion)) result in termination of academy enrollment.~~

~~(3) Conduct and participation.~~

~~(a) Each recruit will be required to participate fully in all academy classes and adhere to all rules, regulations, and policies of the commission.~~

~~(b) Failure to ((maintain an exemplary standard of conduct or to)) adhere to all rules, regulations, and policies of ((a basic law enforcement academy sponsored or conducted by)) the commission ((may)) will result in termination of academy ((assignment)) enrollment.~~

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-240, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-240, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-098, § 139-05-240, filed 6/21/93, effective 7/22/93; WSR 86-19-021 (Order 1-B), § 139-05-240, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 05-20-029, filed 9/28/05, effective 10/29/05)

WAC 139-05-242 Readmission to the basic law enforcement academy.

No person may be readmitted to ((the)) any basic law enforcement ((training)) academy except as provided in this section.

(1) Any request for readmission ((to any academy)) must be made and submitted by the individual's employing ((or sponsoring)) agency head, or designee, in accordance with commission policies and procedures.

(2) Any individual whose academy enrollment was terminated ((from any academy)) for academic failure, ((for)) skills deficiency, disciplinary reasons other than those specified ((by)) in subsection (3) of this section, or who ((has)) had voluntarily withdrawn ((from any academy)) for any reason, may be readmitted to a subsequent academy session only if:

(a) The ((head of the)) individual's current employing agency head, or their designee, submits to the commission a written request for readmission of the individual to the academy ((program)); and

(b) The executive director of the commission, or designee, is satisfied that any conditions to the individual's readmission specified by the executive director, or designee, have been met.

(3) Any person ((dismissed from any academy)) whose academy enrollment was terminated for an integrity violation((r)) including, but not limited to: Cheating, the making of materially false statements, the commission of a crime, or other violation ((not constituting disqualifying misconduct as defined in RCW 43.101.010(7), will not be eligible)) contained in RCW 43.101.105 will be ineligible for readmission to any subsequent academy within ((twenty-four)) 24 months from the date of dismissal ((. Such ineligibility will not be affected by any new employment or reemployment during the period of ineligibility

specified in the preceding sentence of this subsection) regardless of employer or employment status.

(4) An exception to the ineligibility period specified in subsection (3) of this section may be granted at the sole discretion of the commission executive director, or designee, based upon mitigating circumstances.

(a) No person may be considered for such early readmission after an integrity violation dismissal unless a written request is made by the head of the agency employing the individual at the time of the request.

(b) Requests for early readmission must follow applicable commission policies and procedures to be considered.

(c) The executive director's, or designee's, decision under this subsection shall be subject to review only for abuse of discretion.

(5) After the ineligibility period specified in subsection (3) of this section has passed, or after an exception has been granted by the commission under subsection (4) of this section, the person previously dismissed for an integrity violation may be readmitted to a subsequent academy session only ((if he or she satisfies)) the conditions of subsection (2) of this section are satisfactorily met.

~~((5))~~ (6) For purposes of this section, reserves and volunteers will be deemed to be employees of the agencies which sponsor them for participation in a training academy.

[Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-242, filed 9/28/05, effective 10/29/05; WSR 04-19-050, § 139-05-242, filed 9/14/04, effective 10/15/04; WSR 00-17-017, § 139-05-242, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 93-13-103, § 139-05-242, filed 6/21/93, effective 7/22/93.]

AMENDATORY SECTION (Amending WSR 19-07-037, filed 3/13/19, effective 4/13/19)

WAC 139-05-250 Basic law enforcement curriculum. The basic law enforcement and reserve academy curriculum of the commission may include, but not be limited to, the following core subject areas with common threads of communications, community policing, and professional ethics throughout:

(1) Use of force training consistent with permissible uses of force per RCW 43.101.490;

(2) Domestic violence reports and situations per RCW 10.99.030 and 10.99.033;

(3) Mental health training as prescribed in WAC 139-11-020 per RCW 43.101.452;

(4) Victim centered and trauma-informed approach to policing per RCW 43.101.274;

(5) Ethnic and cultural diversity per RCW 43.101.280;

(6) Hate crimes per RCW 43.101.290;

(7) Violence de-escalation training as prescribed in WAC 139-11-020 per RCW 43.101.450;

(8) Substance use disorders per RCW 43.101.205;

(9) Child abuse and neglect per RCW 43.101.365;

(10) Vehicular pursuits per RCW 43.101.225;

(11) Motorcycle profiling per RCW 43.101.419;

(12) Orientation and history of policing;

- ~~((2))~~ (13) Criminal law;
- ~~((3))~~ (14) Criminal procedures;
- ~~((4))~~ (15) Patrol procedures;
- ~~((5))~~ (16) Crisis intervention per RCW 43.101.427;
- ~~((6))~~ (17) Emergency vehicle operations ~~((course))~~;
- ~~((7))~~ (18) Report writing;
- ~~((8))~~ (19) Traffic law;
- ~~((9))~~ (20) Firearms;
- ~~((10))~~ (21) Defensive tactics; and
- ~~((11))~~ (22) Criminal investigation.

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-037, § 139-05-250, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-250, filed 9/28/05, effective 10/29/05; WSR 00-17-017, § 139-05-250, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.010(2). WSR 93-13-097, § 139-05-250, filed 6/21/93, effective 7/22/93. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-250, filed 9/10/86.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-911 Tribal certification.

OTS-4136.2

NEW SECTION

WAC 139-06-015 Tribal certification. Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the tribal government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-030 Investigative authority and duty to cooperate.

(1) Except when otherwise required by RCW 43.101.105 (2) or (3), the commission has authority to undertake an investigation regardless of the status of any administrative or criminal investigations into the matter by other agencies.

(2) An agency shall cooperate in any investigation conducted by the commission regarding a certified officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, then the ~~((employing agency shall))~~ agency who employed the officer at the time of the misconduct shall timely conduct and complete an investigation and provide all relevant information to the commission in accordance with WAC 139-06-020(4) and as if the certified officer were still employed by the agency ~~((under RCW 43.101.135))~~.

(3) A certified officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(4) Requests from the commission for records under chapter 43.101 RCW are not subject to any exemptions, redactions, waiting periods, or timelines associated with the Public Records Act, chapter 42.56 RCW.

(5) A certified officer must also consent to and facilitate a review of the certified officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The certified officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the certified officer or the certified officer's union and the entity responsible for the records and information.

(6) An employing agency may not enter into any agreement or contract with a certified officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the certified officer may have committed misconduct in exchange for allowing a certified officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-030, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW

43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-06-100 Outcomes for determinations of misconduct—Suspension, probation, retraining or dismissal of the statement of charges.

(1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension, probation, ~~((or))~~ revocation of certification, ~~((or))~~ remedial training, or dismissal of the statement of charges. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

- (a) Information provided by the complainant(s), if any;
- (b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;
- (c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;
- (d) Any information obtained by the commission through its own investigation or research;
- (e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and
- (f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension or probation by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-06-100, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

OTS-4137.1

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-07-020 Background information. (1) Hiring agency background checks must include the following records and information for new applicants:

- (a) Criminal history;
- (b) National decertification indices or data banks;
- (c) Commission records including employment history and certification status;
- (d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;
- (e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;
- (f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;
- (g) A review of the applicant's social media accounts;
- (h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;
- (i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;
- (j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and
- (k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant, including new hires and in-state laterals, may be offered employment by more than one agency. The background results may be shared with more than one agency under the following circumstances:

- (a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;
 - (b) The applicant signed a release permitting another hiring agency to have the report;
 - (c) The background investigation was completed within six months of the request to share records; and
 - (d) The job analyses of both agencies are substantially similar.
- (3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

(4) Backgrounds, older than six months, of an officer shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-020, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 22-13-075, filed 6/9/22, effective 7/10/22)

WAC 139-07-040 Polygraph examination or other truth verification assessment. (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph assessments:

(a) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;

(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;

(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;

(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and

(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.

(3) Polygraph assessments:

(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;

(c) Model questions shall be adopted in commission policy; and

(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

(10) Polygraph reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

[Statutory Authority: RCW 43.101.080 and 43.101.801. WSR 22-13-075, § 139-07-040, filed 6/9/22, effective 7/10/22. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

OTS-4156.2

AMENDATORY SECTION (Amending WSR 22-19-038, filed 9/14/22, effective 10/15/22)

WAC 139-10-230 Corrections officers academy eligibility and curriculum. (1) All employees whose primary job function is to provide

for the custody, safety, and security of adult prisoners in jails and detention facilities must complete the corrections officers academy. Representative job classifications include, but are not limited to, custody and corrections officers.

(2) The corrections officers academy curriculum shall be at least ~~((400 instructional hours))~~ 10 full-time weeks in length and may include, but not be limited to, the following subject matter areas:

(a) Core skills:

(i) Observation skills;

(ii) Communication skills;

(iii) Security management;

(iv) Supervision of inmates;

(v) Discipline of inmates;

(vi) ~~((Proper use of physical force))~~ Use of force training consistent with permissible uses of force per RCW 43.101.490;

(vii) Writing skills;

(b) Key skills:

(i) Legal issues;

(ii) Dealing with aggressive behavior;

(iii) Dealing with medical problems;

(iv) Dealing with mental illness problems;

(v) Problem solving;

(vi) Report writing;

(vii) Avoiding inmate manipulation;

(viii) Booking and classification;

(ix) Fingerprinting;

(c) Related skills:

(i) Stress management;

(ii) Physical fitness;

(iii) Professionalism;

(iv) Human relations/cultural awareness;

(v) Historical intersection of race and corrections.

[Statutory Authority: RCW 43.101.080. WSR 22-19-038, § 139-10-230, filed 9/14/22, effective 10/15/22; WSR 00-17-017, § 139-10-230, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 87-19-105 (Order 15-D), § 139-10-230, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-10-230, filed 9/10/86. Formerly WAC 139-36-031.]

WSR 23-01-091

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 16, 2022, 1:56 p.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: This rule making order amends chapter 16-662 WAC, Weights and measures—National handbooks, sale of motor fuel, and penalties for violations. The department is making these amendments as required in chapter 238, Laws of 2021 (2SSB 5192), regarding electric vehicle supply equipment (EVSE). The amendments include:

- Updating the chapter title to reflect that the sale of electric vehicle fuel is now regulated under this chapter.
- Establishing EVSE compliance dates and creating an exemption for EVSE installed prior to January 1, 2024, that are clearly marked.
- Requiring all electric vehicle service providers make available multiple payment methods at all publicly available Level 2 EVSE or direct current fast charger (DCFC) EVSE installed in Washington and establishing minimum required payment methods.
- Requiring electric vehicle service providers (EVSP) to provide means for conducting a charging session in at least one language other than English.
- Establishing requirements for all EVSP to, at a minimum, meet and maintain nonproprietary interoperability standards for publicly available Level 2 and DCFC EVSE.

Citation of Rules Affected by this Order: New WAC 16-662-200, 16-662-210, 16-662-215, and 16-662-220.

Statutory Authority for Adoption: Chapter 238, Laws of 2021 (2SSB 5192); RCW 19.94.010, 19.94.190, 19.94.555, 19.94.565, 19.94.570, 19.94.575.

Adopted under notice filed as WSR 22-18-093 on September 7, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 16, 2022.

Derek I. Sandison
Director

OTS-4013.2

Chapter 16-662 WAC

WEIGHTS AND MEASURES—NATIONAL HANDBOOKS, SALE OF MOTOR FUEL, ELECTRIC VEHICLE SUPPLY EQUIPMENT, AND PENALTIES FOR VIOLATIONSNEW SECTION

WAC 16-662-200 Electric vehicle supply equipment compliance dates. (1) Any publicly available electric vehicle supply equipment, including both level 2 and direct current fast chargers, installed and placed into service before January 1, 2024, is exempt from the requirements in WAC 16-662-210 through 16-662-220 until January 1, 2034. Equipment that is replaced or retrofitted with new hardware on or after January 1, 2024, is considered to have been installed and placed into service after January 1, 2024, and must comply with the requirements in WAC 16-662-210 through 16-662-220 upon installation.

(2) Publicly available electric vehicle supply equipment that is exempt as described in subsection (1) of this section must be clearly marked with the date of installation in a conspicuous location that is easily seen during normal use by the public. Acceptable ways to clearly mark the installation date may include:

(a) A sign, sticker, or plaque; or

(b) Any other visible marker that is readable, such as a digital display showing the installation date on the home screen or through a menu that is intuitive, making the installation date easily identified.

(c) When dates are located on a kiosk, the installation date of each electric vehicle supply equipment serviced by that kiosk shall be clearly identified.

(3) If the installation date is not clearly marked, the device will be considered to have been installed and placed into service after January 1, 2024, and will be subject to the requirements in WAC 16-662-210 through 16-662-220.

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NEW SECTION

WAC 16-662-210 Electric vehicle supply equipment payment method and fee disclosure requirements. (1) All publicly available electric vehicle supply equipment installed in Washington that requires payment shall meet the following requirements:

(a) Have a credit card reader device physically located on either the electric vehicle supply equipment unit or a kiosk used to service that electric vehicle supply equipment. The credit card reader device shall comply with all of the following requirements:

(i) The credit card reader device shall accept, at a minimum, the Euro MasterCard Visa (EMV) chip and, at a minimum, one of the following credit card types: Visa, MasterCard, or American Express; and

(ii) The credit card reader device shall be nonlocking and shall always permit customers to remove their credit card without damage to the card, including during a fault situation or power failure.

(b) All electric vehicle supply equipment subject to this section shall have a mobile payment device physically located on the electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment; and

(c) The electric vehicle service provider shall provide and display a toll-free number on each electric vehicle supply equipment or kiosk used to service that electric vehicle supply equipment that provides the user with the option to initiate a charging session and submit payment at any time that the electric vehicle supply equipment is operational and publicly available.

(2) At a minimum, the electric vehicle service provider shall disclose to the user, at the point of sale, the following minimum information, if applicable:

(a) A fee for use of the parking space;

(b) A nonmember plug-in fee from the electric vehicle service provider;

(c) The price to refuel in United States dollars per kilowatt-hour or mega joule;

(d) Any potential changes in the price to refuel, in United States dollars per kilowatt-hour or mega joule, due to variable pricing; and

(e) Any other fees charged for a charging session.

(3) If the charging session or portion of a charging session is offered at no cost, it must be disclosed at the location where the charging session is initiated and prior to a user or a vehicle initiating a charging session.

(4) The electric vehicle service provider may not require a subscription, membership, or account or a minimum balance on an account in order to initiate a charging session at an electric vehicle supply equipment subject to this section.

(5) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

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NEW SECTION

WAC 16-662-215 Electric vehicle supply equipment language requirements. (1) The electric vehicle supply equipment must provide means for conducting a charging session in at least one language other than English. The electric vehicle service provider shall consider the demographics of the area in which the unit will be installed, and the language(s) most commonly spoken in that location, when determining the alternative language(s) provided. At a minimum, electric vehicle service providers shall consult data published from the American Community Survey (ACS).

(2) The requirements of this section shall not apply to electric vehicle supply equipment exempted under RCW 19.94.555.

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NEW SECTION

WAC 16-662-220 Interoperability requirements related to electric vehicle supply equipment. (1) All publicly available electric vehicle supply equipment must be in compliance with the following interoperability requirements:

(a) The electric vehicle service provider shall, at a minimum, use Open Charge Point Interface (OCPI) version 2.1.1 or 2.2 standards.

(b) All networked electric vehicle supply equipment shall be compliant with Open Charge Point Protocol (OCPP) version 1.6 or 2.0.1 standards.

(2) Upon request, electric vehicle service providers shall provide the department with documentation that demonstrates compliance with the requirements of this section. If a certification is available for a standard, the documentation to be provided shall include the certification, otherwise acceptable documentation may include a self-attestation by the service provider. The service provider must provide additional documentation as the department may require to demonstrate compliance.

(3) The requirements of this section shall not apply to:

(a) Electric vehicle supply equipment exempted under RCW 19.94.555.

(b) Publicly available electric vehicle supply equipment provided by a manufacturer of electric vehicles for the exclusive use by vehicles it manufactures.

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WSR 23-01-102
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 21-12—Filed December 19, 2022, 8:34 a.m., effective January 19, 2023]

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

Purpose: Ecology is adopting amendments to chapter 173-423 WAC, Clean vehicles program; and chapter 173-400 WAC, General air quality regulations for air pollution sources.

Chapter 173-423 WAC, Clean vehicles program: RCW 70A.30.010 directs ecology to adopt rules implementing California's vehicle emission standards, including the zero-emission vehicle (ZEV) program, and to amend chapter 173-423 WAC to maintain consistency with California's standards and Section 177 of the federal Clean Air Act.

This rule making amends chapter 173-423 WAC to adopt the following rules from California's Code of Regulations:

- **Heavy-duty engine and vehicle omnibus regulation and associated amendments.** Starting in model year (MY) 2026, these rules require that new internal combustion engines for heavy-duty vehicles emit much lower quantities of nitrogen oxides (NO_x), particulate matter (PM), and greenhouse gases.
- **Advanced Clean Cars II (ACC II).** This rule will increase the percentage of passenger cars, light-duty trucks, and medium-duty vehicles sold in Washington state that are zero-emission vehicles (ZEVs). The sales mandate will take effect in MY 2026 and begin by requiring 35 percent of new passenger vehicle sales to be ZEVs, with that percentage increasing between six and nine percent per year until ZEVs make up 100 percent of new sales starting in MY 2035. It will also require light- and medium-duty vehicles to meet stronger emissions standards.

The rule making also includes the following provisions that support ecology's implementation of California's emission standards:

- **Early action ZEV credits:** This rule will provide automakers with optional ZEV sales credits for MYs 2023 and 2024. This will increase Washingtonians' access to a wide variety of ZEV vehicle models before regulatory requirements take effect in MY 2025, and allow participating automakers to bank credits for meeting future compliance requirements under ACC I and II.
- **One-time fleet reporting requirement:** This requires owners and operators (such as businesses, government agencies, municipalities, brokers, freight dispatchers, transit agencies, etc.) to report information about medium- and heavy-duty vehicles (defined as vehicles over 8,500 pounds) in their fleets by September 30, 2023. This requirement mirrors a similar requirement in California's advanced clean trucks rule. Ecology currently has very little data on fleets. The inventory of existing heavy-duty fleets and information on where the vehicles operate will help ecology develop and implement strategies to reduce their emissions.

Chapter 173-400 WAC, General air quality regulations for air pollution sources: The rule making updates the adoption date of federal rules. Ecology can only implement and enforce federal rules that the rule adopts by reference. This action amends WAC 173-400-025 Adoption by reference, 173-400-050 Emission standards for combustion and incineration units, 173-400-070 Emission standards for certain source categories, 173-400-115 Standards of performance for new sources, and

173-400-720 Prevention of significant deterioration (PSD). The rule will retain ecology's current definition of "project emissions accounting."

Citation of Rules Affected by this Order: Amending chapters 173-423 and 173-400 WAC.

Statutory Authority for Adoption: RCW 70A.30.010, department of ecology to adopt rules to implement California motor vehicle emission standards.

Adopted under notice filed as WSR 22-18-103 on September 7, 2022. Changes Other than Editing from Proposed to Adopted Version:

- WAC 173-423-083 Fleet reporting requirement, the term "person" has been edited throughout this section to instead refer to "entity" or "broker." This change is intended to reduce confusion and clarify who is required to report information about their fleet vehicles to ecology under this rule.
- WAC 173-423-070 Low emission vehicles, this section has been revised to update references to sections of the California Code of Regulations that have been reordered or added since ecology's last rule making.
- WAC 173-423-030 Adoption by reference, this section has been revised for clarity.

A final cost-benefit analysis is available by contacting Adam Saul, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-792-7998, Washington relay service or TTY 711 or 877-833-6341, email adam.saul@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC173-423-400Jan18>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 6, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

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

Date Adopted: December 19, 2022.

Laura J. Watson
Director

OTS-4006.1

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-400-025 Adoption by reference. (1) Adoption by reference date: (~~December 23, 2020~~) August 24, 2022.

(2) Federal rules mentioned in this rule are adopted as they exist on the date in subsection (1) of this section. Adoption by reference means the federal rule applies as if it was copied into this rule.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-400-025, filed 11/29/21, effective 12/30/21. Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-025, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-025, filed 5/31/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting waste wood for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by 40 C.F.R. Part 60, Appendix A, Test Method 5 (in effect on the date in WAC 173-400-025) or approved procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements in WAC 173-400-075 (40 C.F.R. Part 63, Subpart EEE in effect on the date in WAC 173-400-025) and WAC 173-400-115 (40 C.F.R. Part 60, Subparts E, Ea, Eb, Ec, AAAA, and CCCC (in effect on the date in WAC 173-400-025)) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by Source Test Method 14 procedures in *Source Test Manual - Procedures for Compliance Testing*, state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual

operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999. A commercial and industrial solid waste incineration unit that commenced construction on or before November 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025).

Note: Subsection (2) of this section (a state-only provision) does not apply to a unit subject to this subsection because this ~~((section))~~ subsection is ~~((based-on))~~ a federal requirement~~((s))~~.

(a) Definitions.

(i) "Commercial and industrial solid waste incineration (CISWI) unit" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "Commercial and industrial solid waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c) (i) (A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units.* Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025) are not subject to this section if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units.* Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 C.F.R. Part 60, Subpart Ea or Subpart Eb (in effect on the date in WAC 173-400-025); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 C.F.R. Part 60 (in effect on the date in WAC 173-400-025), Subparts Ea, Eb, and AAAA, and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units.* Incineration units regulated under 40 C.F.R. Part 60, Subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on the date in WAC 173-400-025);

(v) *Small power production facilities.* Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities.* Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units.* Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under 40 C.F.R. Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on the date in WAC 173-400-025).

(viii) *Materials recovery units*. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators*. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 C.F.R. 60.2245 through 60.2260 (in effect on the date in WAC 173-400-025).

(A) 100 percent wood waste, as defined in 40 C.F.R. 60.2265.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste, as these terms are defined in 40 C.F.R. 60.2265.

(x) *Cyclonic barrel burners*. See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xi) *Rack, part, and drum reclamation units*. See 40 C.F.R. 60.2265 (in effect on the date in WAC 173-400-025).

(xii) *Cement kilns*. Kilns regulated under 40 C.F.R. Part 63, Subpart LLL (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on the date in WAC 173-400-025).

(xiii) *Sewage sludge incinerators*. Incineration units regulated under 40 C.F.R. Part 60, Subpart O (Standards of Performance for Sewage Treatment Plants) (in effect on the date in WAC 173-400-025).

(xiv) *Chemical recovery units*. Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units*. Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 C.F.R. 60.2815) (in effect on the date in WAC 173-400-025).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 C.F.R. 60.2815 (in effect on the date in WAC 173-400-025) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025).

(e) A CISWI unit must comply with 40 C.F.R. 60.2575 through 60.2875 (in effect on the date in WAC 173-400-025). The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;
- Waste management plan requirements in 60.2620 through 60.2630;
- Operator training and qualification requirements in 60.2635 through 60.2665;
- Emission limitations and operating limits in 60.2670 through 60.2685;
- Performance testing requirements in 60.2690 through 60.2725;
- Initial compliance requirements in 60.2700 through 60.2725;
- Continuous compliance requirements in 60.2710 through 60.2725;
- Monitoring requirements in 60.2730 through 60.2735;
- Recordkeeping and reporting requirements in 60.2740 through 60.2800;
- Title V operating permits requirements in 60.2805;
- Air curtain incinerator requirements in 60.2810 through 60.2870;
- Definitions in 60.2875; and
- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 C.F.R. 60.2805(a) are not adopted. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999. A small municipal waste combustion unit constructed on or before August 30, 1999, that meets the applicability requirements in 40 C.F.R. 62.14510, must comply with the requirements in 40 C.F.R. Part 62, Subpart JJJ (in effect on the date in WAC 173-400-025).

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units

(with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can co-fire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 C.F.R. 60.1910 combusts 100 percent yard waste, then those units must only meet the requirements under 40 C.F.R. 60.1910 through 60.1930 (in effect on the date in WAC 173-400-025).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 C.F.R. Part 60, Subpart AAAA (in effect on the date in WAC 173-400-025).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 C.F.R. 60.1940 (in effect on the date in WAC 173-400-025) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 C.F.R. 60.1610 (in effect on the date in WAC 173-400-025).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 C.F.R. 60.1935 (d) and (e) (in effect on the date in WAC 173-400-025) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 C.F.R. 60.1585 through 60.1905, and 60.1935 (in effect on the date in WAC 173-400-025).

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005, for all Class II units, and by November 6, 2005, for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted according to the procedures specified under 40 C.F.R. 60.1790 (in effect on the date in WAC 173-400-025).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 C.F.R. Part 60, Subpart BBBB (in effect on the date in WAC 173-400-025) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(6) **Hazardous/medical/infectious waste incinerators** constructed on or before December 1, 2008. Hospital/medical/infectious waste incinerators constructed on or before December 1, 2008, must comply with the requirements in 40 C.F.R. Part 62, Subpart HHH (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-050, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-050, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-050, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-050, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-050, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-050, filed 8/15/01, effective 9/15/01. Statutory Authority: Chapter 70.94 RCW. WSR 91-05-064 (Order 90-06), § 173-400-050, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-050, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-050, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-050, filed 5/8/79; Order DE 76-38, § 173-400-050, filed 12/21/76. Formerly WAC 18-04-050.]

AMENDATORY SECTION (Amending WSR 18-17-111, filed 8/16/18, effective 9/16/18)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) **Wigwam and silo burners.** As of January 1, 2020, it is illegal to use a wigwam or silo burner in Washington. A wigwam or silo burner may operate until midnight December 31, 2019, provided it complies with the following:

(a) All wigwam and silo burners designed to dispose of waste wood must meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4), 173-400-115, or 40 C.F.R. Part 62, Subpart III in effect on the date in WAC 173-400-025 as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air

system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include, but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) **Hog fuel boilers.**

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1).

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) **Orchard heating.**

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) This provision is in effect until the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(c) This provision takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP. It is unlawful to burn any material or operate an orchard-heating device that causes a visible emission exceeding twenty percent opacity as specified in WAC 173-400-040(2).

(4) **Grain elevators.** Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) **Other waste wood burners.**

(a) Waste wood burners not specifically provided for in this section shall meet all applicable provisions of:

(i) WAC 173-400-040 and 173-400-050;

(ii) 40 C.F.R. Part 60, Subpart CCCC (in effect on the date in WAC 173-400-025); and

(iii) 40 C.F.R. Part 62, Subpart III (in effect on the date in WAC 173-400-025).

(b) Such waste wood burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(6) **Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.** A municipal solid waste landfill that commenced construction prior to May 30, 1991, and has not been modified or reconstructed since May 30, 1991, must comply with the requirements in 40 C.F.R. Part 62, Subpart GGG (in effect on the date in WAC 173-400-025). A municipal solid waste landfill (MSW landfill) is

an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill may also receive other types of waste regulated under Subtitle D of the Federal Resource Conservation and Recovery Act including the following: Commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 C.F.R. Part 60 rules mean those rules in effect on the date in WAC 173-400-025.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 C.F.R. 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 C.F.R. 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 C.F.R. 60.757 (submission of an initial design capacity report) and 40 C.F.R. 60.758 (recordkeeping requirements), as applicable, except as provided for under (d) (i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 C.F.R. 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b) (2) (ii) through the following procedures:

(A) The systems must follow the operational standards in 40 C.F.R. 60.753.

(B) The systems must follow the compliance provisions in 40 C.F.R. 60.755 (a) (1) through (a) (6) to determine whether the system is in compliance with 40 C.F.R. 60.752 (b) (2) (ii).

(C) The system must follow the applicable monitoring provisions in 40 C.F.R. 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 C.F.R. 60.752 (b) (2) (ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 C.F.R. 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 C.F.R. 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), no source may operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 C.F.R. 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 C.F.R. 60.752 (b) (2) (v).

(7) Municipal solid waste landfills that commenced construction on or before July 17, 2014, and have not been modified or reconstructed since July 17, 2014. A municipal solid waste landfill that commenced construction on or before July 17, 2014, and has not been modified or reconstructed since July 17, 2014, must comply with the requirements in 40 C.F.R. Part 62, Subpart 000 (in effect on the date in WAC 173-400-025).

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-070, filed 8/16/18, effective 9/16/18. Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-070, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-070, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-070, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-070, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-070, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-070, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.860, 70.94.510 and 70.94.331. WSR 98-15-129 (Order 98-04), § 173-400-070, filed 7/21/98, effective 8/21/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-070, filed 9/13/96, effective 10/14/96; WSR 91-05-064 (Order 90-06), § 173-400-070, filed 2/19/91, effective 3/22/91. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-070, filed 4/15/83. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-070, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-070, filed 5/8/79; Order DE 76-38, § 173-400-070, filed 12/21/76. Formerly WAC 18-04-070.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-115 Standards of performance for new sources. NSPS.

Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) Adoption of federal rules.

(a) 40 C.F.R. Part 60 and Appendices (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) of this subsection.

(b) Exceptions to adopting 40 C.F.R. Part 60.

(i) The term "administrator" in 40 C.F.R. Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 C.F.R. Part 60 are not adopted:

- (A) 40 C.F.R. 60.5 (determination of construction or modification);
- (B) 40 C.F.R. 60.6 (review of plans);
- (C) 40 C.F.R. Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, Cf, BBBB, DDDD, FFFF, MMMM, ((UUUU)) and UUUUa (emission guidelines); and
- (D) 40 C.F.R. Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 C.F.R. 60.43 for the Newton Power Station of Central Illinois Public Service Company.

Note: Refer to WAC 173-400-050 and 173-400-070 for adoption of federal rules that implement emission guidelines.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 C.F.R. Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-115, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-115, filed 11/28/12, effective 12/29/12; WSR 11-06-060 (Order 09-01), § 173-400-115, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-115, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-115, filed 1/10/05, effective 2/10/05. Statutory Authority: Chapter 70.94 RCW, RCW 70.94.141, [70.94.]152, [70.94.]331, [70.94.]510 and 43.21A.080. WSR 01-17-062 (Order 99-06), § 173-400-115, filed 8/15/01, effective 9/15/01. Statutory Authority: [RCW 70.94.331, 70.94.510 and chapter 70.94 RCW.] WSR 00-23-130 (Order 98-27), § 173-400-115, filed 11/22/00, effective 12/23/00. Statutory Authority: RCW 70.94.785. WSR 98-22-019 (Order 98-02), § 173-400-115, filed 10/23/98, effective 11/23/98. Statutory Authority: Chapter 70.94 RCW. WSR 96-19-054 (Order 94-35), § 173-400-115, filed 9/13/96, effective 10/14/96; WSR 93-05-044 (Order 92-34), § 173-400-115, filed 2/17/93, effective 3/20/93; WSR 91-05-064 (Order 90-06), § 173-400-115, filed 2/19/91, effective 3/22/91. Statutory Authority: RCW 70.94.331, 70.94.395 and 70.94.510. WSR 85-06-046 (Order 84-48), § 173-400-115, filed 3/6/85. Statutory Authority: Chapters 43.21A and 70.94 RCW. WSR 83-09-036 (Order DE 83-13), § 173-400-115, filed 4/15/83; WSR 82-16-019 (Order DE 82-20), § 173-400-115, filed 7/27/82. Statutory Authority: RCW 70.94.331. WSR 80-11-059 (Order DE 80-14), § 173-400-115, filed 8/20/80. Statutory Authority: RCW 43.21A.080 and 70.94.331. WSR 79-06-012 (Order DE 78-21), § 173-400-115, filed 5/8/79; Order DE 76-38, § 173-400-115, filed 12/21/76. Formerly WAC 18-04-115.]

AMENDATORY SECTION (Amending WSR 16-12-099, filed 5/31/16, effective 7/1/16)

WAC 173-400-720 Prevention of significant deterioration (PSD).

(1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 (1) through (4);

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(iii) WAC 173-400-200;

(iv) WAC 173-400-205;

(v) Allowable emission limits established under WAC 173-400-081 must also meet the criteria of 40 C.F.R. 52.21 (k) (1) and 52.21 (p) (1) through (4) (in effect on the date in WAC 173-400-025); and

(vi) The following subparts of 40 C.F.R. 52.21 (in effect on the date in WAC 173-400-025) are adopted. Exceptions are listed in (b) (i), (ii), (iii), and (iv) of this subsection:

Section	Title
40 C.F.R. 52.21 (a)(2)	Applicability Procedures.
40 C.F.R. 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 C.F.R. 52.21 (c)	Ambient air increments.
40 C.F.R. 52.21 (d)	Ambient air ceilings.
40 C.F.R. 52.21 (h)	Stack heights.
40 C.F.R. 52.21 (i)	Review of major stationary sources and major modifications - Source applicability and exemptions.
40 C.F.R. 52.21 (j)	Control technology review.
40 C.F.R. 52.21 (k)	Source impact analysis.
40 C.F.R. 52.21 (l)	Air quality models.
40 C.F.R. 52.21 (m)	Air quality analysis.
40 C.F.R. 52.21 (n)	Source information.
40 C.F.R. 52.21 (o)	Additional impact analysis.
40 C.F.R. 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - Additional requirements
40 C.F.R. 52.21 (r)	Source obligation.
40 C.F.R. 52.21 (v)	Innovative control technology.

Section	Title
40 C.F.R. 52.21 (w)	Permit rescission.
40 C.F.R. 52.21 (aa)	Actuals Plantwide Applicability Limitation.

(b) Exceptions to adopting 40 C.F.R. 52.21 by reference.

(i) Every use of the word "administrator" in 40 C.F.R. 52.21 means ecology except for the following:

(A) In 40 C.F.R. 52.21 (b) (17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 C.F.R. 52.21 (l) (2), air quality models, "administrator" means the EPA administrator.

(C) In 40 C.F.R. 52.21 (b) (43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 C.F.R. 52.21 (b) (48) (ii) (c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 C.F.R. 52.21 (b) (50) (i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 C.F.R. 52.21 (b) (37) related to the definition of re-powering, "administrator" means the EPA administrator.

(G) In 40 C.F.R. 52.21 (b) (51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 C.F.R. 52.21 (i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p) (1), (2), (3) and (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 C.F.R. 52.21:

~~(A) ((In 40 C.F.R. 52.21 (b) (1) (i) (a) and (b) (1) (iii) (h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.~~

~~(B) 40 C.F.R. 52.21 (b) (23) (i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.~~

~~(C) 40 C.F.R. 52.21 (c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.~~

~~(D)) In (a) (2) (iv) (c): "Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the projected actual emissions (as defined in paragraph (b) (41) of this section) and the baseline actual emissions (as defined in paragraphs (b) (48) (i) and (ii) of this section), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."~~

(B) In (a) (2) (iv) (d): "Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase between the potential to emit (as defined in paragraph (b) (4) of this section) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in paragraph (b) (48) (iii) of this section) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in paragraph (b) (23) of this section)."

(C) In (a)(2)(iv)(f): "Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the increase for each emissions unit, using the method specified in paragraphs (a)(2)(iv)(c) and (d) of this section as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant (as defined in paragraph (b)(23) of this section)."

(D) In 40 C.F.R. 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(E) 40 C.F.R. 52.21 (b)(23)(i) after the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(F) 40 C.F.R. 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption."

(G) 40 C.F.R. 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 C.F.R. 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

- (i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
 - (a) A description of the project;
 - (b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
 - (c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 C.F.R. 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.
- (ii) The owner or operator shall submit a copy of the information set out in paragraph 40 C.F.R. 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permitting authority before beginning actual construction.

- (iii) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 C.F.R. 52.21 (r) (6) (i) (b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit.
- (iv) The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 C.F.R. 52.21 (r) (6) (iii) setting out the unit's annual emissions during the calendar year that preceded submission of the report.
- (v) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 C.F.R. 52.21 (r) (6) (i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r) (6) (i) (c)), by a significant amount (as defined in paragraph 40 C.F.R. 52.21 (b) (23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 C.F.R. 52.21 (r) (6) (i) (c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:
 - (a) The name, address and telephone number of the major stationary source;
 - (b) The annual emissions as calculated pursuant to paragraph (r) (6) (iii) of this section; and
 - (c) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).
- (vi) A "reasonable possibility" under this subsection occurs when the owner or operator calculates the project to result in either:
 - (a) A projected actual emissions increase of at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or
 - (b) A projected actual emissions increase that, added to the amount of emissions excluded under the definition of projected actual emissions sums to at least fifty percent of the amount that is a "significant emissions increase," (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of (r) (6) (vi) (b) of this subsection, and not also within the meaning of (r) (6) (vi) (a) of this subsection, then the provisions of (r) (6) (vi) (ii) through (v) of this subsection do not apply to the project."

~~((E))~~ (H) 40 C.F.R. 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 C.F.R. 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 C.F.R. 70.4 (b)(3)(viii)."

~~((F))~~ (I) 40 C.F.R. 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

~~((G))~~ (J) 40 C.F.R. 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

~~((H))~~ (K) 40 C.F.R. 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

~~((I))~~ (L) 40 C.F.R. 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 C.F.R. 52.21 (aa)(14)(i) through (iii)."

~~((J))~~ (M) 40 C.F.R. 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) The following provisions in 40 C.F.R. 52.21 ~~((r)(2) is)~~ are not adopted: (a)(2)(iv)(g) and (r)(2).

[Statutory Authority: RCW 70.94.152, 70.94.331, 70.94.860. WSR 16-12-099 (Order 16-01), § 173-400-720, filed 5/31/16, effective 7/1/16. Statutory Authority: Chapter 70.94 RCW. WSR 12-24-027 (Order 11-10), § 173-400-720, filed 11/28/12, effective 12/29/12; WSR 11-17-037 (Order 11-04), § 173-400-720, filed 8/10/11, effective 9/10/11; WSR 11-06-060 (Order 09-01), § 173-400-720, filed 3/1/11, effective 4/1/11. Statutory Authority: RCW 70.94.395 and 70.94.331. WSR 07-11-039 (Order 06-03), § 173-400-720, filed 5/8/07, effective 6/8/07. Statutory Authority: RCW 70.94.152. WSR 05-03-033 (Order 03-07), § 173-400-720, filed 1/10/05, effective 2/10/05.]

OTS-4007.5

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-030 Adoption by reference. (1) This chapter adopts by reference California Code of Regulations (~~(7)~~) in the following titles:

(a) Title 13, sections 1900, 1956.8 (~~((g) and (h))~~), 1960.1, 1961, 1961.1 to (~~(1961.3)~~) 1961.4, 1962.2 to 1962.8, (~~(1962.3)~~) 1963, 1963.1 to 1963.5, 1965, 1968.2, 1968.5, 1969, 1971.1, 1971.5, 1976, 1978, 2035 to 2040, 2046, 2109, 2111 to (~~(2120, 2122 to)~~) 2133, 2135, ((2141)) 2137, 2139 to 2149, 2166, 2166.1, 2167, 2168, 2169, 2169.1 to 2169.8, 2170, 2235, 2423, 2485 and Appendix A to Article 2.1 in section 2112;

(b) Exception to adopting Title 13 by reference. The following sections are not adopted by reference:

(i) Section 1956.8 (a) (2) (F); and

(ii) Section 1962.4 (e) (2) (A) 3.a.i and ii; and

(c) Title 17, sections 95300 to 95307, 95311, and 95660 to 95663.

(2) Adoption or adoption by reference means the rule applies as if it was copied into this rule. California Code of Regulations (~~(mentioned in this rule are adopted as)~~) means those provisions as adopted in final regulatory orders by the California Air Resources Board as they exist on ((June 22, 2021)) September 7, 2022, or the adoption date in WAC 173-400-025(1), whichever is later.

(3) Copies of the relevant sections of California Code of Regulations adopted by reference in this chapter are available on ecology's website or by contacting:

Washington State Department of Ecology
Air Quality Program
300 Desmond Drive
Lacey, WA 98503
360-407-6800

(4) For purposes of applying the adopted sections of California Code of Regulations in Washington, unless the context requires otherwise:

(a) "California" means "Washington";

(b) "CARB," "ARB," or "air resources board" means "ecology"; and

(c) "Executive officer" means "ecology."

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-030, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-030, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-040 Definitions and abbreviations. The following definitions apply to the administration of this chapter. Any term that is not defined in this section must be as defined or described in California Code of Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662, as applicable. Definitions in California Code of

Regulations, Title 13, section 1900 or 1963, or Title 17, section 95662 will prevail if any discrepancy arises.

(1) "Authorized emergency vehicle" is defined as provided in RCW 46.04.040.

(2) "Ecology" means the department of ecology.

~~((2))~~ (3) "Gross vehicle weight rating" or "GVWR" is the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

~~((3))~~ (4) "Light-duty truck" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((4))~~ (5) "Medium-duty passenger vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((5))~~ (6) "Medium-duty vehicle" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((6))~~ (7) "Model year": Means the manufacturer's annual production period that includes January 1st of a calendar year, or if the manufacturer has no annual production period, the calendar year. The model year for a motor vehicle manufactured in two or more stages is the model year in which the chassis is completed, except for a vehicle subject to California Code of Regulations, Title 13, sections 1963 through 1963.5 (Advanced Clean Trucks): Is defined as provided in California Code of Regulations, Title 13, section 1963(c).

~~((7))~~ (8) "Manufacturer" means an independent low volume manufacturer, intermediate volume manufacturer, large volume manufacturer, or a small volume manufacturer defined as provided in California Code of Regulations, Title 13, section 1900.

~~((8))~~ (9) "Passenger car" is defined as provided in California Code of Regulations, Title 13, section 1900.

~~((9))~~ (10) "Transit agency" is defined as provided in California Code of Regulations, Title 13, section 2023.

(11) "Zero-emission vehicle" or "ZEV" is defined as provided in California Code of Regulations, Title 13, section 1962.2(a).

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-040, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-040, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-040, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-060 Exemptions. The following vehicles are not subject to this chapter:

- (1) Military tactical vehicles;
- (2) Vehicles sold for registration and use out-of-state;
- (3) Previously registered vehicles where the mileage at the time of sale exceeds 7,500 miles, provided that for vehicle dealers, the mileage at the time of sales is determined by the odometer statement at the time the vehicle dealer acquired the vehicle;
- (4) Vehicles that are only available for rent to a final destination outside of Washington;
- (5) Vehicles purchased by a nonresident prior to establishing residency in Washington, regardless of the mileage on the vehicle;

(6) Vehicles transferred by inheritance or as a result of divorce, dissolution or legal separation;

(7) Motor vehicles purchased for use by a local police department, county sheriff, fire district, or the Washington state patrol; and

(8) Motor vehicles acquired by a resident who is a member of the military stationed outside Washington pursuant to military orders.

(9) The following vehicles are exempt from WAC 173-423-081:

(a) Beginning on January 1, 2025, new diesel-fueled buses sold to a transit agency, provided that they comply with applicable motor vehicle emission standards for transit agency vehicles set out in this chapter;

(b) Authorized emergency vehicles, as defined in RCW 46.04.040.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-060, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 12-24-033 (Order 11-01), § 173-423-060, filed 11/28/12, effective 12/29/12; WSR 05-24-044, § 173-423-060, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-070 Low emission vehicles. (1) **Requirement to meet California vehicle emission standards.** All vehicles subject to this chapter must be certified to the standards adopted by reference in WAC 173-423-030 to be registered, leased, rented, licensed, or sold for use in Washington:

(a) Starting with model year 2009: Passenger car, light-duty truck, or medium-duty passenger vehicle; and

(b) Starting with model year 2025: Medium-duty vehicle.

(2) **Fleet average emissions - Nonmethane organic gas (NMOG) plus oxides of nitrogen exhaust.**

(a) Effective model year 2009 through 2014, except as provided in this subsection, each motor vehicle manufacturer's NMOG fleet average emissions from passenger cars and light-duty trucks delivered for sale in Washington must not exceed the fleet average NMOG exhaust emission requirement in California Code of Regulations, Title 13, section 1961(b). For the 2014 model year only, a manufacturer may comply with the fleet average NMOG + NOx values in (b) of this subsection in lieu of complying with the NMOG fleet average emissions in this subsection. A manufacturer must either comply with the NMOG + NOx fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet or comply with the NMOG fleet average requirements for both its PC/LDT1 fleet and its LDT2/MDPV fleet. A manufacturer must calculate its fleet average NMOG + NOx values using the applicable full useful life standards.

(b) (~~Starting with~~) For model year 2015 through 2025, a motor vehicle manufacturer must comply with the fleet average nonmethane organic gas plus oxides of nitrogen emission values as provided in California Code of Regulations, Title 13, section 1961.2(b).

(c) Emission credits and debits may be accrued and used as provided in California Code of Regulations, Title 13, sections 1961.2(c), 1961.4(d), and 1961.4(e).

(d) Starting with model year 2026, a motor vehicle manufacturer must comply with the fleet average nonmethane organic gas plus oxides of nitrogen emission values as provided in California Code of Regulations, Title 13, sections 1961.4(d) and 1961.4(e).

(e) Each manufacturer must submit a report to ecology by March 1st of the calendar year containing the fleet average emissions for the model year that ended most recently. The report must follow California Code of Regulations, Title 13, sections 1961.2 and 1961.4, and must be in the same format used to report the information to the California air resources board.

~~((e))~~ (f) If a report submitted by the manufacturer under ~~((e))~~ (e) of this subsection demonstrates that the manufacturer does not comply with the fleet average emission standard, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.2 (c) (3) and 1961.4 (e) (3);

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state;

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(3) Fleet average emissions - Greenhouse gas exhaust.

(a) Starting with model year 2009, a motor vehicle manufacturer must comply with the emission standards, fleet average greenhouse gas exhaust emission requirements, and other requirements provided in California Code of Regulations, Title 13, sections 1961.1 and 1961.3.

(b) Emissions credits and debits may be accrued and used in accordance with California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b).

(c) Each manufacturer must submit a report to ecology by March 1st that includes end-of-model year data calculating the fleet average greenhouse gas emissions for the model year that has just ended. The report must include the number of greenhouse gas vehicle test groups, delineated by model type, certified pursuant to California Code of Regulations, Title 13, sections 1961.1 and 1961.3. The report must follow the procedures in California Code of Regulations, Title 13, sections 1961.1 and 1961.3 and must be in the same format used to report this information to the California air resources board.

(d) If the report submitted by the manufacturer under this subsection demonstrates that the manufacturer does not comply with the fleet average emission standards, the manufacturer must submit to ecology within 60 days a fleet average enforcement report. The fleet average enforcement report must:

(i) Describe how the manufacturer intends to equalize any accrued debits, as required in California Code of Regulations, Title 13, sections 1961.1(b) and 1961.3(b), as appropriate.

(ii) Identify all vehicle models delivered for sale in Washington, their corresponding certification standards, and the percentage of each model delivered for sale in Washington and California in relation to total fleet sales in the respective state.

(iii) Describe how the manufacturer plans to achieve compliance with the fleet average in future model years.

(4) Manufacturer delivery reporting requirements.

(a) The manufacturer must submit to ecology one copy of the California executive order and certificate of conformity for certification of new motor vehicles for each engine family to be sold in Washington within 30 days of ecology's request. If these reports are available electronically, the manufacturer must send the record in an electronic format acceptable to ecology.

(b) Commencing with the 2009 model year and prior to the beginning of each model year, upon request, each manufacturer must submit to ecology a list of all models of medium-duty vehicles and medium-duty passenger vehicles that will be delivered to Washington dealers.

(c) Upon request, each manufacturer must report to ecology the vehicle identification numbers (VIN) of each passenger car, light-duty truck, medium-duty passenger vehicle, and medium-duty vehicle delivered to each Washington dealer that is not certified to California emission standards.

(d) For the purposes of determining compliance with this chapter, ecology may require a vehicle manufacturer to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter, including all certification materials submitted to the California air resources board.

(5) Warranty requirements.

(a) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must provide, to the ultimate purchaser and each subsequent purchaser, a warranty that complies with the requirements in California Code of Regulations, Title 13, sections 2035 through 2038, 2040, and 2046.

(b) For all 2009 and subsequent model year vehicles subject to the provisions of this chapter, each manufacturer must include the emission control system warranty statement that complies with the requirements in California Code of Regulations, Title 13, section 2039. Manufacturers may modify this statement as necessary to inform Washington vehicle owners of the applicability of the warranty. The manufacturer must provide a telephone number appropriate for Washington residents.

(c) All manufacturers must submit to ecology failure of emission-related components reports as defined in California Code of Regulations, Title 13, section 2144 for vehicles subject to this chapter. For purposes of compliance with this requirement, manufacturers may submit copies of the failure of emission-related components reports that are submitted to the California air resources board, in lieu of submitting reports for vehicles subject to this chapter. Manufacturers may discontinue submitting these reports if notified by ecology.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-070, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 19-02-056 (Order 18-11), § 173-423-070, filed 12/27/18, effective 1/27/19; WSR 16-12-099 (Order 16-01), § 173-423-070, filed 5/31/16, effective 7/1/16; WSR 12-24-033 (Order 11-01), § 173-423-070, filed 11/28/12, effective 12/29/12. Statutory Authority: RCW 70.120A.010 and 70.120A.050. WSR 09-03-077 (Order 08-16), § 173-423-070, filed 1/15/09, effective 2/15/09. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-070, filed 11/30/05, effective 12/31/05.]

AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-075 Zero-emission vehicle standards. (1) Requirement to meet California vehicle emission standards - Passenger cars, light-duty trucks, and medium-duty vehicles.

(a) Applicability.

(i) Starting with model year 2025, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1962.2 and 1962.3, adopted by reference in WAC 173-423-030((-)); and

(ii) Starting with model year 2026, a manufacturer's sales fleet of passenger cars, light-duty trucks, and medium-duty vehicles delivered for sale or lease in Washington must comply with the following sections of the California Code of Regulations, Title 13, adopted by reference in WAC 173-423-030:

"(G) 1962.4. Zero-Emission Vehicle Standards for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(H) 1962.5. Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles;

(I) 1962.6. Battery Labeling Requirements;

(J) 1962.7. In-Use Compliance, Corrective Action and Recall Protocols for Zero Emission for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;

(K) 1962.8. Warranty Requirements for Zero Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks;"

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, sections ~~(1962.3)~~ 1962.2 and 1962.4.

(c) ZEV credits and values.

(i) ZEV credits may ~~((only))~~ be earned ~~((by model year 2025 and subsequent vehicles))~~ for ZEV sales of model year 2023, 2024, and 2025 vehicles, as allowed by California Code of Regulations, Title 13, section 1962.2 (Advanced Clean Cars I).

(ii) ZEV values may be earned as allowed by California Code of Regulations, Title 13, section 1962.4 (Advanced Clean Cars II).

(2) Requirement to meet California vehicle emission standards - On-road vehicles over 8,500 GVWR. (California advanced clean trucks regulation)

(a) Applicability. Starting with model year 2025, any manufacturer that certifies on-road vehicles over 8,500 pounds GVWR for sale or lease in Washington must comply with California Code of Regulations, Title 13, sections 1963 through 1963.5, adopted by reference in WAC 173-423-030.

(i) Section 1963. Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements;

(ii) Section 1963.1. Advanced Clean Trucks Deficits;

(iii) Section 1963.2. Advanced Clean Trucks Credit Generation, Banking, and Trading;

(iv) Section 1963.3. Advanced Clean Trucks Compliance Determination;

(v) Section 1963.4. Advanced Clean Trucks Reporting and Record-keeping; and

(vi) Section 1963.5. Advanced Clean Trucks Enforcement.

(b) Reporting requirements. Beginning with model year 2025, a manufacturer must submit a report to ecology for each on-road vehicle produced and delivered for sale in Washington for each model year as required by California Code of Regulations, Title 13, section 1963.4.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-075, filed 11/29/21, effective 12/30/21.]

NEW SECTION

WAC 173-423-081 Medium- and heavy-duty vehicle emission standards. (1) Requirements to meet California vehicle emission standards. These standards establish criteria and procedures for the manufacture, testing, distribution and sale of new on-highway medium- and heavy-duty trucks and engines in Washington as adopted by reference in WAC 173-423-030.

(2) Applicability.

(a) Starting with model year 2026, on-highway heavy-duty engines, trucks and trailers delivered for sale or sold in Washington, except as provided in WAC 173-423-060, must comply with California Code of Regulations, Titles 13 and 17, adopted by reference in WAC 173-423-030.

(b) Requirement to meet vehicle emission standards, testing procedures, warranty, reporting, enforcement, recall and other California provisions adopted by reference.

(i) Starting with the 2026 engine model year and for each engine model year thereafter no person may deliver for sale, or sell, in Washington any new on-highway heavy-duty engine unless the engine is certified to the California emission standards as required under WAC 173-423-030, except as provided in WAC 173-423-060 Exemptions.

(ii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 13 adopted by reference in WAC 173-423-030:

(A) Section 1956.8 (a) - (f) and (i) Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles. Except that California Code of Regulations, Title 13, Section 1956.8 (a) (2) (F) "Transit Agency Diesel-Fueled Bus Engine Exemption Request" must be disregarded and is not incorporated by reference;

(B) Section 1971.1 On-Board Diagnostic System Requirements - 2010 and Subsequent Model-Year Heavy-Duty Engines;

(C) Section 2036 Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers;

(D) Section 2121 Penalties;

(E) Section 2137 Vehicle, Engine, and Trailer Selection;

(F) Section 2139 Testing;

(G) Section 2139.5 CARB Authority to Test for Heavy-Duty In-Use Compliance;

(H) Section 2140 Notification and Use of Test Results;

(I) Section 2166 General Provisions;

(J) Section 2166.1 Definitions;

(K) Section 2167 Required Recall and Corrective Action for Failures of Exhaust After Treatment Devices, On-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors;

(L) Section 2168 Required Corrective Action and Recall for Emission-Related Component Failures;

(M) Section 2169 Required Recall or Corrective Action Plan;

(N) Section 2169.1 Approval and Implementation of Corrective Action Plan;

(O) Section 2169.2 Notification of Owners;

(P) Section 2169.3 Repair Label;

(Q) Section 2169.4 Proof of Correction Certificate;

(R) Section 2169.5 Preliminary Tests;

(S) Section 2169.6 Communication with Repair Personnel;

(T) Section 2169.7 Recordkeeping and Reporting Requirements;

(U) Section 2169.8 Extension of Time;

(V) Section 2423(n) Exhaust Emission Standards and Test Procedures - Off-Road Compression-Ignition Engines; and

(W) Section 2485 Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling.

(iii) Each manufacturer of new 2026 and subsequent model year on-highway medium- and heavy-duty engines and trucks and trailers must comply with each of the following applicable standards specified in California Code of Regulations, Title 17 adopted by reference in WAC 173-423-030:

(A) Section 95660 Purpose;

(B) Section 95661 Applicability;

(C) Section 95662 Definitions; and

(D) Section 95663 Greenhouse Gas Exhaust Emission Standards and Test Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles.

(3) Recalls. Any order issued or enforcement action taken by the California Air Resources Board to correct noncompliance with any section of California Code of Regulations, Title 13, that results in the recall of any vehicle as required under California Code of Regulations, Title 13, sections 2109 - 2135, for a vehicle subject to the requirements adopted by reference in WAC 173-423-030, will be prima facie evidence concerning vehicles registered in Washington. If the manufacturer can demonstrate to ecology's satisfaction that the order or action is not applicable to vehicles registered in Washington, ecology will not pursue a recall of vehicles registered in Washington.

(4) Inspections and Information Requests.

(a) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this section. Ecology inspections will occur during regular business hours on public property or on any premises owned, operated, or used by any truck dealer or truck rental agency for the purposes of determining compliance with the requirements of this division.

(b) For the purposes of determining compliance with this section, ecology may require any truck dealer or truck rental agency to submit to ecology any documentation that ecology deems necessary to the ef-

fective administration and enforcement of this section. This provision does not require creation of new records.

[]

NEW SECTION

WAC 173-423-083 Fleet reporting requirement. (1) Applicability.

(a) Except as provided in subsection (2) of this section, the following entities must submit to ecology all of the information in subsection (3) of this section. As used in this section, all operations conducted by entities under common ownership or control must be aggregated and considered to be one entity to determine fleet reporting applicability.

(i) Any entity that has gross annual revenues greater than \$50,000,000 in the United States for the 2022 tax year, including revenues from all subsidiaries, subdivisions, or branches, and that operated a facility in Washington in 2022 that had one or more vehicles over 8,500 pounds GVWR that operated in Washington in 2022.

(ii) Any fleet owner or operator that owns or operates a facility in Washington and that, in the 2022 calendar year, owned or operated five or more vehicles with a GVWR greater than 8,500 pounds.

(iii) Any broker or entity that, in the 2022 calendar year, dispatched five or more vehicles with a GVWR greater than 8,500 pounds into or throughout Washington.

(iv) Any Washington government agency, including state and local government, that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(v) Any federal government agency that operated five or more vehicles over 8,500 pounds GVWR in Washington in 2022.

(b) The following vehicles are exempt from the reporting requirements in this section:

- (i) Vehicles awaiting sale; and
 - (ii) Authorized emergency vehicles.
- (2) General requirements.

(a) All entities required to report under this rule must report information to ecology no later than September 30, 2023.

(b) Subsidiaries, parent companies, or joint ventures may independently report information for each vehicle over 8,500 pounds. Alternatively, the corporate parent or joint venture business may report on behalf of its subsidiaries, as long as the information for all vehicles over 8,500 pounds is reported for each subsidiary, corporate parent, and joint venture.

(c) An entity subject to this subsection and that has brokerage or motor carrier authority, or both, must submit a report, even if no vehicles are owned by the entity.

(d) Information pertaining to vehicles that are under common ownership or control may be submitted separately by each fleet owner.

(e) Entities subject to this subsection may report vehicle data as the fleet was comprised on any date of the entity's choosing, so long as that date falls between January 1, 2022, and December 31, 2022.

(3) Fleet reporting requirement. An entity required to report under this section must report the information according to the requirements of each provision of this section. The reporting must include

information for each and every operation under common ownership or control.

(a) General information.

(i) Name (i.e., if a business, the registered business name) and all business names that the entity does business as (i.e., all "dba" or "doing business as" names);

(ii) Mailing address including street name or P.O. box, city, state, and zip code;

(iii) Name of the responsible official;

(iv) Responsible official's email address;

(v) Responsible official's phone number;

(vi) Name of corporate parent or governing body, as applicable;

(vii) Federal taxpayer identification number of corporate parent or other entities with which the reporting entity has vehicles under common or control;

(viii) For a government agency, the jurisdiction (federal, state, or local); federal taxpayer identification number; primary six-digit North American Industry Classification System code;

(ix) For a nongovernmental entity, the total annual revenue for the entity in the United States for 2022;

(x) Broker authority under the Federal Motor Carrier Safety Administration;

(xi) The operating authority numbers, including motor carrier identification number, United States Department of Transportation number, and International Registration Plan number;

(xii) The number of entities with whom the reporting entity had a contract to deliver items or to perform work in Washington using vehicles over 8,500 pounds GVWR in 2022;

(xiii) The estimated number of subhaulers, vehicles operated by subhaulers, and the number of vehicles operated by subhaulers that operated under the reporting entity's motor carrier authority; and

(xiv) The number of vehicles with a GVWR over 8,500 pounds the reporting entity owned and operated in Washington in 2022 that do not have a vehicle home base in Washington.

(b) Vehicle home base. An entity required to report under this section must report general information about the vehicle home base. Vehicles that accrue a majority of their annual miles in Washington but are not assigned to a particular location in Washington must be reported as part of the entity's headquarters or the location where the vehicles' operation is managed. The entity must report for each vehicle home base:

(i) Facility address including street name, city, state, and zip code;

(ii) Facility type category, using one of the following categories:

(A) Administrative/office building;

(B) Distribution center/warehouse;

(C) Hotel/motel/resort;

(D) Manufacturer/factory/plant;

(E) Medical/hospital/care;

(F) Multibuilding campus/base;

(G) Restaurant;

(H) Service center;

(I) Store;

(J) Truck/equipment yard; and

(K) Any other facility type;

(iii) Name of responsible official;

- (iv) Responsible official's email address;
 - (v) Whether the facility is owned or leased by the entity;
 - (vi) What type of fueling infrastructure is installed at the facility;
 - (vii) Whether the refueling infrastructure at the facility was initially installed on or after January 1, 2010; and
 - (viii) The types of trailers the reporting entity pulls, if it has tractors assigned or domiciled at this facility.
- (c) For each vehicle home base, an entity may report the information grouped by vehicle body type, and weight class bins and fuel type. An entity may complete responses for each individual vehicle and include the vehicle's body type, weight class bin, and fuel type. If applicable, an entity must separately report vehicles dispatched under their brokerage authority. When responding, each vehicle must only be counted once for each response. An entity must report:
- (i) Number of vehicles in each vehicle group;
 - (ii) Model year of the vehicle and engine for each reported vehicle;
 - (iii) The percent of the vehicles in each vehicle group with operating characteristics including, but not limited to: Daily mileage, usage patterns, refueling, trailer towing, and other such characteristics as specified by ecology. The term "usage pattern" shall include:
 - (A) Average number of trips per day;
 - (B) Typical destination points for vehicles within each group;
 - (C) Locations where trucks are parked for two hours or more per day, if different from the vehicle home base;
 - (iv) The average annual mileage for a typical vehicle in this vehicle group;
 - (v) The average length of time a typical vehicle in this vehicle group is retained by the reporting entity after acquisition;
 - (vi) Whether the reporting entity is the fleet owner for this group of vehicles, or if they are dispatched under the reporting entity's brokerage authority; and
 - (vii) The start and end date of the analysis period selected by the reporting entity as required under (d) of this subsection.
- (d) An entity must choose a period of time, for example annual or quarterly data averaged for work days during the period selected to determine responses. For example, if an entity selects annual data to determine vehicle daily mileage, the entity must average the annual mileage accrued based on the number of work days that year.
- (i) A shorter analysis period may be used if the reporting entity deems it more representative of periods of high vehicle utilization when answering questions about typical daily operation. For example, if a reporting entity with seasonal workload fluctuations determines that a week or month during the busy season is representative, average the data records for that week or month when determining a response.
 - (ii) If an alternative analysis period is used, the reporting entity must be prepared to describe their reasoning at the request of ecology.
- (e) For information reported for a vehicle group at one location, a reporting entity may repeat that information for the same vehicle group at another vehicle home base if the reporting entity determines that the operation at the second location is substantially similar to that at the first location.
- (f) A broker must provide information about vehicle usage that is dispatched under contract, such as if a broker hires a truck to move a load, only the miles driven under that contract are required for the

response. If known, the broker may voluntarily report information about the miles driven outside the contract.

(4) Fleet reporting recordkeeping.

(a) An entity required to report must maintain all of the following records related to the reporting for five years after the reporting deadline:

(i) For owned on-road vehicles, mileage records and dates from records, such as maintenance logs, vehicle logs, or odometer readings, or other records with the information that the reporting entity used to prepare the information the entity submitted;

(ii) For on-road vehicles not owned, but dispatched by the entity, dispatch records and dates, contracts, or other records with the information that the reporting entity used to prepare the information the entity submitted;

(iii) Vehicle registration for each owned vehicle operated in Washington; and

(iv) Contracts with entities, or contracts with subhauliers, or other records with the information that the reporting entity used to prepare the information the entity submitted.

(b) An entity subject to this section must respond to requests for clarification of reported information within 14 days of receiving the request from ecology.

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AMENDATORY SECTION (Amending WSR 21-24-059, filed 11/29/21, effective 12/30/21)

WAC 173-423-130 (~~(Surveillance-)~~) Inspections and information requests. (1) Ecology may inspect new and used motor vehicles and related records for the purposes of determining compliance with the requirements of this chapter. Ecology inspections must occur during regular business hours and on any premises owned, operated or used by any dealer or rental car agency.

(2) For the purposes of determining compliance with this chapter, ecology may require a vehicle dealer or rental car agency to submit documentation ecology deems necessary to the effective administration and enforcement of this chapter. This provision does not require creation of new records.

[Statutory Authority: Chapter 173-423 WAC, chapter 70A.30 RCW, chapter 173-400 WAC, chapter 70A.15 RCW. WSR 21-24-059 (Order 21-04), § 173-423-130, filed 11/29/21, effective 12/30/21. Statutory Authority: RCW 70.120A.010. WSR 05-24-044, § 173-423-130, filed 11/30/05, effective 12/31/05.]

WSR 23-01-110
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2022-02—Filed December 19, 2022, 3:19 p.m., effective January 19, 2023]

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

Purpose: Chapter 263, Laws of 2022, amends state law related to health carrier coverage of emergency services, the Balance Billing Protection Act (BBPA), and network access provisions for services subject to the balance billing prohibition under the BBPA. Rule making is necessary to revise the independent review organization rule at chapter 284-43A WAC, BBPA rules at chapter 284-43B WAC, and the office of the insurance commissioner network access rules at chapter 284-170 WAC to be consistent with the new law. The rules will facilitate implementation of the law changes by ensuring that all affected entities understand their rights and obligations under the new law.

Citation of Rules Affected by this Order: New WAC 284-43B-015, 284-43B-032, 284-43B-037, 284-43B-095, 284-43B-100 and 284-170-220; repealing WAC 284-43B-080; and amending WAC 284-43A-010, 284-43B-010, 284-43B-020, 284-43B-030, 284-43B-035, 284-43B-040, 284-43B-050, 284-43B-060, 284-43B-070, 284-43B-085, 284-43B-090, 284-170-200, 284-170-210, 284-170-280, and 284-170-285.

Statutory Authority for Adoption: RCW 48.43.820, 48.49.180, 48.49.110, 48.02.060.

Adopted under notice filed as WSR 22-21-127 on October 18, 2022.

Changes Other than Editing from Proposed to Adopted Version: In WAC 284-43B-020, references to "emergency behavioral health services facilities" were corrected to read "emergency behavioral health services providers" to be consistent with the term defined in RCW 48.43.005.

In WAC 284-43B-050 (2)(b)(ii), the term "emergency behavioral health services provider" is corrected to read "behavioral health emergency services provider."

The arbitration initiation request form in WAC 284-43B-085 Appendix A was modified to remove reference to attaching separate sheets. This revision makes the form in rule consistent with the electronic submission requirement in WAC 284-43B-035(1).

In WAC 284-170-210 (2)(b)(iii), the semicolon at the end of that subsection was changed to a period to correct punctuation.

In WAC 284-170-210(3), the "alternate access delivery request" reference is corrected to read "alternate access delivery system."

A final cost-benefit analysis is available by contacting Rules Coordinator, P.O. Box 40255, Olympia, WA 98504, phone 360-725-7171, fax 360-586-3109, email RulesCoordinator@oic.wa.gov, website www.insurance.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 6, Amended 15, Repealed 1.

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

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

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

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

Date Adopted: December 19, 2022.

Mike Kreidler
Insurance Commissioner

OTS-4112.1

AMENDATORY SECTION (Amending WSR 16-23-168, filed 11/23/16, effective 1/1/17)

WAC 284-43A-010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; (~~(e)~~)

(e) A carrier's denial of an application for coverage; or

(f) Any adverse determination made by a carrier under RCW 48.49.020, 48.49.030, or sections 2799A-1 or 2799A-2 of the Public Health Service Act (42 U.S.C. Sec. 300gg-111 or 300gg-112) and federal regulations implementing those provisions of P.L. 116-260. Examples of such determinations include, but are not limited to:

(i) Calculation of enrollee cost-sharing;

(ii) Application of consumer cost-sharing to an enrollee's deductible and maximum out-of-pocket; and

(iii) Determination of whether a claim is subject to the Balance Billing Protection Act.

(2) "Appellant" means an applicant or a person covered as an enrollee, subscriber, policyholder, participant, or beneficiary of an individual or group health plan, and when designated, their representative, as defined in WAC 284-43-3010. Consistent with the requirements of WAC 284-43-3170, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

(3) "Applicant" means a person or entity seeking to become a Washington certified independent review organization (IRO).

(4) "Attending provider" includes "treating provider" or "ordering provider" as used in WAC 284-43-4040 and 284-43-4060.

(5) "Carrier" or "health carrier" has the same meaning in this chapter as in WAC 284-43-0160(14).

(6) "Case" means a dispute relating to a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for health care service for an enrollee, which has been referred to a specific IRO by the insurance commissioner under RCW 48.43.535.

(7) "Clinical peer" means a physician or other health professional who holds an unrestricted license or certification and is in the same or similar specialty as typically manages the medical condition, procedures, or treatment under review. Generally, as a peer in a similar specialty, the individual must be in the same profession, i.e., the same licensure category, as the attending provider. In a profession that has organized, board-certified specialties, a clinical peer generally will be in the same formal specialty.

(8) "Clinical reviewer" means a medical reviewer, as defined in this section.

(9) "Conflict of interest" means violation of any provision of WAC 284-43A-050 including, but not limited to, material familial, professional and financial affiliations.

(10) "Contract specialist" means a reviewer who deals with interpretation of health plan coverage provisions. If a clinical reviewer is also interpreting health plan coverage and contract provisions, that reviewer shall have the qualifications required of a contract specialist and clinical reviewer.

(11) "Commissioner" means the Washington state insurance commissioner.

(12) "Enrollee" or "covered person" means an individual covered by a health plan including a subscriber, a policyholder, or beneficiary of a group plan, as defined in WAC 284-43-0160(5); means an "appellant" as defined in WAC 284-43-3010; and also means a person lawfully acting on behalf of the enrollee including, but not limited to, a parent or guardian.

(13) "Evidence-based standard" means the conscientious, explicit, and judicious use of the current best evidence based on the overall systematic review of the research in making decisions about the care of individual patients.

(14) "Health care provider" or "provider" as used in WAC 284-43-0160 (13) (a) and (b), means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(15) "Independent review" means the process of review and determination of a case referred to an IRO under RCW 48.43.535.

(16) "Independent review organization" or "IRO" means an entity certified by the commissioner under this chapter.

(17) "Material familial affiliation" means any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(18) "Material professional affiliation" includes, but is not limited to, any provider-patient relationship, any partnership or employment relationship, or a shareholder or similar ownership interest in a professional corporation.

(19) "Material financial affiliation" means any financial interest including employment, contract or consultation which generates more than five percent of total annual revenue or total annual income of an IRO or an individual director, officer, executive or reviewer of the IRO. This includes a consulting relationship with a manufacturer regarding technology or research support for a specific product.

(20) "Medical reviewer" means a physician or other health care provider who is assigned to an external review case by a certified IRO, consistent with this chapter.

(21) "Medical, scientific, and cost-effectiveness evidence" means published evidence on results of clinical practice of any health profession which complies with one or more of the following requirements:

(a) Peer-reviewed scientific studies published in or accepted for publication by medical and mental health journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(b) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);

(c) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861 (t)(2) of the federal Social Security Act;

(d) The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information;

(e) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Healthcare Research and Quality, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Centers for Medicare and Medicaid Services, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services;

(f) Clinical practice guidelines that meet Institute of Medicine criteria; or

(g) In conjunction with other evidence, peer-reviewed abstracts accepted for presentation at major scientific or clinical meetings.

(22) "Referral" means receipt by an IRO of notification from the insurance commissioner or designee that a case has been assigned to that IRO under provisions of RCW 48.43.535.

(23) "Reviewer" or "expert reviewer" means a clinical reviewer or a contract specialist, as defined in this section.

[Statutory Authority: RCW 48.02.060, 48.43.535, and 48.43.537. WSR 16-23-168 (Matter No. R 2016-17), § 284-43A-010, filed 11/23/16, effective 1/1/17.]

OTS-4113.3

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-010 Definitions. (1) The definitions in RCW 48.43.005 apply throughout this chapter unless the context clearly requires otherwise, or the term is defined otherwise in subsection (2) of this section.

(2) The following definitions shall apply throughout this chapter:

(a) "Air ambulance service" has the same meaning as defined in RCW 48.43.005.

(b) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

~~((b))~~ (c) "Balance bill" means a bill sent to an enrollee by ((an out-of-network)) a nonparticipating provider ((or)), facility, behavioral health emergency services provider or air ambulance service provider for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of ((permitted)) cost-sharing allowed under WAC 284-43B-020.

~~((e))~~ (d) "Behavioral health emergency services provider" has the same meaning as defined in RCW 48.43.005.

(e) "De-identified" means, for the purposes of this rule, the removal of all information that can be used to identify the patient from whose medical record the health information was derived.

~~((d))~~ (f) "Emergency medical condition" ((means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder treatment attention to result in a condition (i) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part.

(e) "Emergency services" means a medical screening examination, as required under section 1867 of the Social Security Act (42 U.S.C. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition, and further medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the Social Security Act (42 U.S.C. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867 (e) (3) of the Social Security Act (42 U.S.C. 1395dd (e) (3)).

~~((f))~~ has the same meaning as defined in RCW 48.43.005.

(g) "Emergency services" has the same meaning as defined in RCW 48.43.005.

(h) "Facility" or "health care facility" means:

(i) With respect to the provision of emergency services, a hospital or freestanding emergency department licensed under chapter 70.41 RCW (including an "emergency department of a hospital" or "independent

freestanding emergency department" described in section 2799A-1(a) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(a) and 45 C.F.R. Sec. 149.30)) or a behavioral health emergency services provider; and

(ii) With respect to provision of nonemergency services, a hospital licensed under chapter 70.41 RCW, a hospital outpatient department, a critical access hospital or an ambulatory surgical facility licensed under chapter 70.230 RCW (including a "health care facility" described in section 2799A-1(b) of the Public Health Service Act (42 U.S.C. Sec. 300gg-111(b) and 45 C.F.R. Sec. 149.30)).

(i) "Hospital outpatient department" means an entity or site that provides outpatient services and:

(i) Is a provider-based facility under 42 C.F.R. Sec. 413.65;

(ii) Charges a hospital facility fee in billing associated with the receipt of outpatient services from the entity or site; or

(iii) Bills the consumer or their health plan under a hospital's national provider identifier or federal tax identification number.

~~((g))~~ (j) "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations. A single case reimbursement agreement between a provider or facility and a carrier used for the purpose described in WAC 284-170-200 constitutes a contract exclusively for purposes of this definition under the Balance Billing Protection Act and is limited to the services and parties to the agreement.

~~((h))~~ "Median in-network contracted rate for the same or similar service in the same or similar geographical area" means the median amount negotiated for an emergency or surgical or ancillary service for participation in the carrier's health plan network with in-network providers of emergency or surgical or ancillary services furnished in the same or similar geographic area. If there is more than one amount negotiated with the health plan's in-network providers for the emergency or surgical or ancillary service in the same or similar geographic area, the median in-network contracted rate is the median of these amounts. In determining the median described in the preceding sentence, the amount negotiated for each claim for the same or similar service with each in-network provider is treated as a separate amount (even if the same amount is paid to more than one provider or to the same provider for more than one claim). If no per-service amount has been negotiated with any in-network providers for a particular service, the median amount must be calculated based upon the service that is most similar to the service provided. For purposes of this subsection "median" means the middle number of a sorted list of reimbursement amounts negotiated with in-network providers with respect to a certain emergency or surgical or ancillary service, with each paid claim's negotiated reimbursement amount separately represented on the list, arranged in order from least to greatest. If there is an even number of items in the sorted list of negotiated reimbursement amounts, the median is found by taking the average of the two middle-most numbers.

~~(i))~~ (k) "Nonemergency health care services performed by nonparticipating providers at certain participating facilities" has the same meaning as defined in RCW 48.43.005.

(l) "Offer to pay," "carrier payment," or "payment notification" means a claim that has been adjudicated and paid by a carrier to ((an

~~out-of-network or)) a nonparticipating provider for emergency services or for ((surgical or ancillary services provided at an in-network facility)) nonemergency health care services performed by nonparticipating providers at certain participating facilities.~~

~~((j)) (m) "Out-of-network" or "nonparticipating" ((means a provider or facility that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees)) has the same meaning as defined in RCW 48.43.005.~~

~~((k)) (n) "Provider" means a person regulated under Title 18 RCW or chapter 70.127 RCW to practice health or health-related services or otherwise practicing health care services in this state consistent with state law, or an employee or agent of a person acting in the course and scope of his or her employment, that provides emergency services, or ((surgical or ancillary services at an in-network facility).~~

~~(l) "Surgical or ancillary services" means surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services)) none-emergency health care services at certain participating facilities.~~

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-010, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-010, filed 11/19/19, effective 12/20/19.]

NEW SECTION

WAC 284-43B-015 Coverage of emergency services. (1) Coverage of emergency services is governed by RCW 48.43.093. Emergency services, as defined in RCW 48.43.005, include services provided after an enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to medical, mental health or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant person, the health of a person or their unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(2) A carrier may require notification of stabilization or inpatient admission of an enrollee as provided in RCW 48.43.093. Regardless of such notification, payment and cost-sharing for poststabilization services provided by a nonparticipating facility, provider or behavioral health emergency services provider and dispute resolution related to those services are governed by RCW 48.49.040 and 48.49.160.

[]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-020 Balance billing prohibition and consumer cost-sharing. (1) If an enrollee receives any emergency services from ~~((an out-of-network))~~ a nonparticipating facility ~~((or))~~, provider, or be-

havioral health emergency services provider, any nonemergency ((surgical or ancillary services at an in-network facility from an out-of-network provider)) health care services performed by a nonparticipating provider at certain participating facilities, or any air ambulance services from a nonparticipating provider:

(a) The enrollee satisfies ~~((his or her))~~ their obligation to pay for the health care services if ~~((he or she pays))~~ they pay the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be ~~((determined using the carrier's median in-network contracted rate for the same or similar service in the same or similar geographical area))~~ calculated as if the total amount charged for the services were equal to:

(i) For emergency services other than services provided by emergency behavioral health services providers, for nonemergency health care services performed by a nonparticipating provider at certain participating facilities, and for air ambulance services, the lesser of the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140, or billed charges; and

(ii) For services provided by emergency behavioral health services providers, the qualifying payment amount, as determined in accordance with 45 C.F.R. Sec. 149.140. The carrier must provide an explanation of benefits to the enrollee and the ((out-of-network)) nonparticipating provider, facility, emergency behavioral health services provider or air ambulance provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, ~~((out-of-network))~~ nonparticipating provider, ((or out-of-network)) nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance provider and any agent, trustee, or assignee of the carrier, ~~((out-of-network))~~ nonparticipating provider, ((or out-of-network)) nonparticipating facility, nonparticipating emergency behavioral health services provider or nonparticipating air ambulance provider must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c) (i) For emergency services provided to an enrollee, the ~~((out-of-network))~~ nonparticipating provider ((or out-of-network)), nonparticipating facility, or nonparticipating emergency behavioral health services provider and any agent, trustee, or assignee of the ~~((out-of-network))~~ nonparticipating provider ((or out-of-network)), nonparticipating facility or nonparticipating behavioral health emergency services provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the provider's, facility's, or behavioral health emergency services provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest;

(ii) ~~((For emergency services provided to an enrollee in an out-of-network hospital located and licensed in Oregon or Idaho, the carrier must hold an enrollee harmless from balance billing; and~~

~~((iii))~~ For nonemergency ~~((surgical or ancillary services provided at an in-network facility))~~ health care services performed by nonparticipating providers at certain participating facilities, the ((out-of-network)) nonparticipating provider and any agent, trustee, or assignee of the ((out-of-network)) nonparticipating provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection.

tion. This does not impact the provider's ability to collect a past due balance for an applicable in-network cost-sharing amount with interest.

(d) For emergency services ~~((and)),~~ nonemergency ((surgical or ancillary services provided at an in-network facility)) health care services performed by nonparticipating providers at certain participating facilities and air ambulance services, the carrier must treat any cost-sharing amounts determined under (a) of this subsection paid or incurred by the enrollee for ~~((an out-of-network provider or facility's))~~ a nonparticipating provider's, facility's, behavioral health emergency services provider's or air ambulance provider's services in the same manner as cost-sharing for health care services provided by ~~((an in-network))~~ a participating provider ((or)), facility, behavioral health emergency services provider, or air ambulance services provider and must apply any cost-sharing amounts paid or incurred by the enrollee for such services toward the enrollee's deductible and maximum out-of-pocket payment obligation.

(e) If the enrollee pays ~~((an out-of-network))~~ a nonparticipating provider ((or out-of-network)), nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the ~~((provider or facility))~~ nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider must refund any amount in excess of the in-network cost-sharing amount to the enrollee within ~~((thirty))~~ 30 business days of the ~~((provider or facility's))~~ nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider's receipt of the enrollee's payment. Simple interest must be paid to the enrollee for any unrefunded payments at a rate of ~~((twelve))~~ 12 percent ~~((per annum))~~ beginning on the first calendar day after the ~~((thirty))~~ 30 business days.

(2) The carrier must make payments for health care services described in RCW 48.49.020, provided by ~~((an out-of-network provider or facility))~~ a nonparticipating provider, nonparticipating facility, nonparticipating behavioral health emergency services provider or nonparticipating air ambulance services provider directly to the provider or facility, rather than the enrollee.

(3) A health care provider ~~((or facility, or any of its agents, trustees or assignees may not require a patient at any time, for any procedure, service, or supply, to sign or execute by electronic means, any document that would attempt to avoid, waive, or alter any provision of this section)),~~ health care facility, behavioral health emergency services provider or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260. This prohibition supersedes any provision of sections 2799A-1 et seq. of the Public Health Service Act and federal regulations adopted to implement those sections of P.L. 116-260 that would authorize a provider or facility to ask a patient to consent to waive their balance billing protections.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-020, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-020, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-030 Out-of-network claim payment and placing a claim into dispute. For services described in RCW 48.49.020(1) (other than air ambulance services) provided prior to July 1, 2023, or a later date determined by the commissioner, and for services provided by a nonparticipating emergency behavioral health services provider if the federal government does not authorize use of the federal independent dispute resolution system for these disputes, the allowed amount paid to ((an out-of-network provider for health care services described under RCW 48.49.020)) a nonparticipating provider or facility for emergency services and nonemergency health care services performed by nonparticipating providers at certain participating facilities, shall be a commercially reasonable amount, based on payments for the same or similar services provided in the same or a similar geographic area.

(1) Within ((thirty)) 30 calendar days of receipt of a claim from ((an out-of-network)) a nonparticipating provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. Payment of an adjudicated claim shall be considered an offer to pay. The amount actually paid to ((an out-of-network)) a nonparticipating provider by a carrier may be reduced by the applicable consumer cost-sharing determined under WAC 284-43B-020 (1)(a). The date of receipt by the provider or facility of the carrier's offer to pay is five calendar days after a transmittal of the offer is mailed to the provider or facility, or the date of transmittal of an electronic notice of payment. The claim submitted by the ((out-of-network)) nonparticipating provider or facility to the carrier must include the following information:

- (a) Patient name;
- (b) Patient date of birth;
- (c) Provider name;
- (d) Provider location;
- (e) Place of service, including the name and address of the facility in which, or on whose behalf, the service that is the subject of the claim was provided;
- (f) Provider federal tax identification number;
- (g) Federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number;
- (h) Date of service;
- (i) Procedure code; and
- (j) Diagnosis code.

(2) If the ((out-of-network)) nonparticipating provider or facility wants to dispute the carrier's offer to pay, the provider or facility must notify the carrier no later than ((thirty)) 30 calendar days after receipt of the offer to pay or payment notification from the carrier. A carrier may not require a provider or facility to re-

ject or return payment of the adjudicated claim as a condition of putting the payment into dispute.

(3) If the (~~(out-of-network)~~) nonparticipating provider or facility disputes the carrier's offer to pay, the carrier and provider or facility have (~~(thirty)~~) 30 calendar days after the provider or facility receives the offer to pay to negotiate in good faith.

(4) If the carrier and the (~~(out-of-network)~~) nonparticipating provider or facility do not agree to a commercially reasonable payment amount within the (~~(thirty-calendar)~~) 30-calendar day period under subsection (3) of this section, and the carrier, (~~(out-of-network)~~) nonparticipating provider or (~~(out-of-network)~~) nonparticipating facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration, as provided in RCW 48.49.040.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-030, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-030, filed 11/19/19, effective 12/20/19.]

NEW SECTION

WAC 284-43B-032 Applicable dispute resolution system. (1) Effective for services provided on or after July 1, 2023, or a later date determined by the commissioner, services described in RCW 48.49.020(1) other than air ambulance services are subject to the independent dispute resolution process established in sections 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those sections of P.L. 116-260 (enacted December 27, 2020). Until July 1, 2023, or a later date determined by the commissioner, the arbitration process in this chapter governs the dispute resolution process for those services.

(2) Effective for services provided on or after July 1, 2023, or a later date determined by the commissioner, if the federal independent dispute resolution process is available to the state, behavioral emergency services provider services described in RCW 48.49.020(3) are subject to the independent dispute resolution process established in section 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those sections of P.L. 116-260 (enacted December 27, 2020). Until July 1, 2023, or a later date determined by the commissioner, or if the federal independent dispute resolution process is not available to the state for resolution of these disputes, the arbitration process in this chapter governs the dispute resolution process for those services.

(3) The office of the insurance commissioner must provide a minimum of four months advance notice of the date on which the dispute resolution process will transition to the federal independent dispute resolution process. The notice must be posted on the website of the office of the insurance commissioner.

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AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-035 Arbitration initiation and selection of arbitrator.

(1)(a) To initiate arbitration, the carrier, provider, or facility must provide written notification to the commissioner and the noninitiating party no later than (~~(ten)~~) 10 calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) using the arbitration initiation request form found in Appendix A of this rule. A request must be submitted electronically through the website of the office of the insurance commissioner. When multiple claims are addressed in a single arbitration proceeding, subsection (3) of this section governs calculation of the (~~(ten)~~) 10 calendar days. Each arbitration initiation request must be submitted to the commissioner individually and constitutes a distinct arbitration proceeding unless consolidation of requests is authorized by a court under chapter 7.04A RCW. The commissioner will assign a unique number or designation to each arbitration initiation request. The parties must include that designation in all communication related to that request. Any information submitted to the commissioner with the arbitration initiation request must be included in the notice to the noninitiating party under RCW 48.49.040. A provider or facility initiating arbitration must send the arbitration initiation request form to the email address appearing on the website established by the designated lead organization for administrative simplification in Washington state under (c) of this subsection. Any patient information submitted to the commissioner with an arbitration initiation request form must be de-identified to ensure that protected health information is not disclosed.

(b) The written notification to the commissioner must be made electronically and provide dates related to each of the time period limitations described in WAC 284-43B-030 (1) through (3) and subsection (1)(a) of this section. The commissioner's review of the arbitration initiation request form is limited to the information necessary to determine that the request has been timely submitted and is complete. The commissioner's review does not include a review of whether particular claims included in the request are subject to chapter 48.49 RCW or whether claims are appropriately bundled under subsection (3) of this section. A party seeking to challenge whether a claim is subject to chapter 48.49 RCW or whether claims are appropriately bundled may raise those issues during arbitration.

(c) Each carrier must provide the designated lead organization for administrative simplification in Washington state with the email address and telephone number of the carrier's designated contact for receipt of notices to initiate arbitration. The email address and phone number provided must be specific to the carrier staff responsible for receipt of notices or other actions related to arbitration proceedings. The initial submission of information to the designated lead organization must be made on or before November 10, 2020. The carrier must keep its contact information accurate and current by submitting updated contact information to the designated lead organization as directed by that organization.

(2) Within (~~(ten)~~) 10 business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must prohibit either party from sharing or making use of any confidential or proprietary information

acquired or used for purposes of one arbitration in any subsequent arbitration proceedings. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under RCW 48.49.040 or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

(3) If (~~(an out-of-network)~~) a nonparticipating provider or (out-of-network) nonparticipating facility chooses to address multiple claims in a single arbitration proceeding as provided in RCW 48.49.040, notification must be provided no later than (~~(ten)~~) 10 calendar days following completion of the period of good faith negotiation under WAC 284-43B-030(3) for the most recent claim that is to be addressed through the arbitration. All of the claims at issue must:

(a) Involve identical carrier and provider, provider group or facility parties. (A provider group may bundle claims billed using a common federal taxpayer identification number on behalf of the provider members of the group;) Items and services are billed by the same provider, provider group or facility if the items or services are billed with the same national provider identifier or tax identification number;

(b) (~~(Involve claims with the same or related current procedural terminology codes relevant to a particular procedure)~~) Involve the same or similar items and services. The services are considered to be the same or similar items or services if each is billed under the same service code, or a comparable code under a different procedural code system, such as current procedural terminology (CPT) codes with modifiers, if applicable, health care common procedure coding system (HCPCS) with modifiers, if applicable, or diagnosis-related group (DRG) codes with modifiers, if applicable; and

(c) Occur within (~~(a two-month)~~) the same 30 business day period of one another, such that the earliest claim that is the subject of the arbitration occurred no more than (~~(two months)~~) 30 business days prior to the latest claim that is the subject of the arbitration. For purposes of this subsection, a provider or facility claim occurs on the date the service is provided to a patient or, in the case of inpatient facility admissions, the date the admission ends.

(4) A notification submitted to the commissioner later than (~~(ten)~~) 10 calendar days following completion of the period of good faith negotiation will be considered untimely and will be rejected. Any revision to a previously timely submitted arbitration initiation request form must be submitted to the commissioner within the 10 calendar day period applicable to submission of the original request. A party that has submitted an untimely notice is permanently foreclosed from seeking arbitration related to the claim or claims that were the subject of the untimely notice.

(5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The commissioner will use the email (~~(address)~~) addresses for the initiating party and the noninitiating party (provided) indicated on the arbitration initiation request form for all communication related to the arbitration request. The arbitrator selection process must be completed within (~~(twenty)~~) 20 calendar days of receipt of the original list of arbitrators from the commissioner, as follows:

(a) If the parties are unable to agree on an arbitrator from the original list sent by the commissioner, they must notify the commissioner within five calendar days of receipt of the original list of arbitrators. The commissioner must send the parties a list of (~~(five~~

arbitrators)) two individual arbitrators and three arbitration entities within five calendar days of receipt of notice from the parties under this subsection. Each party is responsible for reviewing the list of five arbitrators and arbitration entities and notifying the commissioner and the other party within three calendar days of receipt of the list:

(i) Whether they are taking the opportunity to veto up to two of the five arbitrators or arbitration entities on this list, and if so, which arbitrators or arbitration entities have been vetoed; and

(ii) If there is a conflict of interest as described in subsection (6) of this section with any of the arbitrators or arbitration entities on the list, to avoid the commissioner assigning an arbitrator or arbitration entity with a conflict of interest to an arbitration.

(b) If, after the opportunity to veto up to two of the five named arbitrators or arbitration entities on the list of five arbitrators and arbitration entities sent by the commissioner to the parties, more than one arbitrator or arbitration entity remains on the list, the parties must notify the commissioner within five calendar days of receipt of the list of five arbitrators or arbitration entities. The commissioner will choose the arbitrator from among the remaining arbitrators on the list. If a party fails to timely provide the commissioner with notice of their veto, the commissioner will choose the arbitrator from among the remaining arbitrators or arbitration entities on the list.

(6) Before accepting any appointment, an arbitrator shall ensure that there is no conflict of interest that would adversely impact the arbitrator's independence and impartiality in rendering a decision in the arbitration. A conflict of interest includes (a) current or recent ownership or employment of the arbitrator or a close family member by any health carrier; (b) serves as or was employed by a physician, health care provider, or a health care facility; (c) has a material professional, familial, or financial conflict of interest with a party to the arbitration to which the arbitrator is assigned.

(7) For purposes of this subsection, the date of receipt of a list of arbitrators is the date of electronic transmittal of the list to the parties by the commissioner. The date of receipt of notice from the parties to the commissioner is the date of electronic transmittal of the notice to the commissioner by the parties.

(8) If a noninitiating party fails to timely respond without good cause to a notice initiating arbitration, the initiating party will choose the arbitrator.

~~(9) ((Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.~~

~~(10) If the parties settle the dispute before the arbitrator issues a decision, the parties must submit to the commissioner notice of the date of the settlement and whether the settlement includes an agreement for the provider to contract with the carrier as an in-network provider.~~

~~(11) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.~~

~~(12) The arbitrator must submit to the commissioner:~~

~~(a) Their decision; and~~

~~(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule.) Where a dispute resolution matter initiated under sections 2799A-1 and 2799A-2 of the Public Health Service Act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and federal regulations implementing those provisions of P.L. 116-260 (enacted December 27, 2020) results in a determination by a certified independent dispute resolution entity that such process does not apply to the dispute or to portions thereof, RCW 48.49.040 (3)(b) governs initiation of arbitration under this chapter.~~

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-035, filed 11/2/20, effective 12/3/20.]

NEW SECTION

WAC 284-43B-037 Arbitration proceedings. (1) For purposes of calculating the date that written submissions to the arbitrator under RCW 48.49.040 are due, final selection of the arbitrator occurs on the date that the commissioner sends by electronic transmittal the notice of selection to the arbitrator. The parties must be copied on such notice.

(2) Good cause for purposes of delay in written submissions to the arbitrator under RCW 48.49.040 includes a stipulation that the parties intend to complete settlement negotiations prior to making such submissions to the arbitrator.

(3) If the parties agree on an out-of-network rate for the services at issue after submitting an arbitration initiation request but before the arbitrator has made a decision, they must provide notice to the commissioner as provided in RCW 48.49.040(7).

(4) If an initiating party withdraws an arbitration initiation request at any point before the arbitrator has made a decision, the party must submit to the commissioner notice of the date of the withdrawal of the request, as soon as possible, but no later than three business days after the date of the withdrawal.

(5) Any enrollee or patient information submitted to the arbitrator in support of the final offer shall be de-identified to ensure that protected health information is not disclosed.

(6) The decision of the arbitrator is final and binding on the parties and is not subject to judicial review. The arbitrator must submit to the commissioner:

(a) Their decision, including an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision; and

(b) The information required in RCW 48.49.050 using the form found in Appendix B to this rule, or for arbitration proceedings under RCW 48.49.135, using the form found in Appendix C to this rule.

(7)(a) For the calendar year beginning January 1, 2023, arbitrators must charge a fixed fee for single claim proceedings within the range of \$200-\$650. If an arbitrator chooses to charge a different fixed fee for bundled claim proceedings, that fee must be within the range of \$268-\$800. Beginning January 1, 2024, and January 1st of each year thereafter, the arbitrator may adjust the fee range by the annual consumer price index-urban as determined annually by the United States Bureau of Labor Statistics.

(b) Expenses incurred during arbitration, including the arbitrator's expenses and fees, but not including attorneys' fees, must be divided equally among the parties to the arbitration. Arbitrator fees must be paid to the arbitrator by the parties within 30 calendar days of receipt of the arbitrator's decision by the parties.

(c) If the parties reach an agreement before the arbitrator makes their decision, the arbitrator fees must be paid by the parties within 30 calendar days of the date the settlement is reported to the commissioner as required under RCW 48.49.040.

(8) RCW 48.49.040(13) governs arbitration proceedings initiated under RCW 48.49.135. The determination of the rate to be paid to the out-of-network or nonparticipating provider must be accomplished through a single arbitration proceeding.

[]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-040 Determining whether an enrollee's health plan is subject to the requirements of the act. (1) To implement RCW ~~((48.49.030))~~ 48.49.170 carriers must make information regarding whether an enrollee's health plan is subject to the requirements of chapter 48.49 RCW or section 2799A-1 et seq. of the Public Health Service Act (42 U.S.C. Sec. 300gg-111 et seq.) and federal regulations implementing those provisions of P.L. 116-260 available to providers and facilities by:

(a) Using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Eligibility Benefit Response (271) transaction information through use of ~~((a))~~ the most appropriate standard message that is placed in a standard location within the 271 transaction; ~~((and))~~

(b) Beginning April 1, 2021, and until December 31, 2022, using the most current version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the X12 industry standard Remark Code N830 to indicate that the claim was processed in accordance with this state's balance billing rules;

(c) Beginning January 1, 2023, using the appropriate version of the Health Insurance Portability and Accountability Act (HIPAA) mandated X12 Health Care Claim Payment and Remittance Advice (835) transaction through compliant use of the applicable X12 industry standard Remark Code to indicate whether a claim was processed in accordance with this state's balance billing rules or the federal No Surprises Act.

(2) The designated lead organization for administrative simplification in Washington state:

(a) After consultation with carriers, providers and facilities through a new or an existing workgroup or committee, must post the language of the most appropriate standard message and the location within the 271 transaction in which the message is to be placed on its website on or before November 1, ~~((2019))~~ 2022;

(b) Must post on its website on or before December 1, 2020, instructions on compliant use of the X12 industry standard Remark Code N830 in the X12 Health Care Claim Payment and Remittance Advice (835) transaction; ~~((and))~~

(c) Must post on its website on or before December 1, 2022, instructions on compliant use of the appropriate X12 industry standard Remark code or codes as provided in subsection (1)(c) of this section; and

(d) Must post on its website on or before December 1, 2020, the information reported by carriers under WAC 284-43B-035(1).

(3) A link to the information referenced in subsection (2) of this section also must be posted on the website of the office of the insurance commissioner.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-040, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-040, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-050 Notice of consumer rights and transparency. (1)

The commissioner shall develop a standard template for a notice of consumer ~~((rights))~~ protections from balance billing under the Balance Billing Protection Act and the federal No Surprises Act (P.L. 116-260). The notice may be modified periodically, as determined necessary by the commissioner. The notice template will be posted on the public website of the office of the insurance commissioner.

(2) The standard template for the notice of consumer ~~((rights))~~ protections developed under ~~((the Balance Billing Protection Act))~~ subsection (1) of this section must be provided to consumers enrolled in any health plan issued in Washington state as follows:

(a) Carriers must:

(i) Include the notice in the carrier's communication to an enrollee, in electronic or any other format, that authorizes nonemergency ~~((surgical or ancillary services at an in-network facility))~~ services to be provided at facilities referenced in WAC 284-43B-010

(2)(h)(ii);

(ii) Include the notice in each explanation of benefits sent to an enrollee for items or services with respect to which the requirements of RCW 48.49.020 and WAC 284-43B-020 apply;

(iii) Post the notice on their website in a prominent and relevant location, such as in a location that addresses coverage of emergency services and prior authorization requirements for nonemergency ~~((surgical or ancillary services performed at in-network))~~ health care services performed by nonparticipating providers at certain participating facilities; and

~~((iii))~~ (iv) Provide the notice to any enrollee upon request.

(b) Health care facilities and providers must:

(i) For any facility or provider that is owned and operated independently from all other businesses and that has more than ~~((fifty))~~ 50 employees, upon confirming that a patient's health plan is subject to the Balance Billing Protection Act or the federal No Surprises Act (P.L. 116-260):

(A) Include the notice in any communication to a patient, in electronic or any other format related to scheduling of nonemergency ~~((surgical or ancillary services at a facility))~~ health care services performed by nonparticipating providers at certain participating fa-

ilities. Text messaging used as a reminder or follow-up after a patient has already received the full text of the notice under this subsection may provide the notice through a link to the provider's webpage that takes the patient directly to the notice. Telephone calls to patients following the patient's receipt of the full text of the notice under this subsection do not need to include the notice; and

(B) For facilities providing emergency (~~medical~~) services, including behavioral health emergency services providers, provide or mail the notice to a patient within (~~seventy-two~~) 72 hours following a patient's receipt of emergency (~~medical~~) services.

(ii) Post the notice on their website, if the provider, behavioral health emergency services provider or facility maintains a website, in a prominent and relevant location near the list of the carrier health plan provider networks with which the provider, behavioral health emergency services provider or facility is an in-network provider; (~~and~~)

(iii) If services were provided at a health care facility or in connection with a visit to a health care facility, provide the notice to patients no later than the date and time on which the provider or facility requests payment from the patient, or with respect to a patient from who the provider or facility does not request payment, no later than the date on which the provider or facility submits a claim to the carrier; and

(iv) Provide the notice upon request of a patient.

(3) The notice required in this section may be provided to a patient or an enrollee electronically if it includes the full text of the notice and if the patient or enrollee has affirmatively chosen to receive such communications from the carrier, provider, or facility electronically. Except as authorized in subsection (2)(b)(i)(A) of this section, the notice may not be provided through a hyperlink in an electronic communication.

(4) For claims processed on or after July 1, 2020, when processing a claim that is subject to the balance billing prohibition in RCW 48.49.020, the carrier must indicate on any form used by the carrier to notify enrollees of the amount the carrier has paid on the claim:

(a) Whether the claim is subject to the prohibition in the act; and

(b) The federal Center for Medicare and Medicaid Services individual national provider identifier number, and organizational national provider identifier number, if the provider works for an organization or is in a group practice that has an organization number.

(5) Carriers must ensure that notices provided under this subsection are inclusive for those patients who may have disabilities or limited-English proficiency, consistent with carriers' obligations under WAC 284-43-5940 through 284-43-5965. To assist in meeting this language access requirement, carriers may use translated versions of the notice of consumer protections from balance billing posted on the website of the office of the insurance commissioner.

(6) A facility, behavioral health emergency services provider or health care provider meets its obligation under RCW 48.49.070 or 48.49.080, to include a listing on its website of the carrier health plan provider networks in which the facility or health care provider participates by posting this information on its website for in-force contracts, and for newly executed contracts within (~~fourteen~~) 14 calendar days of receipt of the fully executed contract from a carrier. If the information is posted in advance of the effective date of

the contract, the date that network participation will begin must be indicated.

~~((6))~~ (7) Not less than ~~((thirty))~~ 30 days prior to executing a contract with a carrier~~((7))~~:

(a) (i) A hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or provider groups that have privileges to practice at the hospital, freestanding emergency department, behavioral health emergency services provider or ambulatory surgical facility ~~((or))~~;

(ii) A hospital, hospital outpatient department, critical access hospital or ambulatory surgical center must provide the carrier with a list of the nonemployed providers or provider groups that are contracted to provide ~~((surgical or ancillary services at the hospital or ambulatory surgical))~~ nonemergency health care services at the facility.

(b) The list must include the name of the provider or provider group, mailing address, federal tax identification number or numbers and contact information for the staff person responsible for the provider's or provider group's contracting. ~~((The hospital or ambulatory surgical facility))~~

(c) Any facility providing carriers information under this subsection must notify the carrier within ~~((thirty))~~ 30 days of a removal from or addition to the nonemployed provider list. ~~((A hospital or ambulatory surgical))~~ The facility also must provide an updated list of these providers within ~~((fourteen))~~ 14 calendar days of a written request for an updated list by a carrier.

~~((7) An in-network))~~ (8) A participating provider must submit accurate information to a carrier regarding the provider's network status in a timely manner, consistent with the terms of the contract between the provider and the carrier.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-050, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-050, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-060 Enforcement. (1)(a) If the commissioner has cause to believe that any health facility, behavioral health emergency services provider or provider has engaged in a pattern of unresolved violations of RCW 48.49.020 or 48.49.030, the commissioner may submit information to the department of health or the appropriate disciplining authority for action.

(b) In determining whether there is cause to believe that a health care provider, behavioral health emergency services provider or facility has engaged in a pattern of unresolved violations, the commissioner shall consider, but is not limited to, consideration of the following:

(i) Whether there is cause to believe that the health care provider, behavioral health emergency services provider or facility has committed two or more violations of RCW 48.49.020 or 48.49.030;

(ii) Whether the health care provider, behavioral health emergency services provider or facility has failed to submit claims to carri-

ers containing all of the elements required in WAC 284-43B-030(1) on multiple occasions, putting a consumer or consumers at risk of being billed for services to which the prohibition in RCW 48.49.020 applies;

(iii) Whether the health care provider, behavioral health emergency services provider or facility has been nonresponsive to questions or requests for information from the commissioner related to one or more complaints alleging a violation of RCW 48.49.020 or 48.49.030; and

(iv) Whether, subsequent to correction of previous violations, additional violations have occurred.

(c) Prior to submitting information to the department of health or the appropriate disciplining authority, the commissioner may provide the health care provider, behavioral health emergency services provider or facility with an opportunity to cure the alleged violations or explain why the actions in question did not violate RCW 48.49.020 or 48.49.030.

(2) In determining whether a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner shall consider, but is not limited to, consideration of the following:

(a) Whether a carrier has failed to timely respond to arbitration initiation request notifications from providers or facilities;

(b) Whether a carrier has failed to comply with the requirements of WAC 284-43-035 related to choosing an arbitrator or arbitration entity;

(c) Whether a carrier has met its obligation to maintain current and accurate carrier contact information related to initiation of arbitration proceedings under WAC 284-43-035;

(d) Whether a carrier has complied with the requirements of WAC 284-43-040;

(e) Whether a carrier has complied with the consumer notice requirements under WAC 284-43-050; and

(f) Whether a carrier has committed two or more violations of chapter 48.49 RCW or this chapter.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-060, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-060, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-070 Self-funded group health plan opt in. (1) A self-funded group health plan that elects to participate in RCW 48.49.020 through 48.49.040 and 48.49.160, shall provide notice to the commissioner of their election decision on a form prescribed by the commissioner. The completed form must include an attestation that the self-funded group health plan has elected to participate in and be bound by RCW 48.49.020 through 48.49.040, 48.49.160 and rules adopted to implement those sections of law. If the form is completed by the self-funded group health plan, the plan must inform any entity that administers the plan of their election to participate. The form will be posted on the commissioner's public website for use by self-funded group health plans.

(2) A self-funded group health plan election to participate is for a full year. The plan may elect to initiate its participation on January 1st of any year or in any year on the first day of the self-funded group health plan's plan year.

(3) A self-funded group health plan's election occurs on an annual basis. On its election form, the plan must indicate whether it chooses to affirmatively renew its election on an annual basis or whether it should be presumed to have renewed on an annual basis until the commissioner receives advance notice from the plan that it is terminating its election as of either December 31st of a calendar year or the last day of its plan year. Notices under this subsection must be submitted to the commissioner at least ((fifteen)) 15 days in advance of the effective date of the election to initiate participation and the effective date of the termination of participation.

(4) A self-funded plan operated by an out-of-state employer that has at least one employee who resides in Washington state may elect to participate in balance billing protections as provided in RCW 48.49.130 on behalf of their Washington state resident employees and dependents. If a self-funded group health plan established by Washington state employer has elected to participate in balance billing protections under RCW 48.49.130 and has employees that reside in other states, those employees are protected from balance billing when receiving care from a Washington state provider.

(5) Self-funded group health plan sponsors and their third party administrators may develop their own internal processes related to member notification, member appeals and other functions associated with their fiduciary duty to enrollees under the Employee Retirement Income Security Act of 1974 (ERISA).

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-070, filed 11/2/20, effective 12/3/20. Statutory Authority: RCW 48.02.060, 48.49.060, and 48.49.110. WSR 19-23-085, § 284-43B-070, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-085 Appendix A.



To be completed by OIC	OIC Tracking Number:

Balance Billing Protection Act Arbitration Initiation Request Form

Read the information on the back of the form. Submit completed form to: BBPA_Arbitration@oic.wa.gov

1. VERIFICATION: You must check all applicable boxes or this will be rejected.	
The patient's plan is regulated by the OIC or is a self-funded group health plan that has elected to participate in the BBPA (See information on back.) IF NOT, DO NOT SUBMIT.	
I have attached a copy of the notice of payment that shows the date(s) of payments and attest that the most recent date of payment was in the last 40 days. IF IT'S NOT, IT'S UNTIMELY. DO NOT SUBMIT.	
I have not attached anything that requires encryption or password protection.	
If this is a request for multiple claims, I have checked that all the claims involve the same carrier and provider/facility. IF NOT, YOU MUST SUBMIT INDIVIDUAL CLAIMS.	
The other party has been included as a courtesy copied recipient to this emailed request. Their email address has been verified and is the correct contact.	
2. DATE CHECK:	
(a) Date of most recent payment – must be within last 40 days or will be rejected.	(b) Date of completion of 30-day period of good faith negotiation
(c) Date of notice to non-initiating party (notice to initiate arbitration)	(d) Date(s) of service. If multiple claims, note the date of service for each claim
3. FILING INFORMATION:	
If the person filing the request to initiate arbitration is filing on behalf of a provider, facility or carrier, please provide the following information: Please indicate if you are a legal representative of the filing party.	
Name(s):	
Address:	Telephone: Email:
4. INITIATING PARTY:	
The requesting entity is a: <input type="checkbox"/> Health care facility *If checked, provide License type: <input type="checkbox"/> Health care provider *If checked, provide Specialty type: <input type="checkbox"/> Carrier/Third Party Administrator	
Name(s):	
Address:	Telephone: Email:
5. NON-INITIATING PARTY:	
The non-initiating party is a: <input type="checkbox"/> Carrier/third-party administrator <input type="checkbox"/> Health care <input type="checkbox"/> provider <input type="checkbox"/> facility	
Name:	
Address:	Telephone: Email:
6. DESCRIPTION OF HEALTH CARE SERVICES PROVIDED (including any applicable CPT codes):	
Description:	
7. ADDITIONAL INFORMATION: (if multiple claims, can attach on separate sheet)	
(a) Group/plan number(s):	
(b) Claim number(s):	
(c) Initiating party's final offer:	

Please review important information on the back of this form prior to submitting this request.

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1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with health insurance plans regulated by OIC and self-funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at <https://www.insurance.wa.gov/self-funded-group-health-plans> to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency, surgical or ancillary services at an in-network facility may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity, OIC will choose one and notify the parties, using the process outlined in WAC 284-43B-035(5). Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. The arbitrator also can require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC.

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To be completed by OIC	OIC Tracking Number:

Balance Billing Protection Act Arbitration Initiation Request Form

Read the information on the back of the form. Submit completed form to: BBPA_Arbitration@oic.wa.gov

1. VERIFICATION: You must check all applicable boxes or this will be rejected.	
<p>The patient's plan is regulated by the OIC or is a self-funded group health plan that has elected to participate in the BBPA (See information on back.) IF NOT, DO NOT SUBMIT.</p> <p>I have attached a copy of the notice of payment that shows the date(s) of payments and attest that the most recent date of payment was in the last 40 days. IF IT'S NOT, IT'S UNTIMELY. DO NOT SUBMIT.</p> <p>I have not attached anything that requires encryption or password protection.</p> <p>If this is a request for multiple claims, I have checked that all the claims involve the same carrier and provider/facility, all claims involve the same procedural code, or comparable code under a different procedural system, and all claims occur within the same 30 business day period. IF NOT, YOU MUST SUBMIT INDIVIDUAL CLAIMS.</p> <p>The other party has been included as a courtesy copied recipient to this emailed request. Their email address has been verified and is the correct contact.</p>	
2. DATE CHECK:	
(a) Date of most recent payment – <i>must be within last 40 days or will be rejected.</i>	(b) Date of completion of 30-day period of good faith negotiation
(c) Date of notice to non-initiating party (notice to initiate arbitration)	(d) Date(s) of service. If multiple claims, note the date of service for each claim
3. FILING INFORMATION:	
If the person filing the request to initiate arbitration is filing on behalf of a provider, facility or carrier, please provide the following information: Please indicate if you are a legal representative of the filing party.	
Name(s):	
Address:	Telephone: Email:
4. INITIATING PARTY:	
The requesting entity is a: <input type="checkbox"/> Health care facility *If checked, provide License type: <input type="checkbox"/> Health care provider *If checked, provide Specialty type: <input type="checkbox"/> Carrier/Third Party Administrator	
Name(s):	
Address:	Telephone: Email:
5. NON-INITIATING PARTY:	
The non-initiating party is a: <input type="checkbox"/> Carrier/third-party administrator <input type="checkbox"/> Health care <input type="checkbox"/> provider <input type="checkbox"/> facility	
Name:	
Address:	Telephone: Email:
6. DESCRIPTION OF HEALTH CARE SERVICES PROVIDED: (including any applicable CPT codes)	
Description:	
7. HEALTH CARE SERVICE PROVIDER INFORMATION:	
Performing provider name:	

Additional questions and important information on the back of this form, please review and complete prior to submitting this request.

7. HEALTH CARE SERVICE PROVIDER INFORMATION CONTINUED:
Facility where services were provided:
County where services were provided:
8. ADDITIONAL INFORMATION:
(a) Group/plan number(s):
(b) Claim number(s):
(c) Initiating party's final offer:

1. This form and any attachments submitted will become public records and are subject to public disclosure laws. Do not provide sensitive or confidential information that is not necessary for the OIC to assign the claim to arbitration (you will have the opportunity to submit relevant information during the arbitration). OIC may dispose of any documents filed that are not necessary to process a claim for arbitration. Personal health information (PHI) disclosed to OIC is not subject to public disclosure under RCW 48.02.068.

2. Only claim payments made in connection with (1) health insurance plans regulated by OIC; and (2) self-funded group health plans that have elected to participate in balance billing protections can use the arbitration process. Examples of health insurance plans that are not included are:

- Medicare and Medicaid
- Federal employee benefit plans

Please check the list of self-funded group health plans at <https://www.insurance.wa.gov/self-funded-group-health-plans> to determine whether a self-funded group health plan has elected to participate in balance billing protections for their members.

3. An out-of-network provider or facility providing emergency services or nonemergency health care services at certain participating facilities (as defined in RCW 48.43.005) may submit this request if it is believed that the payment made for the covered services was not a commercially reasonable amount. A carrier or self-funded group health plan that has elected to participate in balance billing protections for its members may also submit a request for arbitration.

4. Upon OIC review and acceptance of a request for arbitration, both the initiating and non-initiating parties will be provided with a list of approved arbitrators and arbitration entities by OIC. If the parties cannot agree on an arbitrator or arbitration entity from the list, they must notify the OIC. The OIC will then contact the parties and follow the process outlined in RCW 48.49.040 and WAC 284-43B-035. Within 10 business days of the initiating party notifying the commissioner and the non-initiating party of intent to initiate arbitration, both parties must agree to and execute a nondisclosure agreement.

5. Once the arbitrator has been chosen, OIC will send the arbitrator/arbitration entity a copy of the Arbitration Initiation Request Form and both parties will have 30 calendar days to make written submissions to the arbitrator. A party that fails to make timely written submissions without good cause shown will be considered to be in default and will be ordered to pay the final offer amount submitted by the party not in default. The arbitrator may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

6. No later than 30 calendar days after the receipt of the parties' written submissions, the arbitrator will: Issue a written decision requiring payment of the final offer amount of either the initiating party or the non-initiating party, notify the parties of its decision, and provide the decision as well as the information described in RCW 48.49.050 regarding the decision to OIC. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-085, filed 11/2/20, effective 12/3/20.]

AMENDATORY SECTION (Amending WSR 20-22-076, filed 11/2/20, effective 12/3/20)

WAC 284-43B-090 Appendix B.

((



Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM	
ARBITRATOR'S INFORMATION	
Your name and contact information:	
Date of your decision:	OIC Tracking Number:
DISPUTE RESOLUTION INFORMATION <small>This information is required under RCW 48.49.050</small>	
Name of carrier:	
Name of health care provider:	
Name and address of the health care provider's employer or business entity in which provider has ownership interest:	
Name and address of the health care facility where services were provided:	
Type of health care services at issue:	
<i>The arbitrator reporting statutory provisions are noted on the back of this form.</i>	

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RELEVANT STATUTORY PROVISIONS**RCW 48.49.040****Dispute resolution process—Determination of commercially reasonable payment amount. (Effective January 1, 2020.)**

... (3)(a) Each party must make written submissions to the arbitrator in support of its position no later than thirty calendar days after the final selection of the arbitrator. The initiating party must include in its written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. A party that fails to make timely written submissions under this section without good cause shown shall be considered to be in default and the arbitrator shall require the party in default to pay the final offer amount submitted by the party not in default and may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default. No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner.

RCW 48.49.050**Commissioner's annual report on dispute resolution information regarding arbitration over commercially reasonable payment amounts. (Effective January 1, 2020, until January 1, 2024.)**

(1) The commissioner must prepare an annual report summarizing the dispute resolution information provided by arbitrators under RCW 48.49.040. The report must include summary information related to the matters decided through arbitration, as well as the following information for each dispute resolved through arbitration: The name of the carrier; the name of the health care provider; the health care provider's employer or the business entity in which the provider has an ownership interest; the health care facility where the services were provided; and the type of health care services at issue.

(2) The commissioner must post the report on the office of the insurance commissioner's web site and submit the report in compliance with RCW 43.01.036 to the appropriate committees of the legislature, annually by July 1st.

(3) This section expires January 1, 2024.

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Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM	
1. ARBITRATOR'S INFORMATION	
Your name and contact information:	
Date of decision:	OIC Tracking Number:
2. DISPUTE RESOLUTION INFORMATION	
This information is required under RCW 48.49.050	
(a) Name of carrier:	(b) Name of health care provider that directly provided the service:
(c) Name and address of the health care provider's group practice, employer or business entity in which provider has ownership interest:	(d) Name and address of the health care facility where services were provided:
(e) Type of health care services at issue:	
(f) Which parties' final offer was chosen: <i>(Report separately bundled claims)</i>	
<i>The arbitrator reporting statutory provision is noted on the following page.</i>	

ARBITRATOR DECISION REPORTING PROVISION**RCW 48.49.040****Dispute resolution process—Determination of commercially reasonable payment amount. (*Effective March 31, 2022*)**

(8)(a) No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW **48.49.050** regarding the decision to the commissioner. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[Statutory Authority: RCW 48.49.060 and 48.49.110. WSR 20-22-076, § 284-43B-090, filed 11/2/20, effective 12/3/20.]

NEW SECTION**WAC 284-43B-095 Appendix C.**



Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

ARBITRATOR DECISION REPORTING FORM FOR ARBITRATION PROCEEDINGS UNDER RCW 48.49.135	
1. ARBITRATOR'S INFORMATION	
Your name and contact information:	
Date of decision:	OIC Tracking Number:
2. DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050 & RCW 48.49.040	
(a) Date Amended AADR was approved by OIC:	(b) Name of carrier:
(c) Name of facility, provider(s) or provider group(s):	(d) Applicable counties:
(e) Service(s) at issue:	
(f) Which party's final offer was chosen:	
<i>The arbitrator reporting statutory provision is noted on the following page.</i>	

ARBITRATOR DECISION REPORTING PROVISION**RCW 48.49.040****Dispute resolution process—Determination of commercially reasonable payment amount. (Effective March 31, 2022)**

(8)(a) No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW **48.49.050** regarding the decision to the commissioner. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

[]

NEW SECTION**WAC 284-43B-100 Appendix D.**



Please complete the form below and send it with the corresponding Arbitration Initiation Request Form and your decision to BBPA_Arbitration@oic.wa.gov

SETTLEMENT REPORTING FORM	
1. INITIATING PARTY INFORMATION	
Your name and contact information:	
Date of settlement:	OIC Tracking Number:
2. DISPUTE RESOLUTION INFORMATION This information is required under RCW 48.49.050	
(a) Name of carrier:	(b) Name of health care provider that directly provided the service:
(c) Name and address of the health care provider's group practice, employer or business entity in which provider has ownership interest:	(d) Name and address of the health care facility where services were provided:
(e) Type of health care services at issue:	
(f) Out-of-network rate for services:	
(g) Initiating party signature:	
(h) Responding party signature:	
<i>The arbitrator reporting statutory provision is noted on the back of this form.</i>	

SETTLEMENT REPORTING PROVISION**RCW 48.49.040****Dispute resolution process—Determination of commercially reasonable payment amount. (Effective March 31, 2022)**

(7) If the parties agree on an out-of-network rate for the services at issue after providing the arbitration initiation notice to the commissioner but before the arbitrator has made their decision, the amount agreed to by the parties for the service will be treated as the out-of-network rate for the service. The initiating party must send a notification to the commissioner and to the arbitrator, as soon as possible, but no later than three business days after the date of the agreement. The notification must include the out-of-network rate for the service and signatures from authorized signatories for both parties.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 284-43B-080 Effective date.

OTS-4114.3

AMENDATORY SECTION (Amending WSR 21-01-094, filed 12/11/20, effective 1/11/21)

WAC 284-170-200 Network access—General standards. (1) An issuer must maintain each provider network for each health plan in a manner that is sufficient in numbers and types of providers and facilities to assure that, to the extent feasible based on the number and type of providers and facilities in the service area, all health plan services provided to enrollees will be accessible in a timely manner appropriate for the enrollee's condition. An issuer must demonstrate that for each health plan's defined service area, a comprehensive range of primary, specialty, institutional, and ancillary services are readily available without unreasonable delay to all enrollees and that emergency services are accessible (~~(twenty-four)~~) 24 hours per day, seven days per week without unreasonable delay.

(2) Each enrollee must have adequate choice among health care providers, including those providers which must be included in the network under WAC 284-170-270, and for qualified health plans and qualified stand-alone dental plans, under WAC 284-170-310.

(3) An issuer's service area must not be created in a manner designed to discriminate or that results in discrimination against persons because of age, gender, gender identity, sexual orientation, disability, national origin, sex, family structure, ethnicity, race, health condition, employment status, or socioeconomic status.

(4) An issuer must establish sufficiency and adequacy of choice of providers based on the number and type of providers and facilities necessary within the service area for the plan to meet the access requirements set forth in this subchapter. Where an issuer establishes medical necessity or other prior authorization procedures, the issuer must ensure sufficient qualified staff is available to provide timely prior authorization decisions on an appropriate basis, without delays detrimental to the health of enrollees.

(5) In any case where the issuer has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the issuer must ensure through referral by the primary care provider or otherwise that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost to the enrollee than if the service were obtained from network providers and facilities. An issuer must satisfy this obligation even if an alternate access delivery request has been submitted and is pending commissioner approval.

An issuer may use facilities in neighboring service areas to satisfy a network access standard if one of the following types of facilities is not in the service area, or if the issuer can provide substantial evidence of good faith efforts on its part to contract with the facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the facility. This applies to the following types of facilities:

- (a) Tertiary hospitals;
- (b) Pediatric community hospitals;

(c) Specialty or limited hospitals, such as burn units, rehabilitative hospitals, orthopedic hospitals, and cancer care hospitals;

(d) Neonatal intensive care units; and

(e) Facilities providing transplant services, including those that provide solid organ, bone marrow, and stem cell transplants.

(6) An issuer must establish and maintain adequate arrangements to ensure reasonable proximity of network providers and facilities to the business or personal residence of enrollees, and located so as to not result in unreasonable barriers to accessibility. Issuers must make reasonable efforts to include providers and facilities in networks in a manner that limits the amount of travel required to obtain covered benefits.

(7) A single case provider reimbursement agreement must be used only to address unique situations that typically occur out-of-network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in the network and do not support a determination of network access.

(8) An issuer must disclose to enrollees that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of the issuer. A description of the health plan's referral and authorization practices, including information about how to contact customer service for guidance, must be set forth as an introduction or preamble to the provider directory for a health plan. In the alternative, the description of referral and authorization practices may be included in the summary of benefits and explanation of coverage for the health plan.

(9) To provide adequate choice to enrollees who are American Indians/Alaska Natives, each health issuer must maintain arrangements that ensure that American Indians/Alaska Natives who are enrollees have access to covered medical and behavioral health services provided by Indian health care providers.

Issuers must ensure that such enrollees may obtain covered medical and behavioral health services from an Indian health care provider at no greater cost to the enrollee than if the service were obtained from network providers and facilities, even if the Indian health care provider is not a contracted provider. Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system. Nothing in this subsection prohibits an issuer from limiting coverage to those health services that meet issuer standards for medical necessity, care management, and claims administration or from limiting payment to that amount payable if the health service were obtained from a network provider or facility.

(10) An issuer must have a demonstrable method and contracting strategy to ensure that contracting hospitals in a plan's service area have the capacity to serve the entire enrollee population based on normal utilization.

(11) At a minimum, an issuer's provider network must adequately provide for mental health and substance use disorder treatment, including behavioral health therapy. An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal enrollee utilization patterns.

(a) Adequate networks must include crisis intervention and stabilization, psychiatric inpatient hospital services, including voluntary

psychiatric inpatient services, and services from mental health providers.

(b) There must be mental health providers of sufficient number and type to provide diagnosis and medically necessary treatment of conditions covered by the plan through providers acting within their scope of license and scope of competence established by education, training, and experience to diagnose and treat conditions found in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* or other recognized diagnostic manual or standard.

(c) An issuer must establish a reasonable standard for the number and geographic distribution of mental health providers who can treat serious mental illness of an adult and serious emotional disturbances of a child, taking into account the various types of mental health practitioners acting within the scope of their licensure.

The issuer must measure the adequacy of the mental health network against this standard at least twice a year, and submit an action plan with the commissioner if the standard is not met.

(d) Emergency mental health services and substance use disorder services, including ~~((erisis intervention and crisis stabilization))~~ services provided by behavioral health emergency services providers, as defined in RCW 48.43.005, must be included in an issuer's provider network.

(e) An issuer's monitoring of network access and adequacy must be based on its classification of mental health and substance use disorder services to either primary or specialty care, ensuring that a sufficient number of providers of the required type are in its network to provide the services as classified. An issuer may use the classifications established in WAC 284-43-7020 for this element of its network assessment and monitoring.

(f) An issuer must ensure that an enrollee can identify information about mental health services and substance use disorder treatment including benefits, providers, coverage, and other relevant information by calling a customer service representative during normal business hours, by using the issuer's transparency tool developed pursuant to RCW 48.43.007 and by referring to the network provider directory.

(12) The provider network must include preventive and wellness services, including chronic disease management and smoking cessation services as defined in RCW 48.43.005 and WAC 284-43-5640(9) and 284-43-5642(9). If these services are provided through a quit-line or help-line, the issuer must ensure that when follow-up services are medically necessary, the enrollee will have access to sufficient information to access those services within the service area. Contracts with quit-line or help-line services are subject to the same conditions and terms as other provider contracts under this section.

(13) For the essential health benefits category of ambulatory patient services, as defined in WAC 284-43-5640(1) and 284-43-5642(1), an issuer's network is adequate if:

(a) The issuer establishes a network that affords enrollee access to urgent appointments without prior authorization within ~~((forty-eight))~~ 48 hours, or with prior authorization, within ~~((ninety-six))~~ 96 hours of the referring provider's referral.

(b) For primary care providers the following must be demonstrated:

(i) The ratio of primary care providers to enrollees within the issuer's service area as a whole meets or exceeds the average ratio for Washington state for the prior plan year;

(ii) The network includes such numbers and distribution that (~~eighty~~) 80 percent of enrollees within the service area are within (~~thirty~~) 30 miles of a sufficient number of primary care providers in an urban area and within (~~sixty~~) 60 miles of a sufficient number of primary care providers in a rural area from either their residence or work; and

(iii) Enrollees have access to an appointment, for other than preventive services, with a primary care provider within (~~ten~~) 10 business days of requesting one.

(c) For specialists:

(i) The issuer documents the distribution of specialists in the network for the service area in relation to the population distribution within the service area; and

(ii) The issuer establishes that when an enrollee is referred to a specialist, the enrollee has access to an appointment with such a specialist within (~~fifteen~~) 15 business days for nonurgent services.

(d) For preventive care services, and periodic follow-up care including, but not limited to, standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or mental health conditions, and laboratory and radiological or imaging monitoring for recurrence of disease, the issuer permits scheduling such services in advance, consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of his or her practice.

(14) The network access requirements in this subchapter apply to stand-alone dental plans offered through the exchange or where a stand-alone dental plan is offered outside of the exchange for the purpose of providing the essential health benefit category of pediatric oral benefits. All such stand-alone dental plans must ensure that all covered services to enrollees will be accessible in a timely manner appropriate for the enrollee's conditions.

(a) An issuer of such stand-alone dental plans must demonstrate that, for the dental plan's defined service area, all services required under WAC 284-43-5700(3) and 284-43-5702(4), as appropriate, are available to all enrollees without unreasonable delay.

(b) Dental networks for pediatric oral services must be sufficient for the enrollee population in the service area based on expected utilization.

(15) Issuers must meet all requirements of this subsection for all provider networks. An alternate access delivery request under WAC 284-170-210 may be proposed only if:

(a) There are sufficient numbers and types of providers or facilities in the service area to meet the standards under this subchapter but the issuer is unable to contract with sufficient providers or facilities to meet the network standards in this subchapter; or

(b) An issuer's provider network has been previously approved under this section, and a provider or facility type subsequently becomes unavailable within a health plan's service area; or

(c) A county has a population that is (~~fifty thousand~~) 50,000 or fewer, and the county is the sole service area for the plan, and the issuer chooses to propose an alternative access delivery system for that county; or

(d) A qualified health plan issuer is unable to meet the standards for inclusion of essential community providers, as provided under WAC 284-170-310(3).

[Statutory Authority: RCW 48.02.060 and 48.43.765. WSR 21-01-094 (Matter No. R 2019-05), § 284-170-200, filed 12/11/20, effective 1/11/21. Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-200, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-200, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9970, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§ 156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-200, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.100, 48.46.200, 48.43.505, 48.43.510, 48.43.515, 48.43.520, 48.43.525, 48.43.530, 48.43.535. WSR 01-03-033 (Matter No. R 2000-02), § 284-43-200, filed 1/9/01, effective 7/1/01. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.030, 48.46.200. WSR 00-04-034 (Matter No. R 99-2), § 284-43-200, filed 1/24/00, effective 3/1/00. Statutory Authority: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.44.020, 48.44.050, 48.44.080, 48.46.030, 48.46.060(2), 48.46.200 and 48.46.243. WSR 98-04-005 (Matter No. R 97-3), § 284-43-200, filed 1/22/98, effective 2/22/98.]

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-170-210 Alternate access delivery request. (1) Where an issuer's network meets one or more of the criteria in WAC 284-170-200 (15)(a) through (d), the issuer may submit an alternate access delivery request for the commissioner's review and approval. The alternate access delivery request must be made using the Alternate Access Delivery Request Form C, as provided in WAC 284-170-280 (3)(d). Amended alternate access delivery requests for services subject to the Balance Billing Protection Act are governed by WAC 284-170-220 and are distinct from alternative access delivery system requests under this section.

(a) An alternate access delivery system must provide enrollees with access to medically necessary care on a reasonable basis without detriment to their health.

(b) The issuer must ensure that the enrollee obtains all covered services in the alternate access delivery system at no greater cost to the enrollee than if the service was obtained from network providers or facilities or must make other arrangements acceptable to the commissioner.

(i) Copayments and deductible requirements must apply to alternate access delivery systems at the same level they are applied to in-network services.

(ii) The alternate access delivery system may result in issuer payment of billed charges to ensure network access.

(c) An issuer must demonstrate in its alternate access delivery request a reasonable basis for not meeting a standard as part of its filing for approval of an alternate access delivery system, and include an explanation of why the alternate access delivery system pro-

vides a sufficient number or type of the provider or facility to which the standard applies to enrollees.

(d) An issuer must demonstrate a plan and practice to assist enrollees to locate providers and facilities in neighboring service areas in a manner that assures both availability and accessibility. Enrollees must be able to obtain health care services from a provider or facility within the closest reasonable proximity of the enrollee in a timely manner appropriate for the enrollee's health needs.

Alternate access delivery systems include, but are not limited to, such provider network strategies as use of out-of-state and out of county or service area providers, and exceptions to network standards based on rural locations in the service area.

(2) The commissioner will not approve an alternate access delivery system unless the issuer provides substantial evidence of good faith efforts on its part to contract with providers or facilities, and can demonstrate that there is not an available provider or facility with which the issuer can contract to meet provider network standards under WAC 284-170-200.

(a) Such evidence of good faith efforts to contract, where required, will be submitted as part of the issuer's Alternate Access Delivery Request Form C submission, as described in WAC 284-170-280

(3) (d).

(b) Evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider. Documentation of good faith efforts to contract may include, but is not limited to:

(i) Written requests to the provider to enter into contract negotiations for a new or extended contract, with the date each request was made and confirmation by the issuer that staff or a designated person that has been authorized to negotiate or sign a contract on behalf of the provider has been contacted;

(ii) Records of communications and meetings between the issuer and provider, including dates, locations and communication format;

(iii) Written contract offers made to the provider, but not substantive contract terms offered by either the issuer or the provider, including the date each offer was made and confirmation by the issuer that the appropriate staff of the provider was contacted.

(c) Except to the extent provided otherwise in subsection (5) of this section, an alternate access delivery request for services not subject to RCW 48.49.020 may include a request to be approved for up to one health plan year, one calendar year, or until the issuer executes a provider contract to address the network access issue in the alternate access delivery request, whichever occurs earlier. An issuer that needs to submit an alternate access delivery request for the same service and geographic location as a previously approved request must submit a new alternate access delivery request for approval.

(d) For services for which balance billing is prohibited under RCW 48.49.020, the issuer must notify out-of-network or nonparticipating providers or facilities that deliver the services referenced in the alternate access delivery request within five days of submitting the request to the commissioner. Any notification provided under this subsection must include contact information for issuer staff who can provide detailed information to the affected provider or facility regarding the submitted alternate access delivery request.

(3) The effective date of an alternate access delivery system is the date that the commissioner notifies the issuer that the alternate

access delivery system has been approved. The commissioner will notify the carrier in writing that the alternate access delivery system has been approved, and will include the effective date of the approval.

(4) With respect to services for which balance billing is prohibited under RCW 48.49.020, the issuer may not treat payment to an out-of-network or nonparticipating provider or facility for a service addressed in an approved alternate access delivery request as a participating provider or as a means to satisfy network access standards in WAC 284-170-200.

(5) An approved alternate access delivery request for services subject to RCW 48.49.020 expires on December 31st of the year that the request was approved or the effective date of a contract executed by the issuer and a provider who can deliver the service in the geographic location referenced in the alternate access delivery request, whichever occurs earlier.

(6) (a) An alternate access delivery request may propose to use single case provider reimbursement agreements in limited situations if the issuer can demonstrate to the commissioner that the single case provider reimbursement agreement includes hold harmless language that complies with WAC 284-170-421 to protect the enrollee from being balanced billed.

(b) The practice of entering into a single case provider reimbursement agreement with a provider or facility in relation to a specific enrollee's condition or treatment requirements is not an alternate access delivery system ((for purposes of establishing)) and cannot be used in lieu of an alternate access delivery request to establish an adequate provider network. A single case provider reimbursement agreement must be used only to address unique situations that typically occur out of network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in a network for the whole population of enrollees under a plan, and do not support a determination of network access.

((+4)) (7) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.

[Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-210, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-210, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9971, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§ 156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-201, filed 4/25/14, effective 5/26/14.]

NEW SECTION

WAC 284-170-220 Amended alternate access delivery request for services subject to the Balance Billing Protection Act. An issuer that meets the criteria in RCW 48.49.135 (2)(b) may submit an amended alternate access delivery request to the commissioner for review and approval. The amended alternate access delivery request must be made

using the Amended Alternate Access Delivery Request Form E, as provided in WAC 284-170-280 (3)(f).

(1) An amended alternate access delivery request may be filed no sooner than three months after the effective date of the alternate access delivery request approval by the commissioner.

(2) The amended alternate access delivery request must demonstrate substantial evidence of good faith efforts by the issuer to contract between the effective date of the alternate access delivery request and the submission date of the Amended Alternate Access Delivery Request Form E.

(3) An amended alternate access delivery request must be for a specific service that is subject to RCW 48.49.020 and for a specific geographic location. Multiple services may not be combined into a singular request, for example an amended alternate access delivery request may not be for both radiology services and laboratory services. This requirement does not restrict an issuer from filing multiple amended alternate access delivery requests by service or geographic location during a plan year due to provider contract termination dates or execution of new or renewed provider contracts.

(4) The amended alternate access delivery request terminates on December 31st of the year that the request was approved or the effective date of a contract executed by the issuer and a provider who can deliver the service in the geographic location referenced in the amended alternate access delivery request, whichever occurs earlier.

(5) An issuer may not use the amended alternate access delivery request process to update a pending or approved Alternate Access Delivery Request Form C.

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AMENDATORY SECTION (Amending WSR 22-09-021, filed 4/11/22, effective 5/12/22)

WAC 284-170-280 Network reports—Format. (1) An issuer must submit its provider network materials to the commissioner for approval prior to or at the time it files a newly offered health plan.

(a) For individual and small groups, the submission must occur when the issuer submits its plan under WAC 284-43-0200. For groups other than individual and small, the submission must occur when the issuer submits a new health plan and as required in this section.

(b) The commissioner may extend the time for filing for good cause shown.

(c) For plan year 2015 only, the commissioner will permit a safe harbor standard. An issuer who can not meet the submission requirements in subsection (3)(f) and (g) of this subsection will be determined to meet the requirements of those subsections even if the submissions are incomplete, provided that the issuer:

(i) Identifies specifically each map required under subsection (3)(f)(i) of this section, or Access Plan component required under subsection (3)(g) of this section, which has not been included in whole or part;

(ii) Explains the specific reason each map or component has not been included; and

(iii) Sets forth the issuer's plan to complete the submission, including the date(s) by which each incomplete map and component will be completed and submitted.

(2) Unless indicated otherwise, the issuer's reports must be submitted electronically and completed consistent with the posted submission instructions on the commissioner's website, using the required formats.

(3) For plan years beginning January 1, 2015, an issuer must submit the following specific documents and data to the commissioner to document network access:

(a) **Provider Network Form A.** An issuer must submit a report of all participating providers by network.

(i) The Provider Network Form A must be submitted for each network being reviewed for network access. A network may be used by more than one plan.

(ii) An issuer must indicate whether a provider is an essential community provider as instructed in the commissioner's Provider Network Form A instructions.

(iii) An issuer must submit an updated, accurate Provider Network Form A on a monthly basis by the 5th of each month for each network and when a material change in the network occurs as described in subchapter B.

(iv) Filing of this data satisfies the reporting requirements of RCW 48.44.080 and the requirements of RCW 48.46.030 relating to filing of notices that describe changes in the provider network.

(b) **Provider directory certification.** An issuer must submit at the time of each Provider Network Form A submission a certification that the provider directory posted on the issuer's website is specific to each plan, accurate as of the last date of the prior month. A certification signed by an officer of the issuer must confirm that the provider directory contains only providers and facilities with which the issuer has a signed contract that is in effect on the date of the certification.

(c) **988 Crisis Hotline Appointment Form D report.** For health plans issued or renewed on or after January 1, 2023, issuers must make next day appointments available to enrollees experiencing urgent, symptomatic behavioral health conditions to receive covered behavioral health services. Beginning on January 7, 2023, issuers must submit a report that will document their health plans' compliance with next day appointment access, including a count of enrollee appointments available for urgent, symptomatic behavioral health care services.

(i) The report is due on the dates published on the office of the insurance commissioner's website and will be set each calendar year. The office of the insurance commissioner will publish the first reporting date by December 1, 2022, and by each December 1st thereafter. The reporting time frame will be no more frequent than weekly and no less often than twice yearly.

(ii) The report must contain all data items shown in and conform to the format of the 988 Crisis Hotline Appointment Form D report prescribed by and available from the commissioner.

(iii) The report must reflect information from any sources available at the time the reporting is completed including, but not limited to:

(A) All requests the issuer has received from any source including, but not limited to, an enrollee, their provider, or a crisis call center hub;

(B) The issuer's claims data; and

(C) The behavioral health crisis call center system platform and the behavioral health integrated client referral system, once those are established and providing real-time information relevant to the coordination of behavioral health crisis response and suicide prevention services, as provided in chapter 71.24 RCW, and that information is accessible to the issuer.

(iv) For purposes of this report, urgent symptomatic behavioral health condition has the same meaning as described in RCW 48.43.790 or as established by the National Suicide Hotline Designation Act of 2020 and federal communications rules adopted July 16, 2020.

(d) **Network Enrollment Form B.** The Network Enrollment Form B report provides the commissioner with an issuer's count of total covered lives for the prior year, during each month of the year, for each health plan by county.

(i) The report must be submitted for each network as a separate report. The report must contain all data items shown in and conform to the format of Network Enrollment Form B prescribed by and available from the commissioner.

(ii) An issuer must submit this report by March 31st of each year.

(e) **Alternate Access Delivery Request Form C.** For plan years that begin on or after January 1, 2015, alternate access delivery requests must be submitted when an issuer's network meets one or more of the criteria in WAC 284-170-200 (15) (a) through (d). Alternate access delivery requests must be submitted to the commissioner using the Alternate Access Delivery Request Form C.

(i) The Alternate Access Delivery Request Form C submission must address the following areas, and may include other additional information as requested by the commissioner:

(A) A description of the specific issues the alternate access delivery system is intended to address, accompanied by supporting data describing how the alternate access delivery system ensures that enrollees have reasonable access to sufficient providers and facilities, by number and type, for covered services;

(B) A description and schedule of cost-sharing requirements for providers that fall under the alternate access delivery system;

(C) The issuer's proposed method of noting on its provider directory how an enrollee can access provider types under the alternate access delivery system;

(D) The issuer's marketing plan to accommodate the time period that the alternate access delivery system is in effect, and specifically describe how it impacts current and future enrollment and for what period of time;

(ii) Provider Network Form A and Network Enrollment Form B submissions are required in relation to an alternate access delivery system on the basis described in subsections (1) and (2) of this section.

(iii) If a network becomes unable to meet the network access standards after approval but prior to the health product's effective date, an alternate access delivery request must include a timeline to bring the network into full compliance with this subchapter.

(f) **Amended Alternate Access Delivery Request Form E.** For plan years that begin on or after January 1, 2022, an amended alternate access delivery request may be submitted to the commissioner when an issuer has filed and received approval for an Alternate Access Delivery Request Form C that is for services for which balance billing is prohibited under RCW 48.49.020, at least three months has passed since the effective date of that approved request, and the issuer can demon-

strate that it has made new good faith efforts to contract. Each Amended Alternate Access Delivery Request Form E must be specific to a defined service and geographic location. The report must contain all data items shown in and conform to the format of Amended Alternate Access Delivery Request Form E prescribed by and available from the commissioner.

(g) Geographic Network Reports.

(i) The geographic mapping criteria outlined below are minimum requirements and will be considered in conjunction with the standards set forth in WAC 284-170-200 and 284-170-310. One map for each of the following provider types must be submitted:

(A) Hospital and emergency services. Map must identify provider locations, and demonstrate that each enrollee in the service area has access within 30 minutes in an urban area and 60 minutes in a rural area from either their residence or workplace to general hospital facilities including emergency services.

(B) Primary care providers. Map must demonstrate that 80 percent of the enrollees in the service area have access within 30 miles in an urban area and 60 miles in a rural area from either their residence or workplace to a primary care provider with an open practice. The provider type selected must have a license under Title 18 RCW that includes primary care services in the scope of license.

(C) Mental health and substance use disorder providers. For general mental health providers, such as licensed psychiatrists, psychologists, social workers, and mental health nurse practitioners, the map must demonstrate that 80 percent of the enrollees in the service area have access to a mental health provider within 30 miles in an urban area and 60 miles in a rural area from either their residence or workplace. For specialty mental health providers and substance use disorder providers, the map must demonstrate that 80 percent of the enrollees have access to the following types of service provider or facility: Evaluation and treatment, voluntary and involuntary inpatient mental health and substance use disorder treatment, outpatient mental health and substance use disorder treatment, and behavioral therapy. If one of the types of specialty providers is not available as required above, the issuer must propose an alternate access delivery system to meet this requirement.

(D) Pediatric services. For general pediatric services, the map must demonstrate that 80 percent of the covered children in the service area have access to a pediatrician or other provider whose license under Title 18 RCW includes pediatric services in the scope of license. This access must be within 30 miles in an urban area and 60 miles in a rural area of their family or placement residence. For specialty pediatric services, the map must demonstrate that 80 percent of covered children in the service area have access to pediatric specialty care within 60 miles in an urban area and 90 miles in a rural area of their family or placement residence. The pediatric specialty types include, but are not limited to, nephrology, pulmonology, rheumatology, hematology-oncology, perinatal medicine, neurodevelopmental disabilities, cardiology, endocrinology, and gastroenterology.

(E) Specialty services. An issuer must provide one map for the service area for specialties found on the American Board of Medical Specialties list of approved medical specialty boards. The map must demonstrate that 80 percent of the enrollees in the service area have access to an adequate number of providers and facilities in each specialty. Subspecialties are subsumed on the map.

(F) Therapy services. An issuer must provide one map that demonstrates that 80 percent of the enrollees have access to the following types of providers within 30 miles in an urban area and 60 miles in a rural area of their residence or workplace: Chiropractor, rehabilitative service providers and habilitative service providers.

(G) Home health, hospice, vision, and dental providers. An issuer must provide one map that identifies each provider or facility to which an enrollee has access in the service area for home health care, hospice, vision, and pediatric oral coverage, including allied dental professionals, dental therapists, dentists, and orthodontists.

(H) Covered pharmacy dispensing services. An issuer must provide one map that demonstrates the geographic distribution of the pharmacy dispensing services within the service area. If a pharmacy benefit manager is used by the issuer, the issuer must establish that the specifically contracted pharmacy locations within the service area are available to enrollees through the pharmacy benefit manager.

(I) Essential community providers. An issuer must provide one map that demonstrates the geographic distribution of essential community providers, by type of provider or facility, within the service area. This requirement applies only to qualified health plans as certified in RCW 43.71.065.

(J) Behavioral health emergency services. Map must identify provider locations and demonstrate that each enrollee in the service area has access within 30 minutes in an urban area and 60 minutes in a rural area from either their residence or workplace to behavioral health emergency services.

(ii) Each report must include the provider data points on each map, title the map as to the provider type or facility type it represents, include the network identification number the map applies to, and the name of each county included on the report.

(iii) For plan years beginning January 1, 2015, and every year thereafter, an issuer must submit reports as required in subsection (1) of this section to the commissioner for review and approval, or when an alternate access delivery request is submitted.

~~((g))~~ **(h) Access Plan.** An issuer must establish an access plan specific to each product that describes the issuer's strategy, policies, and procedures necessary to establishing, maintaining, and administering an adequate network.

(i) At a minimum, the issuer's policies and procedures referenced in the access plan must address:

(A) Referral of enrollees out-of-network, including criteria for determining when an out-of-network referral is required or appropriate;

(B) Copayment and coinsurance determination standards for enrollees accessing care out-of-network;

(C) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of specialists and hospitals to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees;

(D) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(E) Standard hours of operation, and after-hours, for prior authorization, consumer and provider assistance, and claims adjudication;

(F) Triage and screening arrangements for prior authorization requests;

(G) Prior authorization processes that enrollees must follow, including the responsibilities and scope of use of nonlicensed staff to handle enrollee calls about prior authorization;

(H) Specific procedures and materials used to address the needs of enrollees with limited-English proficiency and literacy, with diverse cultural and ethnic backgrounds, and with physical and mental disabilities;

(I) Assessment of the health status of the population of enrollees or prospective enrollees, including incorporation of the findings of local public health community assessments, and standardized outcome measures, and use of the assessment data and findings to develop network or networks in the service area;

(J) For gender affirming treatment:

(I) Standards of accessibility expressed in terms of objectives and minimum levels below which corrective action will be taken, including the proximity of gender affirming treatment services to primary care sources, and a method and process for documentation confirming that access will not result in delay detrimental to health of enrollees; and

(II) Monitoring policies and procedures for compliance, including tracking and documenting network capacity and availability;

(K) Notification to enrollees regarding personal health information privacy rights and restrictions, termination of a provider from the network, and maintaining continuity of care for enrollees when there is a material change in the provider network, insolvency of the issuer, or other cessation of operations;

(L) Issuer's process for corrective action for providers related to the provider's licensure, prior authorization, referral and access compliance. The process must include remedies to address insufficient access to appointments or services; and

(M) The process for ensuring access to next day appointments for urgent, symptomatic behavioral health conditions.

(ii) An access plan applicable to each product must be submitted with every Geographic Network Report when the issuer seeks initial certification of the network, submits its annual rate filing to the commissioner for review and approval, or when an (~~alternative~~) alternate access delivery request is required due to a material change in the network.

(iii) The current access plan, with all associated data sets, policies and procedures, must be made available to the commissioner upon request, and a summary of the access plan's associated procedures must be made available to the public upon request.

(4) For purposes of this section, "urban area" means:

(a) A county with a density of 90 persons per square mile; or

(b) An area within a 25 mile radius around an incorporated city with a population of more than 30,000.

[Statutory Authority: RCW 48.02.060, 48.43.515, 48.44.050, 48.46.200, 2021 c 302 and c 280. WSR 22-09-021 (Matter No. R 2021-16), § 284-170-280, filed 4/11/22, effective 5/12/22. Statutory Authority: RCW 48.02.060. WSR 16-14-106 (Matter No. R 2016-11), § 284-170-280, filed 7/6/16, effective 8/6/16; WSR 16-07-144 (Matter No. R 2016-01), recodified as § 284-170-280, filed 3/23/16, effective 4/23/16. WSR 16-01-081, recodified as § 284-43-9976, filed 12/14/15, effective 12/14/15. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.460, 48.43.505, 48.43.510, 48.43.515, 48.43.530, 48.43.535, 48.44.050, 48.46.200, 48.20.450, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. §§

156.230, 156.235, and 156.245. WSR 14-10-017 (Matter No. R 2013-22), § 284-43-220, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 48.02.060, 48.43.510 and 48.43.515. WSR 11-07-015 (Matter No. R 2011-01), § 284-43-220, filed 3/8/11, effective 4/8/11. Statutory Authority: RCW 48.02.060. WSR 08-17-037 (Matter No. R 2008-17), § 284-43-220, filed 8/13/08, effective 9/13/08. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.43.515, 48.44.050, 48.46.030, 48.46.200, 48.42.100, 48.43.515, 48.46.030. WSR 03-09-142 (Matter No. R 2003-01), § 284-43-220, filed 4/23/03, effective 5/24/03. Statutory Authority: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, 48.46.030, 48.46.200. WSR 00-04-034 (Matter No. R 99-2), § 284-43-220, filed 1/24/00, effective 1/1/01. Statutory Authority: RCW 48.02.060, 48.20.450, 48.20.460, 48.30.010, 48.44.020, 48.44.050, 48.44.080, 48.46.030, 48.46.060(2), 48.46.200 and 48.46.243. WSR 98-04-005 (Matter No. R 97-3), § 284-43-220, filed 1/22/98, effective 2/22/98.]

AMENDATORY SECTION (Amending WSR 21-01-094, filed 12/11/20, effective 1/11/21)

WAC 284-170-285 Mental health and substance use disorder web page model format and required content. (1) Not later than July 1, 2021, carriers must establish and maintain a web page entitled "Important Mental Health and Substance Use Disorder Treatment Information" that complies with the requirements in this section. By July 1, 2021, carriers must prominently post the information in subsections (4), (5), (6), (7), and (8) of this section on their website so that a member may easily locate it. By March 1, 2023, carriers must conspicuously post the information in subsection (4) of this section related to coverage of behavioral health emergency services on their website so that a member can easily locate it.

(2) A member must be able to link to the web page from their portal landing page if the carrier provides members with a portal. If the carrier does not provide members with a personal electronic portal, the carrier must place a link to the web page that is visually prominent and easily located on the health plan's network information page.

(3) A carrier's transparency tool(s) must include the information required in this section to the extent that it is required by RCW 48.43.007(2).

(4) The web page must contain a section that explains what to do if an enrollee or their dependent is experiencing a mental health or substance use disorder emergency or crisis. This section must specifically include, but is not limited to, links and information for the National Suicide Prevention hotline, a statement that the health plan will cover, without any prior authorization requirement, emergency behavioral health services provided by an emergency behavioral health services provider, as defined in RCW 48.43.005, whether the provider is a participating or nonparticipating provider, and identify additional resources for emergency or crisis intervention within an enrollee's service area and within Washington state that provide support and services for mental health or substance use disorder emergencies or crises. The content for this portion of the web page must emphasize the ways an enrollee or their personal representative can receive emergency or crisis services ((either)) covered by their health plan, from public health resources, or other private health resources ((or

through the services offered by the carrier)) in nontechnical and consumer friendly language. This section must be above the fold and visually prominent on the mental health and substance use disorder web page.

(5) The web page must contain accurate information explaining the following information, based on the health plan network's access and adequacy standards for mental health and substance use disorder treatment and services:

(a) How an enrollee can find in-network mental health and substance use disorder treatment and services in their service area;

(b) What an enrollee may do if covered services are not available in their service area or the enrollee cannot obtain access to scheduling an appointment from an in-network provider within (~~ten~~) 10 business days for mental health and substance use disorder services covered as primary care and (~~fifteen~~) 15 business days for those covered as specialty care; and

(c) A description of access to services based on the applicable time frames, such as the following: "If the enrollee seeks covered mental health and substance use disorder treatment services for which the enrollee needs a referral or is covered as specialty care, an appointment must be made available to the enrollee within (~~fifteen~~) 15 days of requesting one. If the requested service does not require a referral or is not specialty care, the appointment must be made available within (~~ten~~) 10 business days of making a request for an appointment. If an enrollee is unable to schedule an appointment within the applicable number of business days, the carrier must assist with scheduling an appointment."

(6) By June 30th of each year, the commissioner shall post a report identifying, by carrier, the number of consumer complaints, asserting an inability to access mental health or substance use disorder services within (~~ten~~) 10 business days for primary care and (~~fifteen~~) 15 business days for specialty care, that were submitted to the commissioner during the prior calendar year. A carrier's "Important Mental Health and Substance Use Disorder Treatment Information" web page must include a link to this report, and must update the link to the office of the insurance commissioner's web page on which the report is posted.

(7) If the commissioner has disciplined the carrier for violating the network standards set forth in this chapter or Title 48.43 RCW, with regard to mental health or substance use disorder treatment and services, the carrier must post a link to each order of enforcement or disciplinary action posted on the commissioner's website within (~~thirty~~) 30 days of the commissioner posting the order on the office of the insurance commissioner's website. An order may be removed from the carrier's website three years after the issue date of the order or completion of the corrective action plan associated with the order, whichever is later.

Carriers may indicate when a corrective action plan associated with the order is completed and carriers may include an explanation of the actions it has taken to address the enforcement or disciplinary action.

(8) The web page must contain a section titled "How to File a Complaint with the Office of the Insurance Commissioner" and refer users to the OIC complaint form at <https://www.insurance.wa.gov/file-complaint-or-check-your-complaint-status.com> or the commissioner's toll-free insurance consumer hotline at 1-800-562-6900.

(9) The commissioner may review the web page for accuracy and conformance with the requirements of this section when an enrollee complaint is received about access to mental health or substance use disorder services, or at any time as the commissioner deems necessary to ensure the carrier is in compliance with the requirements of this chapter.

(10) Carriers may include its logo and identifying information on the web page.

[Statutory Authority: RCW 48.02.060 and 48.43.765. WSR 21-01-094 (Matter No. R 2019-05), § 284-170-285, filed 12/11/20, effective 1/11/21.]

WSR 23-01-119
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 22-08—Filed December 20, 2022, 8:41 a.m., effective January 20, 2023]

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

Purpose: The Washington state department of ecology (ecology) is adopting expedited rule making at the direction of the Washington legislature to amend chapter 197-11 WAC, SEPA rules. This rule making will incorporate amendments and new language in chapter 43.21C RCW, State Environmental Policy Act (SEPA), and amends other sections of the rule to align with legislative directives.

Ecology is amending and adding new language [to] the following sections of chapter 197-11 WAC:

- WAC 197-11-800 (1)(b)(c) and (d), minor new construction, flexible thresholds.
- WAC 197-11-444 (2)(c), elements of the environment.
- WAC 197-11-960, environmental checklist.
- WAC 197-11-172 (1)(b), planned actions, project review.
- WAC 197-11-164 (1)(b), planned actions, definition and criteria.

The majority of these changes reflect legislative directives in SSB 5818, Housing construction—State Environmental Policy Act and Growth Management Act (GMA), chapter 246, Laws of 2022, regular session to be completed by December 2022. Other changes align the rule with state statute and fulfill past legislative directives.

The scope of the SEPA rule amendments and new language in chapter 197-11 WAC incorporate language directly from SEPA statute, chapter 43.21C RCW.

We are making the following state SEPA rule changes:

- Creating a new categorical exemption level for single-family home construction for cities and towns fully planning under GMA in RCW 36.70A.040;
- Including four attached single-family residential units in WAC 197-11-800 (1)(b)(i);
- Increased flexibility for multifamily residential exemption in cities and towns fully planning under GMA in RCW 36.70A.040;
- Incorporating new procedural standards for raising categorical exemption levels in WAC 197-11-800 that require outreach to the Washington state department of transportation;
- Removing parking as a required consideration for analyzing traffic impacts for proposals;
- Updating planned actions, WAC 197-11-164, to be consistent with state SEPA law, chapter 43.21C RCW; and
- Fixing typographical errors in the title of WAC 197-11-800.

Citation of Rules Affected by this Order: Amending chapter 197-11 WAC.

Statutory Authority for Adoption: RCW 43.21C.110.

Other Authority: Chapter 246, Laws of 2022, regular session.

Adopted under notice filed as WSR 22-21-138 on October 19, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

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

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

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

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

Date Adopted: December 20, 2022.

Heather Bartlett
for Laura Watson
Director

OTS-4081.1

AMENDATORY SECTION (Amending WSR 14-09-026, filed 4/9/14, effective 5/10/14)

WAC 197-11-164 Planned actions—Definition and criteria. (1)

Under RCW 43.21C.440, GMA counties/cities may designate a planned action. A planned action means one or more types of project action that:

(a) Are designated planned actions by an ordinance or resolution adopted by a GMA county/city;

(b) ~~((Have had the significant environmental impacts adequately addressed in an EIS prepared in conjunction with:~~

~~(i) A comprehensive plan or subarea plan adopted under chapter 36.70A RCW; or~~

~~(ii) A fully contained community, a master planned resort, a master planned development, or a phased project;)) In conjunction with, or to implement, a comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or a fully contained community, a master planned resort, a master planned development, or a phased project, have had the significant impacts adequately addressed:~~

~~(i) In an environmental impact statement under the requirements of this chapter; or~~

~~(ii) In a threshold determination or, where one is appropriate, in an environmental impact statement under the requirements of this chapter, if the planned action contains mixed use or residential development and encompasses an area that:~~

~~(A) Is within one-half mile of a major transit stop; or~~

~~(B) Will be within one-half mile of a major transit stop no later than five years from the date of the designation of the planned action;~~

(c) Are subsequent or implementing projects for the proposals listed in (b) of this subsection;

(d) Are located within an urban growth area, as defined in RCW 36.70A.030, or are located within a master planned resort;

(e) Are not essential public facilities, as defined in RCW 36.70A.200; and

(f) Are consistent with a comprehensive plan adopted under chapter 36.70A RCW.

(2) A GMA county/city shall limit planned actions to certain types of development or to specific geographical areas that are less extensive than the jurisdictional boundaries of the GMA county/city.

(3) A GMA county/city may limit a planned action to a time period identified in the EIS or the designating ordinance or resolution adopted under WAC 197-11-168.

[Statutory Authority: RCW 43.21C.110 and 43.21C.100 [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-164, filed 4/9/14, effective 5/10/14. Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. WSR 97-21-030 (Order 95-16), § 197-11-164, filed 10/10/97, effective 11/10/97.]

AMENDATORY SECTION (Amending WSR 16-13-012, filed 6/2/16, effective 7/3/16)

WAC 197-11-172 Planned actions—Project review. (1) Review of a project proposed as a planned action is intended to be simpler and more focused than for other projects. A project proposed as a planned action must qualify as the planned action designated in the planned action ordinance or resolution, and must meet the statutory criteria for a planned action in RCW 43.21C.440. Planned action project review shall include:

(a) Verification that the project meets the description in, and will implement any applicable conditions or mitigation measures identified in, the designating ordinance or resolution; and

(b) Verification that the probable significant adverse environmental impacts of the project have been adequately addressed in the EIS or threshold determination prepared under WAC 197-11-164 (1)(b) through review of an environmental checklist or other project review form as specified in WAC 197-11-315, filed with the project application.

(2)(a) If the project meets the requirements of subsection (1) of this section, the project shall qualify as the planned action designated by the GMA county/city, and a project threshold determination or EIS is not required. Nothing in this section limits a GMA county/city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal local project review and permitting process.

(b) If the project does not meet the requirements of subsection (1) of this section, the project is not a planned action and a threshold determination is required. In conducting the additional environmental review under this chapter, the lead agency may use information in existing environmental documents, including the EIS used to designate the planned action (refer to WAC 197-11-330 (2)(a) and 197-11-600 through 197-11-635). If an EIS or SEIS is prepared on the proposed project, its scope is limited to those probable significant adverse environmental impacts that were not adequately addressed in the EIS used to designate the planned action.

(3) Public notice for projects that qualify as planned actions shall be tied to the underlying permit. If notice is otherwise required for the underlying permit, the notice shall state that the project has qualified as a planned action. If notice is not otherwise required for the underlying permit, no special notice is required.

However, the GMA county/city is encouraged to provide some form of public notice as deemed appropriate.

[Statutory Authority: RCW 43.21C.110. WSR 16-13-012 (Order 15-09), § 197-11-172, filed 6/2/16, effective 7/3/16. Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. WSR 97-21-030 (Order 95-16), § 197-11-172, filed 10/10/97, effective 11/10/97.]

AMENDATORY SECTION (Amending WSR 84-05-020, filed 2/10/84, effective 4/4/84)

- WAC 197-11-444 Elements of the environment.** (1) Natural environment:
- (a) Earth:
 - (i) Geology;i
 - (ii) Soils;i
 - (iii) Topography;i
 - (iv) Unique physical features;i
 - (v) Erosion/enlargement of land area (accretion);i
 - (b) Air:
 - (i) Air quality;i
 - (ii) Odor;i
 - (iii) Climate;i
 - (c) Water:
 - (i) Surface water movement/quantity/quality;i
 - (ii) Runoff/absorption;i
 - (iii) Floods;i
 - (iv) Groundwater movement/quantity/quality;i
 - (v) Public water supplies;i
 - (d) Plants and animals:
 - (i) Habitat for and numbers or diversity of species of plants, fish, or other wildlife;i
 - (ii) Unique species;i
 - (iii) Fish or wildlife migration routes;i
 - (e) Energy and natural resources:
 - (i) Amount required/rate of use/efficiency;i
 - (ii) Source/availability;i
 - (iii) Nonrenewable resources;i
 - (iv) Conservation and renewable resources;i
 - (v) Scenic resources;i
 - (2) Built environment:
 - (a) Environmental health:
 - (i) Noise;i
 - (ii) Risk of explosion;i
 - (iii) Releases or potential releases to the environment affecting public health, such as toxic or hazardous materials;i
 - (b) Land and shoreline use:
 - (i) Relationship to existing land use plans and to estimated population;i
 - (ii) Housing;i
 - (iii) Light and glare;i
 - (iv) Aesthetics;i
 - (v) Recreation;i
 - (vi) Historic and cultural preservation;i
 - (vii) Agricultural crops;i

- (c) Transportation:
 - (i) Transportation systems;
 - (ii) Vehicular traffic;
 - (iii) Waterborne, rail, and air traffic;
 - (iv) ~~((Parking~~
 - ~~(v))~~ Movement/circulation of people or goods;
 - ~~((vi))~~ (v) Traffic hazards;
- (d) Public services and utilities:
 - (i) Fire;
 - (ii) Police;
 - (iii) Schools;
 - (iv) Parks or other recreational facilities;
 - (v) Maintenance;
 - (vi) Communications;
 - (vii) Water/stormwater;
 - (viii) Sewer/solid waste;
 - (ix) Other governmental services or utilities;

(3) To simplify the EIS format, reduce paperwork and duplication, improve readability, and focus on the significant issues, some or all of the elements of the environment in WAC 197-11-444 may be combined.

[Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-444, filed 2/10/84, effective 4/4/84.]

AMENDATORY SECTION (Amending WSR 16-13-012, filed 6/2/16, effective 7/3/16)

WAC 197-11-800 Categorical exemptions. The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC 197-11-305.

Note: The statutory exemptions contained in chapter 43.21C RCW are not included in Part Nine. Chapter 43.21C RCW should be reviewed in determining whether a proposed action not listed as categorically exempt in Part Nine is exempt by statute from threshold determination and EIS requirements.

(1) Minor new construction - Flexible thresholds.

(a) The exemptions in this subsection apply to all licenses required to undertake the construction in question. To be exempt under this subsection, the project must be equal to or smaller than the exempt level. For a specific proposal, the exempt level in (b) of this subsection shall control, unless the city/county in which the project is located establishes an exempt level under (c) of this subsection. If the proposal is located in more than one city/county, the lower of the agencies' adopted levels shall control, regardless of which agency is the lead agency. The exemptions in this subsection apply except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;
- (iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or
- (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The following types of construction shall be exempt:

- (i) The construction or location of four attached or detached single family residential units.

(ii) The construction or location of four multifamily residential units.

(iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.

(iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for ~~((twenty))~~ 20 automobiles. This exemption includes parking lots for ~~((twenty))~~ 20 or fewer automobiles not associated with a structure.

(v) Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

(c) Cities, towns or counties may raise the exempt levels up to the maximum specified in (d) of this subsection by implementing ordinance or resolution. Such levels shall be specified in the agency's SEPA procedures (WAC 197-11-904). Separate maximum optional thresholds are established in (d) of this subsection applying to both incorporated areas and unincorporated urban growth areas in fully planning jurisdictions under RCW 36.70A.040; other unincorporated areas in fully planning counties; and jurisdictions in all other counties. Agencies may adopt the maximum level or a level between the minimum and maximum level. An agency may adopt a system of several exempt levels, such as different levels for different geographic areas, and mixed use projects.

At a minimum, the following process shall be met in order to raise the exempt levels.

(i) Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations. The city, town, or county must document the result of its outreach with the department of transportation on impacts to state-owned transportation facilities, including consideration of whether mitigation is necessary for impacts to state-owned transportation facilities.

(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.

(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of ~~((sixty))~~ 60 days notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.

(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented.

The local ordinance or resolution shall include, but not be limited to, the following:

- Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments.
- Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW.
- Local development regulations that include at minimum preproject cultural resource review where warranted, and standard inadvertent discovery language (SIDL) for all projects.

(d) The maximum exemption levels applicable to (c) of this subsection are:

Project types	Fully planning GMA counties			All other counties
	<u>Incorporated UGA</u>	((Incorporated and)) <u>Unincorporated UGA</u>	Other unincorporated areas	Incorporated and unincorporated areas
Single family residential	<u>30 units</u>	30 units	20 units	20 units
<u>Single family residential with the total square footage less than 1,500 square feet</u>	<u>100 units</u>	<u>30 units</u>	<u>20 units</u>	<u>20 units</u>
Multifamily residential	<u>200 units</u>	60 units	25 units	25 units
Barn, loafing shed, farm equipment storage, produce storage or packing structure	<u>40,000 square feet</u>	40,000 square feet	40,000 square feet	40,000 square feet
Office, school, commercial, recreational, service, storage building, parking facilities	<u>30,000 square feet and 90 parking spaces</u>	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Fill or excavation	<u>1,000 cubic yards</u>	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

(2) Other minor new construction.

(a) The exemptions in this subsection apply to all licenses required to undertake the following types of proposals except when the project:

- (i) Is undertaken wholly or partly on lands covered by water;
- (ii) Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383;
- (iii) Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or
- (iv) Requires a land use decision that is not exempt under WAC 197-11-800(6).

(b) The construction or designation of bus stops, loading zones, shelters, access facilities, pull-out lanes for taxicabs, transit and school vehicles, and designation of transit only lanes.

(c) The construction or installation of commercial on-premise signs, and public signs and signals, including those for traffic control and wayfinding.

(d) The construction or installation of minor road and street improvements by any agency or private party that include the following:

(i) Safety structures and equipment: Such as pavement marking, adding or removing turn restrictions, speed limit designation, physical measures to reduce motor vehicle traffic speed or volume, freeway surveillance and control systems, railroad protective devices (not including grade-separated crossings), grooving, glare screen, safety barriers, energy attenuators;

(ii) Transportation corridor landscaping (including the application of state of Washington approved herbicides by licensed personnel for right of way weed control as long as this is not within watersheds controlled for the purpose of drinking water quality;

(iii) Temporary traffic controls and detours;

(iv) Correction of substandard curves and intersections within existing rights of way, widening of a highway by less than a single lane width where capacity is not significantly increased and no new right of way is required;

(v) Adding auxiliary lanes for localized purposes, (weaving, climbing, speed change, etc.), where capacity is not significantly increased and no new right of way is required;

(vi) Channelization, rechannelization, elimination of sight restrictions at intersections, street lighting, guard rails and barricade installation;

(vii) Installation of catch basins and culverts for the purposes of road and street improvements;

(viii) Reconstruction of existing roadbed (existing curb-to-curb in urban locations), including adding or widening of shoulders where capacity is not increased and no new right of way is required;

(ix) Addition of bicycle lanes, paths and facilities, and pedestrian walks and paths including sidewalk extensions, but not including additional automobile lanes.

(e) Grading, excavating, filling, septic tank installations, and landscaping necessary for any building or facility exempted by subsections (1) and (2) of this section, as well as fencing and the construction of small structures and minor facilities accessory thereto.

(f) Additions or modifications to or replacement of any building or facility exempted by subsections (1) and (2) of this section when such addition, modification or replacement will not change the character of the building or facility in a way that would remove it from an exempt class.

(g) The demolition of any structure or facility, the construction of which would be exempted by subsections (1) and (2) of this section, except for structures or facilities with recognized historical significance such as listing in a historic register.

(h) The installation or removal of impervious underground or above-ground tanks, having a total capacity of 10,000 gallons or less except on agricultural and industrial lands. On agricultural and industrial lands, the installation or removal of impervious underground or above-ground tanks, having a total capacity of 60,000 gallons or less.

(i) The vacation of streets or roads, converting public right of way, and other changes in motor vehicle access.

(j) The installation of hydrological measuring devices, regardless of whether or not on lands covered by water.

(k) The installation of any property, boundary or survey marker, other than fences, regardless of whether or not on lands covered by water.

(1) The installation of accessory solar energy generation equipment on or attached to existing structures and facilities whereby the existing footprint and size of the building is not increased.

(3) **Repair, remodeling and maintenance activities.** The following activities shall be categorically exempt: The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, recreation, and transportation facilities involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks). The following maintenance activities shall not be considered exempt under this subsection:

(a) Dredging of over (~~fifty~~) 50 cubic yards of material;

(b) Reconstruction or maintenance of groins and similar shoreline protection structures;

(c) Replacement of utility cables that must be buried under the surface of the bedlands; or

(d) Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection.

(4) **Water rights.** Appropriations of one cubic foot per second or less of surface water, or of 2,250 gallons per minute or less of groundwater, for any purpose. The exemption covering not only the permit to appropriate water, but also any hydraulics permit, shoreline permit or building permit required for a normal diversion or intake structure, well and pumphouse reasonably necessary to accomplish the exempted appropriation, and including any activities relating to construction of a distribution system solely for any exempted appropriation.

(5) **Purchase or sale of real property.** The following real property transactions by an agency shall be exempt:

(a) The purchase or acquisition of any right to real property.

(b) The sale, transfer or exchange of any publicly owned real property, but only if the property is not subject to a specifically designated and authorized public use established by the public landowner and used by the public for that purpose.

(c) Leasing, granting an easement for, or otherwise authorizing the use of real property when the property use will remain essentially the same as the existing use for the term of the agreement, or when the use under the lease, easement or other authorization is otherwise exempted by this chapter.

(6) **Land use decisions.** The following land use decisions shall be exempt:

(a) Land use decisions for exempt projects, except that rezones must comply with (c) of this subsection.

(b) Other land use decisions not qualified for exemption under subsection (a) (such as a home occupation or change of use) are exempt provided:

(i) The authorized activities will be conducted within an existing building or facility qualifying for exemption under WAC 197-11-800 (1) and (2); and

(ii) The activities will not change the character of the building or facility in a way that would remove it from an exempt class.

(c) Where an exempt project requires a rezone, the rezone is exempt only if:

- (i) The project is in an urban growth area in a city or county planning under RCW 36.70A.040;
- (ii) The proposed rezone is consistent with and does not require an amendment to the comprehensive plan; and
- (iii) The applicable comprehensive plan was previously subjected to environmental review and analysis through an EIS under the requirements of this chapter prior to adoption; and the EIS adequately addressed the environmental impacts of the rezone.
- (d) Except upon lands covered by water, the approval of short plats or short subdivisions pursuant to the procedures required by RCW 58.17.060, and short plats or short subdivisions within the original short subdivision boundaries provided the cumulative divisions do not exceed the total lots allowed to be created under RCW 58.17.020. This exemption includes binding site plans authorized by RCW 58.17.035 up to the same number of lots allowed by the jurisdiction as a short subdivision.
- (e) Granting of variance based on special circumstances, not including economic hardship, applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density.
- (f) Alteration of property lines as authorized by RCW 58.17.040(6).
- (7) **Open burning.** Opening burning and the issuance of any license for open burning shall be exempt. The adoption of plans, programs, objectives or regulations by any agency incorporating general standards respecting open burning shall not be exempt.
- (8) **Clean Air Act.** The granting of variances under RCW 70.94.181 extending applicable air pollution control requirements for one year or less shall be exempt.
- (9) **Water quality certifications.** The granting or denial of water quality certifications under the Federal Clean Water Act (Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1341) shall be exempt.
- (10) **Activities of the state legislature.** All actions of the state legislature are exempted.
- (11) **Judicial activity.** The following shall be exempt:
- (a) All adjudicatory actions of the judicial branch.
- (b) Any quasi-judicial action of any agency if such action consists of the review of a prior administrative or legislative decision. Decisions resulting from contested cases or other hearing processes conducted prior to the first decision on a proposal or upon any application for a rezone, conditional use permit or other similar permit not otherwise exempted by this chapter, are not exempted by this subsection.
- (12) **Enforcement and inspections.** The following enforcement and inspection activities shall be exempt:
- (a) All actions, including administrative orders and penalties, undertaken to enforce a statute, regulation, ordinance, resolution or prior decision. No license shall be considered exempt by virtue of this subsection; nor shall the adoption of any ordinance, regulation or resolution be considered exempt by virtue of this subsection.
- (b) All inspections conducted by an agency of either private or public property for any purpose.
- (c) All activities of fire departments and law enforcement agencies except physical construction activity.
- (d) Any action undertaken by an agency to abate a nuisance or to abate, remove or otherwise cure any hazard to public health or safety.

The application of pesticides and chemicals is not exempted by this subsection but may be exempted elsewhere in these guidelines. No license or adoption of any ordinance, regulation or resolution shall be considered exempt by virtue of this subsection.

(e) Any suspension or revocation of a license for any purpose.

(13) **Business and other regulatory licenses.** The following business and other regulatory licenses are exempt:

(a) All licenses to undertake an occupation, trade or profession.

(b) All licenses required under electrical, fire, plumbing, heating, mechanical, and safety codes and regulations, but not including building permits.

(c) All licenses to operate or engage in amusement devices and rides and entertainment activities including, but not limited to, cabarets, carnivals, circuses and other traveling shows, dances, music machines, golf courses, and theaters, including approval of the use of public facilities for temporary civic celebrations, but not including licenses or permits required for permanent construction of any of the above.

(d) All licenses to operate or engage in charitable or retail sales and service activities including, but not limited to, peddlers, solicitors, second hand shops, pawnbrokers, vehicle and housing rental agencies, tobacco sellers, close out and special sales, fireworks, massage parlors, public garages and parking lots, and used automobile dealers.

(e) All licenses for private security services including, but not limited to, detective agencies, merchant and/or residential patrol agencies, burglar and/or fire alarm dealers, guard dogs, locksmiths, and bail bond services.

(f) All licenses for vehicles for-hire and other vehicle related activities including, but not limited to, taxicabs, ambulances, and tow trucks: Provided, That regulation of common carriers by the utilities and transportation commission shall not be considered exempt under this subsection.

(g) All licenses for food or drink services, sales, and distribution including, but not limited to, restaurants, liquor, and meat.

(h) All animal control licenses including, but not limited to, pets, kennels, and pet shops. Establishment or construction of such a facility shall not be considered exempt by this subsection.

(i) The renewal or reissuance of a license regulating any present activity or structure so long as no material changes are involved.

(14) **Activities of agencies.** The following administrative, fiscal and personnel activities of agencies shall be exempt:

(a) The procurement and distribution of general supplies, equipment and services authorized or necessitated by previously approved functions or programs.

(b) The assessment and collection of taxes.

(c) The adoption of all budgets and agency requests for appropriation: Provided, That if such adoption includes a final agency decision to undertake a major action, that portion of the budget is not exempted by this subsection.

(d) The borrowing of funds, issuance of bonds, or applying for a grant and related financing agreements and approvals.

(e) The review and payment of vouchers and claims.

(f) The establishment and collection of liens and service billings.

(g) All personnel actions, including hiring, terminations, appointments, promotions, allocations of positions, and expansions or reductions in force.

(h) All agency organization, reorganization, internal operational planning or coordination of plans or functions.

(i) Adoptions or approvals of utility, transportation and solid waste disposal rates.

(j) The activities of school districts pursuant to desegregation plans or programs; however, construction of real property transactions or the adoption of any policy, plan or program for such construction of real property transaction shall not be considered exempt under this subsection.

(k) Classification of land for current use taxation under chapter 84.34 RCW, and classification and grading of forest land under chapter 84.33 RCW.

(15) **Financial assistance grants.** The approval of grants or loans by one agency to another shall be exempt, although an agency may at its option require compliance with SEPA prior to making a grant or loan for design or construction of a project. This exemption includes agencies taking nonproject actions that are necessary to apply for federal or other financial assistance.

(16) **Local improvement districts and special purpose districts.** The formation of local improvement districts and special purpose districts, unless such formation constitutes a final agency decision to undertake construction of a structure or facility not exempted under WAC 197-11-800 and 197-11-880. A special district or special purpose district is a local government entity designated by the Revised Code of Washington (RCW) and is not a city, town, township, or county.

(17) **Information collection and research.** Basic data collection, research, resource evaluation, requests for proposals (RFPs), and the conceptual planning of proposals shall be exempt. These may be strictly for information-gathering, or as part of a study leading to a proposal that has not yet been approved, adopted or funded; this exemption does not include any agency action that commits the agency to proceed with such a proposal. (Also see WAC 197-11-070.)

(18) **Acceptance of filings.** The acceptance by an agency of any document or thing required or authorized by law to be filed with the agency and for which the agency has no discretionary power to refuse acceptance shall be exempt. No license shall be considered exempt by virtue of this subsection.

(19) **Procedural actions.** The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(a) Relating solely to governmental procedures, and containing no substantive standards respecting use or modification of the environment.

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

(c) Agency SEPA procedures.

(20) **Reserved.**

(21) **Adoption of noise ordinances.** The adoption by counties/cities of resolutions, ordinances, rules or regulations concerned with the control of noise which do not differ from regulations adopted by the department of ecology under chapter 70.107 RCW. When a county/city proposes a noise resolution, ordinance, rule or regulation, a portion of which differs from the applicable state regulations, SEPA compli-

ance may be limited to those items which differ from state regulations.

(22) **Review and comment actions.** Any activity where one agency reviews or comments upon the actions of another agency or another department within an agency shall be exempt.

(23) **Utilities.** The utility-related actions listed below shall be exempt, except for installation, construction, or alteration on lands covered by water. The exemption includes installation and construction, relocation when required by other governmental bodies, repair, replacement, maintenance, operation or alteration that does not change the action from an exempt class.

(a) All communications lines, including cable TV, but not including communication towers or relay stations.

(b) All stormwater, water and sewer facilities, lines, equipment, hookups or appurtenances including, utilizing or related to lines (~~twelve~~) 12 inches or less in diameter.

(c) All electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 55,000 volts or less; the overbuilding of existing distribution lines (55,000 volts or less) with transmission lines (up to and including 115,000 volts); within existing rights of way or developed utility corridors, all electric facilities, lines, equipment or appurtenances, not including substations, with an associated voltage of 115,000 volts or less; and the undergrounding of all electric facilities, lines, equipment or appurtenances.

(d) All natural gas distribution (as opposed to transmission) lines and necessary appurtenant facilities and hookups.

(e) All developments within the confines of any existing electric substation, reservoir, pump station vault, pipe, or well: Additional appropriations of water are not exempted by this subsection.

(f) Periodic use of chemical or mechanical means to maintain a utility or transportation right of way in its design condition: Provided, the chemicals used are approved by Washington state and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality.

(g) All grants of rights of way by agencies to utilities for use for distribution (as opposed to transmission) purposes.

(h) All grants of franchises by agencies to utilities.

(i) All disposals of rights of way by utilities.

(24) **Natural resources management.** In addition to the other exemptions contained in this section, the following natural resources management activities shall be exempt:

(a) Issuance of new grazing leases covering a section of land or less; and issuance of all grazing leases for land that has been subject to a grazing lease within the previous (~~ten~~) 10 years.

(b) Licenses or approvals to remove firewood.

(c) Issuance of agricultural leases covering (~~one hundred sixty~~) 160 contiguous acres or less.

(d) Issuance of leases for Christmas tree harvesting or brush picking.

(e) Issuance of leases for school sites.

(f) Issuance of leases for, and placement of, mooring buoys designed to serve pleasure craft.

(g) Development of recreational sites not specifically designed for all-terrain vehicles and not including more than (~~twelve~~) 12 campsites.

(h) Periodic use of chemical or mechanical means to maintain public park and recreational land: Provided, That chemicals used are approved by the Washington state department of agriculture and applied by licensed personnel. This exemption shall not apply to the use of chemicals within watersheds that are controlled for the purpose of drinking water quality.

(i) Issuance of rights of way, easements and use permits to use existing roads in nonresidential areas.

(j) Establishment of natural area preserves to be used for scientific research and education and for the protection of rare flora and fauna, under the procedures of chapter 79.70 RCW.

(25) Wireless service facilities.

(a) The siting of wireless service facilities are exempt if:

(i) The collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures that does not substantially change the physical dimensions of such structures; or

(ii) The siting project involves constructing a wireless service tower less than (~~sixty~~) 60 feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone.

(b) For the purposes of this subsection:

(i) "Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(ii) "Wireless service facilities" means facilities for the provision of wireless services.

(iii) "Collocation" means the mounting or installation of equipment on an existing tower, building, structure for the purposes of either transmitting or receiving, or both, radio frequency signals for communication purposes.

(iv) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(v) "Substantially change the physical dimensions" means:

(A) The mounting of equipment on a structure that would increase the height of the structure by more than (~~ten~~) 10 percent, or (~~twenty~~) 20 feet, whichever is greater; or

(B) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than (~~twenty~~) 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

(c) This exemption does not apply to projects within a critical area designated under GMA (RCW 36.70A.060).

(26) State transportation projects. The following Washington department of transportation projects and activities shall be exempt: The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation, as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

(27) **Structurally deficient city, town and county bridges.** The repair, reconstruction, restoration, retrofitting, or replacement of a structurally deficient city, town or county bridge shall be exempt as long as the action:

(a) Occurs within the existing right of way and in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements; and

(b) The action does not result in addition of automobile lanes, a change in capacity, or a change in functional use of the facility.

"Structurally deficient" means a bridge that is classified as in poor condition under the state bridge condition rating system and is reported by the state to the national bridge inventory as having a deck, superstructure, or substructure rating of four or below. Structurally deficient bridges are characterized by deteriorated conditions of significant bridge elements and potentially reduced load-carrying capacity. Bridges deemed structurally deficient typically require significant maintenance and repair to remain in service, and require major rehabilitation or replacement to address the underlying deficiency.

[Statutory Authority: RCW 43.21C.110. WSR 16-13-012 (Order 15-09), § 197-11-800, filed 6/2/16, effective 7/3/16. Statutory Authority: RCW 43.21C.110 and 43.21C.100 [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-800, filed 4/9/14, effective 5/10/14. Statutory Authority: RCW 43.21C.110. WSR 13-02-065 (Order 12-01), § 197-11-800, filed 12/28/12, effective 1/28/13. Statutory Authority: RCW 43.21A.090, chapter 43.21C RCW, RCW 43.21C.035, 43.21C.037, 43.21C.038, 43.21C.0381, 43.21C.0382, 43.21C.0383, 43.21C.110, 43.21C.222. WSR 03-16-067 (Order 02-12), § 197-11-800, filed 8/1/03, effective 9/1/03. Statutory Authority: 1995 c 347 (ESHB 1724) and RCW 43.21C.110. WSR 97-21-030 (Order 95-16), § 197-11-800, filed 10/10/97, effective 11/10/97. Statutory Authority: RCW 43.21C.110. WSR 84-05-020 (Order DE 83-39), § 197-11-800, filed 2/10/84, effective 4/4/84.]

AMENDATORY SECTION (Amending WSR 16-13-012, filed 6/2/16, effective 7/3/16)

WAC 197-11-960 Environmental checklist.

ENVIRONMENTAL CHECKLIST

Purpose of checklist:

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of checklist for nonproject proposals:

For nonproject proposals complete this checklist and the supplemental sheet for nonproject actions (Part D). The lead agency may exclude any question for the environmental elements (Part B) which they determine do not contribute meaningfully to the analysis of the proposal.

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:
2. Name of applicant:
3. Address and phone number of applicant and contact person:
4. Date checklist prepared:
5. Agency requesting checklist:
6. Proposed timing or schedule (including phasing, if applicable):
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.
8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
10. List any government approvals or permits that will be needed for your proposal, if known.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other.....
- b. What is the steepest slope on the site (approximate percent slope)?
- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

3. Water

- a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

5) Does the proposal lie within a 100-year flood plain? If so, note location on the site plan.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

b. Ground:

1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well? Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals...; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

c. Water runoff (including stormwater):

1) Describe the source of runoff (including stormwater) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

2) Could waste materials enter ground or surface waters? If so, generally describe.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

d. Proposed measures to reduce or control surface, ground, runoff water, and drainage pattern impacts, if any:

4. Plants

a. Check the types of vegetation found on the site:

- Deciduous tree: Alder, maple, aspen, other
- Evergreen tree: Fir, cedar, pine, other
- Shrubs
- Grass

- Pasture
- Crop or grain
- Orchards, vineyards or other permanent crops.
- Wet soil plants: Cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: Water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

c. List threatened and endangered species known to be on or near the site.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

e. List all noxious weeds and invasive species known to be on or near the site.

5. **Animals**

a. List any birds and other animals which have been observed on or near the site or are known to be on or near the site. Examples include:

Birds: Hawk, heron, eagle, songbirds, other:

Mammals: Deer, bear, elk, beaver, other:

Fish: Bass, salmon, trout, herring, shellfish, other:

b. List any threatened and endangered species known to be on or near the site.

c. Is the site part of a migration route? If so, explain.

d. Proposed measures to preserve or enhance wildlife, if any:

e. List any invasive animal species known to be on or near the site.

6. **Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

7. **Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

1) Describe any known or possible contamination at the site from present or past uses.

2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.

4) Describe special emergency services that might be required.

5) Proposed measures to reduce or control environmental health hazards, if any:

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

3) Proposed measures to reduce or control noise impacts, if any:

8. Land and shoreline use

a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

c. Describe any structures on the site.

d. Will any structures be demolished? If so, what?

e. What is the current zoning classification of the site?

f. What is the current comprehensive plan designation of the site?

g. If applicable, what is the current shoreline master program designation of the site?

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

i. Approximately how many people would reside or work in the completed project?

j. Approximately how many people would the completed project displace?

k. Proposed measures to avoid or reduce displacement impacts, if any:

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
- c. Proposed measures to reduce or control housing impacts, if any:

10. **Aesthetics**

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?
- b. What views in the immediate vicinity would be altered or obstructed?
- c. Proposed measures to reduce or control aesthetic impacts, if any:

11. **Light and glare**

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?
- b. Could light or glare from the finished project be a safety hazard or interfere with views?
- c. What existing offsite sources of light or glare may affect your proposal?
- d. Proposed measures to reduce or control light and glare impacts, if any:

12. **Recreation**

- a. What designated and informal recreational opportunities are in the immediate vicinity?
- b. Would the proposed project displace any existing recreational uses? If so, describe.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

13. **Historic and cultural preservation**

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.
- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation. This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.
- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of (~~archeology~~) archaeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.

d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

14. **Transportation**

a. Identify public streets and highways serving the site or affected geographic area, and describe proposed access to the existing street system. Show on site plans, if any.

b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?

~~c. ((How many additional parking spaces would the completed project or nonproject proposal have? How many would the project or proposal eliminate?~~

~~d.))~~ Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

~~(e.))~~ d. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

~~(f.))~~ e. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

~~(g.))~~ f. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

~~(h.))~~ g. Proposed measures to reduce or control transportation impacts, if any:

15. **Public services**

a. Would the project result in an increased need for public services (for example: Fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

b. Proposed measures to reduce or control direct impacts on public services, if any.

16. **Utilities**

a. Circle utilities currently available at the site: Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature:

Date Submitted:

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

Proposed measures to avoid or reduce such increases are:

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

3. How would the proposal be likely to deplete energy or natural resources?

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?

Proposed measures to protect such resources or to avoid or reduce impacts are:

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Proposed measures to avoid or reduce shoreline and land use impacts are:

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

Proposed measures to reduce or respond to such demand(s) are:

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

[Statutory Authority: RCW 43.21C.110. WSR 16-13-012 (Order 15-09), § 197-11-960, filed 6/2/16, effective 7/3/16. Statutory Authority: RCW 43.21C.110 and 43.21C.100 [43.21C.170]. WSR 14-09-026 (Order 13-01), § 197-11-960, filed 4/9/14, effective 5/10/14. Statutory Authority: RCW

43.21C.110. WSR 13-02-065 (Order 12-01), § 197-11-960, filed 12/28/12, effective 1/28/13; WSR 84-05-020 (Order DE 83-39), § 197-11-960, filed 2/10/84, effective 4/4/84.]

WSR 23-01-131

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 20, 2022, 4:11 p.m., effective January 20, 2023]

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

Purpose: WAC 246-320-011 Department responsibilities—Licensing—Adjudicative proceeding, and new 246-320-013 Department responsibilities—Enforcement. The department of health (department) is adopting a severity matrix for civil fines related to acute care hospital enforcement in order to implement 2SHB 1148 (chapter 61, Laws of 2021).

Citation of Rules Affected by this Order: New WAC 246-320-013; and amending WAC 246-320-011.

Statutory Authority for Adoption: RCW 70.41.030.

Other Authority: 2SHB 1148 (chapter 61, Laws of 2021).

Adopted under notice filed as WSR 22-18-076 on September 2, 2022.

A final cost-benefit analysis is available by contacting Julie Tomaro, P.O. Box 47843, Olympia, WA 98504-7843, phone 360-236-2937, fax 360-236-2321, TTY 711, email julie.tomaro@doh.wa.gov.

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

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

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

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

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

Date Adopted: December 20, 2022.

Kristin Peterson, JD
Chief of Policy
for Umair A. Shah, MD, MPH
Secretary

OTS-3896.2

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-011 Department responsibilities—Licensing—Adjudicative proceeding. This section identifies the actions and responsibilities of the department for licensing hospitals.

(1) Before issuing an initial license, the department will verify compliance with chapter 70.41 RCW and this chapter which includes, but is not limited to:

(a) Approval of construction documents;

(b) Receipt of a certificate of need as provided in chapter 70.38 RCW;

(c) Approval by the local jurisdiction of all local codes and ordinances and the permit to occupy;

(d) Approval of the initial license application;

(e) Receipt of the correct license fee;

(f) Compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080; and

(g) Conduct an on-site licensing survey in accordance with WAC 246-320-016.

(2) The department may issue a license to include two or more buildings, if the applicant:

(a) Meets the requirements listed in subsection (1) of this section;

(b) Operates the buildings as an integrated system with:

(i) Governance by a single authority over all buildings or portions of buildings;

(ii) A single medical staff for all hospital facilities; and

(iii) Use all policies and procedures for all facilities and departments.

(c) Arranges for safe and appropriate transport of patients between all facilities and buildings.

(3) Before reissuing a license, the department will:

(a) Verify compliance with the on-site survey conducted by the state fire marshal required in RCW 70.41.080;

(b) Review and accept the annual hospital update information documentation;

(c) Assure receipt of the correct annual fee; and

(d) Reissue licenses as often as necessary each calendar year so that approximately one-third of the hospital licenses expire on the last day of the calendar year.

(4) The department may issue a provisional license to allow the operation of a hospital, if the department determines that the applicant or licensed hospital failed to comply with chapter 70.41 RCW or this chapter.

~~((5) The department may deny, suspend, modify, or revoke a license when it finds an applicant or hospital has failed or refused to comply with chapter 70.41 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters 246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.))~~

[Statutory Authority: Chapter 70.41 RCW and RCW 43.70.040. WSR 09-07-050, § 246-320-011, filed 3/11/09, effective 4/11/09.]

NEW SECTION

WAC 246-320-013 Department responsibilities—Enforcement. (1)

The department may deny, suspend, modify, or revoke a license when it finds an applicant or hospital has failed or refused to comply with chapter 70.41 RCW or this chapter. The department's notice of a license denial, suspension, modification, or revocation will be consistent with RCW 43.70.115. The proceeding is governed by the Administrative Procedure Act chapter 34.05 RCW, this chapter, and chapters

246-08 and 246-10 WAC. If this chapter conflicts with chapter 246-08 or 246-10 WAC, this chapter governs.

(2) The department may assess civil fines on a hospital according to RCW 70.41.130.

(a) The department may assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a hospital when:

(i) The hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(ii) The hospital has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule; or

(iii) The hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(b) The department will assess civil fine amounts based on the scope and severity of the violation(s) and in compliance with (g) and (h) of this subsection:

(c) The "severity of the violation" will be considered when determining fines. Levels of severity are categorized as follows:

(i) "**Low**" means harm could happen but would be rare. The violation undermines safety or quality or contributes to an unsafe environment but is very unlikely to directly contribute to harm;

(ii) "**Moderate**" means harm could happen occasionally. The violation could cause harm directly but is more likely to cause harm as a continuing factor in the presence of special circumstances or additional failures. If the deficient practice continues, it would be possible that harm could occur but only in certain situations or patients;

(iii) "**High**" means harm could happen at any time or did happen. The violation could directly lead to harm without the need for other significant circumstances or failures. If the deficient practice continues, it would be likely that harm could happen at any time to any patient.

(d) Factors the department will consider when determining the severity of the violation include:

(i) Whether harm to the patient(s) has occurred, or could occur;

(ii) The impact of the actual or potential harm on the patient(s);

(iii) The degree to which the hospital demonstrated noncompliance with requirements, procedures, policies or protocols;

(iv) The degree to which the hospital failed to meet the patient's physical, mental, and psychosocial well-being; and

(v) Whether a fine at a lower severity has been levied and the condition or deficiency related to the violation has not been adequately resolved.

(e) The scope of the violation is the frequency, incidence, or extent of the occurrence of the violation(s). The levels of scope are defined as follows:

(i) "**Limited**" means a unique occurrence of the deficient practice that is not representative of routine or regular practice and has the potential to impact only one or a very limited number of patients, visitors, or staff. It is an outlier. The scope of the violation is limited when one or a very limited number of patients are affected or one or a very limited number of staff are involved, or the deficiency occurs in a very limited number of locations.

(ii) **"Pattern"** means multiple occurrences of the deficient practice, or a single occurrence that has the potential to impact more than a limited number of patients, visitors, or staff. It is a process variation. The scope of the violation becomes a pattern when more than a very limited number of patients are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same patient(s) have been affected by repeated occurrences of the same deficient practice.

(iii) **"Widespread"** means the deficient practice is pervasive in the facility or represents a systemic failure or has the potential to impact most or all patients, visitors, or staff. It is a process failure. Widespread scope refers to the entire organization, not just a subset of patients or one unit.

(f) When determining the scope of the violation, the department will also consider the duration of time that has passed between repeat violations, up to a maximum of two prior survey cycles.

(g) The department will consider the operation size of the hospital and the number of licensed beds when assessing a civil fine based on the following tables:

Table 1: 0-25 and 26-99 licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$550	\$1,000 - \$1,100	\$2,000 - \$2,200
Pattern	\$1,000 - \$1,100	\$2,000 - \$2,200	\$4,000 - \$4,400
Widespread	\$1,500 - \$1,650	\$3,000 - \$3,300	\$5,000 - \$5,500

Table 2: 100-299 licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$650	\$1,000 - \$1,300	\$2,000 - \$2,600
Pattern	\$1,000 - \$1,300	\$2,000 - \$2,600	\$4,000 - \$5,200
Widespread	\$1,500 - \$1,950	\$3,000 - \$3,900	\$5,000 - \$6,500

Table 3: 300+ licensed beds

Fine Amounts in Relation to the Scope and Severity of the Violation			
Scope	Severity		
	Low	Moderate	High
Limited	\$500 - \$1,000	\$1,000 - \$2,000	\$2,000 - \$4,000
Pattern	\$1,000 - \$2,000	\$2,000 - \$4,000	\$4,000 - \$8,000
Widespread	\$1,500 - \$3,000	\$3,000 - \$6,000	\$5,000 - \$10,000

(h) The department may assess a civil fine that is higher than the maximum fine amounts in (g) of this subsection, not to exceed \$10,000 per violation, if it determines that the maximum fine amounts listed in (g) of this subsection would not be sufficient to deter future noncompliance.

(i) A hospital may appeal the department's action of assessing civil fines under RCW 43.70.095.

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